

1967  
STATE LEGISLATIVE PROGRAM  
of the  
ADVISORY COMMISSION  
ON INTERGOVERNMENTAL  
RELATIONS



- *Washington, D. C. 20575*
- *September 1966*
- *M-33*



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## FOREWORD

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

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

The Commission seeks to implement its legislative recommendations to the states by translating them into legislative language for consideration by the 50 state legislatures. This volume contains 63 legislative proposals in the form of draft bills and policy statements to implement the recommendations for state legislation approved by the Commission through August 31, 1966. It is the sixth in a series of state legislative programs and incorporates all of the proposals from earlier programs. The titles of the 16 proposals appearing for the first time are preceded by an identifying symbol. The proposals are presented under two major subject matter headings-- I. Taxation and Finance and II. Structural and Functional Relationships--and a number of subheadings. Each of the subject areas is introduced by a statement summarizing the broad objectives of the Commission's recommendations. Each legislative draft, in turn, is preceded by a brief explanatory statement.

The Commission's several reports containing the analysis and recommendations that underlie these legislative proposals are listed at the end of this volume. Copies of these reports are available from the Commission on request.

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



1967 STATE LEGISLATIVE PROGRAM OF THE  
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## I. TAXATION AND FINANCE

### Introductory Statement

The Advisory Commission's program for state legislation proceeds from the premise that strong state and local government, responsive to the needs of the people is the foundation of an enduring federal form of government; and that sound and adequate finances are an essential ingredient of governmental strength.

To provide the kinds of services the people need and the financial and technical assistance the local governments need, the states must be financially strong. Since the personal income tax is particularly responsive to rising economic activity, it can be an important element of state fiscal strength. About one-third of the states do not use the personal income tax and another third use it ineffectively. The Commission strongly urges the states to consider such a tax and has developed a suggested income tax statute that incorporates principles of income taxation believed to be desirable at the state level.

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 higher levels of government. States must see to it, too, that local governments use the powers at their disposal effectively, with appropriate regard for the interests of other local governments and of the state itself.

The ability of local governments to raise revenue is necessarily determined by and limited to the taxable resources within their borders. Because local governments derive their powers from their respective states, they can draw upon revenue and other financing resources only in ways and within bounds prescribed by their state constitutions and statutes. Because local governments function in close proximity to one another in an interdependent society and economy, the effectiveness with which they employ financing resources is enhanced through intercommunity cooperation and impaired by a lack of it. The extent to which local governments pursue harmonious tax policies and otherwise act in concert is itself shaped and guided by state policies. By the same token, local government effectiveness is to an important degree influenced by the support given it by the state's stronger and more developed administrative facilities. The Commission's legislative proposals 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 non-property taxes in those limited situations where their use is compatible with other important state and local objectives.

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

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

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

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

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



## A. STATE TAXES

### Introductory Statement

At the time that revenue needs are expanding, states have a continuing responsibility to examine (1) their tax structures to achieve a system of taxation that will yield increasing amounts of revenue as the economy expands, and (2) their existing tax laws to eliminate possible inequities while fostering effective enforcement for the economy and convenience of taxpayers.

In connection with the first requirement, the Advisory Commission recommends that states without a personal income tax give early and careful consideration to incorporating it into their tax system and that those presently employing a relatively ineffective income tax strengthen it. The Commission also recommends that when the federal tax on real estate transfers is repealed (January 1, 1968), those states without such a tax consider it for use at either the state or local level. The states considering real estate transfer taxes are urged to fortify tax administration by requiring local officials charged with the recordation of transfers of title to verify that the transfer tax had been paid.

In connection with the second requirement, a congressional committee recently criticized certain features of state sales and use tax laws. Some of these laws result in the imposition of both the sales tax and the use tax on essentially the same transaction. Some states impose charges upon out-of-state vendors to cover the cost of audits for determining their sales and use tax liabilities, if any. The states are urged to enact legislation to promote greater equity in the application and administration of their sales and use tax laws. To promote more effective use of the administrative machinery at the federal, state, and local level, states are urged to authorize their tax administrators to exchange information with the tax administrators of other states and federal and local governments.

## UNIFORM PERSONAL INCOME TAX STATUTE

The personal income tax represents the last under-utilized major revenue source for many states. One-third of the states, including some in the most industrialized high-income sections of the country, do not tax personal incomes at all and another third tax them at relatively low effective rates. The tax produces about \$4 billion for the 33 states with income taxes. In contrast, state and local sales taxes produce about \$8 billion and property taxes about \$24 billion. In the aggregate the personal income tax provides only about 15 percent of all state and 8 percent of all state and local taxes. Therefore, most states now derive little benefit from the unique growth potential of this tax.

The personal income tax is the brightest prospective revenue source available to states for closing the gap between rising expenditure needs and the revenue productivity of their tax systems. Since World War II, state and local expenditures have been growing at the rate of 8 to 9 percent per year while the principal state and local revenue producers--general retail sales and property taxes--increase at only about half this rate and roughly in proportion to the gross national product. Greater reliance on personal income taxes will strengthen the revenue position of the states as the national economy continues to grow.

The personal income tax has other important attributes. It permits a larger share of the tax burden to be adjusted to the size of the family through an exemption system. It typically results in equal treatment of individuals and households with equal income, a characteristic that grows in importance as the margin between people's incomes and their consumer expenditures widens and as family homesteads become less and less indicative of taxpaying ability. The personal income tax also provides the most effective way for exempting the disadvantaged members in American society--the poor--from some of the growing burden of state and local taxes. This attribute takes on increasing importance as national policy objectives encompassed in the anti-poverty program gain dominance, as the significance of the state and local sector in total government operations increases, and as the weight of national payroll taxes to finance social security programs grows heavier.

The national government now obtains over \$50 billion, more than half of its tax revenue, from the personal income tax. Of the American people's annual tax payments on their personal incomes, 93 percent is to the federal government, only 7 percent to state and local governments. The universality and dominance of the federal income tax has already prompted most income tax states to conform their income tax laws to the federal code in the interest of minimizing taxpayer inconvenience, and administrative costs. The prospect of increased state use of income taxation further underscores the case for conforming state personal income tax laws to the Federal Internal Revenue Code.



The definition of net income derived from business and professional activity lends itself uniquely to federal-state income tax conformity. The basic questions in this area are best resolved in accord with the rules of good business practice. The definition of net income from business operations is in fact, largely an exercise in articulating the rules of accountancy. Because federal law in this regard is already quite explicit, state independence with respect to the definition of net income can result in taxpayer inconvenience and administrative complexity. For this reason, the Advisory Commission on Intergovernmental Relations has recommended that the states endeavor to bring their income tax laws into harmony with the federal definition of adjusted gross income.

Aside from the special treatment of income from government obligations required by the doctrine of intergovernmental tax immunities, the income portion of most taxpayers' state returns could be completed by copying a single figure from the federal return (line 9 of Federal Form #1040), under the approach taken in this suggested legislation. States would, at the same time, retain the requisite flexibility with respect to determining personal deductions and exemptions as well as adjusted gross income modifications designed to promote tax equity, maximize the tax base, and minimize the likelihood of adverse effects on state tax revenues resulting from unforeseen changes in federal tax policy.

To facilitate the adoption of a state income tax law conforming in all essential respects to appropriate Federal Internal Revenue Code provisions, this suggested legislation incorporates in one comprehensive act the provisions necessary to deal consistently with partnerships, estates, trusts, beneficiaries, and decedents, as well as individuals. The legislation includes the definition of residence (section 1(b)) recommended by the Advisory Commission for adoption by all income tax states in order to preclude multiple taxation and to eliminate tax avoidance. It also contains a provision (title II, part I, section 11) for crediting residents of the state for income tax paid another state, a practice now followed by two-thirds of the income tax states in the interest of consistency with tax collection at the source and the avoidance of double taxation of the same income.

The ultimate objective of federal-state income tax comity is a condition that would enable the taxpayer to satisfy both state and federal filing requirements with a single tax return. The realization of such a goal, however, is unlikely without state and federal authority to experiment on a limited geographical basis. The Advisory Commission has recommended that in order to encourage experimentation with federal collection of state income taxes, the Congress authorize the Internal Revenue Service and that the legislatures of states using personal income taxes authorize their governors, to enter into mutually acceptable agreements for federal collection of state income taxes. Legislation was introduced in

the 89th Congress (H.R. 14997) to give federal officials the necessary authority. This suggested legislation provides authorization for the governor to enter into an agreement for federal collection of the state income tax (title VIII, part VII, section 112).

Continuing revenue pressures, against the background of the recent substantial increases in property tax rates, are enhancing local government interest in other tax sources, including the individual income tax. Local governments in seven states (Alabama, Kentucky, Maryland, Missouri, Michigan, Ohio, and Pennsylvania) may impose income taxes. The first four-mentioned states also levy state personal income taxes but the number of their localities using income taxes is quite limited. Michigan, Ohio, and Pennsylvania, none of which levies a state personal income tax, have permitted local income taxation to proliferate. The states have a useful and significant coordinating role to play in the administration of local income taxes as well as in other nonproperty taxes, as noted elsewhere in these state legislative proposals. (See Local Sales Tax Supplement.)

While income taxes are preferable to sales and many other types of taxes because they can be structured to distribute their burden in conformity with ability to pay and with necessary regard for the taxpayer's family obligations, they have important limitations for use at the local level. These limitations grow more compelling as the economies of the different sections of the country become more and more interdependent. Increasingly, our people live in one jurisdiction and work in another. Increasingly, our people supplement their wages and salaries from local sources with investment and earned income from other parts of the state and from other states. In deference to these considerations local jurisdictions that now use these taxes generally limit them to income from wages and salaries. In doing so, they forego some of the advantages of the income tax in terms of ability to pay.

These kinds of considerations explain the Advisory Commission's preference for state rather than locally imposed personal income taxes. Local jurisdictions' need for revenue to supplement those from property, sales, and other local tax sources are best met by state financial aid allocated with appropriate regards for variations in local needs and fiscal resources.

Where it is desired to supplement local resources with revenues from a tax on personal incomes and this cannot be effectuated through a state levy, income taxes imposed below the state level are a possible alternative. Such taxes, however, are preferably levied over as large an area as possible, ideally coinciding with the boundaries of the economic or metropolitan area and as a supplement ("piggy-back") to the state's tax and collected with it. The county meets this area requirement where its boundaries coincide with the boundaries of a metropolitan area.

In multi-county economic or metropolitan areas, the preferred method is a uniform income tax applicable to the entire area. In

these cases, as in the case of a countywide tax shared with incorporated and unincorporated jurisdictions, the division of collections is likely to pose difficulties. Such difficulties could be avoided by reserving the proceeds of the income tax for financing a significant areawide program or function in which the constituent jurisdictions have a common interest, as for example, in higher education, recreation, or water supply. Where the direct use of income tax collections for a common program or function is not practicable, a sharing between the jurisdiction of employment and the jurisdiction of residence, as in Michigan, is a reasonable second choice. It is incontrovertible, however, that the smaller the income tax jurisdiction the more difficult it becomes to satisfy the dictates of tax fairness. While the state can protect its taxpayers with multi-state income tax sources against double taxation through tax credits and other arrangements, this is impracticable with respect to double taxation by local jurisdictions without jeopardy to the administrative ease and efficiency objectives of the local supplement device. The suggested legislation provides for a multi-county personal income tax supplement to the state income tax (title IX). States desiring to reserve their revenue yield for an areawide program or function could do so by an appropriate modification of section 123. In single county taxing areas, the certification provisions of section 120 can be appropriately modified.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

TITLE I

IMPOSITION OF TAX

1        Section 1. (a) Imposition and Rate of Tax. A tax is here-  
 2 by imposed for each taxable year on the entire taxable income  
 3 of every resident of this state and on the taxable income of  
 4 every nonresident which is derived from sources within this  
 5 state. The amount of the tax shall be determined in accor-  
 6 dance with the following table:

7        If the taxable income is:	The tax is:
8        Not over \$[     ]	[     ]% of the taxable income
9        Over \$[     ] but not over	\$[     ] plus [     ]% of the
10       \$[     ]	excess over \$[     ]
11       Over \$[     ] but not over	\$[     ] plus [     ]% of the
12       \$[     ]	excess over \$[     ]

13        (b) Resident and Nonresident Defined. For purposes of this  
 14 act:

15           (1) A resident of this state means an individual who  
16 is domiciled in this state unless he maintains no permanent  
17 place of abode in this state and does maintain a permanent  
18 place of abode elsewhere and spends in the aggregate not more  
19 than thirty days of the taxable year in this state; or who is  
20 not domiciled in this state but maintains a permanent place of  
21 abode in this state and spends in the aggregate more than 183  
22 days of the taxable year in this state.

23           (2) A nonresident means an individual who is not a  
24 resident of this state.

25           (c) Cross References: For application of the tax to  
26 estates and trusts, see title V; for application to partner-  
27 ships, title VI.

1           Section 2. Joint Return or Return of Surviving Spouse.

2 In the case of a joint return of a husband and wife, the tax  
3 imposed by section 1 shall be twice the tax which would be  
4 imposed if the taxable income were cut in half. For purposes  
5 of this section, section 3 (optional tax) and section 8  
6 (standard deduction), a return of a surviving spouse shall be  
7 treated as a joint return of husband and wife.

1           Section 3. Optional Tax. (a) Option to Elect in Lieu  
2 Tax. In lieu of the tax imposed by section 1, there is hereby  
3 imposed for each taxable year on the taxable income of every  
4 individual whose adjusted gross income for such year is less  
5 than \$5,000, or in the case of a married couple filing a joint  
6 return for such year whose adjusted gross income is less than  
7 \$10,000, and who has elected for such year to pay the tax  
8 imposed by this section, a tax as follows:

9                                   (Insert appropriate tables)

10           (b) Manner of Election. The election referred to in sub-  
11 section (a) shall be made in the manner provided in regula-  
12 tions prescribed by the [tax commissioner].

13           (c) Separate Returns. A husband or wife may not elect to  
14 pay the optional tax imposed by this section if the tax of the  
15 other spouse is determined under section 1 on the basis of

16 taxable income computed without regard to the standard de-  
17 duction.

18 (d) Optional Tax Does Not Apply. The optional tax imposed  
19 by this section does not apply to any individual who is in-  
20 eligible to elect the optional tax provided in the Internal  
21 Revenue Code of the United States, nor to estates or trusts.

22 (e) Determination of Taxable Income. In the case of a  
23 taxpayer who makes the election referred to in this section,  
24 taxable income means adjusted gross income as modified by  
25 section 6 less the standard deduction provided in section 8  
26 and the deduction for personal exemptions provided in section  
27 10.

1 Section 4. Meaning of Terms. Any term used in this act  
2 shall have the same meaning as when used in a comparable con-  
3 text in the laws of the United States relating to federal in-  
4 come taxes, unless a different meaning is clearly required.  
5 Any reference in this act to the laws of the United States  
6 shall mean the provisions of the Internal Revenue Code of  
7 1954, and amendments thereto, and other provisions of the laws  
8 of the United States relating to federal income taxes, as the  
9 same may be or become effective, at any time or from time to  
10 time, for the taxable year.

(Alternate form--to avoid invalidity on the ground  
of illegal delegation)

1 Section 4. Meaning of Terms. Any term used in this act  
2 shall have the same meaning as when used in a comparable  
3 context in the laws of the United States relating to federal  
4 income taxes, unless a different meaning is clearly required.  
5 Any reference in this act to the laws of the United States  
6 shall mean the provisions of the Internal Revenue Code of  
7 1954, and amendments thereto, in effect on [December 31, 19 ]  
8 and other provisions of the laws of the United States relating  
9 to federal income taxes in effect on [December 31, 19 ], or  
10 at the option of the taxpayer it shall mean the provisions of  
11 the Internal Revenue Code of 1954 and amendments thereto and

12 other provisions of the laws of the United States relating to  
13 federal income taxes as they may be in effect for the taxable  
14 year.

## TITLE II

### COMPUTATION OF TAXABLE INCOME

#### Part I - Resident Individuals

1       Section 5. Taxable Income. The entire taxable income of  
2 a resident of this state shall be his federal adjusted gross  
3 income as defined in the laws of the United States with the  
4 modifications and less the deductions and personal exemptions  
5 provided in this part.

1       Section 6. Modifications. (a) Additions. There shall be  
2 added to federal adjusted gross income: (1) interest or  
3 dividends on obligations or securities of any state or of a  
4 political subdivision or authority thereof (other than this  
5 state and its political subdivisions and authorities); and  
6 (2) interest or dividends on obligations of any authority,  
7 commission, instrumentality, territory or possession of the  
8 United States which by the laws of the United States are  
9 exempt from federal income tax but not from state income  
10 taxes.

11       (b) Subtractions. There shall be subtracted from federal  
12 adjusted gross income interest or dividends on obligations of  
13 the United States and its territories and possessions or of  
14 any authority, commission or instrumentality of the United  
15 States to the extent includible in gross income for federal  
16 income tax purposes but exempt from state income taxes under  
17 the laws of the United States, provided that the amount sub-  
18 tracted under this subsection shall be reduced by any interest  
19 on indebtedness incurred to carry the obligations or securities  
20 described in this subsection, and by any expenses incurred in  
21 the production of interest or dividend income described in  
22 this subsection to the extent that such expenses including

23 amortizable bond premiums are deductible in determining  
24 federal adjusted gross income.

25 (c) Fiduciary Adjustment. There shall be added to or  
26 subtracted from federal adjusted gross income, as the case may  
27 be, the taxpayer's share of the fiduciary adjustment determined  
28 under section 34.

29 (d) Cross Reference. For modifications required to be  
30 made by a partner relating to items of income, gain, loss or  
31 deduction of a partnership, see title VI.

1 Section 7. Deduction. The deduction of a resident indi-  
2 vidual shall be his standard deduction unless he elects to  
3 itemize his deductions as provided in section 9.

1 Section 8. Standard Deduction. The standard deduction of  
2 a resident individual or of a resident husband and wife who  
3 file a joint return shall be 10 percent of his or their  
4 adjusted gross income as modified by this part, or \$1,000,  
5 whichever is less. The standard deduction of a married per-  
6 son who files a separate return shall not exceed \$500.

1 Section 9. Itemized Deductions. (a) General. If a  
2 resident individual has itemized his deductions from adjusted  
3 gross income in determining his federal taxable income, he  
4 may elect in determining his taxable income under this act to  
5 deduct the sum of such itemized deductions (other than deduc-  
6 tions for personal exemptions):

7 (1) Reduced by any amount thereof representing (i)  
8 income taxes imposed by this state or any other taxing juris-  
9 diction and (ii) interest or expenses incurred in the produc-  
10 tion of income exempt from tax under this act and

11 (2) Increased by the amount of interest or expense  
12 incurred in the production of income taxable under this act  
13 but exempt from federal income tax (and which has not been  
14 deducted in determining federal adjusted gross income).

15 (b) Husband and Wife. A husband and wife, both of whom  
16 are required to file returns under this act shall be allowed  
17 to itemize their deductions only if both elect to do so. The

18 total of itemized deductions of a husband and wife whose fed-  
19 eral taxable income is determined on a joint return but whose  
20 taxable incomes are determined separately for purposes of this  
21 act, may be taken by either or divided between them as they  
22 may elect.

1       Section 10. Personal Exemptions and Credits. (a) Per-  
2 sonal Exemptions. A resident shall be allowed an exemption  
3 of \$[600] for each exemption to which he is entitled for the  
4 taxable year for federal income tax purposes.

5       (b) A Credit for Sales Tax Paid on Food [and Drugs].

6       (i) General. There shall also be allowed to resident indi-  
7 viduals as a credit against the tax imposed by this act, a  
8 food [and drug] sales tax credit equal to \$[    ]<sup>1</sup> multiplied  
9 by the number of allowable personal exemptions claimed for  
10 individuals who are residents, exclusive of the extra exemp-  
11 tions allowable for age or blindness. A refund shall be  
12 allowed to the extent that the food [and drug] sales tax  
13 credit exceeds the income tax payable by the resident individ-  
14 ual for the taxable year.

15       (ii) Limitation on Claim. No individual who may be  
16 claimed as a personal exemption on another individual's re-  
17 turn shall be entitled to a food [and drug] sales tax credit  
18 or refund for himself. If a food [and drug] sales tax credit  
19 or refund is claimed on more than one return for the same  
20 individual, the [tax commissioner] is authorized to determine  
21 the individual entitled to claim the credit or refund provided  
22 herein.

23       (iii) Exemptions Prorated. If personal exemptions  
24 are prorated under other provisions of this act, then the food  
25 [and drug] sales tax credit or refund shall be proportionately  
26 prorated.

27       (iv) Sales Tax Presumed Paid. Any individual, other  
28 than a person who for more than six months of the taxable year

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1. E.g., \$6 where sales tax is 2%; \$9 where sales tax is 3%;  
\$12 where sales tax is 4%.



29 is a resident patient or inmate of a public institution or  
30 an organization exempt from tax as a charitable institution,  
31 who maintains a permanent place of abode within this state,  
32 spending in the aggregate more than 6 months of the taxable  
33 year within this state, shall be conclusively presumed to have  
34 paid or paid with respect to such personal exemptions retail  
35 sales and use taxes imposed by this state equal to the maxi-  
36 mum food [and drug] sales tax credit allowable.

37 (v) Procedure for Credit of Refund of Tax. The  
38 credits or refunds for sales taxes allowed by this section  
39 shall be claimed on the income tax returns provided for in  
40 this act, or in the case of an individual not having taxable  
41 income in this state on such forms or claims for refunds as  
42 the [tax commissioner] shall prescribe.

1 Section 11. Credit for Income Tax Paid to Another State.

2 (a) Resident Individual. A resident individual shall be  
3 allowed a credit against the tax otherwise due under this act  
4 for the amount of any income tax imposed on him for the tax-  
5 able year by another state of the United States or a political  
6 subdivision thereof or the District of Columbia on income  
7 derived from sources therein and which is also subject to tax  
8 under this act.

9 (b) Limitation on Credit. The credit provided under this  
10 section shall not exceed the proportion of the tax otherwise  
11 due under this act that the amount of the taxpayer's adjusted  
12 gross income derived from sources in the other taxing juris-  
13 diction bears to his entire adjusted gross income as modified  
14 by this part.

1 Section 12. Dual Residence; Reduction of Tax. If the tax-

2 payer is regarded as a resident both of this state and another  
3 jurisdiction for purposes of personal income taxation, the  
4 [tax commissioner] shall reduce the tax on that portion of the  
5 taxpayer's income which is subjected to tax in both juris-  
6 dictions solely by virtue of dual residence, provided that the  
7 other taxing jurisdiction allows a similar reduction. The

8 reduction shall be in an amount equal to that portion of the  
9 lower of the two taxes applicable to the income taxed twice  
10 which the tax imposed by this state bears to the combined  
11 taxes of the two jurisdictions on the income taxed twice.

## Part II - Nonresident Individuals

1 Section 13. Nonresident Individuals-Taxable Income. The  
2 taxable income of a nonresident individual shall be that part  
3 of his federal adjusted gross income derived from sources  
4 within this state determined by reference to section 15 less  
5 the deductions and personal exemptions provided in this part.

1 Section 14. Husband and Wife. (a) Separate Federal Return.  
2 If the federal taxable income of husband or wife (both non-  
3 residents of this state) is determined on a separate federal  
4 return, their taxable incomes in this state shall be separately  
5 determined.

6 (b) Joint Federal Return. If the federal taxable income  
7 of husband and wife (both nonresidents) is determined on a  
8 joint federal return, their tax shall be determined in this  
9 state on their joint taxable income.

10 (c) One Spouse a Nonresident. If either husband or wife  
11 is a nonresident and the other a resident, separate taxes  
12 shall be determined on their separate taxable incomes in this  
13 state on such forms as the [tax commissioner] shall prescribe  
14 unless both elect to determine their joint taxable income in  
15 this state as if both were residents. If a husband and wife  
16 file a joint federal income tax return but determine their  
17 taxable income in this state separately, they shall compute  
18 their taxable incomes in this state as if their federal ad-  
19 justed gross incomes had been determined separately.

1 Section 15. Adjusted Gross Income From Sources In This  
2 State. (a) General. The adjusted gross income of a non-  
3 resident derived from sources within this state shall be the  
4 sum of the following: (1) the net amount of items of income,  
5 gain, loss, and deduction entering into his federal adjusted

6 gross income which are derived from or connected with sources  
7 in this state including (i) his distributive share of partner-  
8 ship income and deductions determined under section 43 and  
9 (ii) his share of estate or trust income and deductions  
10 determined under section 39, and (2) the portion of the  
11 modifications described in section 6(a) and (b) which relate  
12 to income derived from sources in this state, including any  
13 modifications attributable to him as a partner.

14 (b) Attribution. Items of income, gain, loss, and de-  
15 duction derived from or connected with sources within this  
16 state are those items attributable to: (1) the ownership  
17 or disposition of any interest in real or tangible personal  
18 property in this state; and (2) a business, trade, profession,  
19 or occupation carried on in this state.

20 (c) Intangibles. Income from intangible personal property  
21 including annuities, dividends, interest, and gains from the  
22 disposition of intangible personal property, shall constitute  
23 income derived from sources within this state only to the  
24 extent that such income is from property employed in a business,  
25 trade, profession, or occupation carried on in this state.

26 (d) Deductions for Losses. Deductions with respect to  
27 capital losses, net long-term capital gains, and net operating  
28 losses shall be based solely on income, gains, losses and  
29 deductions derived from or connected with sources in this  
30 state, under regulations to be prescribed by the [tax com-  
31 missioner] but otherwise shall be determined in the same  
32 manner as the corresponding federal deductions.

33 (e) Small Business Corporation. For a nonresident indi-  
34 vidual who is a shareholder of a corporation which is an  
35 electing small business corporation for federal income tax  
36 purposes, the undistributed taxable income of such corporation  
37 shall not constitute income derived from sources within this  
38 state and a net operating loss of such corporation shall not  
39 constitute a loss or deduction connected with sources in  
40 this state.

41 (f) Apportionment and Allocation. If a business, trade,  
42 profession, or occupation is carried on partly within and  
43 partly without this state, the items of income and deduction  
44 derived from or connected with sources within this state shall  
45 be determined by apportionment and allocation under regula-  
46 tions to be prescribed by the [tax commissioner].

47 (g) Service in Armed Forces. Compensation paid by the  
48 United States for service in the armed forces of the United  
49 States performed by a nonresident shall not constitute income  
50 derived from sources within this state.

1 Section 16. Standard Deduction. The standard deduction of  
2 a nonresident individual or husband and wife who file a joint  
3 return shall be 10 percent of his or their adjusted gross  
4 income from sources within this state or \$1,000, whichever  
5 is less. The standard deduction of a nonresident married  
6 person who files a separate return shall not exceed \$500.

1 Section 17. Itemized Deductions. (a) General. If the  
2 federal taxable income of a nonresident individual is deter-  
3 mined by itemizing deductions from his federal adjusted gross  
4 income, he may elect to deduct his itemized deductions con-  
5 nected with income derived from sources within this state in  
6 lieu of taking the standard deduction. Subject to the limita-  
7 tion in subsection (b), the itemized deductions of a nonresident  
8 individual shall be the same as for a resident individual  
9 determined under section 9. A husband and wife both of whom  
10 are required to file returns under this act shall be allowed  
11 to itemize deductions connected with income derived from  
12 sources within this state only if both elect to itemize their  
13 deductions.

14 (b) Limitation. If the amount of adjusted gross income  
15 a nonresident individual would be required to report under  
16 section 5 if he were a resident, exceeds by more than \$100  
17 the amount of adjusted gross income he receives from sources  
18 within this state, his itemized deductions shall be limited  
19 by the percentage which his adjusted gross income from sources

20 within this state is to the adjusted gross income he would be  
21 required to report if he were a resident. For purposes of  
22 this apportionment, a nonresident individual may elect to  
23 treat his federal adjusted gross income as adjusted gross in-  
24 come from sources within this state unless the amount of the  
25 modifications increasing federal adjusted gross income under  
26 section 6 would exceed \$100.

1       Section 18. Personal Exemptions. A nonresident individual  
2 shall be allowed the same personal exemptions allowed to resi-  
3 dent individuals under section 10(i).

### TITLE III

#### WITHHOLDING OF TAX

1       Section 19. Employer to Withhold Tax from Wages.

2 (a) General. Every employer maintaining an office or trans-  
3 acting business within this state and making payment of any  
4 wages taxable under this act to a resident or nonresident  
5 individual shall deduct and withhold from such wages for each  
6 payroll period a tax computed in such manner as to result,  
7 so far as practicable, in withholding from the employee's  
8 wages during each calendar year an amount substantially  
9 equivalent to the tax reasonably estimated to be due from the  
10 employee under this act with respect to the amount of such  
11 wages included in his adjusted gross income during the calen-  
12 dar year. The method of determining the amount to be with-  
13 held shall be prescribed by regulations of the [tax commis-  
14 sioner]. This section shall not apply to payments by the  
15 United States for service in the armed forces of the United  
16 States.

17 (b) Withholding Exemptions. For purposes of this section:

18 (1) An employee shall be entitled to the same number of  
19 withholding exemptions as the number of withholding exemp-  
20 tions to which he is entitled for federal income tax with-  
21 holding purposes. An employer may rely upon the number of  
22 federal withholding exemptions claimed by the employee,

23 except where the employee claims a different number of with-  
24 holding exemptions in this state;

25 (2) The amount of each exemption in this state shall be  
26 \$[600] whether the individual is a resident or a nonresident.

27 (c) Withholding Agreements. The [tax commissioner] may  
28 enter into agreements with the tax departments of other states  
29 (which require income tax to be withheld from the payment of  
30 wages and salaries) so as to govern the amounts to be withheld  
31 from the wages and salaries of residents of such states under  
32 provisions of this chapter. Such agreements may provide for  
33 recognition of anticipated tax credits in determining the  
34 amounts to be withheld and, under regulations prescribed by  
35 the [tax commissioner], may relieve employers in this state  
36 from withholding income tax on wages and salaries paid to non-  
37 resident employes. The agreements authorized by this subsec-  
38 tion are subject to the condition that the tax department of  
39 such other states grant similar treatment to residents of this  
40 state.

1 Section 20. Information Statement for Employee. Every  
2 employer required to deduct and withhold tax under this act  
3 from the wages of an employee, or who would have been required  
4 so to deduct and withhold tax if the employee had claimed no  
5 more than one withholding exemption, shall furnish to each such  
6 employee in respect to the wages paid by such employer to such  
7 employee during the calendar year on or before February 15 of  
8 the succeeding year, or, if his employment is terminated before  
9 the close of such calendar year, within thirty days from the date  
10 on which the last payment of wages is made, a written statement  
11 as prescribed by the [tax commissioner] showing the amount of  
12 wages paid by the employer to the employee, the amount deducted  
13 and withheld as tax, and such other information as the [tax  
14 commissioner] shall prescribe.

1 Section 21. Credit for Tax Withheld. Wages upon which tax  
2 is required to be withheld shall be taxable under this chapter  
3 as if no withholding were required, but any amount of tax

4 actually deducted and withheld under this chapter in any  
5 calendar year shall be deemed to have been paid to the [tax  
6 commissioner] on behalf of the person from whom withheld, and  
7 such person shall be credited with having paid that amount of  
8 of tax for the taxable year beginning in such calendar year.  
9 For a taxable year of less than 12 months, the credit shall be  
10 made under regulations of the [tax commissioner].

1 Section 22. Employer's Return and Payment of Tax Withheld.

2 (a) General. Every employer required to deduct and withhold  
3 tax under this act shall, for each calendar quarter, on or  
4 before the fifteenth day of the month following the close of  
5 such calendar quarter, file a withholding return as prescribed  
6 by the [tax commissioner] and pay over to the [tax commissioner]  
7 or to a depository designated by the [tax commissioner], the  
8 taxes so required to be deducted and withheld, except that for  
9 the fourth quarter of the calendar year, the return shall be  
10 filed and the taxes paid on or before January 31 of the suc-  
11 ceeding year. Where the aggregate amount required to be de-  
12 ducted and withheld by any employer for a calendar month ex-  
13 ceeds \$[500], the employer shall by the fifteenth day of the  
14 succeeding month pay over such aggregate amount to the [tax  
15 commissioner] or to a depository designated by the [tax com-  
16 missioner]. The amount so paid shall be allowed as a credit  
17 against the liability shown on the employer's quarterly with-  
18 holding return required by this section. Where the aggregate  
19 amount required to be deducted and withheld by any employer  
20 is less than \$[100] in a calendar quarter, the [tax commissioner]  
21 may by regulation permit an employer to file a withholding  
22 return on or before July 31 for the semi-annual period ending  
23 on June 30 and on or before January 31 of the succeeding year  
24 for the semi-annual period ending on December 31. The [tax  
25 commissioner] may, if he believes such action necessary for the  
26 protection of the revenue, require any employer to make such  
27 return and pay him the tax deducted and withheld at any time,  
28 or from time to time. Where the amount of wages paid by an

29 employer is not sufficient under this chapter to require the  
30 withholding of tax from the wages of any of his employees, the  
31 [tax commissioner] may by regulation permit such employer to  
32 file an annual return on or before January 31 of the succeeding  
33 calendar year.

34 (b) Deposit in Trust for [Tax Commissioner]. Whenever any  
35 employer fails to collect, truthfully account for, pay over the  
36 tax, or make returns of the tax as required by this section,  
37 the [tax commissioner] may serve a notice requiring such em-  
38 ployer to collect the taxes which became collectible after  
39 service of such notice, to deposit such taxes in a bank ap-  
40 proved by the [tax commissioner], in a separate account, in  
41 trust for and payable to the [tax commissioner], and to keep  
42 the amount of such tax in such account until paid over to the  
43 [tax commissioner]. Such notice shall remain in effect until  
44 a notice of cancellation is served by the [tax commissioner].

1 Section 23. Employer's Liability for Withheld Taxes. Every  
2 employer required to deduct and withhold tax under this act is  
3 hereby made liable for such tax. For purposes of assessment  
4 and collection, any amount required to be withheld and paid  
5 over to the [tax commissioner], and any additions to tax,  
6 penalties and interest with respect thereto, shall be con-  
7 sidered the tax of the employer. Any amount of tax actually  
8 deducted and withheld under this act shall be held to be a  
9 special fund in trust for the [tax commissioner]. No employee  
10 shall have any right of action against his employer in respect  
11 to any money deducted and withheld from his wages and paid over  
12 to the [tax commissioner] in compliance or in intended compliance  
13 with this act.

1 Section 24. Employer's Failure to Withhold. If an employer  
2 fails to deduct and withhold tax as required, and thereafter the  
3 tax against which such tax may be credited is paid, the tax so  
4 required to be deducted and withheld shall not be collected from  
5 the employer, but the employer shall not be relieved from lia-  
6 bility for any additions to tax penalties or interest otherwise  
7 applicable in respect to such failure to deduct and withhold.



## TITLE IV

### ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

1     Section 25. Period for Computation of Taxable Income.

2     (a) General. For purposes of the tax imposed by this act,  
3     a taxpayer's taxable year shall be the same as his taxable  
4     year for federal income tax purposes.

5     (b) Change of Taxable Year. If a taxpayer's taxable year  
6     is changed for federal income tax purposes, his taxable year  
7     for purposes of the tax imposed by this act shall be similarly  
8     changed. If a change in taxable year results in a taxable  
9     period of less than 12 months, the standard deduction and the  
10    deduction for personal exemption allowed by this act shall be  
11    prorated under regulations prescribed by the [tax commissioner].

12    (c) Termination of Taxable Year for Jeopardy. Notwith-  
13    standing the provisions of subsections (a) and (b), if the  
14    [tax commissioner] terminates the taxpayer's taxable year under  
15    section 103 (relating to tax in jeopardy), the tax shall be  
16    computed for the period determined by such action.

1     Section 26. Methods of Accounting. (a) Same as Federal.

2     For purposes of the tax imposed by this act, a taxpayer's method  
3     of accounting shall be the same as his method of accounting for  
4     federal income tax purposes. If no method of accounting has  
5     been regularly used by the taxpayer, taxable income for purposes  
6     of this act shall be computed under such method that in the  
7     opinion of the [tax commissioner] fairly reflects income.

8     (b) Change of Accounting Methods. If a taxpayer's method  
9     of accounting is changed for federal income tax purposes, his  
10    method of accounting for purposes of this act shall similarly be  
11    changed.

1     Section 27. Adjustments. In computing a taxpayer's taxable  
2     income for any taxable year under a method of accounting different  
3     from the method under which the taxpayer's taxable income for  
4     the previous year was computed, there shall be taken into account  
5     those adjustments which are determined, under regulations pres-  
6     cribed by the [tax commissioner], to be necessary solely by

7 reason of the change in order to prevent amounts from being  
8 duplicated or omitted.

1     Section 28. Limitation on Additional Tax. (a) Change  
2 Other Than to Installment Method. If a taxpayer's method of  
3 accounting is changed, other than from an accrual to an in-  
4 stallment method, any additional tax which results from ad-  
5 justments determined to be necessary solely by reason of the  
6 change shall not be greater than if such adjustments were  
7 ratably allocated and included for the taxable year of the  
8 change and the preceding taxable years, not in excess of two,  
9 during which the taxpayer used the method of accounting from  
10 which the change is made.

11     (b) Change from Accrual to Installment Method. If a tax-  
12 payer's method of accounting is changed from an accrual to an  
13 installment method, any additional tax for the year of such  
14 change of method and for any subsequent year which is attribut-  
15 able to the receipt of installment payments properly accrued in  
16 a prior year, shall be reduced by the portion of tax for any  
17 prior taxable year attributable to the accrual of such instal-  
18 lment payments, under regulations prescribed by the [tax com-  
19 missioner].

## TITLE V

### ESTATES, TRUSTS, BENEFICIARIES, AND DECEDENTS

#### Part I - General

1     Section 29. Imposition of Tax. The tax imposed by this  
2 act on individuals shall apply to the taxable income of estates  
3 and trusts.

1     Section 30. Computation and Payment. The taxable income of  
2 an estate or trust shall be computed in the same manner as in  
3 the case of an individual except as otherwise provided by this  
4 subchapter. The tax shall be computed on such taxable income  
5 and shall be paid by the fiduciary.

1     Section 31. Tax Not Applicable. (a) Associations Taxable  
2 as Corporations. An association, trust or other unincorporated

3 organization which is taxable as a corporation for federal  
4 income tax purposes shall not be subject to tax under this act.  
5 (b) Exempt Associations, Trusts, and Organizations. An  
6 association, trust, or other unincorporated organization which  
7 by reason of its purposes or activities is exempt from federal  
8 income tax shall be exempt from the tax imposed by this act  
9 except with respect to its unrelated business taxable income.

## Part II - Resident Estates and Trusts

1 Section 32. Resident Estate or Trust Defined. A resident  
2 estate or trust means: (1) the estate of a decedent who at  
3 his death was domiciled in this state; (2) a trust created by  
4 will of a decedent who at his death was domiciled in this state;  
5 or (3) a trust created by, or consisting of property of, a  
6 person domiciled in this state.

1 Section 33. Taxable Income of Resident Estate or Trust. The  
2 taxable income of a resident estate or trust means its federal  
3 taxable income modified by the addition or subtraction, as the  
4 case may be, of its share of the fiduciary adjustment determined  
5 under section 34.

1 Section 34. Fiduciary Adjustment. (a) Fiduciary Adjustment  
2 Defined. The fiduciary adjustment shall be the net amount of  
3 the modifications described in section 6 (including subsection  
4 (c) if the estate or trust is a beneficiary of another estate or  
5 trust) which relates to items of income or deduction of an  
6 estate or trust.

7 (b) Shares of Fiduciary Adjustment. The respective shares  
8 of an estate or trust and its beneficiaries (including solely  
9 for the purpose of this allocation, nonresident beneficiaries)  
10 in the fiduciary adjustment shall be in proportion to their  
11 respective shares of federal distributable net income of the  
12 estate or trust. If the estate or trust has no federal dis-  
13 tributable net income for the taxable year, the share of each  
14 beneficiary in the fiduciary adjustment shall be in proportion  
15 to his share of the estate or trust income for such year, under

16 local law or the terms of the instrument, which is required to  
17 be distributed currently and any other amounts of such income  
18 distributed in such year. Any balance of the fiduciary ad-  
19 justment shall be allocated to the estate or trust.

20 (c) Alternate Attribution of Adjustment. The [tax com-  
21 missioner] may by regulation authorize the use of such other  
22 methods of determining to whom the items comprising the fiduci-  
23 ary adjustment shall be attributed, as may be appropriate and  
24 equitable, on such terms and conditions as the [tax commissioner]  
25 may require.

1 Section 35. Credit for Income Tax of Another State. A  
2 resident estate or trust shall be allowed the credit provided  
3 in section 11 (relating to an income tax imposed by another  
4 state) except that the limitation shall be computed by refer-  
5 ence to the taxable income of the estate or trust.

1 Section 36. Credit to Beneficiary for Accumulation  
2 Distribution. (a) General. A resident beneficiary of a trust  
3 whose adjusted gross income includes all or part of an accumu-  
4 lation distribution by such trust, as defined in section 665  
5 of the Internal Revenue Code, shall be allowed a credit against  
6 the tax otherwise due under this act for all or a proportionate  
7 part of any tax paid by the trust under this act for any pre-  
8 ceding taxable year which would not have been payable if the  
9 trust had in fact made distribution to its beneficiaries at the  
10 times and in the amounts specified in section 666 of the  
11 Internal Revenue Code.

12 (b) Limitation on Credit. The credit under this section  
13 shall not reduce the tax otherwise due from the beneficiary  
14 under this act to an amount less than would have been due if  
15 the accumulation distribution or his part thereof were excluded  
16 from his adjusted gross income.

### Part III - Nonresident Trusts and Estates

1 Section 37. Nonresident Estate or Trust Defined. A non-  
2 resident estate or trust means an estate or trust which is not a

3 resident.

1 Section 38. Taxable Income of a Nonresident Estate or  
2 Trust. (a) General Rules. For purposes of this part:

3 (1) Items of income, gain, loss, and deduction mean  
4 those derived from or connected with sources in this state.

5 (2) Items of income, gain, loss, and deduction entering  
6 into the definition of federal distributable net income in-  
7 cludes such items from another estate or trust of which the  
8 first estate or trust is a beneficiary.

9 (3) The source of items of income, gain, loss, or de-  
10 duction shall be determined under regulations prescribed by  
11 the [tax commissioner] in accordance with the general rules  
12 in section 15 as if the estate or trust were a nonresident  
13 individual.

14 (b) Determination of Taxable Income. The taxable income  
15 of a nonresident estate or trust consists of (i) its share of  
16 items of income, gain, loss, and deduction which enter into  
17 the federal definition of distributable net income; (ii) in-  
18 creased or reduced by the amount of any items of income, gain,  
19 loss, or deduction which are recognized for federal income tax  
20 purposes but excluded from the federal definition of distribut-  
21 able net income of the estate or trust; (iii) less the amount  
22 of the deduction for its federal exemption.

1 Section 39. Share of a Nonresident Estate, Trust or Its  
2 Beneficiaries in Income From Sources in This State. (a) General  
3 Rule. The share of a nonresident estate or trust of items of  
4 income, gain, loss, and deduction entering into the definition  
5 of distributable net income and the share for purpose of sec-  
6 tion 15 of a nonresident beneficiary of any estate or trust in  
7 estate or trust income, gain, loss, and deduction shall be  
8 determined as follows:

9 (i) To the amount of items of income, gain, loss, and  
10 deduction which enter into the definition of distributable net  
11 income there shall be added or subtracted, as the case may be,  
12 the modifications described in section 6 to the extent they

13 relate to items of income, gain, loss, and deduction which also  
14 enter into the definition of distributable net income. No  
15 modification shall be made under this section which has the  
16 effect of duplicating an item already reflected in the defi-  
17 nition of distributable net income.

18 (ii) The amount determined under the preceding paragraph  
19 shall be allocated among the estate or trust and its benefici-  
20 aries (including, solely for the purpose of this allocation,  
21 resident beneficiaries) in proportion to their respective  
22 shares of federal distributable net income. The amounts so  
23 allocated shall have the same character as for federal income  
24 tax purposes. Where an item entering into the computation of  
25 such amounts is not characterized for federal income tax pur-  
26 poses, it shall have the same character as if realized directly  
27 from the source from which realized by the estate or trust, or  
28 incurred in the same manner as incurred by the estate or trust.

29 (iii) If the estate or trust has no federal distributable  
30 net income for the taxable year, the share of each beneficiary  
31 in the net amount determined under paragraph (a)(i) of this  
32 section shall be in proportion to his share of the estate or  
33 trust income for such year, under local law or the terms of  
34 the instrument, which is required to be distributed currently  
35 and any other amounts of such income distributed in such year.  
36 Any balance of such net amount shall be allocated to the estate  
37 or trust.

38 (b) Alternate Methods. The [tax commissioner] may by  
39 regulation establish such other method or methods of determin-  
40 ing the respective shares of the beneficiaries and of the  
41 estate or trust in its income derived from sources in this  
42 state, and in the modifications related thereto, as may be  
43 appropriate and equitable.

1 Section 40. Credit to Beneficiary for Accumulation  
2 Distribution. A nonresident beneficiary of a trust whose ad-  
3 justed gross income derived from sources in this state includes  
4 all or part of an accumulation distribution by such trust, as

5 defined in section 665 of the Internal Revenue Code, shall be  
6 allowed a credit against the tax otherwise due under this  
7 act, computed in the same manner and subject to the same limi-  
8 tation as provided by section 36 with respect to a resident  
9 beneficiary.

## TITLE VI

### PARTNERS AND PARTNERSHIPS

1 Section 41. Entity not Taxable. A partnership as such  
2 shall not be subject to the tax imposed by this act. Persons  
3 carrying on business as partners shall be liable for the tax  
4 imposed by this act only in their separate or individual  
5 capacities.

1 Section 42. Resident Partner - Adjusted Gross Income. (a)  
2 Modification in Determining the Adjusted Gross Income of a  
3 Resident Partner. Any modification described in section 9  
4 which relates to an item of partnership income, gain, loss, or  
5 deduction shall be made in accordance with the partner's dis-  
6 tributive share, for federal income tax purposes, of the item  
7 to which the modification relates. Where a partner's distri-  
8 butive share of any such item is not required to be taken into  
9 account separately for federal income tax purposes, the partner's  
10 distributive share of such item shall be determined in accordance  
11 with his distributive share, for federal income tax purposes, of  
12 partnership taxable income or loss generally.

13 (b) Character of Items. Each item of partnership income,  
14 gain, loss, or deduction shall have the same character for a  
15 partner under this act as it has for federal income tax pur-  
16 poses. Where an item is not characterized for federal income  
17 tax purposes, it shall have the same character for a partner  
18 as if realized directly from the source from which realized by  
19 the partnership or incurred in the same manner as incurred by  
20 the partnership.

21 (c) Tax Avoidance or Evasion. Where a partner's distri-  
22 butive share of an item of partnership income, gain, loss, or

23 deduction is determined for federal income tax purposes by a  
24 special provision in the partnership agreement with respect to  
25 such item, and the principal purpose of such provision is the  
26 avoidance or evasion of tax under this act, the partner's dis-  
27 tributive share of such item and any modification required with  
28 respect thereto shall be determined in accordance with his dis-  
29 tributive share of the taxable income or loss of the partnership  
30 generally (that is, exclusive of those items requiring separate  
31 computation under the provisions of section 702 of the Internal  
32 Revenue Code).

1       Section 43. Nonresident Partner - Adjusted Gross Income  
2 From Sources in This State. (a) General. In determining the  
3 adjusted gross income of a nonresident partner of any partner-  
4 ship, there shall be included only that part derived from or  
5 connected with sources in this state of the partner's distri-  
6 butive share of items of partnership income, gain, loss, and  
7 deduction entering into his federal adjusted gross income, as  
8 such part is determined under regulations prescribed by the  
9 [tax commissioner] in accordance with the general rules in  
10 section 15.

11       (b) Itemized Deductions. If a nonresident partner of any  
12 partnership elects to itemize his deductions in determining his  
13 taxable income in this state, there shall be attributed to him  
14 his distributive share of partnership items of deduction from  
15 federal adjusted gross income which are deductible by him under  
16 section 17.

17       (c) Special Rules as to Sources in This State. In determin-  
18 ing the sources of a nonresident partner's income, no effect  
19 shall be given to a provision in the partnership agreement which:

20       (i) characterizes payments to the partner as being for  
21 services or for the use of capital, or allocated to the partner,  
22 as income or gain from sources outside this state, a greater  
23 proportion of his distributive share of partnership income or  
24 gain than the ratio of partnership income or gain from sources  
25 outside this state to partnership income or gain from all sources,  
26 except as authorized in subsection (e); or



27 (ii) allocates to the partner a greater proportion of  
28 a partnership item of loss or deduction connected with sources  
29 in this state than his proportionate share, for federal income  
30 tax purposes, of partnership loss or deduction generally, except  
31 as authorized in subsection (e).

32 (d) Partner's Modifications. Any modification described in  
33 subsections (a) and (b) of section 6, which relates to an item  
34 of partnership income, gain, loss, or deduction, shall be made  
35 in accordance with the partner's distributive share, for federal  
36 income tax purposes of the item to which the modification relates,  
37 but limited to the portion of such item derived from or connected  
38 with sources in this state.

39 (e) Alternate Methods. The [tax commissioner] may, on appli-  
40 cation, authorize the use of such other methods of determining a  
41 nonresident partner's portion of partnership items derived from  
42 or connected with sources in this state, and the modifications  
43 related thereto, as may be appropriate and equitable, on such  
44 terms and conditions as he may require.

45 (f) Application of Rules for Resident Partners to  
46 Nonresident Partners. A nonresident partner's distributive  
47 share of items of income, gain, loss, or deduction shall be  
48 determined under subsection (a) of section 42. The character  
49 of partnership items for a nonresident partner shall be determi-  
50 ned under subsection (b) of section 42. The effect of a special  
51 provision in a partnership agreement, other than a provision  
52 referred to in subsection (c) of this section, having as a  
53 principal purpose the avoidance or evasion of tax under this  
54 act shall be determined under subsection (c) of section 42.

## TITLE VII

### RETURNS, DECLARATIONS AND PAYMENTS

#### Part I - Income Tax Returns

1 Section 44. Persons Required to Make Returns of Income.  
2 An income tax return with respect to the tax imposed by this  
3 act shall be made by the following:

- 4 (a) Every resident individual,  
5 (1) who is required to file a federal income tax return  
6 for the taxable year, or  
7 (2) who has adjusted gross income of more than \$[600]  
8 if single or more than \$[1,200] if married, or  
9 (3) who having attained the age of 65 before the close  
10 of his taxable year has adjusted gross income of more than  
11 \$[1,200] if single and more than \$[1,800] if married and his  
12 spouse has not attained the age of 65 and more than \$[2,400]  
13 if both have attained the age of 65 before the close of the  
14 taxable year.
- 15 (b) Every nonresident individual,  
16 (1) who has adjusted gross income from sources in this  
17 state of more than \$[600] if single and \$[1,200] if married, or  
18 (2) who having attained the age of 65 before the close  
19 of his taxable year has adjusted gross income from sources  
20 within this state of more than \$[1,200] if single and more than  
21 \$[1,800] if married and his spouse has not yet attained the age  
22 of 65 and more than \$[2,400] if both have attained the age of  
23 65 before the close of the taxable year.
- 24 (c) Every resident estate or trust which is required to file  
25 a federal income tax return.
- 26 (d) Every nonresident estate which has gross income of  
27 \$[600] or more for the taxable year from sources within this  
28 state.
- 29 (e) Every nonresident trust which for the taxable year has  
30 from sources within this state,  
31 (1) any taxable income,  
32 (2) gross income of \$[600] or more regardless of the  
33 amount of taxable income.

1 Section 45. Joint Returns by Husband and Wife. (a) General.

2 A husband and wife may make a joint return with respect to the  
3 tax imposed by this act even though one of the spouses has  
4 neither gross income nor deductions except that:

- 5 (1) no joint return shall be made under this act if  
6 the spouses are not permitted to file a joint federal income

7 tax return.

8 (2) if the federal income tax liability of either spouse  
9 is determined on a separate federal return their income tax  
10 liabilities under this act shall be determined on separate  
11 returns.

12 (3) if the federal income tax liabilities of husband  
13 and wife, other than a husband and wife described in subsection  
14 (b) of this section, are determined on a joint federal return,  
15 they shall file a joint return under this act and their tax  
16 liabilities shall be joint and several.

17 (4) if neither spouse is required to file a federal  
18 income tax return and either or both are required to file an  
19 income tax return under this act, they may elect to file  
20 separate or joint returns and pursuant to such election their  
21 liabilities shall be separate or joint and several.

22 (b) One spouse a Nonresident. If either husband or wife  
23 is a resident and the other is a nonresident, they shall file  
24 separate income tax returns in this state on such forms as may  
25 be required by the [tax commissioner] in which event their tax  
26 liabilities shall be separate; but they may elect to determine  
27 their joint taxable income as if both were residents and in  
28 such case, their liabilities shall be joint and several.

1 Section 46. Returns by Fiduciaries. (a) Decedents. An  
2 income tax return for any deceased individual shall be made  
3 and filed by his executor, administrator, or other person  
4 charged with the care of his property. A final return of a  
5 decedent shall be due when it would have been due if the  
6 decedent had not died.

7 (b) Individuals Under a Disability. An income tax return  
8 for an individual who is unable to make a return by reason of  
9 minority or other disability shall be made and filed by his duly  
10 authorized agent, his committee, guardian, conservator, fiduciary  
11 or other person charged with the care of his person or property  
12 other than a receiver in possession of only a part of the  
13 individual's property.

14 (c) Estates and Trusts. The income tax return of an  
15 estate or trust shall be made and filed by the fiduciary thereof.

16 (d) Joint Fiduciaries. If two or more fiduciaries are  
17 acting jointly, the return may be made by any one of them.

18 (e) Cross Reference: For provisions relating to information  
19 returns by partnerships, see section 59.

1 Section 47. Notice of Qualification as Receiver. Every  
2 receiver, trustee in bankruptcy, assignee for benefit of  
3 creditors, or other like fiduciary, shall give notice of his  
4 qualification as such to the [tax commissioner], as may be re-  
5 quired by regulation.

1 Section 48. Change of Status as Resident or Nonresident  
2 During Year. If an individual changes his status during his  
3 taxable year from resident to nonresident or from nonresident  
4 to resident, the [tax commissioner] may by regulation  
5 require him to file one return for the portion of the year  
6 during which he is a resident and one for the portion of the  
7 year during which he is a nonresident.

1 Section 49. Taxable Income as Resident and Nonresident.

2 (a) Except as provided in subsection (b) of this section,  
3 the taxable income of the individual shall be determined as  
4 provided in section 5 for residents and section 13 for non-  
5 residents as if the individual's taxable year for federal  
6 income tax purposes were limited to the period of his resident  
7 and nonresident status respectively.

8 (b) There shall be included in determining taxable income  
9 from sources within or without this state, as the case may  
10 be, income, gain, loss, or deduction accrued prior to the  
11 change of status even though not otherwise includible or  
12 allowable in respect of the period prior to such change, but  
13 the taxation or deduction of items accrued prior to the change  
14 of status shall not be affected by the change.

1 Section 50. Minimum Tax and Prorating of Exemptions. Where  
2 two returns are required to be filed as provided in section 48:

3 (1) personal exemptions and the standard deduction shall be

4 prorated between the two returns, under regulations prescribed  
5 by the [tax commissioner], to reflect the proportions of the  
6 taxable year during which the individual was a resident and a  
7 nonresident, and

8 (2) the total of the taxes due thereon shall not be less  
9 than would be due if the total of the taxable incomes reported  
10 on the two returns were includible in one return.

1 Section 51. Time and Place for Filing Returns and Paying  
2 Tax. The income tax return required by this act shall be filed  
3 on or before the fifteenth day of the fourth month following the  
4 close of the taxpayer's taxable year. A person required to make  
5 and file a return under this act shall, without assessment,  
6 notice or demand, pay any tax due thereon to the [tax com-  
7 missioner] on or before the date fixed for filing such return  
8 (determined without regard to any extension of time for filing  
9 the return). The [tax commissioner] shall prescribe by regu-  
10 lation the place for filing any return, declaration, statement  
11 or other document required pursuant to this chapter and for the  
12 payment of any tax.

1 Section 52. Declarations of Estimated Tax. (a) Requirement  
2 of Declaration. Every resident and nonresident individual shall  
3 make a declaration of his estimated tax for the taxable year, in  
4 such form as the [tax commissioner] may prescribe if his ad-  
5 justed gross income (in the case of a nonresident from sources  
6 within this state), other than from wages on which tax is with-  
7 held under this act, can reasonably be expected to exceed  
8 \$[500] plus the sum of the personal exemptions to which he is  
9 entitled.

10 (b) Estimated Tax Defined. The term "estimated tax" means  
11 the amount which the individual estimates to be his income tax  
12 under this act for the taxable year less the amount which he  
13 estimates to be the sum of any credits allowable for tax with-  
14 held.

15 (c) Joint Declaration of Husband and Wife. If they are  
16 eligible to do so for federal tax purposes, a husband and wife

17 may make a joint declaration of estimated tax as if they were  
18 one taxpayer, in which case the liability with respect to the  
19 estimated tax shall be joint and several. If a joint decla-  
20 ration is made but husband and wife elect to determine their  
21 taxes under this chapter separately, the estimated tax for  
22 such year may be treated as the estimated tax of either husband  
23 or wife, or may be divided between them, as they may elect.

24 (d) Amendment of Declaration. An individual may amend a  
25 declaration under regulations prescribed by the [tax com-  
26 missioner].

27 (e) Return or Declaration as Amendment. If on or before  
28 January 31 (or February 15 in the case of an individual re-  
29 ferred to in subsection (b) of section 53) of the succeeding  
30 taxable year an individual files his return for the taxable  
31 year for which the declaration is required, and pays in full  
32 the amount shown on the return as payable, such return (1) shall  
33 be considered as his declaration if no declaration was required  
34 to be filed during the taxable year, but is otherwise required  
35 to be filed on or before January 15, or (2) shall be considered  
36 as the amendment permitted by subsection (d) to be filed on or  
37 before January 15 if the tax shown on the return is greater than  
38 the estimated tax shown in a declaration previously made.

39 (f) Short Taxable Year. An individual having a taxable  
40 year of less than twelve months shall make a declaration in  
41 accordance with regulations of the [tax commissioner].

42 (g) Declaration for Individual Under a Disability. The  
43 declaration of estimated tax for an individual under a dis-  
44 ability shall be made and filed in the manner provided in sub-  
45 section (b) of section 46 for an income tax return.

1 Section 53. Time for Filing Declaration of Estimated Tax.

2 (a) Time for Filing. A declaration of estimated tax of an  
3 individual other than a farmer shall be filed on or before  
4 April 15 of the taxable year, except that if the requirements of  
5 section 52 are first met:

6 (1) after April 1 and before June 2 of the taxable year,  
7 the declaration shall be filed on or before June 15, or

8 (2) after June 1 and before September 2 of the taxable  
9 year, the declaration shall be filed on or before September 15,  
10 or

11 (3) after September 1 of the taxable year, the decla-  
12 ration shall be filed on or before January 15 of the succeeding  
13 year.

14 (b) Declaration by Farmer. A declaration of estimated tax  
15 required by section 52 from an individual having an estimated  
16 adjusted gross income from farming in this state for the taxable  
17 year which is at least two-thirds of his total estimated ad-  
18 justed gross income taxable in this state for the taxable year,  
19 may be filed at any time on or before January 15 of the suc-  
20 ceeding taxable year, in lieu of the time otherwise prescribed.

21 (c) Declaration of Estimated Tax of \$[50] or Less. A  
22 declaration of estimated tax of an individual having a total  
23 estimated tax for the taxable year of \$[50] or less may be  
24 filed at any time on or before January 15 of the succeeding  
25 taxable year under regulations prescribed by the [tax com-  
26 missioner].

27 (d) Fiscal Year. In the application of this section and  
28 the preceding section to the case of a taxable year beginning  
29 on any date other than January 1, there shall be substituted,  
30 for the months specified in this section and the preceding sec-  
31 tion, the months which correspond thereto.

1 Section 54. Payments of Estimated Tax. (a) General. The  
2 estimated tax with respect to which a declaration is required  
3 under this act shall be paid as follows:

4 (1) If the declaration is filed on or before April 15  
5 of the taxable year, the estimated tax shall be paid in four  
6 equal installments. The first installment shall be paid at  
7 the time of the filing of the declaration, the second and third  
8 on June 15 and September 15, respectively, of the taxable year,  
9 and the fourth on January 15 of the succeeding taxable year.

10 (2) If the declaration is filed after April 15 and not  
11 after June 15 of the taxable year, and is not required to be

12 filed on or before April 15 of the taxable year, the estimated  
13 tax shall be paid in three equal installments. The first in-  
14 stallment shall be paid at the time of the filing of the de-  
15 clarations, the second on September 15, of the taxable year, and  
16 the third on January 15 of the succeeding taxable year.

17 (3) If the declaration is filed after June 15 and not  
18 after September 15 of the taxable year, and is not required to  
19 be filed on or before June 15 of the taxable year, the estimated  
20 tax shall be paid in two equal installments. The first in-  
21 stallment shall be paid at the time of the filing of the de-  
22 clarations, and the second on January 15 of the succeeding  
23 taxable year.

24 (4) If the declaration is filed after September 15 of  
25 the taxable year and is not required to be filed on or before  
26 September 15 of the taxable year, the estimated tax shall be  
27 paid in full at the time of the filing of the declaration.

28 (5) If the declaration is filed after the time prescribed  
29 in section 53 (including cases in which an extension of time for  
30 filing the declaration has been granted), paragraphs (2), (3),  
31 and (4) of this subsection shall not apply, and there shall be  
32 paid at the time of such filing all installments of estimated  
33 tax which would have been payable on or before such time if the  
34 declaration had been filed within the time prescribed in section  
35 53, and the remaining installments shall be paid at the time at  
36 which, and in the amounts in which they would have been payable  
37 if the declaration had been so filed.

38 (b) Farmers. If an individual referred to in subsection (b)  
39 of section 53 (relating to income from farming) makes a de-  
40 clarations of estimated tax after September 15 of the taxable year  
41 and on or before January 15 of the succeeding taxable year, the  
42 estimated tax shall be paid in full at the time of the filing of  
43 the declaration.

44 (c) Amendments of Declaration. If any amendment of a de-  
45 clarations is filed, the remaining installments, if any, shall be  
46 ratably increased or decreased, as the case may be, to reflect



47 the increase or decrease in the estimated tax by reason of  
48 such amendment, and if any amendment is made after September 15  
49 of the taxable year, any increase in the estimated tax by reason  
50 thereof shall be paid at the time of making such amendment.

51 (d) Application to Short Taxable Years. The application of  
52 this section to taxable years of less than 12 months shall be in  
53 accordance with regulations prescribed by the [tax commissioner].

54 (e) Fiscal Years. In the application of this section to the  
55 case of a taxable year beginning on any date other than January 1,  
56 there shall be substituted, for the months specified in this  
57 section, the months which correspond thereto.

58 (f) Installments Paid in Advance. At the election of the  
59 individual, any installment of the estimated tax may be paid  
60 prior to the date prescribed for its payment.

61 (g) Payment of Account. Payment of the estimated income tax  
62 or any installment thereof, shall be considered payment on account  
63 of the income tax imposed under this act for the taxable year.

1 Section 55. Extension of Time for Filing and Payment.

2 (a) General. The [tax commissioner] may grant a reasonable  
3 extension of time for payment of tax or estimated tax or any  
4 installment thereof, or for filing any return, declaration,  
5 statement, or other document required pursuant to this chapter,  
6 on such terms and conditions as he may require. Except for a  
7 taxpayer who is outside the United States, no such extension for  
8 filing any return, declaration, statement, or document, shall  
9 exceed six months.

10 (b) Security. If any extension of time is granted for payment  
11 of any amount of tax, the [tax commissioner] may require the tax-  
12 payer to furnish a bond or other security in an amount not ex-  
13 ceeding twice the amount for which the extension of time for  
14 payment is granted, on such terms and conditions as the [tax  
15 commissioner] may require.

1 Section 56. Change of Election. Any election expressly  
2 authorized by this act may be changed on such terms and con-  
3 ditions as the [tax commissioner] may prescribe by regulation.

1        Section 57. Signing of Returns and Other Documents.

2        (a) General. Any return, declaration, statement or other  
3 document required to be made pursuant to this act shall be  
4 signed in accordance with regulations or instructions pres-  
5 cribed by the [tax commissioner]. The fact that an individual's  
6 name is signed to a return, declaration, statement or other  
7 document, shall be prima facie evidence for all purposes that  
8 the return, declaration, statement or other document was actually  
9 signed by him.

10        (b) Partnerships. Any return, statement or other document  
11 required of a partnership shall be signed by one or more partners.  
12 The fact that a partner's name is signed to a return, statement  
13 or other document, shall be prima facie evidence for all purposes  
14 that such partner is authorized to sign on behalf of the partner-  
15 ship.

16        (c) Certifications. The making or filing of any return,  
17 declaration, statement or other document or copy thereof re-  
18 quired to be made or filed pursuant to this act, including a  
19 copy of a federal return, shall constitute a certification by  
20 the person making or filing such return, declaration, statement  
21 or other document or copy thereof that the statements contained  
22 therein are true and that any copy filed is a true copy.

Part II - Information Returns

1        Section 58. General Requirements Concerning Returns, Notices,  
2 Records and Statements. The [tax commissioner] may prescribe  
3 regulations as to the keeping of records, the content and form  
4 of returns and statements and the filing of copies of federal  
5 income returns and determinations. The [tax commissioner] may  
6 require any person, by regulation or notice served on such person,  
7 to make such returns, render such statements, or keep such  
8 records, as the [tax commissioner] may deem sufficient to show  
9 whether or not such person is liable under this act for tax or  
10 for the collection of tax.

1       Section 59. Partnership Return. Every partnership having a  
2 resident partner or having any income derived from sources in  
3 this state, determined in accordance with the applicable rules  
4 of section 15 as in the case of a nonresident individual, shall  
5 make a return for the taxable year setting forth all items of  
6 income, gain, loss, and deduction, and the names and addresses  
7 of the individuals whether residents or nonresidents who would  
8 be entitled to share in the net income if distributed and the  
9 amount of the distributive share of each individual and such  
10 other pertinent information as the [tax commissioner] may pre-  
11 scribe by regulations and instructions. Such return shall be  
12 filed on or before the fifteenth day of the fourth month follow-  
13 ing the close of each taxable year. For purposes of this sec-  
14 tion, "taxable year" means a year or period which would be a  
15 taxable year of the partnership if it were subject to tax under  
16 this act.

1       Section 60. Information Returns. The [tax commissioner] may  
2 prescribe regulations and instructions requiring returns of in-  
3 formation to be made and filed on or before February 28 of each  
4 year by any person making payment or crediting in any calendar  
5 year the amounts of \$[600] or more (\$[10] or more in the case of  
6 interest or dividends) to any person who may be subject to the  
7 tax imposed under this act. Such returns may be required of  
8 any person, including lessees or mortgagors of real or personal  
9 property, fiduciaries, employers, and all officers and employees  
10 of this state, or of any municipal corporation or political sub-  
11 division of this state, having the control, receipt, custody,  
12 disposal or payment of dividends, interest, rents, salaries,  
13 wages, premiums, annuities, compensations, remunerations,  
14 emoluments or other fixed or determinable gains, profits, or  
15 income, except interest coupons payable to bearer. A dupli-  
16 cate of the statement as to tax withheld on wages, required to  
17 be furnished by an employer to an employee, shall constitute  
18 the return of information required to be made under this sec-  
19 tion with respect to such wages.

1       Section 61. Report of Change in Federal Taxable Income. If  
2 the amount of a taxpayer's federal taxable income reported on  
3 his federal income tax return for any taxable year is changed  
4 or corrected by the United States Internal Revenue Service or  
5 other competent authority, or as the result of a renegotiation  
6 of a contract or subcontract with the United States, the tax-  
7 payer shall report such change or correction in Federal taxable  
8 income within ninety days after the final determination of such  
9 change, correction, or renegotiation, or as otherwise required  
10 by the [tax commissioner], and shall concede the accuracy of  
11 such determination or state wherein it is erroneous. Any tax-  
12 payer filing an amended federal income tax return shall also  
13 file within ninety days thereafter an amended return under this  
14 act, and shall give such information as the [tax commissioner]  
15 may require. The [tax commissioner] may by regulation prescribe  
16 such exceptions to the requirements of this section as he deems  
17 appropriate.

## TITLE VIII

### PROCEDURE AND ADMINISTRATION

#### Part I - Deficiencies

1       Section 62. Examination of Return. (a) Deficiency or  
2 Overpayment. As soon as practical after the return is filed,  
3 the [tax commissioner] shall examine it to determine the correct  
4 amount of tax. If the [tax commissioner] finds that the amount  
5 of tax shown on the return is less than the correct amount, he  
6 shall notify the taxpayer of the amount of the deficiency pro-  
7 posed to be assessed. If the [tax commissioner] finds that the  
8 tax paid is more than the correct amount, he shall credit the  
9 overpayment against any taxes due under this act by the taxpayer  
10 and refund the difference.

11       (b) No Return Filed. If the taxpayer fails to file an  
12 income tax return, the [tax commissioner] shall estimate the  
13 taxpayer's taxable income and the tax thereon on from any

14 available information and notify the taxpayer of the amount pro-  
15 posed to be assessed as in the case of a deficiency.

16 (c) Notice of Deficiency. A notice of deficiency shall set  
17 forth the reason for the proposed assessment. The notice may  
18 be mailed by certified or registered mail to the taxpayer at his  
19 last known address. In the case of a joint return, the notice  
20 of deficiency may be a single joint notice except that if the  
21 [tax commissioner] is notified by either spouse that separate  
22 residences have been established he shall mail joint notices  
23 to each spouse. If the taxpayer is deceased or under a legal  
24 disability, a notice of deficiency may be mailed to his last  
25 known address unless the [tax commissioner] has received notice  
26 of the existence of a fiduciary relationship with respect to such  
27 taxpayer.

1 Section 63. Assessment Final if no Protest. Ninety days  
2 after the date on which it was mailed (150 days if the taxpayer  
3 is outside the United States), a notice of proposed assessment  
4 of a deficiency shall constitute a final assessment of the  
5 amount of tax specified together with interest, additions to  
6 tax and penalties except only for such amounts as to which the  
7 taxpayer has filed a protest with the [tax commissioner].

1 Section 64. Protest by Taxpayer. Within 90 days (150 days  
2 if the taxpayer is outside the United States) after the mailing  
3 of a deficiency notice, the taxpayer may file with the [tax  
4 commissioner] a written protest against the proposed assessment  
5 in which he shall set forth the grounds on which the protest  
6 is based. If a protest is filed, the [tax commissioner] shall  
7 reconsider the assessment of the deficiency and, if the tax-  
8 payer has so requested, shall grant the taxpayer or his author-  
9 ized representatives an oral hearing.

1 Section 65. Notice of Determination After Protest. Notice  
2 of the [tax commissioner's] determination shall be mailed to the  
3 taxpayer by certified or registered mail and such notice shall  
4 set forth briefly the [tax commissioner's] findings of fact and  
5 the basis of decision in each case decided in whole or in part  
6 adversely to the taxpayer.

1       Section 66. Action of [Tax Commissioner] Final. The action  
2 of the [tax commissioner] on the taxpayer's protest is final  
3 upon the expiration of 90 days from the date when he mails  
4 notice of his action to the taxpayer unless within this period  
5 the taxpayer seeks judicial review of the [tax commissioner's]  
6 determination.

1       Section 67. Burden of Proof in Proceedings Before the [Tax  
2 Commissioner]. In any proceeding before the [tax commissioner]  
3 under this act the burden of proof shall be on the taxpayer  
4 except for the following issues, as to which the burden of proof  
5 shall be on the [tax commissioner]:

6       (1) whether the taxpayer has been guilty of fraud with  
7 attempt to evade tax,

8       (2) whether the petitioner is liable as the transferee of  
9 property of a taxpayer (but not to show that the taxpayer was  
10 liable for the tax).

11       (3) whether the taxpayer is liable for any increase in a  
12 deficiency where such increase is asserted initially after the  
13 notice of deficiency was mailed and a protest under section 64  
14 filed, unless such increase in deficiency is the result of a  
15 change or correction of federal taxable income required to be  
16 reported under section 61, and of which change or correction  
17 the [tax commissioner] had no notice at the time he mailed the  
18 notice of deficiency.

1       Section 68. Evidence of Related Federal Determination.  
2 Evidence of a federal determination relating to issues raised  
3 in a proceeding under section 64 shall be admissible, under  
4 rules established by the [tax commissioner].

1       Section 69. Mathematical Error. In the event that the  
2 amount of tax is understated on the taxpayer's return due to  
3 a mathematical error, the [tax commissioner] shall notify the  
4 taxpayer that an amount of tax in excess of that shown on the  
5 return is due and has been assessed. Such a notice of ad-  
6 ditional tax due shall not be considered a notice of a de-  
7 ficiency assessment nor shall the taxpayer have any right of  
8 protest of appeal as in the case of a deficiency assessment

9 based on such notice, and the assessment and collection of the  
10 amount of tax erroneously omitted in the return is not pro-  
11 hibited by any provision of this act.

1 Section 70. Waiver of Restriction. The taxpayer at any  
2 time, whether or not a notice of deficiency has been issued,  
3 shall have the right to waive the restrictions on assessment  
4 and collection of the whole or any part of the deficiency by  
5 a signed notice in writing filed with the [tax commissioner].

1 Section 71. Assessment of Tax. (a) Date of Assessment.  
2 The amount of tax which is shown to be due on the return  
3 (including revisions for mathematical errors) shall be deemed  
4 to be assessed on the date of filing of the return including  
5 any amended returns showing an increase of tax. In the case  
6 of a return properly filed without the computation of the tax,  
7 the tax computed by the [tax commissioner] shall be deemed to be  
8 assessed on the date when payment is due. If a notice of  
9 deficiency has been mailed, the amount of the deficiency shall  
10 be deemed to be assessed on the date provided in section 63 if  
11 no protest is filed; or, if a protest is filed then upon the  
12 date when the determination of the [tax commissioner] becomes  
13 final. If an amended return or report filed pursuant to sec-  
14 tion 61 concedes the accuracy of a federal change or correction,  
15 any deficiency in tax under this act resulting therefrom shall  
16 be deemed to be assessed on the date of filing such report or  
17 amended return and such assessment shall be timely notwith-  
18 standing any other provisions of this act. Any amount paid  
19 as a tax or in respect of a tax, other than amounts withheld  
20 at the source or paid as estimated income tax, shall be deemed  
21 to be assessed upon the date of receipt of payment, notwith-  
22 standing any other provision of this act.

23 (b) Other Assessment Powers. If the mode or time for the  
24 assessment of any tax under this act, including interest, ad-  
25 ditions to tax and penalties is not otherwise provided for, the  
26 [tax commissioner] may establish the same by regulation.

27 (c) Supplemental Assessment. The [tax commissioner] may, at  
28 any time within the period prescribed for assessment, make a

29 supplemental assessment, subject to the provisions of sec-  
30 tion 62 where applicable, whenever it is found that any as-  
31 sessment is imperfect or incomplete in any material aspect.

32 (d) Cross Reference. For assessment in case of jeopardy,  
33 see section 103.

1 Section 72. Limitations on Assessment. (a) General.

2 Except as otherwise provided in this act, a notice of a pro-  
3 posed deficiency assessment shall be mailed to the taxpayer  
4 within three years after the return was filed. No deficiency  
5 shall be assessed or collected with respect to the year for  
6 which the return was filed unless the notice is mailed within  
7 the three year period or the period otherwise fixed.

8 (b) Omission of More Than 25 Percent of Income. If the  
9 taxpayer omits from gross income an amount properly includible  
10 therein which is in excess of 25 percent of the amount of gross  
11 income stated in the return, a notice of a proposed deficiency  
12 assessment may be mailed to the taxpayer within six years after  
13 the return was filed. For purposes of this subsection, there  
14 shall not be taken into account any amount which is omitted in  
15 the return if such amount is disclosed in the return, or in a  
16 statement attached to the return, in a manner adequate to  
17 apprise the [tax commissioner] of the nature and amount of  
18 such item.

19 (c) No Return Filed or Fraudulent Return. If no return is  
20 filed or a false and fraudulent return is filed with intent to  
21 evade the tax imposed by this act, a notice of deficiency may  
22 be mailed to the taxpayer at any time.

23 (d) Failure to Report Federal Change. If a taxpayer fails  
24 to comply with the requirement of section 61 by not reporting  
25 a change or correction increasing his federal taxable income,  
26 or in not reporting a change or correction which is treated in  
27 the same manner as if it were a deficiency for federal income  
28 tax purposes, or in not filing an amended return, a notice of  
29 deficiency may be mailed to the taxpayer at any time.

30 (e) Report of Federal Change or Correction. If the taxpayer  
31 shall pursuant to section 61 report a change or correction or



32 file an amended return increasing his federal taxable income or  
33 report a change or correction which is treated in the same  
34 manner as if it were a deficiency for federal income tax pur-  
35 poses, the assessment (if not deemed to have been made upon the  
36 filing of the report or amended return) may be made at any time  
37 within two years after such report or amended return was filed.

38 (f) Extension by Agreement. Where, before the expiration  
39 of the time prescribed in this section for the assessment of a  
40 deficiency, both the [tax commissioner] and the taxpayer shall  
41 have consented in writing to its assessment after such time, the  
42 deficiency may be assessed at any time prior to the expiration of  
43 period agreed upon. The period so agreed may be extended by  
44 subsequent agreement in writing made before the expiration of  
45 the period previously agreed upon.

46 (g) Time Return Deemed Filed. For purposes of this section  
47 an income tax return filed before the last day prescribed by law  
48 or by regulation promulgated pursuant to law for the filing there-  
49 of, shall be deemed to be filed on such last day. If a return  
50 or withholding tax for any period ending with or within a calendar  
51 year is filed before April 15 of the succeeding calendar year,  
52 such return shall be deemed to be filed on April 15 of such suc-  
53 ceeding calendar year.

1 Section 73. Recovery of Erroneous Refund. An erroneous re-  
2 fund shall be considered an underpayment of tax on the date made,  
3 and an assessment of a deficiency arising out of an erroneous re-  
4 fund may be made at any time within two years from the making of  
5 the refund, except that the assessment may be made within five  
6 years from the making of the refund if it appears that any part  
7 of the refund was induced by fraud or the misrepresentation of  
8 of a material fact.

9 Section 74. Interest on Underpayments. (a) General. If  
10 any amount of tax imposed by this act, including tax withheld  
11 by an employer, is not paid on or before the last date pre-  
12 scribed for payment, interest on such amount at the rate of  
13 6 percent per annum shall be paid for the period from such last

14 date to date paid. No interest shall be imposed if the  
15 amount due is less than one dollar nor shall this section apply  
16 to any failure to pay estimated income tax under section 54.

17 (b) Last Date Prescribed for Payment. For purposes of this  
18 section, the last date prescribed for the payment of tax shall  
19 be determined without regard to any extension of time.

20 (c) Suspension of Waiver of Restrictions. If the taxpayer  
21 has filed a waiver of restrictions on the assessment of a  
22 deficiency and if notice and demand by the [tax commissioner]  
23 for payment of such deficiency is not made within 30 days after  
24 the filing of such waiver, interest shall not be imposed on such  
25 deficiency for the period beginning immediately after such 30th  
26 day and ending with the date of notice and demand.

27 (d) Interest Treated as Tax. Interest prescribed under this  
28 section on any tax including tax withheld by an employer shall  
29 be paid on notice and demand and shall be assessed, collected  
30 and paid in the same manner as taxes. Any reference in this  
31 act to the tax imposed by this act shall be deemed also to refer  
32 to interest imposed by this section on such tax.

33 (e) Interest on Penalties, or Additions to Tax. Interest  
34 shall be imposed under this section in respect to any penalty,  
35 or addition to tax only if such penalty or addition to tax is  
36 not paid within 10 days of the notice and demand therefor, and  
37 in such case interest shall be imposed only for the period from  
38 the date of the notice and demand to the date of payment.

39 (f) Payments Made Within 10 Days After Notice and Demand.  
40 If notice and demand is made for the payment of any amount due  
41 under this act and if such amount is paid within 10 days  
42 after the date of such notice and demand, interest under this  
43 section on the amount so paid shall not be imposed for the  
44 period after the date of such notice and demand.

45 (g) Satisfaction by Credits. If any portion of a tax is  
46 satisfied by credit of an overpayment, then no interest shall  
47 be imposed under this section on the portion of the tax so  
48 satisfied for any period during which if the credit had not

49 been made, interest would have been allowable with respect to  
50 such overpayment.

51 (h) Interest on Erroneous Refund. Any portion of the tax  
52 imposed by this act or any interest, penalty, or addition  
53 to tax which has been erroneously refunded and which is re-  
54 coverable by the [tax commissioner] shall bear interest at the  
55 rate of 6 percent per annum from the date of payment of the  
56 refund.

57 (i) Limitation on Assessment and Collection. Interest  
58 prescribed under this section may be assessed and collected  
59 at any time during the period within which the tax, penalty,  
60 or addition to tax to which such interest relates may be  
61 assessed and collected respectively.

## Part II - Additions to Tax and Penalties

1 Section 75. Failure to File Tax Returns. (a) Failure to  
2 File Tax Return. In case of failure to file any return re-  
3 quired under this act on the date prescribed therefor (determi-  
4 ned with regard to any extension of time for filing), unless it  
5 is shown that such failure is due to reasonable cause and not  
6 due to willful neglect, there shall be added to the amount re-  
7 quired to be shown as tax on such return 5 percent of the amount  
8 of such tax if the failure is not for more than one month, with  
9 an additional 5 percent for each additional month or fraction  
10 thereof during which such failure continues, not exceeding  
11 25 percent in the aggregate. For purposes of this section,  
12 the amount of tax required to be shown on the return shall be  
13 reduced by the amount of any part of the tax which is paid on  
14 or before the date prescribed for payment of the tax and by  
15 the amount of any credit against the tax which may be claimed  
16 upon the return.

17 (b) Failure to File Certain Information Returns. In case  
18 of each failure to file a statement of payment to another  
19 person required under the authority of this act including the  
20 duplicate statement of tax withheld on wages on the date

21 prescribed therefor (determined with regard to any extension  
22 of time for filing), unless it is shown that such failure is  
23 due to a reasonable cause and not to willful neglect, there  
24 shall be paid upon notice and demand by the [tax commissioner]  
25 and in the same manner as by the person so failing to file the  
26 statement, a penalty of \$2.00 for each statement not so filed,  
27 but the total amount imposed on the delinquent person for all  
28 such failures during any calendar year shall not exceed \$2,000.

1       Section 76. Failure to Pay Tax. (a) Deficiency Due to  
2 Negligence. If any part of a deficiency is due to negligence  
3 or intentional disregard of rules and regulations (but without  
4 intent to defraud) there shall be added to the tax an amount  
5 equal to 5 percent of the deficiency.

6       (b) Fraud. If any part of a deficiency is due to fraud,  
7 there shall be added to the tax an amount equal to 50 percent  
8 of the deficiency. This amount shall be in lieu of any amount  
9 determined under subsection (a).

10       (c) Failure by Individual to File Declaration or Under-  
11 payment of Estimated Tax. If any taxpayer fails to file a  
12 declaration of estimated tax or fails to pay all or any part  
13 of an installment of any tax, he shall be deemed to have made  
14 an underpayment of estimated tax. The [tax commissioner] may  
15 prescribe by regulation the method for determining the amount  
16 of the underpayment and the period of the underpayment.

17       (d) Nonwillful Failure to Pay Withholding Tax. If any  
18 employer, without intent to evade or defeat any tax imposed by  
19 this act or the payment thereof, shall fail to make a return  
20 and pay a tax withheld by him at the time required by or under  
21 the provisions of this act, such employer shall be liable for  
22 such taxes and shall pay the same together with interest thereon  
23 and the addition to tax provided in subsection (a), and such  
24 interest and addition to tax shall not be charged to or collected  
25 from the employee by the employer. The [tax commissioner] shall  
26 have the same rights and powers for the collection of such tax,  
27 interest, and addition to tax against such employer as are now

28 prescribed by this act for the collection of tax against an  
29 individual taxpayer.

30 (e) Willful Failure to Collect and Pay Over Tax. Any  
31 person required to collect, truthfully account for, and pay over  
32 the tax imposed by this act who willfully fails to collect such  
33 tax or truthfully account for and pay over such tax or willfully  
34 attempts in any manner to evade or defeat the tax or the payment  
35 thereof, shall, in addition to other penalties provided by law  
36 be liable to a penalty equal to the total amount of the tax  
37 evaded, or not collected, or not accounted for and paid over.  
38 No addition to tax under subsections (a) or (b) of this section  
39 shall be imposed for any offense to which this subsection applies.

40 (f) Additional Penalty. Any person who with fraudulent intent  
41 shall fail to pay, or to deduct or withhold and pay, any tax, or  
42 to make, render, sign, or certify any return or declaration of  
43 estimated tax, or to supply any information within the time  
44 required by or under this act, shall be liable to a penalty  
45 of not more than \$1,000, in addition to any other amounts re-  
46 quired under this act, to be imposed, assessed and collected by  
47 the [tax commissioner].

48 (g) Additions Treated as Tax. The additions to tax and  
49 penalties provided by this act shall be paid upon notice and  
50 demand and shall be assessed, collected, and paid in the same  
51 manner as taxes and any reference in this act to income tax or  
52 the tax imposed by this act shall be deemed also to refer to  
53 additions to the tax, and penalties provided by this section.  
54 For purposes of the deficiency procedures provided in section  
55 62, of this subsection shall not apply to:

56 (1) any addition to tax under subsection (a) of  
57 section 75 except as to that portion attributable to a de-  
58 ficiency;

59 (2) any addition to tax for failure to file a decla-  
60 ration or underpayment of estimated tax as provided in sub-  
61 section (c) of this section;

62 (3) any additional penalty under subsection (f) of this  
63 section.

64 (h) Determination of Deficiency. For purposes of subsections  
65 (a) and (b) related to deficiencies due to negligence or fraud,  
66 the amount shown as the tax by the taxpayer upon his return shall  
67 be taken into account in determining the amount of the deficiency  
68 only if such return was filed on or before the last day prescribed  
69 for the filing of such return, determined with regard to any ex-  
70 tension of time for such filing.

71 (i) Person Defined. For purposes of subsections (e) and (f)  
72 the term person includes an individual, corporation or partner-  
73 ship, or an officer or employee of any corporation (including  
74 a dissolved corporation), or a member or employee of any partner-  
75 ship, who as such officer, employee or member is under a duty to  
76 perform the act in respect of which the violation occurs.

1 Section 77. False Information with Respect to Withholding  
2 Allowance. In addition to any other penalty provided by law,  
3 if any individual in claiming a withholding allowance states  
4 (1) as the amount of the wages shown on his return for any tax-  
5 able year an amount less than such wages actually shown, or  
6 (2) as the amount of the itemized deductions referred to in  
7 section 9 shown on the return for any taxable year an amount  
8 greater than such deductions actually shown, he will pay a  
9 penalty of \$50 for such statement, unless:

10 (1) such statement did not result in a decrease in the  
11 amounts deducted and withheld, or

12 (2) the taxes imposed with respect to the individual under  
13 this act for the succeeding taxable year do not exceed the sum  
14 of: (i) the credits against such taxes, and (ii) the payments  
15 of estimated tax which are considered payments on account of  
16 such taxes.

17 Section 62 relating to deficiency procedure shall not apply in  
18 respect to the assessment or collection of any penalty imposed  
19 by this section.

### Part III - Credits and Refunds

1 Section 78. Authority to Make Credits or Refunds. (a) General.  
2 Rule. The [tax commissioner] within the applicable period of

3 limitations may credit an overpayment of income tax and interest  
4 on such overpayment against any liability in respect of any tax  
5 imposed by the tax laws of this state on the person who made the  
6 overpayment, and the balance shall be refunded by the treasurer  
7 out of the proceeds of the tax retained by him for such general  
8 purposes.

9 (b) Excessive Withholding. If the amount allowable as a  
10 credit for tax withheld from the taxpayer exceeds his tax to  
11 which the credit relates, the excess shall be considered an  
12 overpayment.

13 (c) Overpayment by Employer. If there has been an over-  
14 payment of tax required to be deducted and withheld under sec-  
15 tion 19, refund shall be made to the employer only to the extent  
16 that the amount of the overpayment was not deducted and withheld  
17 by the employer.

18 (d) Credits Against Estimated Tax. The [tax commissioner]  
19 may prescribe regulations providing for the crediting against  
20 the estimated income tax for any taxable year of the amount  
21 determined to be an overpayment of the income tax for a pre-  
22 ceding taxable year.

23 (e) Assessment and Collection After Limitation Period. If  
24 any amount of income tax is assessed or collected after the ex-  
25 piration of the period of limitations properly applicable thereto,  
26 such amount shall be considered an overpayment.

1 Section 79. Abatements. (a) General Rule. The [tax com-  
2 missioner] is authorized to abate the unpaid portion of the  
3 assessment of any tax or any liability in respect thereof, which  
4 (1) is excessive in amount, or (2) is assessed after the ex-  
5 piration of the period of limitations properly applicable thereto,  
6 or (3) is erroneously or illegally assessed.

7 (b) No Claim by Taxpayer. No claim for abatement shall be  
8 filed by a taxpayer in respect of an assessment of any tax  
9 imposed under this act.

10 (c) Small Tax Balances. The [tax commissioner] is authorized  
11 to abate the unpaid portion of the assessment of any tax, or any

12 liability in respect thereof, if he determines under uniform  
13 rules prescribed by him that the administration and collection  
14 costs involved would not warrant collection of the amount due.

1 Section 80. Limitations on Credit or Refund. (a) General.

2 A claim for credit or refund of an overpayment of any tax imposed  
3 by this act shall be filed by the taxpayer within three years  
4 from the time the return was filed or two years from the time  
5 the tax was paid whichever of such periods expires the later;  
6 or if no return was filed by the taxpayer, within two years  
7 from the time the tax was paid. No credit or refund shall be  
8 allowed or made after the expiration of the period of limitation  
9 prescribed in this subsection for the filing of a claim for  
10 credit or refund, unless a claim for credit or refund is filed  
11 by the taxpayer within such period.

12 (b) Limit on Amount of Claim or Refund. If the claim is  
13 filed by the taxpayer during the three-year period prescribed in  
14 subsection (a), the amount of the credit or refund shall not  
15 exceed the portion of the tax paid within the three years  
16 immediately preceding the filing of the claim plus the period  
17 of any extension of time for filing the return. If the claim  
18 is not filed within such three-year period, but is filed within  
19 the two-year period, the amount of the credit or refund shall  
20 not exceed the portion of the tax paid during the two years  
21 immediately preceding the filing of the claim. If no claim is  
22 filed, the credit or refund shall not exceed the amount which  
23 would be allowable under either of the preceding sentences, as  
24 the case may be, if a claim was filed on the date the credit or  
25 refund is allowed.

26 (c) Extension of Time by Agreement. If an agreement for  
27 an extension of the period for assessment of income taxes is  
28 made within the period prescribed in subsection (a) for the  
29 filing of a claim for credit or refund, the period for filing  
30 claim for credit or for making credit or refund if no claim is  
31 filed, shall not expire prior to six months after the expiration  
32 of the period within which an assessment may be made pursuant



33 to the agreement or any extension thereof. The amount of such  
34 credit or refund shall not exceed the portion of the tax paid  
35 after the execution of the agreement and before the filing of  
36 the claim or the making of the credit or refund, as the case  
37 may be, plus the portion of the tax paid within the period which  
38 would be applicable under subsection (a) if a claim had been  
39 filed on the date the agreement was executed.

40 (d) Notice of Change or Correction of Federal Income. If  
41 a taxpayer is required by section 61 to report a change or  
42 correction in federal taxable income reported on his federal  
43 income tax return, or to report a change or correction which  
44 is treated in the same manner as if it were an overpayment for  
45 federal income tax purposes, or to file an amended return with  
46 the [tax commissioner], claim for credit or refund of any  
47 resulting overpayment of tax shall be filed by the taxpayer  
48 within two years from the time the notice of such change or  
49 correction or such amended return was required to be filed with  
50 the [tax commissioner]. If the report or amended return re-  
51 quired by section 61 is not filed within the 90-day period  
52 therein specified, interest on any resulting refund or credit  
53 shall cease to accrue after such 90th day. The amount of such  
54 credit or refund shall not exceed the amount of the reduction  
55 in tax attributable to such federal change, correction, or items  
56 amended on the taxpayer's amended federal income tax return.  
57 This subsection shall not affect the time within which or the  
58 amount for which a claim for credit or refund may be filed apart  
59 from this subsection.

60 (e) Special Rules. The following rules shall apply:

61 (1) If the claim for credit or refund relates to an  
62 overpayment of tax on account of the deductibility by the tax-  
63 payer of a debt as a debt which became worthless or a loss from  
64 worthlessness of a security or the effect that the deductibility  
65 of a debt or of a loss has on the application to the taxpayer of  
66 a carry-over, the claim may be made, under regulations prescribed  
67 by the [tax commissioner] within seven years from the date

68 prescribed by law for filing the return for the year with  
69 respect to which the claim is made.

70 (2) If the claim for credit or refund relates to an  
71 overpayment attributable to a net operating loss carry-back,  
72 the claim may be made, under regulations prescribed by the  
73 [tax commissioner] within the period which ends with the  
74 expiration of the 15th day of the 40th month following the  
75 end of the taxable year of the net operating loss which resulted  
76 in such carry-back or the period prescribed in subsection (c)  
77 in respect of such taxable year, whichever expires later.

1 Section 81. Interest on Overpayment. (a) General. Under  
2 regulations prescribed by the [tax commissioner] interest shall  
3 be allowed and paid at the rate of 6 percent per annum upon any  
4 overpayment in respect of the tax imposed by this act. No  
5 interest shall be allowed or paid if the amount thereof is less  
6 than \$1.00.

7 (b) Date of Return or Payment. For purposes of this section:

8 (1) Any return filed before the last day prescribed  
9 for the filing thereof shall be considered as filed on such last  
10 day determined without regard to any extension of time granted  
11 the taxpayer;

12 (2) Any tax paid by the taxpayer before the last day  
13 prescribed for its payment, any income tax withheld from the  
14 taxpayer during any calendar year and any amount paid by the  
15 taxpayer as estimated income tax for a taxable year shall be  
16 deemed to have been paid by him on the fifteenth day of the  
17 fourth month following the close of his taxable year to which  
18 such amount constitutes a credit or payment.

19 (c) Return and Payment of Withholding Tax. For purposes  
20 of this section with respect to any withholding tax;

21 (1) If a return for any period ending with or within  
22 a calendar year is filed before April 15 of the succeeding  
23 calendar year, such return shall be considered filed on April 15  
24 of such succeeding calendar year; and

25 (2) If a tax with respect to remuneration paid during  
26 any period ending with or within a calendar year is paid before

27 April 15 of the succeeding calendar year, such tax shall be  
28 considered paid on April 15 of such succeeding calendar year.

29 (d) Refund Within Three Months. If any overpayment of tax  
30 imposed by this act is refunded within three months after the  
31 last date prescribed (or permitted by extension of time) for  
32 filing the return of such tax or within three months after the  
33 return was filed, whichever is later, no interest shall be  
34 allowed under this section on overpayment.

1 Section 82. Refund Claim. Every claim for refund shall be  
2 filed with the [tax commissioner] in writing and shall state  
3 the specific grounds upon which it is founded. The [tax com-  
4 missioner] may grant the taxpayer or his authorized repre-  
5 sentatives an opportunity for an oral hearing if the taxpayer  
6 so requests.

1 Section 83. Notice of Denial. If the [tax commissioner]  
2 disallows a claim for refund, he shall notify the taxpayer  
3 accordingly. The action of the [tax commissioner] denying a  
4 claim for refund is final upon the expiration of 90 days from  
5 the date when he mails notice of his action to the taxpayer  
6 unless within this period the taxpayer seeks judicial review  
7 of the [tax commissioner's] determination.

1 Section 84. Refund Claim Deemed Disallowed. If the [tax  
2 commissioner] fails to mail a notice of action on any refund  
3 claim within six months after the claim is filed, the taxpayer  
4 may, prior to notice of action on the refund claim, consider  
5 the claim disallowed.

#### Part IV - Judicial Review - Suits for Refunds

1 Section 85. Review of Determination of [Tax Commissioner].  
2 A determination by the [tax commissioner] on a taxpayer's  
3 protest against the proposed assessment of a deficiency shall  
4 be subject to judicial review at the instance of any taxpayer af-  
5 fected thereby [either in the manner provided by law for the review  
6 of final decisions or determinations of administrative agencies

7 of this state or by a de novo review in a court of appropriate  
8 jurisdiction].<sup>2</sup>

1 Section 86. Judicial Review Exclusive Remedy in Deficiency  
2 Proceedings. The review of a determination of the [tax com-  
3 missioner] provided by section 85 shall be the exclusive remedy  
4 available to any taxpayer for the judicial review of the action  
5 of the [tax commissioner] in respect to the assessment of a  
6 proposed deficiency. No injunction or other legal or equitable  
7 process shall issue in any suit, action or proceeding in any  
8 court against this state or against any office of this state to  
9 prevent or enjoin the assessment or collection of any tax imposed  
10 under this act.

1 Section 87. Assessment Pending Review - Review Bond. The  
2 [tax commissioner] may assess a deficiency after the expiration  
3 of the period specified in section 66 notwithstanding that an  
4 application for judicial review in respect of such deficiency has  
5 been made by the taxpayer, unless the taxpayer at or before the  
6 time his application for review is made, has paid the deficiency,  
7 or has deposited with the [tax commissioner] the amount of the  
8 deficiency or has filed with the [tax commissioner] a bond, in  
9 the amount of the deficiency being contested including interest  
10 and other amounts as well as all costs and charges which may  
11 accrue against him in the prosecution of the proceeding and  
12 issued by a person authorized under the laws of this state to  
13 act as surety, conditioned upon the payment of the deficiency  
14 including interest and other amounts as finally determined and  
15 such costs and charges.

1 Section 88. Proceedings After Review. (a) Credit, Refund or  
2 Abatement. If the amount of a deficiency determined by the  
3 [tax commissioner] is disallowed in whole or in part by the court  
4 of review, the amount so disallowed shall be credited or re-  
5 funded to the taxpayer without the making of a claim therefor, or,  
6 if payment has not been made, shall be abated.

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2. These provisions will have to be drafted to be consistent  
with judicial remedies available in comparable proceedings.

7           (b) Deficiency Disallowed - Costs. If the deficiency  
8 determined by the [tax commissioner] is disallowed, the tax-  
9 payer shall have his costs. If the deficiency is disallowed  
10 in part, the court in its discretion may award the taxpayer a  
11 proportion of his costs.

12           (c) Assessment Final. An assessment of a proposed de-  
13 ficiency by the [tax commissioner] shall become final upon the  
14 expiration of the period specified in section 63 for filing a  
15 written protest against the proposed assessment if no such  
16 protest has been filed within the time provided; or if the  
17 protest provided in section 64 has been filed, upon the ex-  
18 piration of time provided for filing an application for ju-  
19 dicial review, or upon the final judgment of the reviewing  
20 court or upon the rendering by the [tax commissioner] of a  
21 decision pursuant to the mandate of the reviewing court. Not-  
22 withstanding the foregoing, for the purpose of making an  
23 application for the review of a determination of the [tax com-  
24 missioner], the determination shall be deemed final on the  
25 date the notice of decision is sent by certified mail or re-  
26 gistered mail to the taxpayer as provided in section 65.

1           Section 89. Suit for Refund. Except in cases involving the  
2 proposed assessment of a deficiency, any taxpayer who claims  
3 that the tax he has paid under this act is void in whole or in  
4 part, may bring an action, upon the grounds set forth in his  
5 claim for refund, against the [tax commissioner] for the  
6 recovery or the whole or any part of the amount paid. Such  
7 suit against the [tax commissioner] may be instituted in the  
8 [district, county, circuit court of appropriate jurisdiction  
9 where the taxpayer resides or in the capital city]. [If neces-  
10 sary, insert appropriate provision for defense of action either  
11 by the attorney general or counsel for the tax commissioner.]

1           Section 90. No Suit Prior to Filing Claim. No suit shall  
2 be maintained for the recovery of any tax imposed by this act  
3 alleged to have been erroneously paid until a claim for refund  
4 has been filed with the [tax commissioner] as provided in

5 section 82 and the [tax commissioner] has denied the refund  
6 or has filed to mail a notice of action on the claim within  
7 six months after the claim was filed.

1 Section 91. Limitation on Suit for Refund. The action  
2 authorized in section 90 shall be filed within three years from  
3 the last date prescribed for filing the return or within one year  
4 from the date the tax was paid, or within 90 days after the  
5 denial of a claim for refund by the [tax commissioner] or within  
6 90 days after the refund claim has been deemed to be disallowed  
7 because of the failure of the [tax commissioner] to mail a  
8 notice of action within six months after the claim was filed  
9 whichever period expires the later.

1 Section 92. Judgement for Taxpayer. In any action for a  
2 refund, the court may render judgment for the taxpayer for any  
3 part of the tax, interest penalties or other amounts found to  
4 be erroneously paid, together with interest on the amount of  
5 the overpayment. The amount of any judgment against the [tax  
6 commissioner] shall first be credited against any taxes, interest,  
7 penalties or other amounts due from the taxpayer under the tax  
8 laws of this state and the remainder refunded by the [state  
9 treasurer].

#### Part V - Miscellaneous Enforcement Provisions

1 Section 93. Timely Mailing. If any claim, statement, notice,  
2 petition, or other document including, to the extent authorized  
3 by the [tax commissioner] a return or declaration of estimated  
4 tax, required to be filed within a prescribed period or on or  
5 before a prescribed date under the authority of any provision  
6 of this act is, after such period of such date, delivered by  
7 United States mail to the [tax commissioner], or the officer or  
8 person therein with which or with whom such document is required  
9 to be filed, the date of the United States postmark stamped on  
10 the envelope shall be deemed to be the date of delivery. This  
11 section shall apply only if the postmark date falls within the  
12 prescribed period or on or before the prescribed date for the

13 filing of such document, determined with regard to any ex-  
14 tension granted for such filing, and only if such document  
15 was deposited in the mail, postage prepaid, properly addressed  
16 to the [tax commissioner], office, officer or person therein  
17 with which or with whom the document is required to be filed.  
18 If any document is sent by United States registered mail, such  
19 registration shall be prima facie evidence that such document  
20 was delivered to the [tax commissioner], or the office, officer  
21 or person to which or to whom it is addressed. To the extent that  
22 the [tax commissioner] shall prescribe by regulation, certified  
23 mail may be used in lieu of registered mail under this section.  
24 This section shall apply in the case of postmarks not made by  
25 the United States Post Office only if and to the extent provided  
26 by regulations of the [tax commissioner]. When the last day  
27 prescribed under the authority of this act, including any ex-  
28 tension of time, for performing any act falls on Saturday,  
29 Sunday, or a legal holiday in this state, the performance of  
30 such act shall be considered timely if it is performed on the  
31 next succeeding day which is not a Saturday, Sunday or a legal  
32 holiday.

1       Section 94. Collection Procedures. (a) General. The tax  
2 imposed by this act shall be collected by the [tax commissioner],  
3 and he may establish the mode or time for the collection of any  
4 amount due under this act if not otherwise specified. The [tax  
5 commissioner] shall, on request, give a receipt for any amount  
6 collected under this act. The [tax commissioner] may authorize  
7 incorporated banks or trust companies which are depositaries or  
8 fiscal agents of this state to receive and give a receipt for  
9 any tax imposed under this act, in such manner, at such times,  
10 and under such conditions as he may prescribe; and the [tax  
11 commissioner] shall prescribe the manner, times and conditions  
12 under which the receipt of tax by such banks and trust companies  
13 is to be treated as payment of tax to the [tax commissioner].

14       (b) Notice and Demand. The [tax commissioner] shall as soon  
15 as practicable give notice to each person liable for any amount

16 of tax, addition to tax, additional amount, penalty or interest,  
17 which has been assessed but remains unpaid, stating the amount  
18 and demanding within 10 days of the date of the notice and  
19 demand payment thereof. Such notice shall be left at the  
20 dwelling place or usual place of business of such person or  
21 shall be sent by mail to such person's last known address.  
22 Except where the [tax commissioner] determines that collection  
23 would be jeopardized by delay, if any tax is assessed prior to  
24 the last date, including any date fixed by extension, prescribed  
25 for payment of such tax, payment of such tax shall not be  
26 demanded until after such date.

27 (c) Cross-Reference: For requirements of payment without  
28 assessment, notice or demand of amount shown to be due on  
29 return, see section 51.

1 Section 95. Issuance of Warrant. If any person liable to  
2 pay any tax, addition to tax, penalty, or interest imposed  
3 under this act neglects or refuses to pay the same within ten  
4 days after notice and demand, the [tax commissioner] may issue  
5 a warrant directed to the [sheriff] of any county of this state  
6 or to his own representative commanding him to levy upon and  
7 sell such person's real and personal property for the payment  
8 of the amount assessed, with the cost of executing the warrant,  
9 and to return such warrant to the [tax commissioner] and to  
10 pay him the money collected by virtue thereof within 60 days  
11 after receipt of the warrant. If the [tax commissioner] finds  
12 that collection of the tax is in jeopardy, notice and demand  
13 for immediate payment of such tax may be made by the [tax  
14 commissioner] and upon failure or refusal to pay such tax the  
15 [tax commissioner] may issue a warrant without regard to the  
16 ten-day waiting period provided in this section.

1 Section 96. Lien of Tax. If any tax imposed by this act  
2 is not paid when due, the [tax commissioner] may file in the  
3 office of any [county recorder] a certificate specifying the  
4 amount of the tax, addition to tax, penalty and interest due,  
5 the name and last known address of the taxpayer liable for the



6 amount and the fact that the [tax commissioner] has complied  
7 with all the provisions of this act in the assessment of the  
8 tax. From the time of the filing, the amount set forth in the  
9 certificate constitutes a lien upon all property of the tax-  
10 payer in the county then owned by him or thereafter acquired  
11 by him in the period before the expiration of the lien. The  
12 lien provided herein has the same force, effect and priority  
13 as a judgment lien and continues for ten years from the date  
14 of recording unless sooner released or otherwise discharged.

1 Section 97. Extension; Release of Lien. Within ten years  
2 from the date of the recording or within ten years from the  
3 date of the last extension of the lien in the manner provided  
4 herein, the lien may be extended by recording in the office  
5 of the [county recorder] of any county, a new certificate. The  
6 [tax commissioner] may, at any time, release all or any portion  
7 of the property subject to any lien provided for in this act or  
8 subordinate the lien to other liens if he determines that the  
9 taxes are sufficiently secured by a lien on other property of  
10 the taxpayer or that the release or subordination of the lien  
11 will not endanger or jeopardize the collection of the taxes.

1 Section 98. Taxpayer Not a Resident. When notice and  
2 demand for the payment of a tax is given to a nonresident and  
3 it appears to the [tax commissioner] that it is not practicable  
4 to locate property of the taxpayer sufficient in amount to  
5 cover the amount of tax due, he shall send a copy of the  
6 certificate provided for in section 96 to the taxpayer at his  
7 last known address together with a notice that such certificate  
8 has been filed with the [county recorder]. Thereafter, the  
9 [tax commissioner] may authorize the institution of any action  
10 or proceeding to collect or enforce such claim in any place  
11 and by any procedure that a civil judgment of a court of record  
12 of this state could be collected or enforced. The [tax com-  
13 missioner] may also in his discretion, designate agents or  
14 retain counsel outside this state for the purpose of collecting  
15 outside this state any taxes due under this act from taxpayers

16 who are not residents of this state; and he may fix the com-  
17 pensation of such agents and counsel to be paid out of money  
18 appropriated or otherwise lawfully available for payment there-  
19 of and he may require of them bonds or other security for the  
20 faithful performance of their duties. The [tax commissioner]  
21 is authorized to enter into agreements with the tax departments  
22 of other states and the District of Columbia for the collection  
23 of taxes from persons found in this state who are delinquent  
24 in the payment of income taxes imposed by those states or the  
25 District of Columbia on condition that the agreeing states and  
26 the District of Columbia afford similar assistance in the  
27 collection of taxes from persons found in those jurisdictions  
28 who are delinquent in the payment of taxes imposed under this  
29 act.

1       Section 99. Action for Recovery of Taxes. The [tax com-  
2 missioner] within six years after the assessment of any tax may  
3 bring an action in any court of competent jurisdiction within  
4 or without this state in the name of the people of this state  
5 to recover the amount of any taxes, additions to tax, penalties  
6 and interest due and unpaid under this act. In such action, the  
7 certificate of the [tax commissioner] showing the amount of the  
8 delinquency shall be prima facie evidence of the levy of the tax,  
9 of the delinquency, and of the compliance by the [tax commissioner]  
10 with all the provisions of this act in relation to the assessment  
11 of the tax.

1       Section 100. Income Tax Claims of Other States. The courts  
2 of this state shall recognize and enforce liabilities for  
3 personal income taxes lawfully imposed by any other state which  
4 extends a like comity to this state, and the duly authorized  
5 officer of any such state may sue for the collection of such a  
6 tax in the courts of this state. A certificate by the secre-  
7 tary of state of such other state that an officer suing for the  
8 collection of such a tax is duly authorized to collect the tax  
9 shall be conclusive proof of such authority. For the purposes  
10 of this section, the word "taxes" shall include additions to tax  
11 (interest and penalties, and liability for such taxes, additions

12 to tax), interest and penalties shall be recognized and enforced  
13 by the courts of this state to the same extent that the laws of  
14 such other state permit the enforcement in its courts of liability  
15 for such taxes, additions to tax, interest and penalties due this  
16 state under this act.

1     Section 101. Order to Compel Compliance. (a) Failure to  
2 File Tax Return. If any person willfully refuses to file an  
3 income tax return required by this act, the [tax commissioner]  
4 may apply to a judge of the [court of appropriate jurisdiction]  
5 for the county in which the taxpayer (or other person required  
6 to file an income tax return) resides, for an order directing  
7 such person to file the required return. If a person fails  
8 or refuses to obey such order, he shall be guilty of contempt  
9 of court.

10     (b) Failure to Furnish Records or Testimony. If any person  
11 willfully refuses to make available any books, papers, records  
12 or memoranda for examination by the [tax commissioner] or his  
13 representative or willfully refuses to attend and testify,  
14 pursuant to the powers conferred on the [tax commissioner] by  
15 section 110(c) of this act, the [tax commissioner] may apply to  
16 a judge in the [court of appropriate jurisdiction] for the  
17 county where such person resides, for an order directing that  
18 person to comply with the [tax commissioner's] request for  
19 books, papers, records or memoranda or for his attendance and  
20 testimony. If the books, papers, records or memoranda re-  
21 quired by the [tax commissioner] are in the custody of a  
22 corporation, the order of the court may be directed to any  
23 principal officer of such corporation. If a person fails  
24 or refuses to obey such order, he shall be guilty of contempt  
25 of court.

1     Section 102. Transferees. (a) General. The liability, at  
2 law or in equity, of a transferee of property of a taxpayer  
3 for any tax, addition to tax, penalty or interest due the [tax  
4 commissioner] under this act, shall be assessed, paid and  
5 collected in the same manner and subject to the same provisions

6 and limitations as in the case of the tax to which the liability  
7 relates except as hereinafter provided in this section. The  
8 term transferee includes donee, heir, legatee, devisee, and  
9 distributee.

10 (b) Period of Limitation. In the case of the liability of  
11 an initial transferee, the period of limitation for assessment  
12 of any liability is within one year after the expiration of  
13 period of limitation against the transferor; in the case of the  
14 liability of a transferee of a transferee, within one year after  
15 the expiration of the period of limitation against the preceding  
16 transferee, but not more than three years after the expiration  
17 of the period of limitation for assessment against the original  
18 transferor; except that if before the expiration of the period  
19 of limitation for the assessment of the liability of the trans-  
20 feree, a proceeding for the collection of the liability has been  
21 begun against the initial transferor or the last preceding trans-  
22 feree, respectively, then the period of limitation for assessment  
23 of the liability of the transferee shall expire one year after  
24 the proceeding is terminated.

25 (c) Extension by Agreement. If before the expiration of the  
26 time provided in this section for the assessment of the liability  
27 the [tax commissioner] and the transferee have both consented in  
28 writing to its assessment after such time, the liability may be  
29 assessed at any time prior to the expiration of the period agreed  
30 upon or an extension thereof. For the purpose of determining the  
31 period of limitation on credit or refund to the transferee of over-  
32 payments of tax made by such transferee of overpayments of tax  
33 made by the transferor of which the transferee is legally en-  
34 titled to credit or refund, such agreement and any extension  
35 thereof shall be deemed an agreement or extension referred to in  
36 subsection (c) of section 80. If the agreement is executed after  
37 the expiration of the period of limitation for assessment against  
38 the taxpayer with reference to whom the liability of such trans-  
39 feree arises, then in applying the limitations under subsection  
40 (b) of section 80 on the amount of the credit or refund, the  
41 periods specified in subsection (a) of section 80 shall be  
42 increased by the period from the date of such expiration to

43 the date of the agreement.

44 (d) Transferor Deceased. If any person is deceased, the  
45 period of limitation for assessment against such person shall  
46 be the period that would be in effect had death not occurred.

1 Section 103. Jeopardy Assessments. (a) Filing and Notice.

2 If the [tax commissioner] finds that the assessment or the  
3 collection of a tax or a deficiency for any year, current or  
4 past, will be jeopardized in whole or in part by delay, he  
5 may mail or issue notice of his finding to the taxpayer, to-  
6 gether with a demand for immediate payment of the tax or the  
7 deficiency declared to be in jeopardy, including additions to  
8 tax, interest and penalties.

9 (b) Termination of Taxable Year. In the case of a tax  
10 for a current period, the [tax commissioner] shall declare the  
11 taxable period of the taxpayer immediately terminated and his  
12 notice and demand for a return and immediate payment of the tax  
13 shall relate to the period declared terminated, including therein  
14 income accrued and deductions incurred up to the date of termi-  
15 nation if not otherwise properly includible or deductible in  
16 respect of the period.

17 (c) Collection. A jeopardy assessment is immediately due  
18 and payable, and proceedings for collection may be commenced at  
19 once. The taxpayer, however, may stay collection and prevent  
20 the jeopardy assessment from becoming final by filing, within  
21 ten days after the date of mailing or issuing the notice of  
22 jeopardy assessment, a request for reassessment, accompanied  
23 by a bond or other security in the amount of the assessment  
24 including additions to tax, penalties, and interest as to  
25 which the stay of collection is sought. If a request for  
26 reassessment, accompanied by a bond or other security on the  
27 appropriate amount, is not filed within the ten-day period,  
28 the assessment becomes final.

29 (d) Proceeding on Reassessment. If a request for re-  
30 assessment accompanied by a bond or other security, is filed  
31 within the ten-day period, the [tax commissioner] shall re-  
32 consider the assessment and, if the taxpayer has so requested

33 in his petition, the [tax commissioner] shall grant him or his  
34 authorized representatives an oral hearing. The [tax com-  
35 missioner's] action on the request for reassessment becomes  
36 final upon the expiration of thirty days from the date when  
37 he mails notice of his action to the taxpayer, unless within  
38 that thirty-day period, the taxpayer files an application to  
39 seek judicial review of the [tax commissioner's] determination.

40 (e) Presumptive Evidence of Jeopardy. In any proceeding  
41 brought to enforce payment of taxes made due and payable by  
42 this section, the finding of the [tax commissioner] under sub-  
43 section (a) of this section is for all purposes presumptive  
44 evidence that the assessment or collection of the tax or de-  
45 ficiency was in jeopardy.

46 (f) Abatement if Jeopardy Does Not Exist. The [tax com-  
47 missioner] may abate the jeopardy assessment if he finds that  
48 jeopardy does not exist.

1 Section 104. Bankruptcy or Receivership. (a) Immediate  
2 Assessment. Upon the adjudication of bankruptcy of any tax-  
3 payer in any bankruptcy proceeding or the appointment of a  
4 receiver for any taxpayer in any receivership proceeding before  
5 any court of the United States or any state or territory or of  
6 the District of Columbia, any deficiency (together with ad-  
7 ditions to tax and interest provided by law) determined by the  
8 [tax commissioner] may be immediately assessed.

9 (b) Adjudication of Claims. Claims for the deficiency and  
10 such additions to tax and interest may be presented, for ad-  
11 judication in accordance with law, to the court before which  
12 the bankruptcy or receivership proceeding is pending, despite  
13 the pendency of a protest before the [tax commissioner] under  
14 section 64. No protest against a proposed assessment shall be  
15 filed with the [tax commissioner] after the adjudication of  
16 bankruptcy or appointment of the receiver.

17 (c) Cross Reference: For the requirement of notice to the  
18 [tax commissioner] of the qualification of a trustee in  
19 bankruptcy, receiver, assignee for the benefit of creditors, or  
20 other like judiciary, see section 47.

Part VI - Criminal Offenses

1       Section 105. Attempt to Evade or Defeat Tax. Any person  
2 who willfully attempts in any manner to evade or defeat any  
3 tax imposed by this act or the payment thereof shall, in ad-  
4 dition to other penalties provided by law, be guilty of a  
5 felony and, upon conviction thereof, shall be fined not more  
6 than \$[5,000], or imprisoned not more than [5] years, or both,  
7 together with the costs of prosecution.

1       Section 106. Failure to Collect or Pay Over. Any person  
2 required under this act to collect, truthfully account for,  
3 and pay over any tax imposed by this act who willfully fails  
4 to collect or truthfully account for and pay over such tax  
5 shall, in addition to other penalties provided by law, be  
6 guilty of a felony and, upon conviction thereof, shall be  
7 fined not more than \$[5,000], or imprisoned not more than [5]  
8 years, or both, together with the costs of prosecution.

1       Section 107. Failure to File Return, Supply Information,  
2 Pay Tax. Any person required under this act to pay any tax or  
3 estimated tax, or required by this act or regulation prescribed  
4 thereunder to make a return (other than a return of estimated  
5 tax), keep any records, or supply any information, who will-  
6 fully fails to pay such tax or estimated tax, make such return,  
7 keep such records, or supply such information, at the time or  
8 times required by law or regulations, shall, in addition to  
9 other penalties provided by law, be guilty of a misdemeanor  
10 and, upon conviction thereof, shall be fined not more than  
11 \$[5,000], or imprisoned not more than [one] year, or both,  
12 together with the costs of prosecution.

1       Section 108. False Statements. Any person who willfully  
2 makes and subscribes any return, statement or other document,  
3 which contains or is verified by a written declaration that it  
4 is made under the penalties of perjury, and which he does not  
5 believe to be true and correct as to every material matter; or  
6 willfully aids or procures the preparation or presentation in

7 a matter arising under the provisions of this act of a return,  
8 affidavit, claim or other document which is fraudulent or is  
9 false as to any material matter shall be guilty of a felony  
10 and, upon conviction thereof, shall be fined not more than  
11 \$[5,000], or imprisoned not more than [3] years, or both,  
12 together with the costs of prosecution.

1 Section 109. Limitations. Any prosecution under this act  
2 shall be instituted within three years after the commission  
3 of the offense, provided that if such offense is the failure  
4 to do an act required by or under the provisions of this  
5 act to be done before a certain date, a prosecution for such  
6 offense may be commenced not later than [3] years after such  
7 date. The failure to do any act required by or under the  
8 provisions of this act shall be deemed an act committed in  
9 part at the principal office of the [tax commissioner]. Any  
10 prosecution under this act may be conducted in any county  
11 where the person or corporation to whose liability the proceeding  
12 relates resides, or has a place of business or in any county  
13 in which such crime is committed. The attorney general shall  
14 have concurrent jurisdiction with the [district] attorney in  
15 the prosecution of any offenses under this act.

#### Part VII - Powers of [Tax Commissioner]

1 Section 110. (a) General. The [tax commissioner] shall  
2 administer and enforce the tax imposed by this act and he is  
3 authorized to make such rules and regulations and to require  
4 such facts and information to be reported, as he may deem  
5 necessary to enforce the provisions of this act. The [tax  
6 commissioner] may for enforcement and administrative purposes  
7 divide the state into a reasonable number of districts in  
8 which branch offices may be maintained.

9 (b) Returns and Forms. The [tax commissioner] may prescribe  
10 the form and contents of any return or other document required  
11 to be filed under the provisions of this act.

12 (c) Examination of Books and Witnesses. The [tax com-  
13 missioner] for the purpose of ascertaining the correctness of



14 any return, or for the purpose of making an estimate of taxable  
15 income of any person, shall have power to examine or to cause  
16 to have examined, by any agent or representative designated  
17 by him for that purpose, any books, papers, records or memo-  
18 randa bearing upon the matters required to be included in the  
19 return, and may require the attendance of the person rendering  
20 the return or any officer or employee of such person, or the  
21 attendance of any other person having knowledge in the premises,  
22 and may take testimony and require proof material for his  
23 information, with power to administer oaths to such person or  
24 persons.

25 (d) Secrecy of Returns and Information. Except in ac-  
26 cordance with proper judicial order or as otherwise provided  
27 by law, it shall be unlawful for the [tax commissioner] or  
28 any officer or employee of the [tax department], any person  
29 engaged or retained by such [department] on an independent  
30 contract basis, or any person who, pursuant to this section,  
31 is permitted to inspect any report or return or to whom a  
32 copy, an abstract or a portion of any report or return is  
33 furnished, to divulge or make known in any manner the amount  
34 of income or any particulars set forth or disclosed in any  
35 report or return required under this act. The officers  
36 charged with the custody of such reports and returns shall not  
37 be required to produce any of them or evidence of anything  
38 contained in them in any action or proceeding in any court,  
39 except on behalf of the [tax commissioner] in an action or  
40 proceeding under the provisions of the tax law to which he  
41 is a party, or on behalf of any party to any action or pro-  
42 ceeding under the provisions of this act when the reports or  
43 facts shown thereby are directly involved in such action or  
44 proceeding, in either of which events the court may require  
45 the production of, and may admit in evidence, so much of said  
46 reports or of the facts shown thereby, as are pertinent to  
47 the action or proceeding and no more. Nothing herein  
48 shall be construed to prohibit the delivery to a taxpayer

49 or his duly authorized representative of a certified copy  
50 of any return or report filed in connection with his tax or to  
51 prohibit the publication of statistics so classified as to pre-  
52 vent the identification of particular reports or returns and  
53 the items thereof, or the inspection by the attorney general  
54 or other legal representatives of the state of the report or  
55 return of any taxpayer who shall bring an action to review the  
56 tax based thereon, or against whom an action or proceeding for  
57 collection of tax has been instituted. Any person who violates  
58 the provisions of this subsection shall be guilty of a misde-  
59 meanor and, upon conviction thereof, shall be fined not more  
60 than \$[1,000] or imprisoned not more than [one] year, or both,  
61 in the discretion of the court, together with costs of pro-  
62 secution. If the offender is an officer or employee of the  
63 state, he shall be dismissed from office and be ineligible to  
64 hold any public office in this state for a period of [5] years  
65 thereafter.

66 (e) Reports and Returns Preserved. Reports and returns  
67 required to be filed under this act shall be preserved for  
68 [3] years and thereafter until the [tax commissioner] orders  
69 them to be destroyed.

70 (f) Cooperation with the United States and Other States.  
71 Notwithstanding the provisions of subsection (d), the [tax  
72 commissioner] may permit the secretary of the treasury of the  
73 United States or his delegates, or the proper officer of any  
74 state imposing an income tax upon the incomes of individuals, or  
75 the authorized representative of either such officer, to inspect  
76 the income tax returns of any individuals, or may furnish to such  
77 officer or his authorized representative an abstract of the return  
78 of income of any individual or supply him with information con-  
79 cerning an item of income contained in any return, or disclosed  
80 by the report of any investigation of the income or return of  
81 income of any individual, but such permission shall be granted  
82 only if the statutes of the United States or of such other  
83 state, as the case may be, grant substantially similar privileges

84 to the [tax commissioner] of this state as the officer charged  
85 with the administration of the tax imposed by this act.

86 (g) Cooperation With Other Tax Officials of This State.

87 The [tax commissioner] may permit other tax officials of this  
88 state to inspect the tax returns and reports filed under this  
89 act but such inspection shall be permitted only for purposes  
90 of enforcing a tax law and only to the extent and under the  
91 conditions prescribed by the regulations of the [tax com-  
92 missioner].

1 Section 111. Closing Agreements. (a) [Tax Commissioner]  
2 Authorized. The [tax commissioner], or any person authorized  
3 in writing by him, is authorized to enter into an agreement  
4 with any person relating to the liability of such person (or  
5 of the person or estate for whom he acts) in respect to the  
6 tax imposed by this act for any taxable period.

7 (b) Finality. If such agreement is approved by the [state  
8 auditor] within such time as may be stated in such agreement or  
9 later agreed to, such agreement shall be final and conclusive  
10 and, except upon a showing of fraud or malfeasance, or mis-  
11 representation of a material fact:

12 (1) the case shall not be reopened as to matters  
13 agreed upon or the agreement modified by any officer, employee  
14 or agent of this state, and

15 (2) in any suit, action or proceeding under such  
16 agreement, or any determination, assessment, collection, payment,  
17 abatement, refund, or credit made in accordance therewith, shall  
18 not be annulled, modified, set aside or disregarded.

19 Section 112. Governor May Contract with Secretary of the  
20 Treasury for Collection of Tax. The governor or his delegate  
21 is authorized in his discretion to enter into an agreement with  
22 the secretary of the treasury of the United States or his  
23 delegate, under which, to the extent provided by the terms of  
24 the agreement, the secretary or his delegate will administer,  
25 enforce and collect such income tax on behalf of the state.  
26 The cost of the services performed by the secretary or his

27 delegate in administering, enforcing or collecting an income  
28 tax under the terms of such an agreement may be paid from the  
29 appropriations for the general operations of the [tax depart-  
30 ment].

1 Section 113. Governor May Contract With Secretary of Treas-  
2 ury for Administration of Federal Tax. The governor or his  
3 delegate is authorized in his discretion to enter into an  
4 agreement with the secretary of the treasury of the United  
5 States or his delegate under which, to the extent provided by  
6 the terms of the agreement, the governor or his delegate will  
7 undertake to conduct on behalf of the United States any ad-  
8 ministrative, enforcement or collection function in respect  
9 to the federal income tax on individuals. Such agreement shall  
10 make provision for the payment by the United States of cost of  
11 the services performed on its behalf.

1 Section 114. Armed Forces Relief Provisions (a) Time of  
2 Performance. The period of service in the armed forces of  
3 the United States in combat zone plus any period of continu-  
4 ous hospitalization outside this state attributable to such  
5 service plus the next 180 days shall be disregarded in determi-  
6 ning, under regulations to be promulgated by the [tax com-  
7 missioner], whether any act required by this act was performed  
8 by a taxpayer or his representative within the time prescribed  
9 therefor.

10 (b) Death Attributable to Service in Combat Zone. In the  
11 case of any individual who dies during an induction period  
12 while in active service as a member of the armed forces of the  
13 United States, if such death occurred while the individual was  
14 serving in a combat zone or as a result of wounds, disease, or  
15 injury incurred while so serving, the tax imposed by this act  
16 shall not apply with respect to the taxable year in which falls  
17 the date of his death, or with respect to any prior taxable  
18 year ending on or after the first day he so served in a combat  
19 zone.

20 Section 115. Effective Date. This act shall take effect  
21 immediately and shall be applicable with respect to items of

22 income, deduction, loss or gain accruing in taxable years  
23 ending on or after [January 1, 19 ] but only to the extent  
24 such items have been earned, received, incurred or accrued on  
25 or after [January 1, 19 ]. For the purpose of facilitating  
26 the administration of the tax imposed by this act during the  
27 transitional period, the [tax commissioner] shall provide by  
28 regulation for the filing of returns in respect to taxable  
29 periods of less than 12 calendar months ending after [January 1,  
30 19 ] and prior to [December 31, 19 ].

1 Section 116. Separability. [Insert separability clause.]

2 Section 117. Disposition of Revenues. [Insert appropriate  
3 language for disposition of revenues.]

#### TITLE IX

#### AUTHORIZATION FOR A COUNTY SUPPLEMENT

#### TO THE STATE INCOME TAX

1 Section 118. Title. This part may be cited as the "Uniform  
2 County Income Tax Law."

1 Section 119. Authorization. Any county, by action of its  
2 local governing board, may adopt by reference the provisions of  
3 the state income tax imposed by titles I through VIII, except  
4 that a county located in a Standard Metropolitan Statistical  
5 Area, designated as such by the U. S. Bureau of the Census in  
6 most recent census of population, may adopt an income tax only  
7 if the governing board of each county in that Standard Metropoli-  
8 tan Statistical Area within this state by mutual and unanimous  
9 agreement adopts the identical tax authorized by this act.

1 Section 120. Certification and Withdrawal of the County  
2 Income Tax. Any county enacting an income tax in accordance  
3 with this act shall certify to the [tax commissioner] the date  
4 of adoption of the ordinance imposing an income tax, the rate  
5 of the tax, and the date when the enactment becomes effective.

6 A county imposing an income tax in accordance with the provi-  
7 sions of this act may repeal its income tax only after first

8 giving at least [120] days notice of the contemplated repeal  
9 of its income tax to the [state tax department] and, in the  
10 case of counties within a Standard Metropolitan Statistical  
11 Area, to the governing boards of other participating counties.  
12 The withdrawal shall be effective from and after the first day  
13 of the next calendar year and in the absence of a mutual and  
14 unanimous agreement among all counties in the Standard Metropoli-  
15 tan Statistical Area the income tax imposed by each county shall  
16 be discontinued and repealed in all counties. Nothing in this  
17 section shall be construed or applied to prevent or interfere  
18 with the collection of tax monies which were lawfully due and  
19 payable when the tax was effective and any money collected  
20 after the tax has been repealed and discontinued shall be ac-  
21 counted for and distributed as required in this act.

1 Section 121. Rate of County Income Tax. In lieu of the  
2 rates applicable to taxable incomes set forth in section 1 of  
3 this act the income tax imposed by any county adopting by  
4 reference the state income tax shall not exceed [20] percent  
5 of the liability determined for state income tax purposes.<sup>1</sup>

1 Section 122. State Administration of the County Income Tax.  
2 The income tax imposed under the provisions of this act in any  
3 county shall be administered by the [state tax commissioner].  
4 Revenues collected under county income taxes shall be accounted  
5 for separately and shall be paid into a separate fund to be  
6 distributed to the counties imposing such taxes after deducting  
7 an amount to cover the necessary and legitimate additional  
8 expenditures incurred by the [tax commissioner] in administering  
9 the county income taxes. The rules and regulations promulgated  
10 in accordance with the state income tax shall apply to the county  
11 income taxes except when, in the judgment of the [tax commissioner],  
12 such rules would be inconsistent or not feasible of proper adminis-  
13 tration.

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1. In order to prevent counties from experiencing revenue windfalls or losses as a result of changes in state income tax rates, legislatures may wish to consider authorizing the [tax commissioner] to proportionately increase or reduce the county income tax limitation.

1       Section 123. Distribution of Collections Among Local  
2 Governments. All sums received and collected on behalf of a  
3 particular political subdivision pursuant to this act shall  
4 be credited to a special Local Income Tax Fund which is hereby  
5 established in the State Treasury, and after deducting the  
6 amount of refunds made, the amounts necessary to defray the  
7 cost of collecting tax, and the administrative expenses  
8 incident thereto, shall be paid within [10] days after col-  
9 lection to the political subdivision entitled thereto.

1       Section 124. Separability. [Insert separability clause.]

2       Section 125. Effective Date. [Insert effective date.]

## SALES TAX AMENDMENTS TO EASE INTERSTATE TRADE

State sales tax practices are being subjected to searching criticism at the national level. In the 89th Congress bills were introduced to bring the Federal Government into the administration of state sales taxes for the purpose of reducing compliance burdens on multistate firms and removing impediments to interstate commerce. This reflects the political and business concern with the operation of this major state revenue source. States will want to consider ways to disarm this criticism to avoid federal sales tax regulations. To this end, the Advisory Commission on Intergovernmental Relations recommends to the states three steps that would help to safeguard the productivity and fairness of state sales taxes, facilitate accounting for sales taxes by interstate vendors, and ease interstate trade.

The states logically employ use taxes to safeguard avoidance of sales taxes on out of state purchase. An inequity arises, however, when both sales and use tax is imposed on the same transaction because for reasons of convenience or necessity the purchaser takes delivery in the state of sale for subsequent transportation to the state of use. About three-fourths of the sales tax states already have provisions in law to prevent this inequity by allowing a credit for the tax paid in the state where the sale occurred. In the other one-fourth of the states, however, the potential for dual taxation remains. These remaining states are urged to amend their sales tax laws to allow a credit for sales and use taxes previously paid another state by reason of the imposition of a similar tax. This would be accomplished by the enactment of statutory language along the lines of section 1 of the suggested legislation below.

Some states engage in the practice of charging the expenses of sales and use tax audits to a seller who maintains his books and records at an out-of-state place of business. Even where the liability of out-of-state sellers to collect sales and use taxes is uncontested, their cooperativeness would be enhanced if the cost of tax audits were not charged to them. The practice of charging vendors the cost of auditing sales and use tax audits would be prohibited under section 2 of the suggested legislation.

States and localities can facilitate one another's sales tax enforcement activities by exchanging tax records and related information. Some states and localities, however, lack the statutory authority to exchange sales and use tax information or their authority to do so is limited. These states are urged to amend their laws where required to authorize state and local sales tax officials to open additional avenues for improving taxpayer compliance and economies in tax enforcement. Alternatively, the states may want to enact a generally applicable statute to authorize the exchange of information relating to all state and local taxes. Sections 3 and 4 of the suggested legislation would limit the exchange of information to jurisdictions which reciprocate the service and undertake to use the information solely for tax enforcement purposes.



Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1       Section 1. Credit shall be granted against the tax imposed  
2 by [state sales and use tax statutory references] with respect  
3 to a person's use in this state of tangible personal property  
4 purchased by him in another state. The amount of such credit  
5 shall be equal to the tax paid by him to another state by  
6 reason of the imposition of a similar tax on his purchase or  
7 use of the property. The amount of such credit shall not ex-  
8 ceed the tax imposed by this act.

1       Section 2. Notwithstanding any other provision of law, no  
2 charge shall be imposed on registered vendors for any expense  
3 incurred by this state or its employees in connection with the  
4 audit of the books and records of such vendors regardless of  
5 where such books and records may be located.

1       Section 3. The [tax commissioner] at his discretion may  
2 furnish to the taxing officials of any other state and its  
3 political subdivision, the political subdivisions of this  
4 state, the District of Columbia, the United States and its  
5 territories, any information contained in tax returns and re-  
6 ports and related schedules and documents filed pursuant to  
7 the tax laws of this state, or in the report of an audit or  
8 investigation made with respect thereto, provided that said  
9 jurisdictions grant similar privileges to this state and pro-  
10 vided further that such information is to be used only for  
11 tax purposes.

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

## REAL ESTATE TRANSFER TAX

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

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

### Suggested Legislation

[Title should conform to state requirements.

The following is a suggestion: "An act imposing a real estate transfer tax."]

(Be it enacted, etc.)

- 1     Section 1. Definitions. As used in this act:
- 2         (1) "Deed" means [insert the definition applied in the
- 3 state's law pertaining to real estate].
- 4         (2) "Registrar" means [insert title of local official
- 5 responsible for recording deeds].
- 6         (3) "Value" means: (i) in the case of any deed not a gift,
- 7 the amount of the full actual consideration therefore, paid or
- 8 to be paid, including the amount of any lien or liens thereon;
- 9 and (ii) in the case of a gift, or any deed with nominal con-
- 10 sideration or without state consideration, the estimated price
- 11 the property would bring in an open market and under the then
- 12 prevailing market conditions in a sale between a willing seller
- 13 and a willing buyer, both conversant with the property and with

14 prevailing general price levels.

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

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

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

1     Section 4. Declaration of Value. (a) Each deed evidenc-  
2 ing a transfer of title subject to the tax as herein provided  
3 shall have appended thereto an affidavit of the parties to  
4 the transaction or their legal representatives declaring the  
5 value of the property transferred. If the transfer is not  
6 subject to the tax as herein provided, the affidavit shall  
7 specify the reasons for the exemption.

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

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

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

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1. Disposition of the proceeds is a matter for state policy determination. Some states will wish to use the entire proceeds for state purposes. Others will wish to share the real estate transfer tax with their local governments; still others will make the entire proceeds available to their local governments.

1       Section 6. Powers and Duties of [State Tax Agency]. (a)  
2       The [state tax agency] may prescribe such rules and regulations  
3       as reasonably necessary to facilitate and expedite the imposi-  
4       tion, collection, and administration of the tax imposed pursuant  
5       to this act.

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

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

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

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

- 3       (1) recorded prior to the effective date of this act;
- 4       (2) to the United States of America, this state, or any  
5       instrumentality, agency, or subdivision thereof;
- 6       (3) solely in order to provide or release security for a  
7       debt or obligation;
- 8       (4) which confirms or corrects a deed previously recorded;
- 9       (5) between husband and wife, or parent and child with  
10      only nominal actual consideration therefore;
- 11      (6) on sale for delinquent taxes or assessments;
- 12      (7) on partition;

13 (8) pursuant to mergers of corporations;  
14 (9) by a subsidiary corporation to its parent corporation  
15 for no consideration, nominal consideration, or in sole con-  
16 sideration of the cancellation or surrender of the subsidiary's  
17 stock.

1 Section 10. Separability. [Insert separability clause.]

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

## EXCHANGE OF TAX RECORDS AND INFORMATION

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

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

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

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

### Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

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

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

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

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





## B. LOCAL FISCAL POWERS

### Introductory Statement

Local governments need certain fiscal powers if they are to perform adequately the functions for which they are responsible. Outmoded constitutional and statutory restrictions on local property taxing and borrowing should be eliminated from constitutions and localities should be given broad legislative authority to raise property tax revenue and to issue bonds. Legislation to accomplish those objectives is presented here.

The Commission's examination of local industrial development bond financing developed a need for state supervision and regulation to curb undesirable practices. Suggested legislation to implement the recommendation is included below.

In addition, legislation is proposed that would broaden local governments' authority to invest their idle funds so as to maximize their interest earnings. Legislation is also proposed to enable and encourage counties to establish subordinate taxing units.

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

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

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

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

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

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

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

and borrowing powers and gives the legislatures authority to establish and revise local tax and debt policy through the normal legislative process.

#### Suggested Constitutional Amendment

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

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

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

#### b. AUTHORIZATION FOR LOCAL PROPERTY TAX LEVIES

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

The following suggested legislation to vest responsibility for determining property tax rates with local governing boards is modeled after a portion of the California Government Code (Division 4, Art. 2., Secs. 43090 - 43096). It would require (a) the local legislative body to determine annually the amount of the property tax levy; (b) the property assessing authority to certify annually the assessed value of taxable property within the jurisdiction; and (c) the local legislative authority to fix the tax rate at a level sufficient to produce the amount of the tax levy necessary to cover operating costs and the debt obligations for the fiscal year.

#### Suggested Legislation

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

(Be it enacted, etc.)

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

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

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

1     Section 4. Determination of Property Tax Rate. On [insert  
2     date], the local legislative body shall fix the tax rate, des-  
3     ignating the number of [mills] [cents upon each hundred dollars  
4     (\$100)], using as a basis the value of property as shown in  
5     the written statement furnished under section 3.

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

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

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

C. AUTHORIZATION FOR LOCAL GOVERNMENT BORROWING

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

Statutes regarding local borrowing powers, while providing the usual safeguards as to the purposes for which bonds may be issued, maturity schedules, interest rates, and the like should also:<sup>1</sup>

1. Allow maximum flexibility for local government borrowing with any governing state provisions being as comprehensive and uniform in character as possible; and
2. Vest authority to incur debt with the governing bodies of local governments, subject only to a permissive referendum if petitioned by the voters and resolved generally by a simple majority vote.

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

#### Suggested Legislation

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

(Be it enacted, etc.)

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

2        (1) "Bond" means a bond, note, or other evidence of in-  
3        debtedness.

4        (2) "Local government" means a county, city, school dis-  
5        trict, [township, special district, or borough].

1        Section 2. Debt-incurring Power. Every [local government]  
2        [political subdivision] may contract debts for the construction  
3        and acquisition of public buildings and facilities and for the  
4        acquisition of land [states may wish to specify additional  
5        purposes for which local governments may contract debts], issue  
6        its bonds, notes, or other evidence of indebtedness to finance

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

7 such activities, and provide for the rights of the holders of  
8 these obligations and to secure these obligations.

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

1 Section 4. Petition Protesting Issuance of Bonds. No vote  
2 of the qualified electors upon a proposition for the issuance  
3 of bonds by any local government under this act shall be  
4 necessary if the initial resolution is adopted by a majority of  
5 the members of the governing body of the local government, un-  
6 less within [30] days from the date of publication or posting,  
7 as the case may be, of the initial resolution so adopted, a  
8 petition protesting the issuance of the bonds signed by at  
9 least [ ] percent of the qualified electors of the jurisdic-  
10 tion shall have been filed with [insert title of official with  
11 whom such petitions are filed]. If the petition shall have  
12 been filed with the [ ] within [30] days from the publica-  
13 tion or the posting, as the case may be, of the initial resolu-  
14 tion, no bonds shall be issued under this act without the  
15 assent of a majority of qualified electors who vote upon a  
16 proposition for the issuance of the bonds in the manner pro-  
17 vided by sections 5 and 6 of this act. For the purpose of  
18 this act, a qualified elector shall be any resident or citizen  
19 of the local jurisdiction who was qualified to vote for mem-  
20 bers of the [state legislature] at the general election next  
21 preceding the filing of such petition, or who, on the date  
22 of the filing of such petition, is qualified to vote for members  
23 of the [state legislature]. No qualified elector shall be

24 permitted to withdraw his signature from such a petition after  
25 signing the petition.

1       Section 5. Election Resolution. If it is necessary to hold  
2 an election on the proposition to issue the bonds pursuant to  
3 section 4 of this act, such election shall be called by the  
4 [local legislative body] which shall adopt a resolution (here-  
5 in called the "election resolution") which shall supersede by  
6 its adoption the initial resolution and shall state in sub-  
7 stance: (1) the amount or maximum amount of bonds to be issued;  
8 (2) the purpose or purposes stated in general terms for which  
9 the bonds are to be issued; (3) the rate or maximum rate of  
10 interest which the bonds are to bear; (4) a brief statement  
11 of the fact whether the bonds will be payable (i) from all  
12 local revenue, from whatever source derived, (ii) from ad  
13 valorem taxes levied upon all the taxable property in the  
14 local jurisdiction, or (iii) exclusively from the revenues of  
15 the facility; and (5) the date on which the election will be  
16 held. The election resolution shall be published in full at  
17 least once, not less than [30] days nor more than [60] days  
18 prior to the date fixed for the election, in a newspaper pub-  
19 lished in the local jurisdiction or, if there be no such news-  
20 paper, the election resolution shall be placed in [5] conspicuous  
21 places within the jurisdiction of the local government, not  
22 less than [30] days nor more than [60] days prior to the date  
23 fixed for the election, and no other notice thereof need be  
24 published or given.

1       Section 6. Conduct of Election. Except as herein otherwise  
2 provided, and as far as may be reasonable, the manner of conduct-  
3 ing the election, keeping the poll lists, counting and canvass-  
4 ing the votes, certifying the returns, declaring the results,  
5 and doing all acts relating to the election shall conform to  
6 the mode or method of procedure provided by law for the quali-  
7 fication of voters and the holding of a general election.

1       Section 7. Limitation on Election Contests. No suit, action  
2 or other proceeding contesting the validity of the bond election

3 shall be entertained in any of the courts of this state, un-  
4 less the suit, action, or other proceedings is commenced with-  
5 in [10] days from the date of the canvassing of the returns  
6 and the determination and declaration of the results thereof.

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

1 Section 9. Separability. [Insert separability clause.]

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



## LOCAL INDUSTRIAL DEVELOPMENT BOND FINANCING

Local governments in about thirty states are authorized to issue bonds to finance industrial plants for lease to private enterprise. This method of attracting industry is rapidly increasing, as is the size of individual local bond issues for this purpose. It is estimated that as much of \$500 million worth of industrial development bonds will be issued during 1966.

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

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

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

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

We conclude that the industrial development bond tends to impair tax equities, 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.

#### Suggested Legislation

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

(Be it enacted, etc.)

- 1        Section 1. Purpose. The legislature hereby finds and de-  
2        clares that the issuance of industrial development bonds as here-  
3        in described must be placed under proper safeguards in order  
4        that the fiscal integrity of the state and its political subdivi-  
5        sions be preserved, that the conventional credit facilities of  
6        private enterprise not be displaced, and that local government  
7        financing not be abused. It is the intent of this act, therefore:  
8                (1) to insure that the issuance of local government in-  
9        dustrial development bonds is conducted in such a manner as to  
10       make a maximum contribution to the orderly industrial develop-  
11       ment of the state;  
12                (2) to avoid overextension of local government indus-  
13       trial development credit;

14 (3) to prevent abuse of tax-exempt local government in-  
15 dustrial development bonds; and

16 (4) to provide technical assistance to local units of  
17 general government choosing to utilize industrial development  
18 bond financing.

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

2 (1) "Industrial development bond" means any general obliga-  
3 tion or revenue bond issued by any local unit of general govern-  
4 ment of the state for the purpose of financing the purchase of  
5 land, the purchase or construction, including reconstruction,  
6 improvement, expansion, extension, and enlargement, of build-  
7 ings and appurtenances and the purchase and installation of  
8 machinery, equipment, or fixtures, the purpose of such purchases  
9 being primarily for sale or continuing lease to a private indi-  
10 vidual, partnership, or corporation for use in connection with  
11 the operation of an industrial enterprise, except [docks, wharves  
12 and marine warehouses, airport terminal and hangar facilities,  
13 other transportation facilities, municipal stadiums, theaters,  
14 and other appropriate exceptions].

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

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

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

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

6 able to provide credit in adequate amounts.<sup>1</sup> Such local units  
7 of general government are hereby authorized to issue industrial  
8 development bonds subject to the conditions of this act.

1 Section 4. Statutory limitations imposed upon the borrowing  
2 powers of local units of general government shall be construed  
3 as not being applicable with respect to the issuance of indus-  
4 trial development bonds. In addition to the limitations on the  
5 powers of local units of general government provided in this  
6 act, the agency shall limit the aggregate volume of industrial  
7 development bonds outstanding at any time on behalf of all local  
8 units of general government in the state to an amount not to  
9 exceed [insert one of the following three alternatives: (1)  
10 [ ] percent of the personal income of the population in the  
11 state as last determined by the United States Department of  
12 Commerce; (2) [ ] percent of total state and local tax col-  
13 lections in the state during the preceding fiscal year; (3)  
14 [ ] dollars]. The agency shall determine from time to time  
15 the aggregate volume of industrial development bonds which may  
16 be issued pursuant to this limitation and in the light of employ-  
17 ment needs and industrial development prospects shall allot  
18 among all eligible local units of general government the amount  
19 of industrial development bonds each may issue.

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

1 Section 6. All departments, division, boards, bureaus, com-  
2 missions, or other agencies of the state government shall pro-  
3 vide assistance and information as the agency may require to

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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 federal programs administered by the Economic Development Administration and the Small Business Administration.

4 enable it to carry out its duties under this act. In its deli-  
5 berations incident to the administration of this act the agency  
6 shall consider the advice of the [state planning and development  
7 agencies and] local planning agency regarding resource utiliza-  
8 tion and developmental plans for the various areas of the state.

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

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

15 (2) that the lessee of the property is a responsible  
16 party;

17 (3) that the contract for lease of the property pro-  
18 vides for:

19 (i) the reasonable maintenance, less normal wear  
20 and tear, of the property by the lessee;

21 (ii) insurance to be carried on the property and  
22 the use and disposition of insurance moneys;

23 (iii) the rights of the local unit of general gov-  
24 ernment and the lessee respecting the disposition of the prop-  
25 erty financed by the proposed industrial development bonds upon  
26 retirement of the bonds or termination of the contract by expira-  
27 tion or failure to comply with any of the provisions thereof;

28 (4) in addition to the above, the contract may provide  
29 for the rights of the bondholders, the care and disposition of  
30 rental receipts, and such other safeguards as are deemed to be  
31 necessary by the agency;

32 (5) that opportunities for employment are inadequate  
33 in the area from which the proposed industrial plant would rea-  
34 sonably draw its labor force and that there exists in that area  
35 a condition of substantial and persistent unemployment or under-  
36 employment;

37 (6) that the proposed project will provide employment  
38 having a reasonable relationship to the volume of the bonds  
39 issued as compared to investment per employee of comparable in-  
40 dustrial facilities;

41 (7) that financing by banks, other financial institu-  
42 tions, or other parties, of the property required by the lessee  
43 is not readily available to the lessee on ordinary commercial  
44 terms in adequate amounts either on the local market or on the  
45 national market;

46 (8) that no portion of the proposed industrial develop-  
47 ment bond issue will be purchased by the lessee or any affiliate  
48 or subsidiary of the lessee at the time of the initial marketing;

49 (9) that the facility offered the lessee is intended to  
50 accommodate expansion of an enterprise located elsewhere or a  
51 new enterprise and not primarily the relocation of an existing  
52 facility;

53 (10) that adequate provision is being made to meet any  
54 increased demand upon community public facilities that might re-  
55 sult from the proposed project; and

56 (11) that the issuance of the proposed bonds and the  
57 operation of the enterprise of the lessee will not disrupt the  
58 fiscal stability of the issuing local unit of general government  
59 in the event it should become necessary for it to assume respon-  
60 sibility for payment of the interest and principal of the pro-  
61 posed industrial development bonds.

1 Section 8. (a) Within [ ] days after a local unit of  
2 general government files a petition, completed in accordance  
3 with the rules and regulations authorized by section 5, the  
4 agency shall upon due notice, hold a hearing upon the petition.  
5 The agency shall reasonably expedite any such hearing and shall  
6 advise the petitioning local unit of general government of its

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

17 (b) A certificate of convenience and necessity issued as  
18 provided in this act shall expire in twelve months from the date  
19 of its issuance provided that, upon written application by the  
20 local unit of general government to the agency, supported by a  
21 resolution of such local unit's governing board and such informa-  
22 tion as the agency may require, the agency may in its discretion  
23 extend the expiration date of such certificate for a period not  
24 to exceed [ ] months.<sup>2</sup> If, at any time during the life of  
25 such certificate, the authority of the local unit of general  
26 government to proceed thereunder is contested in any judicial  
27 proceeding, the court in which the proceeding is pending or,  
28 upon proper application, to the agency, the agency may issue an  
29 order extending the life of such certificate for a period not to  
30 exceed the time from the initiation of such proceeding to final  
31 judgment or other termination thereof.

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

6 (b) Prior to authorization of the incurring of bonded in-  
7 debtedness pursuant to this act [by resolution of the local gov-  
8 erning board], public notice as provided in [cite appropriate

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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.

9 sections of state law] shall be given. In addition to any other  
10 items which the notice is required to or may contain, such  
11 notice shall include: (1) the nature of the project; (2) the  
12 amount of bonds to be issued; and (3) whether such bonds are to  
13 be revenue bonds or general obligation bonds; the right, as pro-  
14 vided herein, of petition for a referendum; and the place at  
15 which a true copy of the contract is available for examination.  
16 If, within [60] days thereafter, no petition for a referendum  
17 has been received the governing body may proceed with the issu-  
18 ance of the bonds.

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

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

1 Section 11. The agency shall make an annual report to the  
2 governor and the legislature, including recommendations to fur-  
3 ther the purposes of this act.

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

1 Section 13. Separability. [Insert separability clause.]

1 Section 14. Effective Date. [Insert effective date.]



## INVESTMENT OF IDLE FUNDS

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.

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

in their custody in investment media with which they are unfamiliar.

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

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

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

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

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

Section 3 of the suggested act authorizes the state official or agency responsible for investing state funds to provide technical

assistance to local governments in investing their temporarily idle funds.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1     Section 1. (a) The governing body of a municipality, county,  
2 school district, or other local governmental unit or political  
3 subdivision, may invest and reinvest money subject to its con-  
4 trol and jurisdiction in:

5             (1) Obligations of the United States and of its agencies  
6 and instrumentalities;

7             (2) Bonds or certificates of indebtedness of this  
8 state and of its agencies and instrumentalities;

9             (3) Shares of any building and loan association in-  
10 sured by an agency of the government of the United States up  
11 to the amount so insured;

12             (4) [     ];<sup>1</sup>

13             (5) [     ];<sup>1</sup>

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

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

1     Section 3. The state [insert title of the state official  
2 or agency responsible for investing state funds] is authorized  
3 and directed to assist local governments in investing funds

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1. Individual states may wish to augment the list of author-  
ized investments set forth in this section.

4 that are temporarily in excess of operating needs by:

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

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

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

1 Section 4. Effective Date. [Insert effective date.]

## COUNTY SUBORDINATE SERVICE AREAS

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

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

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

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

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

body in either case would be subject to referendum proceedings commenced by the qualified voters within the territory of the proposed area.

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

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

#### Suggested Legislation

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

(Be it enacted, etc.)

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

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

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

1     Section 4. Creation by [County Governing Body]. The [county governing body] may establish a subordinate service area in any

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

3 portion of the county by adoption of an appropriate resolution.  
4 The resolution shall specify the service or services to be pro-  
5 vided within the subordinate taxing area and shall specify the  
6 territorial boundaries of the area. Adoption of a resolution  
7 shall be subject to the publication, hearing, and referendum  
8 provisions of law relating to [county governing body].

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

10 (b) Upon receipt of the petition, and verification of the  
11 signatures thereon by the [county clerk], the [county govern-  
12 ing body] shall, within [30] days following verification, hold  
13 a public hearing on the question of whether or not the requested  
14 subordinate service area shall be established.

15 (c) Within [30] days following the holding of a public  
16 hearing, the [county governing body], by resolution, shall  
17 approve or disapprove the establishment of the requested sub-  
18 ordinate county service area. A resolution approving the  
19 creation of the subordinate service area may contain amend-  
20 ments or modifications of the area's boundaries of functions  
21 as set forth in the petition.

1 Section 6. Publication and Effective Date. Upon passage  
2 of a resolution authorizing the creation of a subordinate  
3 county service area, the [county governing body] shall cause  
4 to be published [once] in [ ] newspapers of general circula-  
5 tion a concise summary of the resolution. The summary shall  
6 include a general description of the territory to be included  
7 within the area, the type of service or services to be under-  
8 taken in the area, a statement of the means by which the

9 service or services will be financed, and a designation of the  
10 county agency or officer who will be responsible for supervis-  
11 ing the provision of the service or services. The service  
12 area shall be deemed established [30] days after publication  
13 or at such later date as may be specified in the resolution.

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

8 (b) The [county governing body] shall make arrangements  
9 for the holding of a special election not less than [30] nor  
10 than [60] days after receipt of such petition within the  
11 boundaries of the proposed taxing area. The question to be  
12 submitted and voted upon by the qualified voters within the  
13 territory of the proposed service area shall be phrased sub-  
14 stantially as follows:

15 Shall a subordinate service area be established  
16 in order to provide--[service or services to be  
17 provided] financed by [revenue sources]?

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

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

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



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

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

1 Section 10. Separability. [Insert separability clause.]

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



## C. LOCAL PROPERTY TAXES

### Introductory Statement

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 \$25 billion that will be collected from this source in calendar year 1966 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 nonfederal taxes on the pace of industrialization and economic development, on production, income and consumption, and on the distribution of the tax burden among the people.

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

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

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1. Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax (Washington: U. S. 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.)

- 1     Section 1. Property Tax Survey Commission. There is hereby
- 2     created a property tax survey commission of [     ] members for
- 3     the purpose of making a thorough examination of the property
- 4     tax and its administration. The commission shall make a report
- 5     of its study and examination together with such specific

6 recommendations as it may adopt to the governors and to the  
7 legislature not later than [ ] of each [ ] numbered years.

1 Section 2. Commission Duties. The commission shall:

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

7 (2) determine (i) whether provision of the constitu-  
8 tion or any statute, ordinance or charter unduly restricts leg-  
9 islative or administrative flexibility and responsibility for  
10 producing and maintaining a productive and administrable prop-  
11 erty tax system and, (ii) whether the property tax laws need  
12 revision or recodification;

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

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

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

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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.

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

40 (7) study all state financial grants to school districts  
41 and local governments that are measured by assessed valuations  
42 set by local assessment officials and recommend adjustments as  
43 may be necessitated by the adoption of the market value deter-  
44 minations of the [state tax agency] as an equalized measure of  
45 local fiscal capacity and tax effort;

46 (8) evaluate the structure, powers, facilities, and  
47 competence of the [state tax agency] and local property tax  
48 offices and on the basis of the evaluation recommend an organ-  
49 izational policy from among the following alternatives:

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

55 (ii) centralized property assessment administra-  
56 tion, with the valuations certified to local officials as the  
57 basis for their billing and collection of taxes;

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

67 (iv) some other uniform method of property assess-  
68 ment administration.

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

1 Section 3. Commission Membership. The governor shall ap-  
2 point the members of the commission and shall designate the  
3 chairman thereof. The term of each commissioner authorized  
4 shall be [four] years. Any vacancy on the commission shall be  
5 filled in the same manner as original appointments thereto and  
6 shall be for the unexpire term.

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

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

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

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

1 Section 8. Appropriation. [Use this section to make initial  
2 appropriation to the commission.]

1 Section 9. Separability. [Insert separability clause.]

1 Section 10. 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 countywide, 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 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.)

- 1     Section 1. Division of Property Taxation.<sup>1</sup> (a) There  
2 shall be in the [state tax agency] a division of property tax-  
3 ation, hereinafter called the "division." The head of the di-  
4 vision shall be the director, appointed by the [head of the  
5 state tax agency] in accordance with the provisions of the  
6 [state merit system law]. The director shall serve in accord-  
7 ance with the provisions of such law. He shall have experience  
8 and training in the fields of taxation and property appraisal.  
9     (b) The employees of the division shall be in the [state  
10 merit service]. The director may contract for the services of  
11 expert consultants to the division.  
12     (c) In addition to any duties, powers, or responsibilities  
13 otherwise conferred upon the division, it shall administer and  
14 enforce all laws related to the state supervision of local prop-  
15 erty tax administration and the central assessment of property  
16 subject to ad valorem taxation. Whenever the division assesses  
17 or appraises property, or provides services therefor, it shall

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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.

18 prescribe the methods and specifications for such assessment or  
19 appraisal.

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

7       (b) The division shall provide for the examination of appli-  
8 cants for such certificates. No certificate shall be issued to  
9 any person who has not demonstrated to the satisfaction of the  
10 division that he is competent to perform the work of an asses-  
11 sor or appraiser, as the case may be; but any applicant for a  
12 certificate who is denied the same shall have a right to review  
13 of such denial [in accordance with the state administrative  
14 procedure act] [by a court of appropriate jurisdiction].

1       Section 3. Collection and Publication of Property Tax Data.<sup>2</sup>

2       (a) The division annually shall make and issue comprehensive  
3 assessment ratio studies of the average level of assessment,  
4 the degree of assessment uniformity, and overall compliance with  
5 assessment requirements for each major class of property in each  
6 county in the state. In order to determine the degree of assess-  
7 ment uniformity and compliance in the assessment of major classes  
8 of property within each county, the division shall compute the  
9 average dispersion. As used in this section, "average disper-  
10 sion" means the percentage which the average of the deviations  
11 of the assessment ratio of individual sold [or appraised] prop-  
12 erties bears to their median ratio.

13       (b) The division may require assessors and other local of-  
14 ficers to report to it data on assessed valuations and other

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2. Subsection (a) of this section is similar to section 3, and  
subsection (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 equal-  
ization procedures, and for related purposes.", which appears below.  
This duplication is necessary because the provisions are desirable  
in each act standing alone.

15 features of the property tax for such periods and in such form  
16 and content as the division shall require. The division shall  
17 so construct and maintain its system for the collection and  
18 analysis of property tax facts as to enable it to make intra-  
19 state comparisons as well as interstate comparisons based on  
20 property tax and assessment ratio data compiled for other states  
21 by the United States Bureau of the Census, or any agency succes-  
22 sor thereto.

23 (c) The [state tax agency] shall publish annually the find-  
24 ings of the division's assessment ratio studies together with  
25 digests of property tax data.

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

1 Section 5. Forms. The division shall devise, prescribe,  
2 [supply,] and require the use of all forms deemed necessary for  
3 effective administration of the property tax laws. So far as  
4 practicable the forms shall be uniform, but nothing herein shall  
5 be deemed to prevent the prescribing of substitute or additional  
6 forms where special circumstances require.

1 Section 6. Tax Maps. The division shall require each county  
2 assessor to maintain tax maps in accordance with standards spec-  
3 ified by the division. Whenever necessary to correct mapping  
4 deficiencies, the division shall install standard maps or ap-  
5 prove mapping plans and supervise map production. The [state  
6 tax agency] [shall] [may] require the county to reimburse the  
7 state for tax maps installed by the division. The amount or  
8 amounts of such reimbursement shall be deposited in the [state

9 treasury] to the account of the [state tax agency].<sup>3</sup>

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

1     Section 8. Data Processing. To expedite the preparation of  
2 assessment rolls, tax rolls, and tax bills, the division is  
3 authorized to take action as may be appropriate to enable coun-  
4 ties to receive the benefits of modern data processing methods.

1     Section 9. Provision of Engineering, Professional and Tech-  
2 nical Services. Whenever a county by or pursuant to action of  
3 its [governing board] requests the [state tax agency] to pro-  
4 vide engineering, professional or technical services for the  
5 appraisal or reappraisal of properties, the [state tax agency]  
6 may, within its available resources, and in accord with its  
7 determination of the need therefor, provide these services.  
8 The county shall pay to the [state tax agency] the actual cost  
9 of the services in accordance with a schedule of standard fees  
10 and charges furnished, and from time to time, revised by the  
11 [state tax agency]. All payments received by the [state tax  
12 agency] pursuant to this section shall be deposited in the  
13 [state treasury] to the account of the [state tax agency].

1     Section 10. Appraisal of Major Industrial and Commercial  
2 Properties. The division shall provide to each county or multi-  
3 county assessment district the services of certified appraisers  
4 for the appraisal of major industrial and commercial properties.  
5 The properties to be appraised shall be determined by the divi-  
6 sion after consultation with county assessors. In making such  
7 determinations, the division shall take into account the ability  
8 of the county assessor to perform such appraisals with the re-  
9 sources at his disposal. [Provide for such reimbursement or

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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.

10 county charge as may be appropriate.]

1       Section 11. Inspections, Investigations and Studies. The  
2 division may make such inspections, investigations and studies  
3 as may be necessary for the adequate administration of its re-  
4 sponsibilities pursuant to this act. Such inspections, investi-  
5 gations and studies may be made in cooperation with other state  
6 agencies, and, in connection therewith, the division may utilize  
7 reports and data of other state agencies.

1       Section 12. Training Programs. The division shall conduct  
2 or sponsor in-service, pre-entry, and intern training programs  
3 on the technical, legal, and administrative aspects of the as-  
4 sessment process. For this purpose it may cooperate with educa-  
5 tional institutions, local, regional, state, or national asses-  
6 sors' organizations, and with any other appropriate professional  
7 organizations. The division may reimburse the participation  
8 expenses incurred by assessors and other employees of the state  
9 and its subdivisions whose attendance at in-service training  
10 programs is approved by the division.

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

13       (b) If the division finds that a county has failed or is  
14 failing to meet the standards contained in the rules or regula-  
15 tions in force pursuant to subsection (a) of this section, it  
16 shall notify the county assessor of the fact and nature of the  
17 failure. The notice shall be in writing and shall be served  
18 upon the county assessor and the [county governing board].

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

30 (d) During the continuance of a suspension pursuant to sub-  
31 section (c) of this section, the division shall succeed to the  
32 authority and duties from which the county has been suspended  
33 and shall exercise and perform the same. Such exercise and per-  
34 formance shall be a charge on the suspended county. The sus-  
35 pension shall continue until the division finds that the condi-  
36 tions responsible for the failure to meet the minimum standards  
37 contained in the rules and regulations of the division have been  
38 corrected.

39 (e) Any county aggrieved by a determination of the division  
40 made pursuant to this section or alleging that its suspension  
41 is no longer justified may have review of such determination or  
42 continued suspension [as provided in the state administrative  
43 procedure act] [by a court of appropriate jurisdiction].

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

8 (b) A county assessor may be removed from office by the  
9 [chief executive officer of the county] or by the commissioner  
10 of the [state tax agency]. The [chief executive officer] may

11 not remove such assessor, except for cause and the commissioner  
12 may remove such assessor only for failure to comply with the  
13 orders of the division. [Add provision making appropriate  
14 statute relating to hearings and appeals applicable, or supply  
15 procedural detail.]

16 (c) Notwithstanding any provision of this section, any  
17 county assessor holding office on the effective date of this  
18 act by virtue of election by the people shall be entitled to  
19 complete the term for which he was elected.

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

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

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

4 (b) Such agreement shall provide for:

5 (1) the division, merger, or consolidation of admin-  
6 istrative functions between or among the parties, or the per-  
7 formance thereof by one county on behalf of all the parties;

8 (2) the financing of the joint or cooperative under-  
9 taking;

10 (3) the rights and responsibilities of the parties  
11 with respect to the direction and supervision of work to be  
12 performed under the agreement;

13 (4) the duration of the agreement and procedures for  
14 amendment or termination thereof; and

15 (5) any other necessary or appropriate matters.

16 (c) The agreement may provide for the suspension of the pow-  
17 ers and duties of the office of county assessor in any one or  
18 more of the parties.

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



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

40 (e) No agreement made pursuant to this section shall take  
41 effect until it has been approved in writing by the commission  
42 of the [state tax agency] and the [attorney general].

43 (f) Copies of any agreement made pursuant to this section,  
44 and of any amendment thereto, shall be filed in the office of  
45 the [secretary of state] and the [state office of local govern-  
46 ment].

1 Section 17. State Performance of County Assessment Function.

2 The [governing board] of a county may, [by resolution], request  
3 the [state tax agency] to assume the county assessment function  
4 and to perform the same in and for the county. If the commis-  
5 sioner of the [state tax agency] finds that direct state per-  
6 formance of the function is necessary or desirable to the eco-  
7 nomic and efficient performance thereof, he may direct the di-  
8 vision to undertake such performance pursuant to the request.

9 Unless otherwise authorized by law, the division shall under-  
10 take and perform the function only after the execution of a  
11 suitable agreement between the county and the [state tax agency]  
12 providing for responsibility for costs. During the continuance  
13 of performance of the county assessment function by the divi-  
14 sion, the office and functions of the county assessor shall be  
15 suspended, and the performance thereof by the division shall be  
16 deemed performance by the county assessor.

1 Section 18. Discontinuance of Certain Assessors' Office.

2 On and after [date] assessment of property for purposes of tax-  
3 ation, unless pursuant to agreement as authorized in section 16  
4 of this act, shall be only by the county and state in accordance  
5 with law. However, any assessor in office on [date] who is  
6 serving a fixed term as provided by statute or local law may  
7 continue in office until the expiration of such term, and the  
8 jurisdiction of which he is the assessor shall continue to have  
9 the assessment function previously conferred upon it until the  
10 expiration of such term. Any vacancy in an elective or appoin-  
11 tive office permitted to continue by reason of this section  
12 shall be filled only for the unexpired portion of the term.

1 Section 19. Separability. [Insert separability clause.]

1 Section 20. 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 nation-wide 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.

To secure intercounty equalization, the draft legislation directs a taxing unit such as a sewer district lying in more than one county to apportion its levy among the counties in which it is situated in accordance with the market value determinations derived

from assessment ratio studies made by the state tax agency. This approach, pioneered by Wisconsin, permits an equitable distribution of the tax load without state-ordered adjustments in local assessment levels.

#### Suggested Legislation

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

(Be it enacted, etc.)

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

2            (1) "Current market value" means the estimated price a  
3 property would bring in an open market and under the then pre-  
4 vailing market conditions in a sale between a willing seller  
5 and a willing buyer, both conversant with the property and with  
6 prevailing general price levels.

7            (2) "Assessment level" means the percentage relationship  
8 which the assessed value of taxable property bears to its cur-  
9 rent market value.

10           (3) "Assessment ratio study" means the comparison, on a  
11 sampling basis, of the current market value determined from the  
12 best information available which may include, but is not limited  
13 to appraisals, deed recordings, documentary or tax stamps and  
14 statements of parties to the transaction with their assessed  
15 valuations, and the application of statistical procedures to  
16 determine assessment levels and to measure nonuniformity of as-  
17 sessments.

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

1        Section 2. Tax Base Determination. All classes of taxable  
2 property shall be assessed at the same percentage of current  
3 market value within each county. No assessment level shall be  
4 lower than [     ] percent of current market value as found by  
5 the assessment ratio studies made by the division of property

6 taxation [of the state tax agency], hereinafter called the "di-  
7 vision." Whenever the prevailing general assessment level with-  
8 in a county, as shown in an assessment ratio study, is below  
9 the minimum assessment level in force pursuant to this section  
10 and the division deems it necessary to the proper administration  
11 of the tax laws to order such uniform percentage adjustments in  
12 the assessment base, it may issue such order. Whenever such  
13 prevailing general assessment level is 10 percent or more below  
14 the minimum assessment level in force pursuant to this section,  
15 the county assessor shall make such uniform percentage adjust-  
16 ment in the assessment base as is necessary to secure compliance  
17 with law. The failure of the division to issue an order pur-  
18 suant to this paragraph shall be of no evidentiary significance  
19 in any proceeding for the abatement or modification of an assess-  
20 ment.

1 Section 3. Preparation of Assessment Ratio Studies.<sup>1</sup> The  
2 division annually shall make and issue comprehensive assessment  
3 ratio studies of the average level of assessment, the degree of  
4 assessment uniformity and overall compliance with assessment re-  
5 quirements for each major class of property in each county in  
6 the state. In order to determine the degree of assessment uni-  
7 formity and compliance in the assessment of major classes of  
8 property within each county, the division shall compute the  
9 average dispersion.

1 Section 4. Notice to Assessor and [Chief County Fiscal Offi-  
2 cer]; Hearing. (a) At least [sixty] days prior to the issuance  
3 of an assessment ratio study, the division shall furnish each  
4 county assessor and each [chief county fiscal officer] a copy of  
5 the tentative assessment ratio study for his county. The copy  
6 shall be accompanied by a notice stating that, unless the asses-  
7 sor or [chief county fiscal officer] files a written demand for  
8 a hearing thereon, the tentative assessment ratio study, together  
9 with all findings, shall be final.

10 (b) Upon demand for hearing filed pursuant to subsection (a)

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1. See footnote 2, page 121.

11 of this section, the division shall fix a hearing. The hearing  
12 shall be not less than [ten] days nor more than [twenty] days  
13 from the date when the demand therefor is received, but in no  
14 event shall such hearing be less than [five] days from the date  
15 notice is served upon the county assessor and [chief county  
16 fiscal officer] of the county from which a demand has been filed.

17 (c) As promptly as may be after such hearing, the division  
18 shall inform the county assessor and [chief county fiscal offi-  
19 cer] whether it has determined to make any changes in the tenta-  
20 tive assessment ratio study, and if so, of their precise con-  
21 tent. If the county assessor or [chief county fiscal officer]  
22 is not satisfied with the study as then proposed to be issued,  
23 he may have review of any finding or findings contained therein  
24 which formed the basis of the demand for hearing, [as provided  
25 in the state administrative procedure act] [by a court of ap-  
26 propriate jurisdiction].

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

1 Section 5. Publication of Assessment Ratio Information. Im-  
2 mediately on the issuance thereof, the division shall publish  
3 each of its assessment ratio studies and shall publish a summary  
4 of each such study in convenient form. The division shall take  
5 such additional steps as may be appropriate to disseminate to  
6 the general public the information contained in its studies.

1 Section 6. Property Tax Equalization. (a) Whenever, in the  
2 view of the division, an assessment ratio for a particular class  
3 of property within a county deviates to the degree that a uni-  
4 form adjustment in the assessment base is necessary for the  
5 proper administration of the tax laws, the division shall order  
6 the county assessor to make uniform adjustments in the assess-  
7 ment base as are necessary to remove such deviation. A devia-  
8 tion of 10 percent or more shall require the division to issue  
9 such order. The failure of the division to issue an order

10 pursuant to this subsection shall be of no evidentiary signifi-  
11 cance in any proceeding for the abatement or modification of an  
12 assessment.

13 (b) In any case where a [tax levying unit of government] is  
14 situated in more than one county, the state and the [tax levy-  
15 ing unit of government] shall apportion their tax levies among  
16 the various counties in the same proportion that the current  
17 market value of the property subject to the tax of the [tax  
18 levying unit of government] in each county bears to the current  
19 market value of all property subject to the tax of the [tax  
20 levying unit of government]. Such apportionment shall be based  
21 upon the current market value determinations derived from the  
22 annual assessment ratio studies made by the division. There-  
23 after the tax rates of the [tax levying unit of government]  
24 shall be fixed in the respective counties in such manner as is  
25 calculated to raise the amounts so apportioned when applied to  
26 the assessed values therein.

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

1 Section 8. 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.

### Suggested Legislation

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



(Be it enacted, etc.)

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

1        Section 2. Assessors and Boards of Review. (a) In all  
2 counties of less than [     ] population there shall be a [local  
3 board of property tax review] to consist of [specify membership,  
4 method of appointment, and term]. Such board shall hear and  
5 determine assessment protests, and shall have power to alter or  
6 modify any protested assessment in order that it may conform  
7 with law. In connection therewith, the board may make such re-  
8 view of assessments and order such equalization thereof as may  
9 be necessary. At any time when the county assessor has in his  
10 regular employ [three] or more appraisers holding appraiser's  
11 certificates issued by the division of property taxation [of the  
12 state tax agency], hereinafter called "division," one of such  
13 appraisers shall sit with and advise the board, but no appraiser  
14 shall sit with the board on its hearing of, or advise the board  
15 concerning any protest of an assessment of property previously  
16 appraised by him.

17        (b) In any county [     ] or more population, the county as-  
18 sessor shall have in his regular employ at least [three] ap-  
19 praisers holding appraiser's certificates issued by the division.  
20 In any such county, the county assessor shall have the functions  
21 and jurisdiction of a [local board of property tax review] and  
22 there shall be no such board. In hearing and determining a  
23 protest of an assessment the assessor shall be assisted by an  
24 appraiser regularly employed in his office who has not previously  
25 appraised the property in question.

26        (c) If the assessment function is performed by an assessor  
27 acting for and on behalf of more than one county as provided in  
28 an agreement made pursuant to [cite appropriate section of state  
29 statute authorizing multi-county assessment districts], a protest

30 of assessment shall be heard and determined by the assessor's  
31 office functioning under such agreement, if the office has in  
32 its regular employ at least [three] appraisers holding apprais-  
33 er's certificates from the division or a [local board of prop-  
34 erty tax review] established by the agreement.

35 (d) In the case of property assessed by the state, neither  
36 a [local board of property tax review] nor a county assessor  
37 shall have jurisdiction to hear or determine a protest. Any  
38 such protest shall be heard and determined by the [head of the  
39 state tax agency].

40 (e) Review of determinations of a [local board of property  
41 tax review], a county assessor when acting on a protest of as-  
42 sessment, and of determinations of the [head of the state tax  
43 agency] when acting on a protest of assessment, may be had only  
44 in the state tax court as established in section 4 of this act.

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

15 (b) If the taxpayer has requested a hearing, but does not  
16 appear in person, he may appear by an agent. Such agent shall  
17 have power to appear for and act on behalf of the protest-  
18 ing taxpayer only if the protest states the taxpayer's intention  
19 so to appear and clearly identifies the agent.

20 (c) Any agent who appears for or with a taxpayer at a hear-  
21 ing held pursuant to this section shall not be deemed to be

22 engaged in the practice of any licensed trade or profession by  
23 reason of such appearance.

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

1 Section 4. Tax Court. (a) There is hereby established the  
2 state tax court which, for administrative purposes only, shall  
3 be in the [state tax agency], but which shall be an independent  
4 administrative tribunal. The court shall consist of a chief  
5 judge and [four] associate judges, appointed by the governor  
6 [with the consent of the state senate] [with the consent of the  
7 state legislature]. The term of each judge of the court shall  
8 be [six] years. The initial appointments shall be as follows:  
9 the chief judge for a term of [six] years; one associate judge  
10 for a term of [two] years; one associate judge for a term of  
11 [three] years; one associate judge for a term of [four] years;  
12 and one associate judge for a term of [five] years. Vacancies  
13 on the court shall be filled for the unexpired term in the same  
14 manner as appointments to full terms. During his continuance  
15 in office neither the chief judge nor an associate judge shall  
16 have any other employment, but shall devote full time to his  
17 duties as such judge.

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

27 (c) Any taxpayer dissatisfied with the disposition of his  
28 protested assessment by the [local board of property tax review],  
29 county assessor, or [head of the state tax agency] may appeal  
30 therefrom to the state tax court by filing with the court a  
31 written notice of appeal and serving on the appropriate county

32 assessor or the [head of the state tax agency], as the case may  
33 be, a certified copy of such notice. In order to be valid and  
34 effective, any such notice shall be filed and served within  
35 [thirty] days of the disposition from which the appeal is to be  
36 taken.

37 (d) Consistent with this act and [cite statutes applicable  
38 to proceedings of administrative tribunals], the state tax court  
39 shall provide by rule for practice before it and the conduct of  
40 its proceedings.

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

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

50 (g) Appeals from determinations of the state tax court may  
51 be taken to the [state supreme court] only on questions of law.  
52 [Provide procedures for appeals to the state supreme court.]

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

13 (b) The protesting taxpayer whose assessment is in question  
14 and the county assessor or [head of the state tax agency] may  
15 obtain an order of the state tax court summoning witnesses or

16 requiring the production of any returns, books, papers, docu-  
17 ments, correspondence and other evidence pertinent to the matter  
18 under inquiry in the same manner in which witnesses may be sum-  
19 moned and evidence may be required to be produced for the pur-  
20 pose of trials in the [court of appropriate jurisdiction]. Any  
21 witness summoned or whose deposition is taken shall receive the  
22 same fees and mileage as witnesses in the [court of appropriate  
23 jurisdiction].

1     Section 6. Small Claims. (a) The state tax court shall es-  
2 tablish by rule a small claims procedure which, to the greatest  
3 extent practicable, shall be informal. The court shall take  
4 special care to provide all protesting taxpayers, wherever lo-  
5 cated within the state, reasonable and convenient access to the  
6 court, and shall sit at such times and places as may be appro-  
7 priate to promote such accessibility.

8     (b) Any protesting taxpayer who, pursuant to the disposition  
9 of his protest by the county assessor, [local board of property  
10 tax review], or [head of the state tax agency], would incur a  
11 tax liability of less than \$[1,000.00] by reason of the protested  
12 assessment in the first year to which such assessment applies  
13 may elect to employ such procedure to appeal from such disposi-  
14 tion, upon payment of a \$[2.00] filing fee.

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

1     Section 7. Appeal to [State Supreme Court]. [Use this sec-  
2 tion to provide procedure for appeal of tax court determinations  
3 to state supreme court.]

1     Section 8. Effect of Assessment Ratio Evidence. (a) Reports  
2 of assessment ratios contained in assessment ratio studies of  
3 the division shall be conclusive evidence of what the reported

4 ratio is in fact, unless a party to such proceedings establishes  
5 that such ratio is not supported by substantial evidence or was  
6 derived or established in a manner contrary to law.

7 (b) In any proceeding relating to a protested assessment it  
8 shall be a sufficient defense of such assessment that it is ac-  
9 curate within reasonable limites of practicality; but a proven  
10 deviation of ten percent or more from the relevant county assess-  
11 ment ratio shall establish conclusively the invalidity of such  
12 defense.

1 Section 9. Separability. [Insert separability clause.]

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

## D. LOCAL NONPROPERTY TAXES

### Introductory Statement

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

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

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

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

the scope of effective cooperation in administration.

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

When sharing state taxes with their localities or authorizing local nonproperty taxes, the states should avoid policies that encourage proliferation of local governments and thereby widen intercommunity fiscal disparities. Steps in this direction are presented in the policy statement that follows, and the suggested legislation for a local sales tax supplement, with county pre-emption and an alternative plan for concomitant levy of a uniform sales tax encompassing the entire jurisdiction of a multi-county metropolitan area, provides one approach to that goal. Title IX of the Uniform Personal Income Tax Statute provides for a multi-county income tax supplement to the state's tax. Additional pieces of suggested legislation would promote state-local or interlocal cooperation in tax policies and practices in ways appropriate to their circumstances:

- (1) by authorizing the collection by the state of any local nonproperty taxes that are also levied by the state;
- (2) by providing for state support of local tax enforcement;  
and
- (3) by authorizing the pooled administration of separate local taxes by a collection agency serving groups of jurisdictions.



STATE TAX POLICIES TO COMBAT INTERLOCAL DISPARITIES  
IN METROPOLITAN AREAS

It is in the public interest that local jurisdictions in metropolitan areas provide their residents and businesses with a reasonably comparable level of basic government services. This is difficult when taxable wealth, income, and business activity as well as the need for governmental services vary drastically among the several jurisdictions comprising the area. It is made doubly difficult when state fiscal policies encourage the proliferation of local governments because the smaller the governmental units the greater the likelihood of wider fiscal disparities among them.

The larger the geographic area for which governmental services are provided, the greater the opportunity to equalize the level of services financed from the fiscal resources of the geographic area. Thus, a broad-based state tax draws funds from all parts of the state, wealthy and poor, in accordance with the way in which its taxable base is distributed. The state can then provide a comparable level of services throughout its area, regardless of where the money is collected. State functional grants-in-aid to local governments can be distributed with the same effect, so as to mitigate interlocal disparities.

The advantages of statewide financing can also be realized by the shared-tax device, provided the proceeds are shared on some equalizing basis. Michigan, for example, distributes part of its sales tax revenue to cities and towns in proportion to population, and most of the remainder to school districts on the basis of an equalization formula. Interlocal disparities are aggravated when a state shares income or consumer taxes with its localities solely on the basis of origin of collections (i.e., residence in the case of personal income taxes; place where the sale is made in the case of consumer taxes) because income and commercial activity are unequally distributed among local jurisdictions. For example, where part of a state income tax is returned to incorporated places on the basis of the residence of taxpayer, as in Wisconsin,<sup>1</sup> wealthy citizens are encouraged to settle in the suburbs and to incorporate satellite communities. By the same token, if state sales tax collections are returned to the jurisdiction in which they originate, large suburban shopping centers beyond city boundaries are encouraged to incorporate into separate municipalities. In both instances, much of the taxable wealth of the central city would be chipped away and its fiscal capacity to provide adequate governmental services diminished.

Increasingly, as the desire for more and better local government services grows and property tax burdens approach economic and legal ceilings, metropolitan communities can be expected to press state legislatures for nonproperty taxing powers. When authorizing such local nonproperty taxes, states should consider their possible

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1. Wisconsin Statutes, Chapter 71, Section 71.14.

effect upon local government organization. By authorizing county-wide or even metropolitan-area-wide local sales or income taxes, the states can discourage proliferation of local governments and relieve some of the fiscal disparities between contiguous localities. The county-preemption approach is taken by Wyoming, which allows cities to enact a supplement to the state sales tax only if the county has not done so.<sup>2</sup> Once a countywide sales tax is enacted, however, the city taxes are invalid, and the county tax is shared with all the cities on a per capita basis. Suggested legislation along these lines appears on p. 146.

In contrast, the city-preemption approach to local sales taxation, adopted by California, tends to encourage municipal incorporation.<sup>3</sup> There, both counties and cities are authorized to impose a supplement to the state sales tax. The county and city sales taxes together may not exceed one percent. If both the county and city levy such a tax, the county is required to allow a credit for the city tax. Thus, a city can preempt the entire local sales tax that originates within its jurisdiction. In these circumstances, it could be advantageous for a group of people living in the unincorporated part of a county to incorporate around a large suburban shopping center and thus retain the sales tax in its own jurisdiction.

When authority for local income or sales taxes is limited to cities, it has the same proliferation-disparity effects as a state-shared tax distributed on an origin basis. Wealthy central city residents subject to local income taxes levied to finance costly public municipal services, such as education, public welfare, and crime prevention, the costs of which are attributable mainly to the economically disadvantaged residents, may well move out. Their local taxes would thereby contribute nothing to the central city from which they earn their livelihood. Michigan has mitigated this problem by coupling the authority for a municipal income tax with the requirement that the proceeds be shared equally by both the city of residence and the city of employment if both levy the tax.<sup>4</sup> However, the county or metropolitan-area-wide approach to local sales or income taxation is preferable.

The county-preemption approach to local sales taxation is adaptable for use in multi-county metropolitan areas. A state which contains such areas could require concomitant enactment of the local sales tax by all counties in the metropolitan area. Maryland adopted this approach in 1965 when it authorized the city of Baltimore, Baltimore County, and Anne Arundel County, comprising the Baltimore metropolitan area, to impose a sales tax supplement to the state general sales tax by "mutual and unanimous agreement."<sup>5</sup> Suggested

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2. Wyoming Statutes Annotated, Section 39-288.

3. California Revenue and Taxation Code, Section 7200.

4. Compiled Laws of the State of Michigan, 1948, Sec. 141.501-141.699 (Act 284 of 1964).

5. Annotated Code of Maryland, 1957, Art. 81, Sec. 411A. The communities involved have not acted upon this authorization.

legislation based on the Maryland law appears on p. 149.

An attempt to accomplish a similar objective in the Denver area was halted by the Colorado Supreme Court. The state legislature adopted an enabling act in 1961 authorizing Denver and the three counties in the Denver metropolitan area to establish a metropolitan capital improvement district to be financed by a 2 percent areawide sales tax.<sup>6</sup> The Denver Metropolitan Capital Improvement District began to collect the 2 percent sales tax in January 1962, the proceeds to be allocated to the respective jurisdictions on a per capita basis. However, the state Supreme Court declared the state enabling act unconstitutional on the ground that it interfered with the home rule powers granted by the state constitution to one of the municipalities encompassed by the capital improvement district whose voters had rejected the proposal.<sup>7</sup>

This multiple county approach to local sales taxation holds significant promise, particularly in those metropolitan areas where capital improvement programs would be facilitated by areawide handling. Those states considering its usefulness will need to anticipate the implications of their constitutional home rule provisions, possibly by including in their enabling legislation explicit language to waive otherwise applicable home rule provisions in the case of jurisdictions in the affected metropolitan areas.

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6. Colorado Laws of 1961, Chapter 179.

7. Four-County Metropolitan Capital Improvement District, et. al. v. The Board of County Commissioners of Adams County, et. al. (1962), 149 Colo. 284, 369 P. (2d) 67.

## LOCAL SALES TAX SUPPLEMENT

Where sales are taxed at both the state and local level, a logical administrative device is the tax supplement. The local rate is added to the state rate, both are collected by the state government, and the allocate share of collections is credited to the account of the local taxing jurisdiction.

The tax supplement has important advantages. It uses identical tax definitions (taxpayers, tax base, etc., preferably by reference) for both state and local purposes. Even where state definitions are imperfect, uniformity has important advantages for ease of compliance and economy of tax collection. The local supplement is collected together with the state tax, eliminating the need for duplicate administration, with corresponding alleviation of compliance burdens. Where the state charges the local jurisdiction a fee for collecting the local supplement, these charges supplement state resources appropriated for tax enforcement.

The tax supplement preserves the principle of leaving with local governing boards responsibility for the decision to impose the tax and, within limits prescribed by state law, to set the tax rate. Thus, each jurisdiction retains its freedom to balance the need for the additional local services against the added tax burden.

Because the proceeds of local sales tax supplements accrue by definition to the imposing jurisdiction, problems of allocating among jurisdictions present in grants-in-aid and shared revenues are generally avoided. By the same token, however, variations in need relative to local resources are disregarded except to the extent that latitude is provided in the sharing of countywide collections among incorporated cities and towns as is done in Tennessee.<sup>1</sup>

The local sales tax supplement was first used by Mississippi in 1950 and has since spread to eight other states: California, Illinois, New Mexico, New York, Tennessee, Utah, Virginia, and Wyoming.<sup>2</sup> The suggested legislation is based largely on the Wyoming act. It pre-emptes the local sales tax supplement for the unit of government having the largest jurisdiction--the county--on the theory that the larger the geographic area the less the impact of the tax on business competition between trading centers. Where counties do not exercise this authority, cities are authorized to do so.

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1. Tennessee Laws of 1963, chapter 329, 1963 Local Option Revenue Act, section 4.

2. California Revenue and Taxation Code; section 7200; Illinois Revised Statutes, section 8-11; Mississippi Code Annotated, section 10111.5; New Mexico Statutes Annotated, section 14-39; New York Tax Law, chapter 60, act 29, subpart B, section 1210; Tennessee Laws of 1963, chapter 329, 1963 Local Option Revenue Act; Utah Code Annotated, section 11-9-3; Virginia Code Annotated, section 58-441.49; Wyoming Statutes Annotated, section 39-288.

The following suggested statutory language provides only for a local sales tax supplement to a state sales tax; it is not a complete sales tax statute. It would be used as an amendment in states that already have a state sales tax and wish to grant sales tax authority to their local governments. Alternatively, it could be incorporated into new legislation authorizing a state sales tax by states considering the adoption of such a tax coupled with the grant of additional authority to local governments to impose nonproperty taxes.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize uniform local sales and use taxes, and to provide for administration by the state."]

(Be it enacted, etc.)

1       Section 1. Short Title. This act may be cited as the "Uni-  
2 form Local Sales and Use Tax Law."

1       Section 2.<sup>1</sup> Authorization for Political Subdivisions. Any  
2 county may adopt a sales and use tax in accordance with the  
3 provisions of this act by action of its local governing board;  
4 and any incorporated [city or town] situated within a county  
5 which has not imposed a sales and use tax may adopt a sales and  
6 use tax in accordance with the provisions of this act by action  
7 of its local governing board, but the tax imposed by any city  
8 or town shall terminate upon the effective date of any sales  
9 and use tax imposed by the county in which the city or town is  
10 situated.

1       Section 3. Contents of Local Law or Ordinance. The sales  
2 and use tax law or ordinance adopted under this act shall impose  
3 a sales tax for the privilege of selling tangible personal prop-  
4 erty at retail and a use tax upon the storage, use or other  
5 consumption of tangible personal property purchased outside the  
6 political subdivision for storage, use, or consumption in the  
7 political subdivision, and shall, in addition to any other pro-  
8 visions include provisions in substance as follows:

9       (1) A provision for imposing a tax for collection by every

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1. See alternative on p. 149 for a local supplement in two or more counties comprising a trading area.

10 retailer in the political subdivision at the rate of [ ] per-  
11 cent of the gross receipts of the retailer from the sale of all  
12 tangible personal property sold by him at retail in the political  
13 subdivision, and a provision imposing a complementary tax upon  
14 the storage, use, or other consumption in the political subdivi-  
15 sion of tangible personal property purchased outside the politi-  
16 cal subdivision for storage, use, or other consumption in the  
17 political subdivision at rate of [ ] percent of the sales  
18 price of the property, but nothing herein shall be construed to  
19 make inapplicable any exemptions of particular classes of arti-  
20 cles, commodities, or services, in accordance with law.

21 (2) A provision that the storage, use, or other consumption  
22 of tangible personal property, the gross receipts from the sale  
23 of which have been subject to sales tax under a sales and use  
24 tax law or ordinance enacted in accordance with this act by any  
25 other county, or incorporated city or town in this state, shall  
26 be a credit against the tax due under this act.

27 (3) Provisions incorporating by reference [statutory citation  
28 of the state sales and use tax law] except that an additional  
29 [seller's permit] shall not be required if one has been or is  
30 issued to the seller by the state.

31 (4) A provision that all relevant provisions of [statutory  
32 citation of the state sales and use tax law], as they may be  
33 from time to time, and not inconsistent with this act shall  
34 govern transactions, proceedings, and activities pursuant to  
35 the local law or ordinances.

36 (5) A provision designating the [state tax department] to  
37 perform all functions incident to the administration of the  
38 sales and use tax law or ordinance of the political subdivision.

39 (6) A provision that the amount subject to tax shall not in-  
40 clude the amounts of any sales tax or use tax imposed by [statu-  
41 tory citation of the state sales and use tax law].

1 Section 4. State Administration. The administration of  
2 local sales and use taxes adopted under this act shall be by  
3 the [state tax department] which may prescribe forms and reason-  
4 able rules and regulations in conformity with this act for the

5 making of returns and for the ascertainment, assessment, and  
6 collection of the tax imposed pursuant hereto. The [state tax  
7 department] shall keep full and accurate records of all monies  
8 received and distributed under this act.

1 Section 5. Distribution of Collections. All sums received  
2 and collected on behalf of a particular political subdivision  
3 pursuant to this act shall be credited to a special local sales  
4 and use tax fund which is hereby established in the state  
5 treasury and, after deducting the amount of refunds made, the  
6 amounts necessary to defray the cost of collecting the tax, and  
7 the administrative expenses incident thereto, shall be paid  
8 within [10] days after collection to the political subdivision  
9 entitled thereto.

1 [Section 6. Distribution of Collections Among Local Govern-  
2 ments. The state legislature may wish to provide that when the  
3 county preempts the sales tax field the proceeds be divided  
4 among the county and local units of general governments within  
5 the county.<sup>2</sup>]

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

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

Local Supplement to a State Sales Tax by Two or More  
Counties Comprising a Trading Area

In some states the pressure for additional revenue to finance more and costlier government services is felt most acutely by governments making up an economic or trading area. Yet, the shadow of intercommunity competition can effectively restrain local governments in such areas from using a local supplement to the state sales tax. States may wish to consider authorizing counties located within

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2. Tennessee (Laws of 1963, chapter 329, 1963 Local Option Revenue Act, section 4) provides that one-half of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed. It further provides that the other half shall be distributed as follows: (a) collections in unincorporated areas, to the county general fund; (b) collections in incorporated cities and towns, to the city or town in which the privilege is exercised; (c) provided, however, that a county and city or town may by contract provide for other distribution of the half not allocated for school purposes.

retail trading areas to impose by mutual and unanimous agreement a uniform, areawide supplement to the state sales tax without at the same time extending such authority to all counties or other units of local government throughout the state.

The Maryland legislature adopted this approach in 1965 when it authorized each of the units of local general government in the Baltimore Metropolitan Area, City of Baltimore, and Baltimore and Anne Arundel counties, to impose a supplementary rate to the state sales tax as long as all three jurisdictions did so.<sup>3</sup> The Maryland jurisdictions have not implemented the enabling legislation. Similar authority was enacted by the Colorado legislature in 1961 for jurisdictions in the Denver Metropolitan Area.<sup>4</sup> The Colorado experiment foundered on legal grounds involving municipal home rule powers.

The suggested legislation below presents alternative language for section 2 which would authorize two or more counties making up a trading area to impose concurrently a local supplement to a state sales tax.

1        Section 2. Authorization for Counties Within a Trading Area.

2        (a) County Authorization. A county located in a standard  
3 metropolitan statistical area designated as such by the United  
4 States Bureau of the Census in the most recent census of popu-  
5 lation may adopt a sales and use tax in accordance with the  
6 provision of this act by action of its local governing board if  
7 the governing boards of each county in its standard metropolitan  
8 statistical area within this state by mutual and unanimous agree-  
9 ment adopt the identical tax authorized by this act.

10        (b) Limitation on Withdrawal. A county participating under  
11 the authority granted in this act may withdraw from such mutual  
12 and unanimous agreement by action of its local governing board  
13 after first giving at least 120 days notice of the contemplated  
14 withdrawal to the [state tax department] and to the governing  
15 boards of the other participating counties. The withdrawal shall  
16 be effective from and after the [first day of the next succeed-  
17 ing fiscal year], and the local laws and ordinances imposing the  
18 tax in the other counties of the trading area shall no longer  
19 be of any force or effect. Nothing in this subsection shall be

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3. Annotated Code of Maryland 1957, article 81, section 411A.

4. Colorado Laws of 1961, chapter 179.



20 construed or applied to prevent or interfere with the collection  
21 of tax monies which were lawfully due and payable while the tax  
22 was effective, and any money collected by the [state tax depart-  
23 ment] after the tax has been repealed and discontinued shall be  
24 accounted for and distributed as required in this act.

## COLLECTION OF LOCAL NONPROPERTY TAXES BY THE STATE

Over the past few years an increasing number of states have authorized local governments to levy nonproperty 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 nonproperty 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 nonproperty taxes. It merely provides for a procedure where the state, on a reimbursable basis, can collect local government nonproperty taxes where such taxes are otherwise authorized by state law.

### Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1        Section 1. Authority to Contract. The director of [tax de-  
2        partment] is hereby authorized to negotiate and contract with  
3        any political subdivision of the state for the purpose of ar-  
4        ranging for the collection by the [tax department] of any tax  
5        levied by a political subdivision of the state which is also  
6        levied and collected by the [tax department] for the state.  
7        Such agreements shall include a fee to be paid by the political  
8        subdivision to the [tax department] in the amount as may be  
9        necessary fully to cover the cost of collection of the local

10 portion of the tax by the [tax department]. Pursuant to the  
11 agreement the director shall transmit to those political subdi-  
12 visions on or before [date] all taxes so collected on behalf of  
13 the political subdivisions less the agreed upon collection fee.

1     Section 2. Effective Date. [Insert effective date.]

## STATE SUPPORT OF LOCAL TAX ENFORCEMENT

States can strengthen the finances of local governments by assisting them to collect taxes imposed at the local level. In some situations the state can condition issuance of state licenses and privileges upon compliance with and payment of local taxes. Local administration of personal property taxes on automobiles is measurably eased in states where evidence of their payment is made prerequisite to state registration of motor vehicles. Georgia provides the most recent example of this type of assistance to local tax administration. Similarly, states can condition state motor vehicle registration upon payment of the local motor vehicle registration fee.

The opportunities for state support in the collection of local taxes are particularly good with respect to those activities which are subject to licensing by the state. States usually require annual licenses for certain types of business and occupations. For example, alcoholic beverage wholesalers and retailers are generally required to obtain an annual license. The states could require an affidavit that local personal property taxes have been paid as a precondition to alcoholic beverage license renewal. States also require the payment of an annual renewal fee for corporations generally. As a precondition to the continued exercise of the corporate business, states could require an affidavit certifying that all local personal property and business license fees have been paid. A similar requirement could be made a precondition to the renewal of professional licenses.

While the scope for state support of local tax enforcement is broad, this suggested legislation is designed only to make the payment of local ad valorem and vehicle registration taxes a precondition of state motor vehicle registration.

### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to make payment of local taxes on motor vehicles a prerequisite to motor vehicle registration."]

(Be it enacted, etc.)

- 1     Section 1. No vehicle shall be registered and licensed by
- 2     the [state motor vehicle licensing authority and its agents]
- 3     unless a signed statement [tax receipt] accompanies the appli-
- 4     cation certifying that all county and municipal taxes legally
- 5     due by the applicant on the vehicle concerned have been paid.
- 1     Section 2. [Appropriate penalty provision or reference to
- 2     a statutory citation providing a penalty for making a false
- 3     statement on the tax return.]

## COOPERATIVE TAX ADMINISTRATION AGREEMENTS

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

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

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

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

### Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

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

8 administration by one political subdivision on behalf of one  
9 or more political subdivisions that are parties to such an  
10 agreement and shall provide for the allocation of the cost of  
11 such administration among the parties.

## II. STRUCTURAL AND FUNCTIONAL RELATIONSHIPS

### Introductory Statement

The Commission has urged state and local governments to equip themselves for a role of leadership in the federal system. It has recommended that they develop programs, utilize cooperative approaches to government, organize their administrative structures, and exercise their powers in ways designed to minimize intergovernmental friction and capitalize on their resources and strengths. The Commission has urged upon states an increased awareness of their key governmental role and the need for them both to provide direct state services and to offer assistance and oversight for local governments. The states should also take legislative action to enable local governments to seek their own solutions to their problems. The first two sections in this part include proposals dealing with direct state programs and with state action to provide assistance and direction for local governments.

The problems of intergovernmental relations in the federal system are particularly acute in the large metropolitan areas where the activities of all levels of government function in close proximity. It is particularly important that an opportunity be provided for flexible approaches to governmental organization so that areawide coordination can be furthered. The next section in this part includes several proposals for metropolitan area and regional organizations.

The structure and powers of local governments are developed within a framework of state constitutional, statutory, and administrative requirements. A range of choices in determining the structure of local government should be made available, cooperative undertakings among local governments should be facilitated, and necessary legislative action should be taken to encourage the provision of services and facilities by them. The final two sections in this part provide proposals to meet these objectives. A section is devoted to general local government organization and powers and another section to specific local government programs.





## A. STATE GOVERNMENT PROGRAMS

### Introductory Statement

The Commission has recommended state initiative in several specific program areas. Traditionally the several phases of overall water resources programs have been administered independently by different agencies of state government and furthermore local political boundaries do not follow watershed boundaries. To overcome this fragmentation, the Commission has recommended the establishment of a state agency for overall water resource planning and policy-making.

An active role for state governments in the poverty program has been urged by the Commission. Two proposals are included in this section to assist states in this objective. One would give a statutory basis for a state office of economic opportunity and the other would provide the basis for state participation in the job corps program by direct operation of camps or serving as a prime or subcontractor in connection with a camp. A positive role was also recommended for the states in a program of open space acquisition. The draft authorizes both states and local governments to acquire interest or rights in land to preserve appropriate open areas.

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.

The desirability of mobility in the public service is increasingly recognized. One of the important factors contributing to mobility is transferability of retirement credits. The proposal on state and local retirement systems puts emphasis on methods of transferability.

## 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, the Council of State Governments' 1957 report on State Administration of Water Resources, 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 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, Connecticut, and Maryland.

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

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

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

#### Suggested Legislation

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

(Be it enacted, etc.)

- 1        Section 1. Short Title. This act may be cited as the
- 2 [state] Water Resource Planning and Coordination Act.
- 1        Section 2. Declaration of Policy. (a) The legislature
- 2 recognizes that: (1) the maintenance of the present level of
- 3 economic and general welfare of the people of this state and

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

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

1        Section 3. Planning and Coordination Staff. The Director  
2 of the Office of State Water Resources [or the head of such  
3 other agency or unit of the state government as the governor  
4 may designate]<sup>1</sup> (hereinafter referred to as the Director) shall  
5 have the responsibility for leadership and direction of a pro-  
6 gram to implement the legislative policy declared by this act,  
7 and may employ such additional staff and other resources as may  
8 be available to him and necessary to the exercise and perform-  
9 ance of duties and responsibilities conferred by this act.

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

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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.

23 (b) Studies and Surveys. The Director is authorized to  
24 carry out such studies, inquiries, surveys, or analyses as may  
25 be relevant to his duties in assisting the governor and in  
26 helping to implement the legislative policy declared in this  
27 act, and in developing recommendations for the legislature.  
28 For these purposes, the Director shall have full access to the  
29 relevant records of other state departments and agencies and  
30 political subdivisions of the state, and may hold public hear-  
31 ings, and may cooperate with or contract with any public or  
32 private agencies, including educational, civic, and research  
33 organizations. Such studies, inquiries, surveys, or analyses  
34 shall incorporate and integrate, to the maximum extent feasible,  
35 plans, programs, reports, research, and studies of federal,  
36 state, interstate, regional, metropolitan and local units,  
37 agencies and departments of government.

38 (c) Consultations. In developing recommendations for the  
39 governor relating to the use and control of the water resources  
40 of the state, the Director shall: (1) consult with representa-  
41 tives of any federal, state, interstate, or local units of gov-  
42 ernment which would be affected by such recommendations; and  
43 (2) be authorized to appoint such interdepartmental and public  
44 advisory boards as necessary to advise him in developing poli-  
45 cies for recommendation to the governor.

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

51 (e) Reports. The Director may publish reports, including  
52 the results of such studies, inquiries, surveys, and analyses  
53 as may be of general interest, and shall make an annual report  
54 of his activities under this act to the governor and the legis-  
55 lature.

1 Section 5. Planning Objectives. In exercising his respon-  
2 sibilities under this act, the Director shall take into con-  
3 sideration the need for:

- 4           (1) adequate supplies of surface and ground waters of  
5 suitable quality for domestic, municipal, agricultural, and  
6 industrial uses;
- 7           (2) water quality facilities and controls to assure  
8 water of suitable quality for all purposes;
- 9           (3) water navigation facilities;
- 10          (4) hydroelectric power;
- 11          (5) flood damage control or prevention measures, in-  
12 cluding flood plain zoning, to protect people, property, and  
13 productive lands from flood losses;
- 14          (6) land stabilization measures;
- 15          (7) drainage measures, including salinity control;
- 16          (8) watershed protection and management measures;
- 17          (9) outdoor recreational and fish and wildlife oppor-  
18 tunities; and
- 19          (10) any other means by which development of water  
20 and related land resources can contribute to economic growth  
21 and development, the long-term preservation of water resources,  
22 and the general well-being of all the people of the state.

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

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

## STATE OFFICE OF ECONOMIC OPPORTUNITY

The Economic Opportunity Act of 1964 ushered in a new era of governmental and private partnership designed to break the cycle of poverty for more than 30 million Americans. The act established several new programs which when added to previously existing federal, state, local, and private activities constitute a wide range of approaches to an attack on poverty and its causes.

Forty-nine states have established offices or agencies to provide technical assistance activities under section 209 of the Economic Opportunity Act and to provide other poverty-related activities and services. Because of the desirability of reacting quickly to the national program, many of these offices were established by gubernatorial executive order. Even now, there is no complete prescription for the most effective role for these offices, and continuing adjustments to fit existing state organizational and program patterns and needs will be necessary.

After studying the intergovernmental aspects of the war on poverty, the Advisory Commission on Intergovernmental Relations adopted the following recommendation for state action:

The Commission recommends that the states fully utilize the grants available under the Economic Opportunity Act to undertake broad programs of technical assistance including: (a) public educational and informational services; (b) consultation on the organization of anti-poverty programs and agencies; (c) assistance in training personnel; (d) coordination of new and on-going programs; (e) broad program research, planning, and development; (f) program evaluation and review; (g) anti-poverty policy staff assistance to the Governor; and (h) the development and testing of model projects and programs.<sup>1</sup>

Based on the same study, the Advisory Commission also advanced the following recommendation on the nature of community action agencies organized to carry out local anti-poverty programs:

The Commission recommends that: (a) in communities in which general units of local government are able and willing to undertake an effective program to aid the poor, general units of local government organize the community action agencies; (b) in communities in which local governments do not prefer or otherwise have refrained from undertaking anti-poverty programs for which there is a clear need, private nonprofit groups, or a combination of public and private representatives,

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1. Advisory Commission on Intergovernmental Relations, Intergovernmental Relations in the Poverty Program, April 1966, p. 184.



organize the community action agencies. The Commission further recommends that when it appears that a community action program can be administered equally effectively by either a governmental or a nonprofit organization, OEO guidelines and performance standards give preference to establishment of community action agencies by units of local general government. The Commission further recommends that states, in encouraging and assisting establishment of community action agencies, follow the general directions suggested above in advising on the public or private nature of such bodies.<sup>2</sup>

The following model bill is in response to these recommendations. It is designed to add some permanency to this important new state function and to reflect the best experience of the 45 state offices of economic opportunity which responded to a questionnaire circulated in connection with the Advisory Commission's study of the anti-poverty program. It establishes a state economic opportunity office and makes provision for establishment of necessary coordination, administration, and advisory machinery to strengthen the administration of federal and state programs having an impact on poverty. The state office of economic opportunity could be established as a direct staff arm of the governor or as an integral part of local affairs, economic development, planning or other agency. The specific provisions of the bill are drawn from executive orders issued in California, Oklahoma, New Jersey, Vermont, and Washington, and from the Illinois Economic Opportunity Act enacted in 1965.

The technical assistance needs of many communities (especially those serving rural areas); the necessity of coordinating existing federal and state programs at the state level; and the national urgency attached to the war on poverty all require a strong and effective state role. The establishment of state administrative machinery provides the basis for such a role.

Some states may wish to consider lodging the state responsibility contemplated in this act in an agency for community development which consolidates a number of related functions concerned with urban development and state-local relations. The proposal on page 211 of this Program establishes such an agency which could be expanded to include state responsibility for the poverty program by adding additional functions, as appropriate, from section 5 of this act and by adding provisions for a program of state grants, if desired.

The following suggested legislation for states wishing to establish a separate office of economic opportunity, includes in section 1 a statement of the legislative finding that the urgent problems of poverty require the effective development and implementation of anti-poverty programs. Section 2 provides definitions and

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2. Ibid., p. 163.

section 3 establishes the office, headed by a director. Section 4 specifies the functions of the office and outlines certain recommended principles for use in guiding the establishment of community action agencies. The functions of the office include technical assistance; research, planning, and program development; and assistance to the governor in developing, evaluating, and coordinating anti-poverty programs. Section 5 authorizes the governor to establish appropriate coordination and advisory machinery to fulfill the purposes of the act and section 6 provides for the submission of reports and recommendations on anti-poverty programs and activities to the governor and the legislature. Section 7 is to be used to establish a grant program to assist communities in meeting the non-federal share required for programs under the federal act. Section 8 is to be used to transfer authority, duties, personnel and property of any existing state anti-poverty organizational unit and sections 9 and 10 are for severability and effective date provisions.

### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing for the establishment of the office of economic opportunity to provide for the effective implementation of and assistance for anti-poverty programs within the state and for other purposes."]

(Be it enacted, etc.)

1        Section 1. Legislative Finding. The legislature finds  
2 that:  
3        (1) many citizens of this state are without the means  
4 necessary to meet their needs, and suffer from severe and long-  
5 term poverty;  
6        (2) assuring full economic opportunity for all citizens of  
7 the state is urgently necessary to relieve this unnecessary  
8 human suffering and to permit the full development of the state's  
9 economy and resources;  
10        (3) poverty has been and continues to be prevalent in many  
11 communities despite the best efforts of public and private  
12 agencies;  
13        (4) the incidence of poverty within this state and the  
14 urgent necessity of providing the citizens of this state with  
15 the opportunity for education and training, the opportunity  
16 to work, and the opportunity to live in decency and dignity

17 require the effective development and implementation of anti-  
18 poverty programs including those authorized by the Economic  
19 Opportunity Act of 1964 as amended.

1 Section 2. Definitions. For the purposes of this act, the  
2 following words and phrases shall have the following meanings:

3 (1) "Federal act" means the Economic Opportunity Act of  
4 1964 as amended (Public Law 88-452).

5 (2) "Federal office" means the Office of Economic Opportu-  
6 nity, Executive Office of the President.

7 (3) "Act" means this act.

8 (4) "Director" means the Director of the Office of Economic  
9 Opportunity.

10 (5) "Office" means the Office of Economic Opportunity.

11 (6) "Community action program" means a program as defined  
12 by section 202(a) of the federal act.

13 (7) "Community action agency" means a public or nonprofit  
14 agency or combination thereof organized to carry out a community  
15 action program.

1 Section 3. Establishment of the Office of Economic Opportu-  
2 nity. (a) The Office of Economic Opportunity is established  
3 within the [insert its organizational location]<sup>1</sup> to carry out  
4 this act. The office shall be headed by a director appointed  
5 by and serving at the pleasure of the governor [by and with  
6 advice and consent of the Senate]. The director shall appoint  
7 such staff as may be necessary. [The employees of the office  
8 shall be subject to pertinent civil service and personnel  
9 policies established for state employees in comparable posi-  
10 tions and shall be paid at rates of pay comparable to those of  
11 state employees with equivalent responsibilities in other  
12 departments and agencies.]<sup>2</sup>

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1. The Office of Economic Opportunity may be located either in the Executive Office of the Governor or in an appropriate existing department or agency such as the economic development, local affairs, or planning units.

2. The language of this provision should reflect existing state legislative and administrative requirements relating to civil service, salary, and employee benefits. Where possible, a citation to an exist-

13 (b) The director may submit and adopt all necessary plans;  
14 enter into contracts; accept gifts, grants, and federal funds;  
15 hire personnel; prepare and submit budgets; make rules and  
16 regulations; and do all things necessary and proper to carry  
17 out this act. [Federal and other funds received by the office  
18 shall be paid or turned over to [insert the name of the central  
19 state financial agency if one exists which normally performs  
20 such functions] and shall be expended upon the approval of  
21 the director.]<sup>3</sup>

22 (c) All departments, divisions, boards, bureaus, commissions  
23 or other agencies of the state or any political subdivision  
24 thereof or any public authority shall provide such assistance  
25 and data to the director as will enable him to carry out his  
26 functions, powers, and duties.

1 Section 4. Functions of the Office of Economic Opportunity.

2 The Office of Economic Opportunity shall:

3 (1) provide, with the assistance of funds under section 209  
4 of the federal act, technical assistance to communities within  
5 the state in developing, conducting, and administering programs  
6 for the alleviation and elimination of poverty [and, in the  
7 absence of compelling reasons to the contrary, shall adhere to  
8 the following principles in advising on the nature of community  
9 action agencies to be established pursuant to the federal act:  
10 (i) in communities in which general units of local government  
11 are able and willing to undertake an effective program to aid  
12 the poor, the general units of local government should be  
13 encouraged to organize the community action agency; and (ii)  
14 in communities in which general units of local government have  
15 not undertaken anti-poverty programs for which there is a clear  
16 need, private nonprofit groups, or a combination of public and  
17 private agencies, should be encouraged to organize the community  
18 action agencies];

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ing state civil service act should be included to clarify the way in  
which existing merit systems, pay scales, and employee benefits will  
be applied to employees of the office.

3. This provision should be used where all federal grants and  
other funds to finance state programs and activities are channeled

- 19 (2) collect, analyze, and disseminate data and information  
20 concerning the incidence of poverty within the state and the  
21 resources available for combatting poverty and its causes;
- 22 (3) continuously analyze the effectiveness of state and  
23 locally administered programs and develop recommendations for  
24 consideration by the governor and the legislature;
- 25 (4) advise the governor on poverty matters and assist him  
26 in providing effective coordination of state activities having  
27 an impact on the elimination and alleviation of poverty;
- 28 (5) develop comprehensive plans for eliminating poverty  
29 throughout the state and for maximizing the effectiveness of  
30 available resources, both public and private;
- 31 (6) serve as a clearinghouse for new approaches and sug-  
32 gested programs developed by state and local agencies both  
33 within and outside of the state;
- 34 (7) serve as the source of information for governmental  
35 and private agencies and citizens on programs authorized by  
36 the federal act and by other federal acts having an impact on  
37 the alleviation or elimination of poverty;
- 38 (8) carry out, with the assistance of grants under Title  
39 II of the federal act where applicable, the following types of  
40 activities: (i) training programs for state and local agency  
41 employees engaged in carrying out anti-poverty related programs;  
42 (ii) development and testing of demonstration or model programs  
43 which attack a common and widespread problems for which new  
44 solutions are needed; (iii) upon request of and under contract  
45 with a local anti-poverty agency, render program or administra-  
46 tive services to assist that community in organizing and admin-  
47 istering an effective anti-poverty program; and (iv) research  
48 and planning activities designed to provide the basis for an  
49 effective attack on poverty and its causes;
- 50 (9) establish liaison with federal, state, local, and

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through and managed by a central financial agency. It in no way is intended to give such agency control of the funds but rather is designed to permit consolidated management of federal grant and other nonstate funds.

51 private agencies and groups engaged in poverty-related activ-  
52 ities for the purpose of coordinating such programs and for  
53 assuring maximum use of available resources;

54 (10) assist other state and local agencies in fully utiliz-  
55 ing the programs authorized by the federal act and other re-  
56 lated federal programs.

1 Section 5. Coordination and Advisory Bodies. The governor  
2 may establish such coordinating and advisory bodies as he deems  
3 necessary to carry out this act.<sup>4</sup>

1 Section 6. Reports. At least [fourteen] days preceding  
2 each regular session of the legislature, the director shall  
3 submit to the governor and the legislature a report of the  
4 activities of the office and, together with the governor, shall  
5 submit recommendations for proposed legislation to carry out  
6 the purposes of this act.

1 Section 7. Authorization for State Economic Opportunity  
2 Grants. [Use this section to establish a program of grants  
3 to local public and private agencies engaged in carrying out  
4 anti-poverty programs authorized and assisted by the federal  
5 act to be used by such agencies in meeting the local share of  
6 the cost of such programs.]

1 Section 8. Transfer of Responsibility. [Use this section  
2 to provide for the transfer to the Office of Economic Opportunity  
3 the functions, powers, and duties and employees, property,  
4 records, and files of an existing state anti-poverty organiza-  
5 tion if one has been established by the governor by executive  
6 order.]

1 Section 9. Separability. [Insert separability clause.]

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

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4. Such bodies might include a cabinet-level coordinating council composed of appropriate state department and agency heads and a statewide advisory committee representing various areas and groups within the state.

## STATE PARTICIPATION IN THE JOB CORPS PROGRAM

Unemployment among youth, particularly those 16 to 21, continues to be a chronic national social as well as economic problem. While the national unemployment rate continues to remain below 5 percent, the unemployment rate among youth of various ages ranges from 12 to 27 percent. Between 1963 and 1964, the number of young people in this age category out of work and out of school increased by 22 percent.

In response to this growing problem, Title I-A of the Economic Opportunity Act of 1964 (Public Law 88-452) provides for the establishment of Job Corps facilities in which young men and women between the ages of 16 and 21 may receive educational and vocational training and useful work experience to increase their employability and enable them to participate fully in the mainstream of American life. The Job Corps provides this training through three kinds of centers: Conservation Centers located in national parks and forests; Urban Centers for Men, primarily on surplus Department of Defense sites; and Urban Centers for Women on privately leased sites.

Responsibility for operating these centers may be placed, by contract, on a federal, state, or private agency. State agencies may participate in the Job Corps program in two ways:

1. By serving as a prime or subcontractor for a facility. Subcontracts cover basic education, vocational training, work experience, and public health services. State employment and educational agencies are also used to provide screening, testing, counseling, and placement services for potential Job Corps enrollees.

2. Under Section 108 of the Economic Opportunity Act, a state-operated Job Corps camp may receive federal assistance up to 100 percent of its costs.

States have had more experience than perhaps any other form of public or private agency in providing the kinds of services and programs involved in the Job Corps. Thus, they conduct important programs in the fields of education, training of youth, and institutional management, and have extensive experience in managing work facilities, such as conservation and public works projects. Their full participation in the Job Corps program, therefore, would be an effective contribution to the success of this important national program. It would seem possible, for example, to have a state-operated camp, receiving federal assistance, in each state so that youths who need this valuable training may more easily get it. The education and training of American youth is an extremely vital endeavor which is the responsibility of and demands the efforts of all levels of government. The Job Corps has demonstrated its ability to help these youth and it deserves the support and assistance of states.

Yet in its study of the intergovernmental relations aspects of the poverty program, the Advisory Commission on Intergovernmental

Relations found only a low level of participation by state agencies in Job Corps programs. As of January 1, 1966, only six of the more than 60 Job Corps facilities involved state agencies in a prime or subcontractor role. To remedy this situation, the Advisory Commission adopted the following recommendation:

The Commission recommends that the Office of Economic Opportunity take positive steps to interest States in acting as prime or supporting contractors for Job Corps facilities, and fully inform the States of the opportunities for Federal assistance in the operation of State camps. The Commission further recommends that States in which there is a need for Job Corps training for youths aged 16 to 21, establish State camps or offer to serve as contractors for Federal facilities.<sup>1</sup>

The following model bill is designed to assist states in responding to this recommendation in three ways by:

1. Providing legislative endorsement and support for the establishment of Job Corps facilities and programs within the state.
2. Providing authorization for state agencies to participate fully in Job Corps programs, including the establishment and operation of facilities with or without federal assistance.
3. Assisting the state in overcoming certain commonly identified administrative and legal problems which inhibit the successful establishment and operation of Job Corps facilities.

Section 3 establishes the endorsement of Job Corps facilities and programs within the state while preserving the governor's veto power under Section 109 of the federal Economic Opportunity Act. Section 4 provides authorization for state and local agencies and departments to provide services in connection with Job Corps facilities and programs. This authorization includes the establishment of one or more state-operated camps within the state.

To assure the full and effective implementation of the proposed legislation, section 5 provides for necessary modifications of state laws. For example, state compulsory education laws may affect Job Corps enrollees who are receiving educational instruction in the Job Corps facilities but who are not in the public schools of the state. Also certain financial responsibility requirements in the laws of some states may make it difficult for Job Corps enrollees to secure a driving license and therefore affect their ability to participate in the education and training as a part of the Job Corps program.

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1. Advisory Commission on Intergovernmental Relations, Intergovernmental Relations in the Poverty Program (Washington: Government Printing Office, 1966), p. 187.



Finally, some state civil service laws may need modification to permit the establishment of any classifications required for Job Corps programs.

Authorization for the appropriation of funds necessary to carry out the purposes of the act is provided in section 6. Section 7 requires the governor to submit an annual report to the legislature on the operation of Job Corps facilities and programs within the state.

#### Suggested Legislation

[Title should conform to state requirements. The following is one suggestion: "An act providing for the full participation of (here insert state name) in the job corps program, authorizing state agencies to assist in the operation of the program and for other purposes."]

(Be it enacted, etc.)

1        Section 1. Purpose. The legislature finds that: (a) many  
2 youths within the state are in need of educational and vocational  
3 training and useful work experience to prepare them for useful  
4 lives; (b) the Congress has enacted Title I-A of the Economic  
5 Opportunity Act, Public Law 88-452 as amended, to provide job  
6 corps facilities in which these youths may receive such training  
7 and assistance; and (c) the full participation and assistance of  
8 agencies of the state government contributes to the effective  
9 use of this program to serve the citizens of the state.

1        Section 2. Definitions. This act may be cited as the (here  
2 insert state name) Job Corps Participation Act. For the pur-  
3 poses of this act, the words and phrases defined in this section  
4 shall have the meanings ascribed to them unless the context re-  
5 quires otherwise:

6        (1) "Federal act" means the Economic Opportunity Act of  
7 1964 as amended (Public Law 88-452).

8        (2) "Federal office" means the Office of Economic Opportuni-  
9 ty, Executive Office of the President.

10       (3) "Director" means the director of the federal office.

11       (4) "Act" means this act.

12       (5) "Job corps facility" or "job corps program" means a  
13 facility established or a program operated within such a facility  
14 under contract with the federal office as provided under Title

15 I-A including Section 109, of the federal act.

16 (6) "Federal facility" or "federal program" means a job  
17 corps facility or program established under Section 103 of the  
18 Economic Opportunity Act.

19 (7) "State-operated facility" or "state-operated program"  
20 means a job corps facility or program established by a state  
21 agency which receives partial or full financial assistance under  
22 Section 108 of the Economic Opportunity Act.

23 (8) "State facility" or "state program" means a facility or  
24 program established and operated by a state agency which pro-  
25 vides equivalent or similar training and educational opportuni-  
26 ties to that provided in a federal facility or in a state-operated  
27 facility but which receives no financial assistance under the  
28 Economic Opportunity Act.

29 (9) "Youth" means an individual eligible for job corps train-  
30 ing as defined in Sections 101 and 104 of the federal act.

1 Section 3. Endorsement of Job Corps Programs. The governor  
2 is hereby authorized to take such steps as may be necessary to  
3 obtain or provide the opportunity for youths to receive training  
4 in job corps facilities through establishing or securing the  
5 establishment of job corps facilities within the state or through  
6 providing adequate screening, testing, counseling, and placement  
7 services as will permit such youths to participate in job corps  
8 facilities located in other states.

1 Section 4. Participation in Job Corps Programs. (a) The  
2 governor is hereby authorized, with the assistance of such agen-  
3 cies and departments of the state [including the state univer-  
4 sity] as he may designate, to enter into contracts with the fed-  
5 eral office or with public or private agencies to provide serv-  
6 ices in connection with federal or state-operated job corps  
7 facilities including, but not limited to: (1) screening, test-  
8 ing, counseling, and placement of job corps enrollees; (2) serv-  
9 ing as the prime contractor for federal facilities within the  
10 state; (3) providing supporting services to federal facilities  
11 within the state including but not limited to basic education,  
12 vocational training, public health services, and useful work

13 experience opportunities.

14 (b) All departments, divisions, boards, bureaus, commissions,  
15 or other agencies of the state or any political subdivision  
16 thereof or any public authorities are authorized and directed to  
17 furnish upon request and under arrangements providing for the  
18 reimbursement of reasonable costs by the federal office, such  
19 police, fire, and other services as may be required by federal  
20 facilities located within the state.

21 (c) The governor is further authorized and directed to de-  
22 velop plans for the establishment of and to establish and oper-  
23 ate one or more state-operated or state facilities within the  
24 state as he determines are necessary to fulfill the purposes of  
25 this act.

26 (d) In carrying out the provisions of this act, the governor  
27 or his designee is authorized to: (1) submit and adopt all nec-  
28 essary plans; (2) enter into contracts; (3) accept gifts, grants,  
29 and federal funds; (4) hire personnel; (5) prepare and submit  
30 budgets; (6) make rules and regulations; and (7) do all things  
31 necessary and proper for carrying out the purposes of this act.

1 Section 5. Facilitating Job Corps Participation. (a)<sup>1</sup>

2 (b) The governor is authorized to accept youths not resi-  
3 dents of the state and to provide services to them in the same  
4 manner as provided for youths who are citizens of the state if  
5 required as a condition of a contract or subcontract for serv-  
6 ices to a federal facility which is held by a state agency.

1 Section 6. Authorization for Appropriations. There are

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1. This section may be used to provide such modifications of state laws as the legislature finds necessary to assure the full and effective implementation of this act. Three examples follow: some state compulsory education laws may affect job corps enrollees who are receiving educational instruction in the job corps facility but who are not in the public schools of the state; certain financial responsibility requirements in the laws of some states may make it difficult for job corps enrollees to secure a state driver's license and therefore affect their ability to participate in driver education and training as a part of a job corps program; and some state civil service laws may need modification to permit the establishment of new job classifications required for job corps programs. There have also been conflicts between state and federal procurement laws and regulations.

2 hereby authorized to be appropriated such funds as may be neces-  
3 sary to provide for the successful and full implementation of  
4 this act including, but not limited to, funds to provide oper-  
5 ating capital for the operation of federal or state-operated  
6 facilities until the federal office provides reimbursement, funds  
7 to secure such land, property and personnel and to meet such  
8 other necessary expenses as may be necessary to establish state-  
9 operated or state facilities or to provide services to federal  
10 facilities located within the state.

1       Section 7. Annual Report. The governor shall annually re-  
2 port to the legislature on the operation of job corps facilities  
3 and programs within the state including actions of state agen-  
4 cies and departments in assisting such programs and facilities  
5 and on the extent to which citizens of the state benefited from  
6 job corps programs. The governor shall also transmit his recom-  
7 mendations concerning necessary changes in state laws affecting  
8 job corps facilities and programs and to otherwise assist in  
9 fulfilling the purposes of this act.

1       Section 8. Separability. [Insert separability clause.]

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

## SECURING AND PRESERVING "OPEN SPACE"

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

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

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

estate developers and subdividers.

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

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

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

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

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

Where title to land is retained by the owner subject to an easement or other interest of a public body under the proposed

legislation, tax assessments would take into consideration the change in the market value of the property resulting from the easement or other interest of the public body.

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

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

#### Suggested Legislation

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

(Be it enacted, etc.)

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

1        Section 2. Findings and Purposes. The legislature finds  
2        that the rapid growth and spread of urban development are  
3        creating critical problems of service and finance for the state  
4        and local governments; that the present and future rapid pop-  
5        ulation growth in urban areas is creating severe problems of  
6        urban and suburban living; that the provision and preservation  
7        of permanent open-space land are necessary to help curb urban  
8        sprawl, to prevent the spread of urban blight and deterioration,  
9        to encourage and assist more economic and desirable urban de-  
10        velopment, to help provide or preserve necessary park,

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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.

11 recreational, historic and scenic areas, and to conserve land and  
12 other natural resources; that the acquisition or designation of  
13 interests and rights in real property by public bodies to pro-  
14 vide or preserve permanent open-space land is essential to the  
15 solution of these problems, the accomplishment of these pur-  
16 poses, and the health and welfare of the citizens of the state;  
17 and that the exercise of authority to acquire or designate in-  
18 terests and rights in real property to provide or preserve per-  
19 manent open-space land and the expenditure of public funds for  
20 these purposes would be for a public purpose.

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

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

- 4 (a) "Public body" means [ ].<sup>2</sup>  
5 (b) "Urban area" means any area which is urban in charac-  
6 ter, including surrounding areas which form an economic and  
7 socially related region, taking into consideration such factors  
8 as present and future population trends and patterns of urban  
9 growth, location of transportation facilities and systems, and  
10 distribution of industrial, commercial, residential, govern-  
11 mental, institutional, and other activities.  
12 (c) "Open-space land" means any land in an urban area which

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2. "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 5 to authorize that public body to use those powers for the purposes of this act.



13 is provided or preserved for (1) park or recreational purposes,  
14 (2) conservation of land or other natural resources, (3) his-  
15 toric or scenic purposes, or (4) assisting in the shaping of  
16 the character, direction, and timing of community development.

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

1 Section 4. Acquisition and Preservation of Real Property  
2 for Use as Permanent Open-Space Land. To carry out the pur-  
3 poses of this act, any public body may (1) acquire by purchase,  
4 gift, devise, bequest, condemnation, grant, or otherwise title  
5 to or any interests or rights in real property that will pro-  
6 vide a means for the preservation or provision of permanent  
7 open-space land and (2) designate any real property in which  
8 it has an interest to be retained and used for the preservation  
9 and provision of permanent open-space land. The use of the  
10 real property for permanent open-space land shall conform to  
11 comprehensive planning being actively carried on for the urban  
12 area in which the property is located.

1 Section 5. Conversions and Conveyances. (a) No open-space  
2 land, the title to, or interest or right in which has been  
3 acquired under this act or which has been designated as open-  
4 space land under the authority of this act shall be converted  
5 or diverted from open-space land use unless the conversion or  
6 diversion is determined by the public body to be (1) essential  
7 to the orderly development and growth of the urban area, and  
8 (2) in accordance with the program of comprehensive planning

9 for the urban area in effect at the time of conversion or diver-  
10 sion. Other real property of at least equal fair market value  
11 and of as nearly as feasible equivalent usefulness and location  
12 for use as permanent open-space land shall be substituted with-  
13 in a reasonable period not exceeding one year for any real  
14 property converted or diverted from open-space land use. The  
15 public body shall assure that the property substituted will be  
16 subject to the provisions of this act.

17 (b) A public body may convey or lease any real property it  
18 has acquired or which has been designated for the purposes of  
19 this act. The conveyance or lease shall be subject to contrac-  
20 tual arrangements that will preserve the property as open-space  
21 land, unless the property is to be converted or diverted from  
22 open-space land use in accordance with the provisions of sub-  
23 section (a) of this section.

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

1 Section 7. General Powers. (a) A public body shall have  
2 all the powers necessary or convenient to carry out the pur-  
3 poses and provisions of this act, including the following  
4 powers in addition to others granted by this act:

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

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

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

14 imposed pursuant to federal laws as the public body may deem  
15 reasonable and appropriate and which are not inconsistent with  
16 the purposes of this act;

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

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

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

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

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

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

42 (1) appropriate funds;

43 (2) levy taxes and assessments;

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

47 (4) exercise its powers under this act through a board  
48 or commission, or through such office or officers as its

49 governing body by resolution determines, or as the governor  
50 determines in the case of the state.

1       Section 8. Planning for the Urban Area.<sup>3</sup> The state, coun-  
2 ties, cities, towns, or other municipalities in an urban area,  
3 acting jointly or in cooperation, are authorized to perform  
4 comprehensive planning for the urban area and to establish and  
5 maintain a planning commission for this purpose and related  
6 planning activities. Funds may be appropriated and made avail-  
7 able for the comprehensive planning, and financial or other  
8 assistance from the federal government and any other public or  
9 private sources may be accepted and utilized for the planning.

1       Section 9. Taxation of Open-Space Land. Where an interest  
2 in real property less than the fee is held by a public body for  
3 the purposes of this act, assessments made on the property for  
4 taxation shall reflect any change in the market value of the  
5 property which may result from the interest held by the public  
6 body. The value of the interest held by the public body shall  
7 be exempt from property taxation to the same extent as other  
8 property owned by the public body.

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

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

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

## LEGISLATIVE APPORTIONMENT PROCEDURE

The actual formulas for apportioning seats in the legislative bodies of a state is a matter of individual state concern, subject to the limitations imposed by the United States Constitution. However, it is essential that state constitutions specifically provide procedures that will insure that the states themselves are in a position to comply with all constitutional requirements for periodic reapportionment of legislative bodies. The suggested constitutional amendment is designated to insure compliance with apportionment provisions of the state constitution.

The suggested amendment deals only with apportionment procedure and does not treat the substantive issues on the basis (population, political subdivision, etc.) of allocating state legislative seats nor questions involved in use of weighted voting, single- or multi-member districts, etc. The amendment directs the legislature to reapportion itself in accordance with constitutional requirements following each decennial census. In the event that the legislature fails to meet its responsibility, a nonjudicial, nonlegislative officer or board is directed to do the reapportioning. In both instances, the highest court of the state is given original jurisdiction to determine the constitutionality of the reapportionment plan.

The language of the suggested amendment is modeled after the provisions of the Oregon constitution, although it should be noted that at least 14 other states have specific constitutional provisions which are designed to insure periodic apportionment of at least one house of their state legislatures. Some of these states have removed responsibility for apportionment completely from the hands of the state legislature. Others have directed that an individual state official or a separate apportionment board undertake the apportionment only after the legislature itself has failed to enact a reapportionment law or failed to reapportion in accordance with the provisions of the state constitution.

Section 1 would spell out the formula for apportioning seats in the state legislature and the appropriate provisions should be inserted by each state. The formula should be as clear and as specific as possible in order to permit the state supreme court to determine easily whether the reapportionment statute complies with the state constitutional formulas. It may be best for a state constitution in defining "population" in its formula to express that definition in mathematical terms. The following two alternatives might be included at the appropriate place or places:

- (a) The [population] of no [Senatorial or Representative] district shall deviate by more than ten (10) percent from the figure obtained by dividing the total [population] of the state by the number of [Senators or Representatives].

- (b) [Senatorial and Representative] districts shall be established with appropriate boundaries so as to permit at least forty-five (45) percent of the total [population] of the state to elect fifty (50) percent of the state [Senators] and fifty (50) percent of the state [Representatives].

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

Section 3 gives the state supreme court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the state constitution. Any qualified voter of the state can bring this question before the court within 30 days after enactment of the reapportionment. If the court finds that the reapportionment does not comply with the constitution, the court shall direct either the named state official or the apportionment board to reapportion the legislature in accordance with the constitution. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with the constitution, the court is authorized to direct the named state official or apportionment board to make appropriate changes.

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

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

Suggested Constitutional Amendment

1       Section 1. Apportionment of Senators and Representatives.

2       (a) Senators. [Insert provisions for the apportionment of  
3 state senators.]

4       (b) Representatives or Assemblymen. [Insert provisions  
5 for apportionment of house of representatives or assembly.]

1       Section 2. Reapportionment Duty. The number of senators  
2 and representatives shall, not later than [July 1st] at the  
3 first regular session of the legislature next following the  
4 decennial census conducted by the United States government, be  
5 reapportioned by the legislature in accordance with section 1  
6 of this article.

1       Section 3. Jurisdiction of [State Supreme Court]. Original  
2 jurisdiction is vested in the [state court of last resort],  
3 upon the petition of any qualified voter of the state filed  
4 with the [clerk of the supreme court] within [30] days after  
5 enactment of a reapportionment measure, to review, in whole or  
6 part, any measure so enacted. If the [supreme court] deter-  
7 mines that the measure complied with section 1 of this article,  
8 it shall dismiss the petition by written opinion within [30]  
9 days after the petition was filed and the legislation enacted  
10 shall become law upon the date of opinion. If the [supreme  
11 court] determines that the measure does not comply with section  
12 1 of this article the measure shall be null and void and the  
13 court shall direct [the named state official] [the appor-  
14 tionment board] to prepare a reapportionment of the legislature in  
15 compliance with section 1 of this article and return its re-  
16 apportionment to the [supreme court] within [30] days after  
17 referral by the court. The [supreme court] shall review the  
18 reapportionment thus returned and, if it is found to be in  
19 compliance with section 1 of this article, shall cause it to  
20 be filed with the governor within [30] days after the finding  
21 and it shall become law upon the date of filing. If the  
22 [supreme court] shall determine that the draft returned to it  
23 by the [named state official] [apportionment board] does not

24 comply with section 1 of this article, the court shall return  
25 it forthwith, accompanied by a written opinion specifying with  
26 particulars wherein the draft fails to comply with the require-  
27 ments of section 1 of this article. The opinion shall further  
28 direct the [named state official] [apportionment board] to  
29 correct the draft in these particulars and in no others and to  
30 file the corrected reapportionment with the governor within  
31 [30] days after issuance of the order, and it shall become law  
32 upon the date of filing.

1       Section 4. Failure of Legislature to Reapportion Itself.

2 If the legislature fails to enact any reapportionment measure  
3 by [July 1st] of the year of the first regular session of the  
4 legislature next following a decennial census by the United  
5 State governments, the [named state official] [apportionment  
6 board] shall make a reapportionment of the legislature in ac-  
7 cordance to the provisions of section 1 of this article. The  
8 reapportionment so made shall be filed with the governor on or  
9 before [August 1st] of such year and shall become law, subject  
10 to [supreme court] review, upon date of filing.

11       Original jurisdiction is vested in the [supreme court], upon  
12 petition of any qualified voter of the state filed with the  
13 [clerk of the supreme court] within [30] days after any reap-  
14 portionment made by the [named state official] [apportionment  
15 board] has been filed with the governor to review, in whole or  
16 part, any such reapportionment. If the court determines that  
17 the reapportionment thus made complies with the provisions of  
18 section 1 of this article it shall dismiss the petition by  
19 written opinion within [30] days after the petition was filed  
20 and the reapportionment shall become law upon the date of the  
21 opinion. If the [supreme court] determines that the reappor-  
22 tionment does not comply with section 1 of this article, said  
23 reapportionment shall be null and void and the [supreme court]  
24 shall return it forthwith to the [named state official] [appor-  
25 tionment board] accompanied by a written opinion specifying with  
26 particulars wherein the reapportionment fails to comply with




27 section 1 of this article. The opinion shall further direct  
28 the [named state official] [apportionment board] to correct the  
29 reapportionment in those particulars and in no others and file  
30 the corrected reapportionment with the governor within [30]  
31 days after issuance of the order and it shall become law upon  
32 the date of filing.

1       [Section 5. Apportionment Board. There is hereby created  
2 an apportionment board consisting of [named state officials;  
3 do not include members of the judiciary] [consisting of [two]  
4 members appointed by the chairman of the political party whose  
5 candidate for governor in the last preceding gubernatorial elec-  
6 tion received the largest number of votes, [two] members ap-  
7 pointed by the chairman of the political party whose candidate  
8 for governor received the second largest number of votes at the  
9 last preceding gubernatorial election], [and one member who  
10 shall be chairman of the apportionment board, appointed by the  
11 aforementioned members]. [The apportionment board shall con-  
12 vene prior to [July 10th] of any year in which the legislature  
13 has failed to comply with its responsibility under section 2 of  
14 this article and reapportion the state legislature in accord-  
15 ance with the provisions of section 1 of this article. In that  
16 event the apportionment board shall, on or before [August 1st]  
17 of such year, reapportion seats in the state legislature in  
18 accordance with the provisions of section 1 of this article and  
19 file a copy of such reapportionment with the governor. Such  
20 reapportionment shall become law, subject to [supreme court]  
21 review, upon date of filing. In the event the [supreme court]  
22 shall declare that a reapportionment law enacted by the legis-  
23 lature fails to comply with the provisions of section 1 of this  
24 article the apportionment board shall convene within [10]  
25 days after the decision of the court and shall proceed to re-  
26 apportion seats in the legislature as if no reapportionment  
27 action was taken by the legislature.]<sup>1</sup> [The [secretary of state]

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1. Some states may wish to include a provision here similar to that in the Michigan constitution which reads as follows: "If a majority of the [Board] cannot agree on a plan, each member of the

28 shall be secretary of the apportionment board, and in that  
29 capacity shall furnish, under its direction, all necessary  
30 technical services.]



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[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]."

## STATE AND LOCAL GOVERNMENT RETIREMENT SYSTEMS

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

### 1. Extending staff retirement coverage to all public employees.

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

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

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

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

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

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

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

## 2. Consolidation of existing public employee retirement systems.

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

States should provide the necessary leadership for retirement system consolidation by encouraging the merger of economically precarious small systems, preferably by making it possible for all local units of government to participate in state administered retirement systems. The general guidelines in the preceding section are equally appropriate for legislation to deal with the consolidation

problem. Action in this regard is essential or state and local governments risk failure to attract qualified personnel, and employees risk the loss of pension dollars.

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

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

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

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

However, in order to develop more adequate solutions, the retirement credit transfer problem should be viewed in terms of both its interstate and intrastate aspects. While many of the difficulties involved in the interstate transfer of retirement credits are very similar to those involved in intrastate transfer, the remedies are somewhat different. There have been several proposed solutions to the interstate problem, most of which involve transfer of funds

between systems and generally have not been found practical or acceptable.

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

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

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

Of the seven states that have general provisions for intrastate transfer of credits, the reciprocal retirement laws in Illinois, Maryland, Michigan, and New York are particularly good. Maryland and New York provide for the transfer of the contributions of both the employer and the employee when the employee changes positions

among the participating reciprocal units or systems. This type of provision would be difficult to square with legal and actuarial provisions in many states. Consequently, legislation similar to that in Illinois and Michigan would appear to be more adaptable in most states because it does not call for lump sum transfers of contributions between systems upon the transfer of employees.

The suggested retirement act presented here is patterned largely after the Illinois Reciprocal Retirement Act. It provides essentially that after the employee has completed at least two 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, if he has not withdrawn any of his contributions; he has enough total years service in all systems to meet the minimum requirement in any system; and he has reached the minimum age required by each system. If he has not reached the minimum age in all systems, he may begin receiving benefits from those systems in which he has reached the required age, and then receive benefits from the other systems when he reaches the required age.

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

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to establish continuity and preservation of pension credit for employees in governmental service in this state."]

(Be it enacted, etc.)

- 1     Section 1. There is hereby established a plan for the con-
- 2     tinuity and preservation of pension credit, in the case of
- 3     employees transferring employment from one governmental unit
- 4     to another governmental unit, if such employees shall have ac-

5 quired such credit in any established retirement system or  
6 pension fund maintained by any such governmental unit. The  
7 purpose of this plan is to assure full and continuous pension  
8 credit for all service rendered by a person in public employ-  
9 ment which service is covered by a retirement system or pension  
10 fund authorized by state law.

1 Section 2. As used in this act:

2 (1) "Retirement system" means any retirement system or pen-  
3 sion fund, by whatever name called, which has been created or  
4 authorized by statute and which is financed in whole or in part  
5 by contributions by the state or by any governmental unit of  
6 the state.

7 (2) "Governmental unit" means the state or any agency or  
8 instrumentality thereof, or any political subdivision or munic-  
9 ipal corporation, which maintains a retirement system for the  
10 benefit of its employees.

11 (3) "Employer" means any governmental unit in the state.

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

17 (5) "Effective date" means July 1, 19[ ], or in the case  
18 of any retirement system becoming subject to the provisions of  
19 this act after such date, the date when such retirement system  
20 comes under the provisions of this act.

21 (6) "Pension credit" means credits or equities acquired by  
22 an employee toward a retirement annuity from a public employees'  
23 retirement system in the form of contributions or services  
24 defined under the provisions of the act governing each retire-  
25 ment system in which he has such credits of equities, except  
26 credits and equities (1) of less than two years in any one sys-  
27 tem, or (2) which were granted during the periods when the  
28 employee was in receipt of a retirement annuity from any of the  
29 retirement systems covered by this act, or (3) which have pre-



30 viously been applied towards a retirement annuity and have not  
31 been re-established in accordance with the provisions of the  
32 act governing the retirement system from which the retirement  
33 annuity has been received.

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

1 Section 3. Any employee who has withdrawn or withdraws from  
2 the service of one employer and then or later enters the serv-  
3 ice of another employer covered by the provisions of this act,  
4 and who has not forfeited his pension credit in the retirement  
5 system maintained by the employer from whose service he has  
6 withdrawn, shall be entitled to a proportional retirement annu-  
7 ity, computed as stated herein, for the periods of credited  
8 service in each retirement system, notwithstanding that the  
9 employee may not have fulfilled the minimum service requirement  
10 prescribed by any retirement system for the receipt of a re-  
11 tirement annuity. If a retirement system provides no refund  
12 of contributions, the pension credit in the case of any employee  
13 who shall have participated in such system shall be considered  
14 effective for the purposes of this act.

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

25 Interest on pension credit shall continue to accumulate in  
26 accordance with the provisions of the act governing the retire-

27 ment system in which the same has been established during the  
28 time an employee is in the service of another employer, on the  
29 assumption such employee, for interest purposes for pension  
30 credit, is continuing in the service covered by such retire-  
31 ment system.

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

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

11       If, at the date of retirement, the employee shall have at-  
12 tained the age prescribed for the receipt of a minimum retire-  
13 ment annuity under any retirement system subject to the provi-  
14 sions of this act which prescribes a minimum retirement annuity,  
15 in which he has a pension credit in all retirement systems par-  
16 ticipating under this act is sufficient to meet the service  
17 qualification prescribed in the applicable retirement system  
18 for the receipt of a minimum retirement annuity, the employee  
19 shall have the option of receiving the proportional retirement  
20 annuity based upon the minimum annuity formula applicable in  
21 each such system.

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

28 for such calculation.

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

1 [Section 5.1. Notwithstanding the provisions of the other  
2 sections of this act, or the acts governing those retirement  
3 systems covered by this act, the alternative formula prescribed  
4 in this section for calculation and payment of the retirement  
5 annuity, shall be applicable in lieu of the formula prescribed  
6 in the other sections of this act, if the employee pays to the  
7 system under which retirement occurs prior to the date his re-  
8 tirement annuity begins, an amount equal to 1 percent of the  
9 actual annual full-time rate of salary on the date of separation  
10 from service under each of the other systems, multiplied by the  
11 number of years of pension credits in each of these systems  
12 which are considered by the system under which retirement occurs  
13 in determining the retirement annuity payable under this sec-  
14 tion and for which contributions were made by the employee.

15 The system under which retirement occurs shall calculate  
16 and pay a retirement annuity based upon the combined pension  
17 credits under all systems participating under this section,  
18 using the final average salary and formula prescribed by the  
19 system under which retirement occurs. Service rendered prior

20 to a break in employment of more than 12 months under govern-  
21 mental units covered by the retirement systems which are sub-  
22 ject to this act shall not be considered by the system under  
23 which retirement occurs in determining the retirement annuity  
24 payable under this section. If an employee is concurrently  
25 employed by governmental units covered by two or more systems  
26 participating under this section during a period of service  
27 which is used in determining the average salary on which his  
28 annuity is based, his earning credits under all of these sys-  
29 tems during the period of concurrent employment shall be con-  
30 sidered by the system under which retirement occurs in computing  
31 his final average salary.

32 If an employee who becomes entitled to retirement benefits  
33 under this section, has elected a deferred annuity under any  
34 of the systems participating under this section and in which he  
35 has pension credits, the system under which retirement occurs  
36 shall reduce the retirement annuity otherwise payable under this  
37 section, by the actuarial equivalent of the amount required to  
38 provide the deferred annuity. This actuarial equivalent shall  
39 be determined by and in accordance with the actuarial tables of  
40 the system under which the election of the deferred annuity is  
41 made.

42 Each of the other systems participating under this section  
43 in which the employee has pension credits, shall assume a por-  
44 tion of the annuity liability by paying at least annually to  
45 the system under which retirement occurs, the amount of the  
46 proportional retirement annuity which would otherwise have been  
47 payable under the other sections of this act, and the employee  
48 concerned shall, by the acceptance of the retirement annuity  
49 payable under this section, waive and forfeit the right to re-  
50 ceive such proportional retirement annuity from such other sys-  
51 tems. If the minimum age requirement of the system under which  
52 the retirement occurs is lower than that of any of the other  
53 systems in which the employee has pension credits, the payment  
54 by such other system to the system under which retirement occurs

55 shall be deferred until the minimum age requirement of such  
56 other system has been met.

57 For the purpose of this section, the system under which re-  
58 tirement occurs and to which the employee last contributes for  
59 a period of four or more years shall be the system to which  
60 this section applies. If the employee contributes concurrently  
61 to two or more of such systems during this period, the system  
62 under which retirement occurs shall be that system under which  
63 he has the greatest earnings credits during the period of con-  
64 current employment, or if he has equal earnings credits under  
65 these systems during this period, the system under which he has  
66 the longest period of pension credits.

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

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

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

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

7 to the aggregate of all such annuities.

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

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

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

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

18 Two or more retirement systems subject to the provisions  
19 hereof may agree, at the time of retirement of an employee, to  
20 have the retirement system under which the employee retires to  
21 pay currently the combined amounts of the proportional payments  
22 on account of the retirement annuity. Such agreement shall be

23 evidenced by a written document between two or more retirement  
24 systems in the form agreed upon between them. At the end of  
25 each fiscal year of the last retirement system, reimbursement  
26 thereto shall be made by the other retirement systems provid-  
27 ing proportional annuities of the amount paid on their account  
28 by the last retirement system. Such arrangement shall be op-  
29 tional with the several retirement systems. If no such arrange-  
30 ment is made, each retirement system shall pay its own propor-  
31 tional annuities to the beneficiaries entitled thereto.

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

1     Section 13. Separability. [Insert separability clause.]

1     Section 14. Effective Date. [Insert effective date.]

## UNIFORM TIME LAW

The variation in the use of daylight saving time throughout the country has caused significant problems. These problems have been particularly acute for industrial and commercial concerns engaged in transportation and communication but involved many others, particularly when individual communities exercised local option in deciding whether or not to go on daylight saving time. The problem existed because of the variation within the standard time zones both in the decisions by states and their subdivisions to use daylight saving time and in the decisions regarding the time to commence and end daylight saving time.

During 1965 thirty-six states had some provision for the observance of daylight saving time, but in only eighteen did it apply throughout the state. In the other eighteen states, a form of local option or limited authorization by the state legislature provides the means for adoption of daylight saving time. Furthermore, daylight saving time began and ended at different times in different jurisdictions. Sixteen states, all but one of which were among the eighteen states in which daylight saving time applied throughout the state, had a uniform period for its use which began the last Sunday of April and ended the last Sunday in October. Daylight saving time in the other twenty states, whether on a statewide or local option basis, began and ended at various times during the calendar year. In only three areas did contiguous states uniformly observe daylight saving time on a statewide basis--(1) California and Nevada; (2) Illinois and Wisconsin; and (3) a group of ten northeastern states comprised of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Pennsylvania. Variations became so complex that in one state with local option there were 23 different combinations of starting and stopping dates for daylight saving time in 1964.

It should also be noted that two states observed daylight saving time "in reverse", i.e., they are located in the Central Standard Time zone but portions of the two states (North Dakota and Texas) observed Mountain Standard Time.

Federal legislation consisted of the Standard Time Act which was enacted in 1918 and had been substantially unchanged since that time. It gave the Interstate Commerce Commission the responsibility of fixing the boundaries between standard time zones in the continental United States but did not refer to daylight saving time. The standard time zones were not mandatory with the states; but the act declared that in statutes or regulations which specify a time of performance by any federal officer or time within which rights shall accrue, it was intended and understood that the time would be standard time.

Various solutions to the problem of time confusion in the United States were proposed. The Advisory Commission took action supporting uniform practice throughout the country. In April, 1966, the



Uniform Time Act<sup>1</sup> of 1966 was approved. The Act provides that the standard time of each zone established under existing federal legislation shall be advanced one hour commencing at 2:00 a.m. on the last Sunday of April and ending at 2:00 a.m. on the last Sunday of October; "except that any state may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if such law provides that the entire state (including all political subdivisions thereof) shall observe the standard time otherwise applicable" under existing federal legislation during such period. The act also declares the express intent of Congress to supersede any and all laws of the states or political subdivisions insofar as they may now or hereafter provide for advances in time or change-over-dates different from those specified.

The suggested legislation below provides a vehicle for placing those states wishing to take such action on standard time and making it legally binding throughout the state for state and local governments and businesses within the state.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to provide for uniform time."]

(Be it enacted, etc.)

1     Section 1. Standard of Time. (a) The standard of time in  
2 this state shall be the solar time of the [     ] meridian west  
3 of Greenwich, commonly known as [     ] standard time.

4     (b) All departments of the state government, and all [counties,  
5 cities, towns, and villages] shall use the standard of  
6 time prescribed in subsection (a) hereof.

7     (c) All persons operating or maintaining places of business  
8 or engaged in business activity shall use the standard of time  
9 prescribed in subsection (a) hereof.

1     Section 2. Effective Date. [Insert effective date.]

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1. Public Law 89-387.



## B. STATE ASSISTANCE AND STANDARDS FOR LOCAL GOVERNMENT

### Introductory Statement

In its reports, the Commission has urged states to assume an active role of leadership in the federal system in facilitating the adjustment and accommodation to increasing urbanization. The Commission recommends that the governors and legislatures of the 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 within the country's local governments.

It is proposed that states establish within the structure of state government a dual function of oversight and technical and financial assistance to local units of government, thereby asserting a determination to assist continually and to intervene where necessary in ameliorating jurisdictional problems. The states should take an active role in providing financial assistance, coordination, and standards for the administration of cooperative and joint programs. The Commission proposes that federal grants and aid to local governments for urban development be channeled through the states in cases where significant financial and technical assistance is provided. With the 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 first three proposals in this section deal generally with these approaches. They provide for the establishment of a state department of community development to consolidate a number of financial and technical assistance, coordination, and community development programs in one agency; for the channeling of federal grant-in-aid money through an appropriate state agency when state financial and technical assistance is provided; and for the provision of state technical services to local governments. Another proposal authorizes financial assistance to encourage joint projects and undertakings by local governments. There follow several measures providing for state financial and technical assistance, oversight, and the establishment of standards in a number of specific program areas: education, relocation, public assistance, building codes, and water supply and sewage systems.

There is a policy statement urging states when considering general constitutional revision or undertaking constitutional changes with regard to local home rule to reserve sufficient state authority

so that necessary legislative action may be taken regarding responsibilities and relationships among local units of government in metropolitan areas in the best interests of the people of the area as a whole. Another proposal would provide state assistance to local governments in their debt management activities and one would establish a state program of planning and assistance for mass transportation.



## STATE DEPARTMENT OF COMMUNITY DEVELOPMENT

Increasing urbanization, and the problems which it imposes on communities and states has affected the nature of relationships within the federal system more than any other single factor in the last generation. The rapid growth of the population living in urban areas has been reflected in increasing state and local governmental indebtedness, employment, budgets, and responsibilities, not to mention federal activities and programs directed at urban problems. If, as it has been estimated, the communities of the United States must duplicate in the next 35 years all the community facilities constructed since the time of the first settlements in the United States, then all resources--federal, state, and local--must be employed in a coordinated and complementary fashion to insure maximum effectiveness.

At the federal level, urbanization has been met by a growing number of urban development programs and activities administered by a host of departments and agencies. The establishment of a Department of Housing and Urban Development in 1965 reflected a recognition of the magnitude of the urban problems facing our nation and of the even more difficult problems involved in meshing the efforts of federal, state, and local agencies.

In its pioneer report on The States and the Metropolitan Problem, the Council of State Governments recommended creation or adaptation of an agency of the state government to "aid in determining the present and changing needs of metropolitan and nonmetropolitan areas of the state."<sup>1</sup> The inclusion of nonmetropolitan as well as metropolitan areas in the Council's recommendation reflected a desire to have the proposed state agency deal with problems of strengthening local governments generally.

The 1966 State Legislative Program of the Advisory Commission on Intergovernmental Relations carried a model bill to establish a state office of local affairs. By 1966, at least eleven states--New York, Pennsylvania, Rhode Island, New Jersey, Alaska, Tennessee, Washington, Colorado, Illinois, Missouri, and California--had adopted legislation establishing a local affairs agency. Most recently, Pennsylvania and New Jersey have given increased attention to state-local relations by establishing a cabinet-level agency within the state government to include the responsibilities of a local affairs unit and to assume a vastly expanded program, policy, and coordination role. In other states, establishment of a department is under active consideration.

The creation of a state department of community affairs present an opportunity to bring together present and new state functions

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1. Council of State Governments, The States and the Metropolitan Problem (Chicago, 1956), p. 128.

which have as their principal objective the development and expansion of state efforts to aid communities in meeting the problems of urbanization. Such an action is likely to improve the effectiveness of state programs if only because it gives the communities of the state a direct spokesman in the executive branch and because it provides a focus for policy development and execution at the state level. It also gives the governor an opportunity to make arrangements for coordinating federal and state progress and to continuously study and evaluate the needs of communities within the state.

In addition to supporting efforts to strengthen state organization for dealing with urban problems, the Advisory Commission has urged the states to play a constructive role in the administration of federal urban development programs within a state. To this end, the Commission adopted the following recommendation:

The Commission recommends 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.<sup>2</sup>

The following examples of "channeling" may be given: the Higher Education Act of 1965 provides for an increase in federal funds available for use in a state by an amount equal to funds contributed by the state government; the Land and Water Conservation Fund Act permits state agencies to transfer funds to political subdivisions of the state and to administer the program on a somewhat-decentralized basis; and the Elementary and Secondary Education Act of 1965 provides that grants to assist local education agencies shall be paid to the states. All these programs require the existence of effective state organizational machinery and they require or encourage state financial participation in the cost of the program.

In addition to becoming involved in the active administration of federal grant programs, states also play an important coordination and technical assistance role. By January, 1966, more than 20 states had established an agency or designated a staff member to coordinate federal programs within the state. Since the passage of the Economic Opportunity Act in August 1964, 49 of the 50 states have established state agencies to provide technical assistance to local anti-poverty agencies and to otherwise assist in the implementation of the Act within the state.

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

The following draft bill is designed for use in states which desire to give appropriate organizational status to community development activities and to establish machinery for coordinating, directing, and assisting efforts to alleviate and solve urban development problems. It is recognized that the functions of such an agency must be tailored to fit the existing organizational and program pattern. The agency, well organized and adequately staffed, would be in a position to help the state play a positive and constructive role in solving urban problems. While the absence of an agency does not necessarily signify state inaction or disinterest, its presence is likely to increase both the level and significance of state urban-related activities.

The following suggested legislation draws primarily from the earlier model bill for a state office of local affairs and the act establishing the Department of Community Affairs in Pennsylvania. The first section of the draft contains the legislative findings and the purpose of the act to promote the coordination of state activities which affect local government. Section 2 establishes the department headed by a secretary. Sections 3 and 5 assign responsibilities to the department and the secretary and section 4 requires provision of data to the secretary. Provision is made in sections 6 and 7 for the assignment of state responsibility for designated community affairs and development programs to the department with an option for the handling of federal and state grants and financial assistance. Section 8 requires coordination of state programs and activities which have an impact on community affairs. Section 9 provides the authorization for appropriations and grants and section 10 requires a report to the governor with the secretary's recommendations for desirable legislative action.

#### Suggested Legislation

[Title should conform to state requirements. The following is one suggestion: "An act to establish the department of community development, to strengthen and extend the role of the state in assisting communities within the state, to improve the administration of federal grant programs within the state, and for other purposes."]

(Be it enacted, etc.)

- 1     Section 1. Findings and Purpose. The legislature finds  
2     that:  
3         (1) the rapid growth being experienced by many communities  
4     within the state presents new and significant problems for the  
5     governmental units of these communities in providing the

6 necessary public services and in planning and developing  
7 desirable living and working areas;

8 (2) the full and effective use of the many grant programs  
9 of the federal government affecting community development  
10 necessitates full cooperation and coordination of existing  
11 state and local governmental agencies;

12 (3) the coordination of existing state activities which  
13 affect the communities of the state requires the establish-  
14 ment of machinery within the state government to administer  
15 new and existing programs to meet these problems;

16 (4) it is the urgent responsibility of the state to assist  
17 communities in meeting these problems and whatever way possible  
18 including technical and financial assistance.

19 It is therefore the purpose of this act to establish a depart-  
20 ment of community development, to provide for state financial  
21 and technical assistance to the communities of the state, and  
22 to otherwise assist in the community development in order to  
23 provide the health and living standards and conditions that  
24 the welfare of the people of the state require.

1 Section 2. Establishment of Department of Community Develop-  
2 ment. (a) The department of community development<sup>1</sup> (here-  
3 after referred to as the "department") is established to carry  
4 out this act.<sup>2</sup> The department shall be headed by a secretary  
5 of community development (hereafter referred to as the "secre-  
6 tary") appointed by and serving at the pleasure of the governor  
7 [by and with the consent of the senate]. The secretary shall  
8 appoint and prescribe the duties of such staff as may be neces-  
9 sary. [Employees of the department shall be subject to pertinent

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1. Other appropriate names for the department include Depart-  
ment of Urban Development, Department of Housing and Urban Develop-  
ment (Affairs), Department of Housing and Community Development  
Affairs.

2. A number of existing state statutes specifically authorize  
the establishment of an advisory body made up of local officials and  
other affected organizations to advise the office of local affairs in  
the carrying out of its functions and on problems facing local govern-  
ments in the state. In Tennessee, for example, the office of local  
government is advised by the local government advisory commission



10 civil service and personnel policies established for state  
11 employees generally and shall be paid at salaries or rates of  
12 pay comparable to those of state employees with equivalent  
13 responsibilities in other state agencies.]<sup>3</sup> [The salary of  
14 the secretary shall be \$[ ] per annum.]

1 Section 3. Duties of the Secretary. (a) The secretary  
2 shall supervise and administer the activities of the department  
3 and shall advise the governor and the legislature with respect  
4 to matters affecting community affairs generally and especially  
5 on the role of the state in these affairs.

6 (b) The secretary may delegate any of his functions, powers,  
7 and duties to such officers and employees of the department as  
8 he may designate and may authorize such successive redelegations  
9 of such functions, powers, and duties as he may deem desirable.

10 (c) The secretary may submit and adopt all necessary plans;  
11 enter into contracts; accept gifts, grants, and federal funds;  
12 prepare and submit budgets; make rules and regulations; and do  
13 all things necessary and proper to carry out this act. [Fed-  
14 eral and other funds received by the department shall be paid  
15 or turned over to the [insert name of central state financial  
16 agency, if one exists, which normally performs such functions]  
17 and shall be expended upon the approval of the secretary.]<sup>4</sup>

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consisting of nine members appointed by the Governor. The chairman is the state comptroller of the treasury, three members are selected by the Governor from slates nominated by the Tennessee Municipal League and the Tennessee County Services Association, and two members are appointed by the Governor from his state executives.

3. The language of this provision should reflect existing state legislative and administrative requirements relating to civil service, salary, and employee benefits. Where possible a citation to an existing state civil service act should be included to clarify the way in which existing merit systems, pay scales, and employee benefits will be applied to employees of the department.

4. This provision should be used where all federal grants and other funds to finance state programs and activities are channeled through and managed by a central financial agency. It in no way intends to give such agency control of the funds but rather is to permit consolidated management of federal grant and other non-state funds.

1       Section 4. Provision of Data to Secretary. All state  
2 agencies or any political subdivisions of the state shall pro-  
3 vide such assistance and data to the secretary as will enable  
4 him to carry out his functions, powers, and duties.

1       Section 5. Functions of the Department. The department  
2 shall have the following functions and responsibilities:

3       (1) Cooperate with and provide technical assistance to  
4 county, municipal, [identify other appropriate units of general  
5 local government] and regional planning commissions, zoning  
6 commissions, parks or recreation boards, community development  
7 groups, community action agencies, and similar agencies created  
8 for the purposes of aiding and encouraging an orderly produc-  
9 tive and coordinated development of the state.

10       (2) Assist the governor in coordinating the activities of  
11 state agencies which have an impact on the solution of community  
12 development problems and the implementation of community plans.

13       (3) Encourage and, when requested, assist the efforts of  
14 local governments to develop mutual and cooperative solutions  
15 to their common problems.

16       (4) Study existing legal provisions that affect the struc-  
17 ture and financing of local government and those state activi-  
18 ties which involve significant relations with local government  
19 units; and recommend to the governor and the legislature such  
20 changes in these provisions and activities as may seem necessary  
21 to strengthen local government.

22       (5) Serve as a clearinghouse for information, data, and  
23 other materials which may be helpful or necessary to local  
24 governments to discharge their responsibilities. The clear-  
25 inghouse should also provide information on available federal  
26 and state financial and technical assistance.

27       (6) Carry out continuing studies and analyses of the prob-  
28 lems faced by communities within the state and develop such  
29 recommendations for administrative or legislative action as  
30 appear necessary. In carrying out such studies and analyses,  
31 particular attention should be paid to the problems of metro-

32 politan, suburban and other areas in which economic and popula-  
33 tion factors are rapidly changing.

34 (7) Assist and cooperate with other state agencies and  
35 officials, with official organizations of elected officials in  
36 the state, with local governments and officials, and with fed-  
37 eral agencies and officials, in carrying out the functions and  
38 duties of the department.

39 (8) Consult with private groups and individuals, and if  
40 the secretary deems it desirable, hold public hearings to  
41 obtain information for the purpose of carrying out this act.

42 (9) Develop and test model or demonstration programs and  
43 projects, contract to administer certain functions or services  
44 within a community of the state for such purposes, or to other-  
45 wise provide a program of practical research in the solution  
46 of community problems.

1 Section 6. Administration of Programs Affecting Community  
2 Affairs and Development. (a) The secretary shall exercise  
3 the state responsibility for administering, supervising, and  
4 coordinating the following community affairs and development  
5 programs and shall fully carry out the state role in federal  
6 grant programs applicable to them: [(1) projects and programs  
7 for the planning and carrying out of the acquisition, use, and  
8 development of land for open space and recreational purposes;  
9 (2) programs to develop decent, safe, and sanitary housing to  
10 serve the needs of all citizens of the community including  
11 low-rent and middle-income housing constructed by public  
12 authorities or nonprofit groups, and other publically assisted  
13 housing activities; (3) urban renewal and redevelopment activi-  
14 ties to rebuild slum areas including the provision or super-  
15 vision of relocation services for individuals, families,  
16 businesses, and nonprofit organizations to assure that such  
17 displaced are provided with comprehensive relocation and finan-  
18 cial assistance.]<sup>5</sup>

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5. Items (1), (2), and (3) of subsection (a) are given as ex-  
amples of the types of program areas which might be placed directly  
under the new department. Among other programs which might be

19 [(b) All applications for federal grants for the purposes  
20 of the programs designated under subsection (a) of this section  
21 shall be submitted to the department. The secretary shall  
22 approve or disapprove state grants to apply toward the non-  
23 federal share of project costs consistent with section 8.  
24 Such approval may be conditioned upon subsequent approval of  
25 the project by an appropriate federal agency for federal grant  
26 funds. Upon approval of the application, the secretary shall  
27 transmit it to the appropriate federal agency. Any application  
28 disapproved by the secretary shall be returned to the appli-  
29 cant with written notice of modifications necessary to make  
30 the project eligible, in terms of state or federal policy.]<sup>6</sup>

1 Section 7. Transfer of Responsibility. [Use this section  
2 to transfer the functions, powers, and duties and employees,  
3 property, records, and files involving programs and agencies  
4 listed in section 6.]

1 Section 8. Coordinating Community Development Programs.  
2 The successful discharge of this act demands that all activities  
3 and programs of state agencies which have an impact on community  
4 affairs be fully coordinated. State agencies shall cooperate  
5 fully with the secretary and the governor in fulfilling this  
6 act. The governor and the secretary may establish such coor-  
7 dination, advisory, or other machinery as they may find neces-  
8 sary to carry out this act and they may issue such rules and  
9 regulations as they believe necessary and desirable to carry  
10 out the provisions of this act.

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considered are the following: provision of schools and educational services; construction and administration of public health facilities and services; water and air pollution control and abatement programs; planning on a neighborhood, community or regional basis; programs to alleviate and eliminate poverty; planning and construction of hospitals, airports, water supply and distribution facilities, sewage facilities and waste treatment works, transportation facilities, highways, water development and land conservation, and other public works facilities; and supervision of and assistance in the development and enforcement of community building codes.

6. The insertion of this subsection may be considered independently of subsection 6(a). Its use depends on the desired role for the department in federal-local grant programs.

1        Section 9. Authorization for Appropriations and State  
2 Grants. Monies may be appropriated to carry out this act in-  
3 cluding monies to enable the secretary to assist communities  
4 in meeting the non-federal share of federal community develop-  
5 ment programs as follows, but in no case may the state grant  
6 exceed one-half:

7        (1)<sup>7</sup>

1        Section 10. Report. The secretary shall report annually to  
2 the governor and the legislature on the activities of the  
3 department and the nature of existing community problems and  
4 shall, together with the governor, submit such recommendations  
5 for legislative action as may appear desirable and necessary.

1        Section 11. Separability. [Insert separability clause.]

1        Section 12. Effective Date. [Insert effective date.]

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7. List federal grant programs for which state financial assistance is available to localities and prescribe the amount of the state grant in percentage terms. For example: "(1) For planning activities undertaken under Section 701 of the Housing Act of 1954, as amended, state grants to municipal, county or regional planning bodies may be [20 to 50] percent of the non-federal share of the cost of such activities." Other federal programs for which some states already provide financial assistance in meeting the non-federal share include: open space, urban renewal, public housing, airport development, hospital and medical facility construction, and waste treatment works.

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

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

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

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

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

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.<sup>1</sup>

The states can, through enabling legislation and subsequent appropriations, involve themselves positively in assuming their increasing responsibilities for urban development.

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

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."<sup>3</sup>

State legislation to carry out these responsibilities for urban development should establish appropriate administrative machinery and technical assistance programs, as well as financial assistance for local urban development activities. Financial contributions should be significant and not token; they might appropriately be between 20 to 50 percent of the nonfederal share of urban development programs. These two contributions--namely (a) the creation of suitable state administrative machinery and

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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, 1962-63 (Chicago: The Council of State Governments, 1962), pp. 456-460.

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

(b) state financial assistance--would give the states a meaningful and effective role in urban affairs. State appropriations should be sufficient to match the availability of federal grants so as to assure that state involvement does not act to reduce the eligibility of localities for federal aid.

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

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

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

#### Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1       Section 1. Programs Authorized. The legislature finds that  
2 the federal government has established and continues to establish  
3 grant programs of direct assistance to the local governments of  
4 the state, and that, due to the large number of local govern-  
5 ments in the urban areas of the state and the lack of coinci-  
6 dence of service needs and tax jurisdictions, it frequently



7 is difficult for local government to marshal the technical  
8 and financial resources needed to meet the needs of its resi-  
9 dents. For the state to assume its proper responsibility and  
10 leadership in meeting the needs of its urban residents, the  
11 declared policy of the state is to render technical assistance,  
12 contribute to the nonfederal share of the cost of the follow-  
13 ing federally aided programs, and to assume responsibility for  
14 coordinating relationships between local governments and fed-  
15 eral agencies with regard to such programs.<sup>1</sup>

16 (a) Open Space. A combination of economic, social, demo-  
17 graphic, governmental, and technological forces has caused a  
18 rapid expansion of the state's urban areas, which has created  
19 critical problems of service and finance for local governments and  
20 threatens severe problems of urban and suburban living, includ-  
21 ing the loss of valuable and vitally necessary open-space land  
22 in such areas. Open-space grants made in accordance with this  
23 act shall be for the purpose of helping to curb urban sprawl,  
24 preventing the spread of urban blight and deterioration, en-  
25 couraging more economic and desirable urban development, and  
26 providing necessary recreational, conservation, and scenic  
27 areas. The [appropriate state agency] shall administer such  
28 grants.<sup>2</sup> State grants shall be [50] percent of the nonfederal  
29 share of the individual project costs.

30 (b) Urban Planning. Haphazard and unplanned urban develop-  
31 ment increases the cost of local government, makes adequate  
32 public services difficult to provide, and results in the crea-  
33 tion of undesirable living environments. Urban planning grants  
34 made pursuant to this act shall be for the purpose of helping  
35 local governments to solve planning problems resulting from

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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.

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. Alternatively this responsibility can be assigned to a state agency or department for local affairs and community development. See the preceding proposal on page 211, above.

36 the increasing concentration of population in urban areas, in-  
37 cluding small communities as well as large, on a continuing  
38 and coordinated basis, and to encourage the establishment and  
39 improvement of local planning staffs. The [appropriate state  
40 agency] shall administer such grants. State grants shall be  
41 [50] percent of the non federal share of the individual project  
42 costs.

43 (c) Urban Renewal. Many areas of urban development have  
44 become or are becoming obsolete, substandard, or unfit for  
45 human habitation. Land ownership patterns and financial prob-  
46 lems frequently impede the renewal of such areas through un-  
47 assisted private efforts. In order to protect the health,  
48 safety, and general welfare of the citizens of the state, urban  
49 renewal grants given in accordance with this act shall be for  
50 the purpose of helping to eliminate urban blight and to renew  
51 obsolete patterns of urban development. The [appropriate state  
52 agency] shall administer such grants. State grants shall be  
53 [50] percent of the nonfederal share of the individual project  
54 costs.

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

65 (e) Airport Development. Civilian air transportation of  
66 both freight and passengers is an essential element of the  
67 economy and welfare of the state: The airport is the nucleus  
68 of an adequate air transportation system. The safe and effi-  
69 cient movement of air traffic depends upon the adequacy of each  
70 airport and of the airport system. Airport development grants

71 made in accordance with this act shall be for the purposes of  
72 planning, constructing, and developing airports important to  
73 the continued growth and safety of air commerce within the  
74 state. The [appropriate state agency] shall administer such  
75 grants. State grants shall be [50] percent of the nonfederal  
76 share of the individual project costs.

77 (f) Hospital and Medical Facility Construction. The health  
78 and well-being of the state's citizens depend in large measure  
79 upon an adequate supply of hospital and other medical facilities.  
80 Hospital and medical facility construction grants made in accord-  
81 ance with this act shall be for the purposes of helping local  
82 governments plan for and assist in assuring adequate hospital  
83 and other medical facilities. The [appropriate state agency]  
84 shall administer such grants. State grants shall be [50] per-  
85 cent of the nonfederal share of the individual project costs.

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

1 Section 2. Relationships with Federal Agencies. (a) Any  
2 application for federal grants for a purpose or program  
3 designated in section 1 shall be submitted to the state  
4 agency designated in section 1 as responsible for the state  
5 program in the field concerned. The head of such state agency  
6 shall approve or disapprove state grants to be applied to the  
7 nonfederal share of project costs consistent with the purposes  
8 of section 1. An approval may be conditioned upon subsequent

9 approval of the project by an appropriate federal agency for  
10 federal grant funds. Upon approval of an application, the  
11 director of the appropriate state agency shall transmit it to  
12 the appropriate federal agency. Any application disapproved  
13 by the director of the appropriate state agency shall be returned  
14 to the applicant with written notice of the modifications neces-  
15 sary to make the project eligible, in terms of state or federal  
16 policy and law.

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

22 Section 3. Technical Assistance and Administration.

23 Heads of the state agencies designated in section 1 shall  
24 establish appropriate technical, administrative, coordinative,  
25 and other measures relating to project sponsors within the state  
26 eligible for federal grants in order to facilitate their partic-  
27 ipation in the program established by this act. They shall  
28 establish, with the approval of the governor, necessary rules  
29 and regulations to carry out their responsibilities under this  
30 act.

1 Section 4. Separability. [Insert separability clause.]

2 Section 5. Effective Date. [Insert effective date.]

## STATE TECHNICAL SERVICES FOR LOCAL GOVERNMENT

State agencies are frequently authorized to provide specific types of technical assistance or services to local governments. In some instances the cost of such services is financed by the state; in others, they are jointly financed; and in still others, they are financed solely by the unit of local government requesting the service. In almost all instances such authority is authorized by individual statute adopted by the legislature.

Areas in which such services are often available to local governments include property assessment, public health services, highway planning and construction, and preparation of community development plans. The initiation of new programs at both state and local levels of government in recent years would seem to dictate that, while existing financing patterns remain undisturbed, state agencies should also have broad authority to provide technical services to local government on a reimbursable basis.

While certain services may not directly affect state interests, costs of providing those services would be reduced where state expertise and equipment available for use by the local government (e. g., laboratory, computer, and training services). The suggested act provides general authorization for all state agencies to provide special and technical services on a reimbursable basis to local governments.

However, under an optional provision of the draft, such authority could not be utilized to obtain services from the state which could be readily obtained from private business channels.

Section 1 sets forth briefly the purpose of the act and section 3 provides the general authority to state agencies to enter into such arrangements. Section 4 indicates that the cost of financing services will not be charged against the appropriation of the state agency and section 5 requires that the head of a state agency furnishing such services make an annual report to the governor and the legislature indicating the scope of the services provided.

### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act authorizing state agencies to provide technical services to local government on a reimbursable basis."]

(Be it enacted, etc.)

1      Section 1. Purpose. It is the purpose of this act to

2 authorize state agencies to provide specialized or technical  
3 services to units of local government and to enable units of  
4 local government to avoid unnecessary duplication and expense  
5 in performing necessary governmental services.

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

2 (1) "unit of local government" means a county, municipality,  
3 city [town, township, metropolitan regional agency, authority,  
4 or a school or other special district].

5 (2) "Specialized or technical services" means special  
6 statistical and other studies and compilations, [development  
7 projects, demonstration projects], technical tests and evalua-  
8 tions, technical information, training activities, professional  
9 services, surveys, reports, and any other similar service func-  
10 tions which the [administrative head] of any agency is author-  
11 ized by law to perform.

1 Section 3. Authority to Provide Service. The [administra-  
2 tive head] of any agency of the state is authorized, within his  
3 discretion and upon written request from a unit of local gov-  
4 ernment, to provide specialized or technical services, upon  
5 the payment, by the unit of local government making the request,  
6 of the cost of such services [, but the services shall not in-  
7 clude those that can be as reasonably or expeditiously obtained  
8 through ordinary business channels]. This authority in no way  
9 reduces the responsibility of any state agency to provide serv-  
10 ices otherwise required by law.

1 Section 4. Reimbursement to Appropriation. All monies re-  
2 ceived by any agency of the state in payment for furnishing  
3 specialized or technical services authorized under this act  
4 shall be deposited to the credit of the appropriation or appro-  
5 priations from which the cost of providing the services has  
6 been paid or is to be charged.<sup>1</sup>

1 Section 5. Reports. The [administrative head] of any agen-  
2 cy of the state, providing specialized or technical services

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1. This section may require adjustment to comply with state constitutional requirements.

3 under this act, shall furnish annually to the governor and the  
4 [legislature] a report on the scope of the services so provided.  
1 Section 6. 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. There is included in this volume 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 proposed legislation includes 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 willings to provide for the consolidation, combining, merger, or joint administration of...any...function...by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof."<sup>1</sup> The Georgia law also provides that the state share of financial assistance can be increased for joint projects.

The new Georgia law is reproduced below and suggested for consideration by other states wishing to furnish or make available services, assistance, funds, property and other incentives to any 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

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1. Section 1, Act No. 303, Georgia Laws 1963, p. 354.



such consolidated programs are intended to meet Georgia's statutory needs which may not be present elsewhere. Other states considering this legislation may therefore not wish to include these provisions.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1     Section 1. The state and all departments, boards, bureaus,  
2     commissions, and other agencies thereof are hereby authorized  
3     and empowered, within the limitations of the constitution, to  
4     furnish and make available services, assistance, funds, prop-  
5     erty, and other incentives to any two or more counties, munic-  
6     pal corporations, public corporations, and other subdivisions  
7     of this state, or any combination thereof, in connection with  
8     any program of services, benefits, administration or other  
9     undertaking in which the state or any of its above-named agen-  
10    cies participates by furnishing supervision, services, property,  
11    administration of funds, where such counties, municipal corpor-  
12    ations, public corporations, or other subdivisions are thereby  
13    able and willing to provide for the consolidation, combining,  
14    merger, or joint administration of such program or any part or  
15    function thereof, by the two or more units, so as to effecutate  
16    economy or simplification in the administration or financing  
17    thereof. [The incentives hereinbefore referred to shall also  
18    include the assuming by the state or its agencies of a greater  
19    share, or where funds are available and such is deemed feasible,  
20    the entire cost of such participating program.]<sup>2</sup>

1     Section 2. The state and all of its aforesaid agencies are  
2     hereby authorized to execute such contracts, plans or other  
3     documents as may be necessary or desirable to effectuate the  
4     purposes hereof.

1     [Section 3. The state and all of its aforesaid agencies are  
2     likewise empowered to establish and maintain area offices for

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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.

3 such combined, consolidated, or merged undertakings.]<sup>3</sup>

1     Section 4. The state and its aforesaid agencies shall be  
2 authorized to prescribe such reasonable rules, regulations, and  
3 requirements, and to require the submission of such plans and  
4 reports from the participating units, as may be deemed neces-  
5 sary or desirable to the proper administration of this act.

1     Section 5. [Insert effective date.]

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3. As indicated in the explanatory statement, this language reflects Georgia's statutory needs and may not be appropriate in other states.

FISCAL MEASURES FOR EQUALIZING EDUCATIONAL  
OPPORTUNITIES FOR ECONOMICALLY AND SOCIALLY DEPRIVED CHILDREN

Equality of education opportunity is of critical importance in a democratic society dedicated to the proposition that all persons should have an equal chance to develop their potentialities to the fullest. This objective takes on a particular urgency as technological advancement causes employment opportunities to become progressively more limited to persons with professional and technical skills.

The growth of national and state programs in education demonstrates increasing citizen recognition that (1) the vagaries of political boundaries, (2) the variations in local property tax bases, and (3) the unwillingness of local rate-making bodies to underwrite education are no longer acceptable reasons for wide differences in educational opportunity. At the state level, however, the assumption of responsibility for high quality education has thus far been hampered by a reluctance to marshal all the state's fiscal resources, including the local property tax, in support of a total state educational program. Intercommunity disparities in educational opportunity will persist until each state revamps its school grant formulas to: (a) provide an adequate educational level below which no community may fall, (b) build in factors designed to measure as accurately as possible local tax effort and diverse community educational requirements, and (c) reflect such measurements in the allocation of aid.

Provision for state leadership in promoting equal educational opportunity in this suggested legislation proceeds from the premise that all tax resources within the state boundaries must be harnessed in support of a total educational program for all pupils in public schools regardless of where in the state they reside. State and local resources are joined in a four-phase plan to accomplish this purpose. The legislation provides:

1. A "basic program" at an adequate expenditure level [\$500 per pupil] financed jointly at the state and the county level. Funds would come from the levy of a required countywide property tax rate based on equalized assessed value and from state appropriations in inverse proportion to each county's relative ability to support the basic program (sections 3 through 6 of the suggested legislation).
2. An "educational improvement program" in which states and localities participate in accordance with each local community's relative need for state aid to supplement the basic program in order to raise expenditures per pupil up to a maximum of twice the basic program level [\$1,000 per pupil]. The objective of this program is to encourage all districts, but particularly the less prosperous districts, to go beyond the basic program level by matching their local effort with state funds on terms most favorable

for those districts with least local ability (sections 7 and 8 of the suggested legislation).

3. A "special needs program" to identify those segments of the state's pupil population necessitating extraordinary costs over and above those required for the average pupil and to provide funds to meet such special requirements until such time as they become integral parts of the regular school program. (Section 9 of the suggested legislation).
4. A "state program" to provide funds to districts for federal programs requiring local matching contributions or local outlays that will be federally reimbursed. The objective is to give all school districts equal access to federal aid that is now expanding into an ever increasing variety of programs, regardless of local ability to meet the matching or funding requirements. (Sections 10 and 11 of the suggested legislation).

For most states this plan, if enacted, would change the method of channeling state aid to local school districts. Continuing state responsibility to support local expenditures for education would be emphasized, not only at the minimum level, but well above it to achieve equality of educational opportunity. This contrasts sharply with the typical foundation-type program now widely used by states in which state basic school grants in conjunction with other state aid generally results in a uniform amount of assistance per pupil regardless of the wealth of the community or its special educational needs.

The "basic school program" gathers the property tax resources of the entire state in support of a mandated minimum level of per pupil expenditures in local districts. This eliminates the highly questionable practice of fiscal zoning to either (1) shield certain properties from the burdens of financing education or (2) reduce the cost of operating public schools in particular districts. The basic program requires that property throughout the state contribute equally to the basic school program through a state-mandated local property tax rate levied in each county and that collections in excess of local needs be transferred to the state for redistribution to less wealthy counties. Variations in the property tax base are submerged for purposes of this program in the interest of obtaining equal distribution of the property tax resource behind each pupil.

The "educational improvement program" enables school districts with the help of the state to improve their educational offering up to a maximum of two times the expenditures per pupil required for the basic program. A minimum guaranteed state share in local programs of educational improvement is provided even in the wealthiest districts.

The "special needs program" is the mechanism for bringing state and local tax resources to bear on the problems stemming from an uneven distribution of extra-cost pupils among school districts. The special school census called for in this legislation would identify unique needs district by district. State assistance would then be made available for high-cost educational needs either temporarily or in a manner that would build the necessary support into the basic program in school districts where extraordinary costs are permanent in nature. The special needs program has particular applicability to programs for overcoming the deterrent effect of poverty and cultural deprivation on the learning process. Typically, the children living in the slums of central cities and in depressed rural areas stand out as the groups of young people most handicapped by an inadequate support for education. Children residing in school districts with strong tax bases usually are the beneficiaries of a superior educational environment both in the home and in the school.

The "state program" of financial assistance to districts for federal aid purposes is provided to insure that the least wealthy school districts obtain the necessary funds initially required to participate in federal matching or reimbursement programs deemed desirable by the state legislature. This program would undo the perverse situation in some states where only the wealthiest districts are able to take advantage of federal aid provided for the explicit purpose of assisting the poor.

In combination the four programs recognize the responsibility of the state in providing equality of education opportunity for all pupils regardless of the wealth of their district or the need for varying types of education.

Several states now utilize one or more of the concepts embodied in this suggested legislation. For example, New York, Rhode Island, and Wisconsin have equalization formulae that provide state support above and beyond the ordinary foundation-type. Most states now require a minimum local tax effort under their foundation programs, but Utah is the only state that requires tax collections in excess of local needs to be turned over to the state for redistribution to the more needy districts. The present inadequacies of school aid legislation to achieve equal education opportunity on a statewide basis and the desirability of establishing a multi-faceted program with built-in flexibility to respond to emerging needs make suggested legislation along the lines presented here a timely subject for state consideration.

#### Suggested Legislation

[Title should conform to state requirements.  
The following is a suggestion: "An act to equalize educational opportunity."]

(Be it enacted, etc.)

1       Section 1. Statement of Purpose. The purpose of this  
2 act is to equalize educational opportunity in the public schools  
3 by requiring a minimum per pupil expenditure level, by encourag-  
4 ing local governments and boards of education to provide supe-  
5 rior education beyond this minimum, by identifying fiscal re-  
6 sponsibilities of local authorities, and by incorporating the  
7 several state aids into one comprehensive program.

1       Section 2. Definitions. As used herein:

2       (1) "Average daily membership" [or "average daily attend-  
3 ance"] means the average number of pupils in a school district  
4 during a school year as determined pursuant to the provisions  
5 of section 16 and the word "pupil" refers to pupil in average  
6 daily membership;

7       (2) "Equalized assessed valuation" means the equalized  
8 assessed valuation of taxable property for a school district  
9 as determined by the [state tax commission] pursuant to the  
10 provisions of section 15;<sup>1</sup>

11       (3) "Basic program" means the cost of education of resident  
12 pupils in grades preprimary through twelve in average daily  
13 membership for the reference year as determined by the mandated  
14 minimum program level;

15       (4) "Mandated minimum program level" means the amount which  
16 shall be spent by a school district for every pupil in average  
17 daily membership;

18       (5) "Required local property tax rate" means the county-  
19 wide levy on the equalized assessed valuation required to  
20 finance the basic program;

21       (6) "Excess local property tax collections" means the  
22 amount of the required local property tax levy together with  
23 federal funds received under the federal program for mainte-  
24 nance and operation aid to federally impacted school districts  
25 (20 USCA 236-240) which exceeds the amount of funds required

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1. In states where the equalized assessed valuation of tax-  
able property by school district is not now available, a directive  
to the appropriate state tax authorities would need to be included.

26 in the county to finance the basic program;

27 (7) "Local percentage" means that percentage established  
28 by the legislature as the statewide local share of the basic  
29 program;

30 (8) "Reference year" means the school year immediately  
31 preceding that for which the aid is to be paid.

1 Section 3. Mandated Minimum Program. There is hereby  
2 established a mandated minimum program of education [\$500]<sup>2</sup>  
3 in the public schools of this state. The mandated minimum  
4 program level per pupil shall be financed from the levy of a  
5 required local property tax rate as provided in section 4 and  
6 from the state basic school fund provided in section 5.

1 Section 4. Required Local Property Tax Rate. Each county  
2 shall levy a local property tax for schools at the rate re-  
3 quired to provide the local share of the basic program. The  
4 required local property tax rate shall be determined by divid-  
5 ing the product of the three following items: (1) local per-  
6 centage [50%], (2) mandated minimum program level, and (3)  
7 the number of pupils in average daily membership in the state  
8 by the total equalized assessed valuation in the state.<sup>3</sup> Excess  
9 local property tax collections in any county shall be forwarded  
10 by the [county treasurer] to the [state treasurer] to be credited  
11 to the state basic school fund.

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2. The amount of the mandated minimum program level for school districts should be substantially similar to the statewide median expenditure level per pupil in average daily membership and not the median expenditure level of school districts because it fails to reflect the higher cost of education generally required in large urban school districts. If some level below the median is selected, it would be well to specify it as "[ ] percent of the median."

3. Because the local percentage and the mandated minimum program level together determine the required local rate, either the local percentage or the mandated level can be adjusted to produce a reasonable and acceptable rate. The calculation should result in a required local rate close to the rate levied in districts of average wealth or that levied by the majority of the districts. If the required local rate resulting from the calculation is too high, however, the local percentage rather than the mandated level of expenditures should be decreased. The following illustrates the computation required to determine the required local property tax rate:

1        Section 5. State Basic School Fund. There is hereby  
 2 established the state basic school fund for the purpose of  
 3 assisting all school districts to finance a minimum mandated  
 4 level of per pupil expenditures. The fund shall consist of  
 5 (1) excess local property tax collections and (2) state appro-  
 6 priations for this purpose.

1        Section 6. Determination of the State's Share of the Basic  
 2 Program. The state's share of the basic program in each county  
 3 shall be determined by subtracting from one hundred percent the  
 4 local share which shall be the product of the local percentage  
 5 times the ratio of equalized assessed value per pupil in the  
 6 county to the statewide average equalized assessed valuation  
 7 per pupil.<sup>4</sup>

1        Section 7. Educational Improvement Program. There is here-  
 2 by established an educational improvement program in which the  
 3 state will assist local school districts to finance a level of  
 4 per pupil expenditures above the mandated minimum program  
 5 level provided in section 3 up to 2.00 times that level or its  
 6 equivalent, 2.00 times the basic program. The [head of the  
 7 state education agency] shall subtract from total local expen-  
 8 ditures approved by him for each school district, for purposes  
 9 of this section, the amount of the basic program and the amount  
 10 of federal funds received by the school district under the  
 11 federal program for maintenance and operation aid to federally

$$\begin{array}{r}
 \frac{[50\%]}{\text{Local Percentage}} \times \frac{[\$500 \text{ per pupil}]}{\text{Mandated Minimum Program Level}} \times \frac{[200,000]}{\text{Pupils in ADM}} = \text{Local Required Property Tax Rate} = \frac{[\$1.00 \text{ per } \$100 \text{ or } 10 \text{ mills per } \$1 \text{ equalized assessed value}]}{\text{Statewide Average Equalized Assessed Valuation } [\$5. \text{ Billion}]}
 \end{array}$$

4. The following illustrates the computation required to determine the state share of the mandated minimum program level for a county with equalized assessed valuation of half the statewide average:

$$\begin{array}{r}
 100\% - \left[ \begin{array}{l} \text{Local Percentage} \\ [50\%] \end{array} \right] \times \left[ \begin{array}{l} \text{Local Equalized Assessed Value Per Pupil} \\ \$1,250 \end{array} \right] \div \left[ \begin{array}{l} \text{Average Equalized Assessed Value Per Pupil} \\ \$2,500 \end{array} \right] = \text{State Share of Mandated Program Level} = [75]\%
 \end{array}$$



12 impacted school districts (20 USCA 236-240) to determine the  
13 amount of state assistance under this section.

1     Section 8. Determination of the State's Share in Educational  
2 Improvement Program.<sup>5</sup> The state's share of the educational  
3 improvement program in each school district shall be determined  
4 by subtracting from one hundred percent the local share which  
5 shall be the product of the local percentage times the ratio of  
6 equalized assessed value per pupil in the school district to the  
7 statewide average equalized assessed valuation per pupil provided  
8 however, that the state's share shall not be less than a guar-  
9 anteed [10] percent in any qualified district. Districts which  
10 qualify for the educational improvement fund shall have more  
11 than [1200] pupils or local equalized assessed value per pupil  
12 less than [3.00] times the statewide equalized assessed value  
13 per pupil.

1     Section 9. Special Educational Needs Program. There is  
2 hereby established a special educational needs program to assist  
3 school districts in financing expenditures resulting from extra-  
4 ordinary educational costs. The [head of the state educational  
5 agency] shall conduct a special count at the beginning of the  
6 school year immediately following the effective date of this  
7 act to identify pupils with special educational needs such as  
8 those from families with low incomes, the mentally and physi-  
9 cally handicapped, the emotionally disturbed, the gifted, and  
10 others. The [head of the state educational agency] shall de-  
11 termine the amount per pupil in excess of the mandated minimum  
12 program level that educational programs to serve the special  
13 needs of such pupils would require. The [head of the state  
14 educational agency] shall determine the distribution of these  
15 financial requirements and others such as above-average cost  
16 for pupil transportation among school districts. Upon the  
17 determination of the [head of the state educational agency]  
18 that groups of pupils or combinations of groups of pupils,

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5. In the case of countywide school systems, this section is unnecessary as the calculation would be the same as section 6 except for the provision of a guaranteed [10] percent.

19 identified by the special count, require per pupil expenditures  
20 in excess of the mandated minimum level and that such program  
21 expenditures raise per pupil costs more than [10] percent in  
22 any school district, he shall recommend either:

23 (1) that for the purposes of computing the state's share of  
24 the mandated minimum program level under sections 3 through 6  
25 and the educational improvement program under sections 7 and 8  
26 such pupils be weighted in the count of average daily member-  
27 ship by the relationship of their cost per pupil to the mandated  
28 minimum program level if the condition is believed to be one  
29 which will persist, or

30 (2) that an amount per pupil equal to the average amount of  
31 the excess cost above the mandated minimum program be paid all  
32 school districts with such pupils if such condition is tempor-  
33 ary.<sup>6</sup>

1 Section 10. State Assistance for Matching Federal Aid.

2 There is hereby established a state program to assist school  
3 districts with equalized assessed values per pupil less than  
4 the statewide average value per pupil to participate in the  
5 following federal programs requiring local funds:

6 [To be specified by the legislature from among  
7 programs as the National Defense Education Act,  
8 School Lunch Program, etc.]

1 Section 11. Determination of the State's Share for Match-  
2 ing Federal Programs. The state's share shall be that per-

3 centage required to make the federal matching funds together  
4 with state funds under this section equal to the state's share  
5 determined under section 8, the educational improvement program;  
6 except that, for the first year of this act, the state share

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6. The basic program combined with the educational improvement program provides sufficient funds for both general and special needs when each school district has the same percentage of children with higher than average costs. Where there is great variation, however, sections 9 and 10 are desirable in order that a permanent need can be identified and made part of the basic program and temporary needs can be met. Continued study and review should provide the basis for changes in the basic program and recognition of new needs as they arise.

7 shall be the matching funds required for participation in  
8 federal programs and the funds required to establish programs  
9 upon which federal funds are provided on a reimbursable basis.<sup>7</sup>

1 Section 12. Collection of Required Local Property Tax Levy.

2 The [county treasurer] in each county shall receive the tax  
3 payments resulting from the levy of the required local property  
4 tax rate under section 4 and shall distribute as provided in  
5 section 13 such funds, together with state funds, to be dis-  
6 tributed to the county under sections 5 and 6 of this act.

1 Section 13. State Payments to Counties. The [head of the  
2 state education agency] shall distribute to the [county treasurer]  
3 in each county from the state basic school fund the state's  
4 share which shall be the difference between the amount of the  
5 basic program and the sum of the amount of the countywide re-  
6 quired property tax levy plus the amount of federal funds re-  
7 ceived by or on behalf of school districts in the county under  
8 provisions of the federal program for maintenance and operation  
9 aid to federally impacted school districts (20 USCA 236-240).  
10 The [head of the state educational agency] shall certify to  
11 each [county treasurer] for each school district in the county  
12 the average daily membership as determined under section 16  
13 and the amount of federal impacted area aid. The [county  
14 treasurer] shall distribute to each school district on the  
15 basis of the certification from the [head of the state educa-  
16 tional agency] the amount of the difference between the basic  
17 program in the school district and the amount the school dis-  
18 trict received in federal impacted area aid under provisions of  
19 federal law (20 USCA 236-240). [Each state will need to de-  
20 termine the best schedule of cash flow to counties and to local

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7. This section makes it possible for districts of average and below average taxable property to participate on a par with more wealthy districts in federal programs. The first year provision is necessary to achieve this equity and the provision for continued state sharing in the same proportion provided under the educational improvement fund assures that the equity will be maintained. A similar first year provision would be needed to make all districts equal when future federal programs have matching or reimbursement provisions.

21 school districts.]

1       Section 14. State payments to School Districts. The [head  
2 of the state education agency] shall distribute as a combined  
3 payment to each school district the funds to be made available  
4 to the district from legislative appropriations for purposes  
5 of the educational improvement program under section 7, the  
6 special needs program under section 9, and the federal match-  
7 ing program under section 10 based on the state share determined  
8 under sections 8, 9, and 11.<sup>8</sup>

1       Section 15. Determination of Equalized Assessed Valuation.  
2 On or before August 1 each year the [state tax commission] shall  
3 determine and certify to the [state education agency] the  
4 equalized assessed valuation for each school district in the  
5 following manner: The total assessed valuations of real and  
6 tangible personal property for each school district as of  
7 [the assessment date] of the second preceding calendar year  
8 shall be weighted by bringing such valuations to the true and  
9 market value thereof which shall be the equalized assessed  
10 valuation of each school district. The sum of the equalized  
11 assessed valuations of real and tangible personal property  
12 for all school districts in a county shall be the equalized  
13 assessed valuation of the county and the sum of the total true  
14 and market value of real and tangible personal property of  
15 each county shall be the equalized assessed valuation of the  
16 state.

1       Section 16. Determination of Average Daily Membership. The  
2 [head of the state education agency] shall determine from data  
3 supplied by the [local education agency] in each school district  
4 the average daily membership of each school district for the  
5 reference year which shall be the aggregate number of days of  
6 membership of all pupils enrolled in grades preprimary to  
7 twelve (12), both inclusive, increased by (i) the aggregate

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8. In the event that legislative appropriations are insuffi-  
cient to finance total program costs, provision should be made to  
prorate state shares in accordance with legislative determination of  
the priority of each program established by this act.

8 number of days of membership of resident pupils whose tuition  
9 is paid by the school district to schools approved by the  
10 [state education agency] and decreased by (ii) the aggregate  
11 number of days of membership of nonresident pupils enrolled  
12 in its schools.<sup>9</sup>

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9. This section is somewhat over simplified on the assumption that the proportions of elementary and secondary pupils will be nearly equal in all school districts. Pupils have not been assigned weights although in Illinois and California where some separate elementary and secondary school districts exist weighting may be necessary. The effect of counting all pupils alike is not serious when state assistance is available for all local expenditures in excess of the mandated minimum level as provided in section 8. Moreover, the suggested legislation provides for special needs in section 9 which would be, in any district, a disproportionate number of higher cost secondary pupils.

## UNIFORM RELOCATION ASSISTANCE

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

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

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

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

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

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

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

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

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

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

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

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

#### Suggested Legislation

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

(Be it enacted, etc.)

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

1        Section 2. Definitions. As used in this act the term:  
2        (1) "State agency" means any department or agency of the  
3 state;  
4        (2) "Person" means any individual, family, or owner of a  
5 business concern or farm operation;  
6        (3) "Nonprofit organization" means [define for state purposes;  
7 might use definition for tax exemption purposes];  
8        (4) "Business concern" means [any firm, partnership, corpora-  
9 tion, or nonprofit organization] not engaged in the activity of  
10 holding property for the production of income;



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

17 (6) "Unit of local government" means a county, city, or  
18 [insert names of others, such as school districts, special  
19 districts, townships, villages, authorities];

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

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

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

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

1 Section 4. Relocation Assistance Programs. (a) When any  
2 state agency or unit of local government acquires real property  
3 for public use, it shall assure that a relocation assistance

4 program for displaced persons and business concerns, offering  
5 the services herein prescribed, is available to reduce hard-  
6 ship to those affected, and to reduce delays in public improve-  
7 ments. If the state agency or local unit of government deter-  
8 mines that other persons, business concerns, or nonprofit orga-  
9 nizations occupying property adjacent to the real property  
10 acquired are caused substantial economic injury because of the  
11 public improvement for which property is acquired, it may pro-  
12 vide such persons or business concerns relocation services under  
13 such programs.

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

1 Section 5. Assurance of Availability of Standard Housing.

2 If any state agency or unit of local government acquires real  
3 property for public use, it shall provide a feasible method  
4 for the temporary relocation of families and individuals dis-  
5 placed from the property acquired, and assurance that there  
6 are or are being provided, in areas not generally less desira-  
7 ble in regard to public utilities and public and commercial  
8 facilities, and at rents or prices within the financial means  
9 of the families and individuals displaced, decent, safe, and

10 sanitary dwellings equal in number to the number of displaced  
11 families and individuals and available to such displaced fami-  
12 lies and individuals and reasonably accessible to their places  
13 of employment.

1 Section 6. Authority of the [insert governor or name of  
2 supervising state agency.]

3 (a) The [governor or state agency] shall make such  
4 regulations as may be necessary to assure:

5 (1) that relocation payments authorized by section 3  
6 are fair and reasonable;

7 (2) that a displaced person, business concern, or non-  
8 profit organization that makes proper application for a re-  
9 location payment authorized by section 3(b)(1) is, if personal  
10 property is disposed of and replaced for use at the new loca-  
11 tion, paid an amount equal to the reasonable expenses that  
12 would have been required in moving such personal property  
13 to the new location;

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

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

22 (b) In order to prevent unnecessary expense and duplication  
23 of functions, and to promote uniform and effective administra-  
24 tion of relocation assistance programs for displaced persons,  
25 the [governor or state agency] may require that any state  
26 agency make relocation payments or provide relocation services  
27 or otherwise carry out its functions under this act, by utiliz-  
28 ing the facilities, personnel, and services of any other state  
29 agency or unit of local government, or by entering into appro-  
30 priate contracts or agreements with any state agency or unit  
31 of local government having an established organization for con-  
32 ducting relocation assistance programs.

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

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

1 Section 8. Fund Availability. Funds appropriated or other-  
2 wise available to any state agency or unit of local government  
3 for the acquisition of real property or any interest therein  
4 for a particular program or project shall be available also  
5 for obligation and expenditure to carry out the provisions of  
6 this act as applied to that program or project.

1 Section 9. State Participation in Cost of Local Relocation  
2 Payments and Services. If a unit of local government acquires  
3 real property, and state financial assistance is available to  
4 pay the cost, in whole or part, of the acquisition of such  
5 real property, or of the improvement for which such property is  
6 acquired, the cost to the unit of local government of providing  
7 the payments and services prescribed by this act shall be in-  
8 cluded as part of the costs of the project for which state  
9 financial assistance is available to such unit of local govern-  
10 ment, and shall be eligible for state financial assistance in  
11 the same manner and to the same extent as other project costs.

1 Section 10. Displacement by Code Enforcement or Voluntary  
2 Rehabilitation. A person who moves his business concern or  
3 other personal property, or moves from his dwelling as the  
4 direct result of code enforcement activities, or a program of  
5 voluntary rehabilitation of buildings conducted pursuant to a  
6 governmental program, is deemed to be a displaced person for  
7 the purposes of this act.

1 Section 11. Appeal Procedure. Any person or business con-  
2 cern aggrieved by final administrative determination concerning

3 eligibility for relocation payments authorized by this act may  
4 appeal such determination to the [insert county court of original  
5 jurisdiction] in which the land taken for public use is located  
6 or in which the code or voluntary rehabilitation program is  
7 conducted.

1 Section 12. Separability. [Insert separability clause.]

1 Section 13. Effective Date. [Insert effective date.]

## GENERAL PUBLIC ASSISTANCE\*

General assistance programs in the states provide public assistance to the needy who do not qualify for assistance under one of the federal public assistance categories for which grants-in-aid are available. Included among the recipients of such assistance may be, to cite several examples: needy, unemployed people who have exhausted or who never qualified for unemployment benefits; needy persons who do not have dependent children; needy people with partial or temporary disability; mothers of dependent children over 18; and needy people who fail to meet all federal and state requirements in the federally aided categorical programs. Payments under the general assistance programs in the 50 states amounted to \$375 million--which is 8 percent--of total public assistance expenditures of 4.9 billion dollars in the fiscal year ending June 30, 1964. However, general assistance is of greater significance than the percentage figure would indicate since it is the type of assistance which provides for all of those in need who do not qualify under any other program. Furthermore, state-local expenditures for general assistance amounted to 17 percent of total state-local public assistance expenditures and local expenditures were one-third of total local public assistance expenditure.

State and local support for the non-federal portion of categorical public assistance and for general assistance shows considerable variation between the two main types of assistance and among the states. In fiscal 1964, federal grants-in-aid provided 60 percent of the expenditures for categorical public assistance. State support for categorical assistance was almost 80 percent of total non-federal expenditures, whereas the states contributed just less than half of total funds for general assistance. The lowest percentage of state participation in the non-federal share of categorical public assistance was 44 percent, while in general assistance, 15 states made no contribution at all. As a result, general assistance programs can be a heavy charge on individual local governments.

There are disparities in the fiscal effects of differences in unemployment, income, and other social conditions of the needy in different jurisdictions. The burden of these disparities on the welfare budgets of individual localities is already considerably modified because of the extent to which federal and state governments finance the categorical public assistance programs. It is difficult to justify the greater burden on localities under the general assistance program. Benefits redounding from maintaining the welfare of individuals and fostering their rehabilitation spread

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\*The suggested legislation is intended for consideration only in those states (approximately two-thirds of the total) where the administration of general assistance is a state-local or local responsibility, not where there is strictly state financing and administration.

well beyond the limits of localities in which they happen to reside. Indigents tend to migrate to urban centers in search of employment or to join relatives, and some become applicants for public assistance, perhaps because they know of the existence of welfare programs which will assure them a minimum of assistance. In its report, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, the Advisory Commission on Intergovernmental Relations reviewed this problem and recommended that states finance at least one-half of the cost of general assistance welfare programs and adopt state standards for such programs.

The suggested legislation is designed to provide for at least 50 percent matching of general assistance costs by the states and for the establishment of state standards generally in conformance with those for the other public assistance programs. The act provides a statement of basic public policy regarding the provision of general assistance; enumerates the responsibilities of the state welfare agency in establishing the system of general assistance; establishes state matching procedures; and provides for the use of rehabilitation, vocational training and retraining services, and community work training programs. Finally, it provides an appeal and judicial review procedure.

States wishing to introduce an equalization factor into their matching provisions may wish to consider two approaches presently in use. In New Jersey, graduated state matching is related to the preceding year's general assistance case load and property tax base. For each administering jurisdiction, there is computed the millage tax rate that would be required, when applied to the preceding year's total assessed valuation, to produce revenue amounting to general assistance expenditures of the preceding year. This gives the "preceding year's general assistance millage" and a schedule of graduated matching is related to the millage amounts. For example, if the general assistance millage were not more than 2.4 mills, 50 percent matching could be provided for; if 2.8, the matching could go up to 52 percent; if 3.2, to 54 percent; and so forth. In New York, the additional reimbursement is related only to the number of persons receiving general relief in any jurisdiction. If the number exceeds 1 percent of the total population of the jurisdiction then the locality is reimbursed for the percentage of recipients over 1 percent of the population at 80 percent and for the remainder at 50 percent.<sup>1</sup>

An increasing emphasis in public assistance programs is the need for social services to assist recipients in meeting special problems and, to the extent possible, becoming self-supporting. These services in combination with financial support are aimed at the prevention and reduction of dependency. The social services

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1. New Jersey Statutes Annotated, Sections 44:8-128 and 44:8-129; New York Social Welfare Law, Section 154.

can contribute not only to minimizing or eliminating the need for financial support--more importantly, they can assist welfare recipients to become contributing members of the economy. Because of the importance of rehabilitative services to a successful assistance program, special provisions regarding them are included in the suggested act. To encourage their use and development, provision is made for a higher matching percentage by the state for funds expended to assist existing programs and services in meeting the needs of general assistance recipients or, where necessary, to provide the services and programs.

Optional sections establishing a hearing board appeal procedure for aggrieved applicants or recipients of general assistance and establishing residence requirements for general assistance are provided. Concern over the legal rights of poor has led to increasing attention directed toward the protection of those who do not have ready access to private legal counsel and advice. Among the specific issues raised is that of appeal procedures for welfare recipients or applicants. Appeal procedures are provided in the states but they usually consist of hearings by the same agencies which promulgate the basic rules pursuant to law and have general administrative responsibility for the program. The optional section establishes a hearing board administratively located in the welfare department but independent of it for policy purposes. Its organization and procedures are based on standard administrative adjudication agency models using a small claims approach. The specific jurisdiction provided can, of course, be varied. Appeal from rulings by the director of welfare might be allowed only on questions of eligibility for example. Similarly, its findings could be made final or appeal could be allowed to the state supreme court, possibly on issues of law only.

While most states retain residence requirements for public assistance programs, it has been recommended that requirements be shortened or eliminated. In 1959, the Governors' Conference urged Congress to enact a uniform one year ceiling on residence requirements and urged states to ratify an interstate compact waiving residence provisions on a reciprocal basis. At present at least four states provide general assistance without residence requirements and in 10 additional states there are special provisions for making general assistance available to those who do not meet residence requirements. While at least one state has reciprocal agreements with a number of states affecting residence requirements for general assistance, such arrangements are more common in the categorical relief programs with over a dozen states having them. The optional section includes provisions for reciprocal agreements and for granting general assistance in cases of special need to those not meeting residence requirements.

The suggested legislation does not deal with the basic organizational structure for the administration of general assistance either at the state or local level. Provision for the administra-



tion of general assistance exists in all states.<sup>2</sup> The emphasis in the suggested legislation is on providing the authority to administer a shared program of general assistance with the state government assuming at least 50 percent of the financial responsibility and exercising supervisory authority to maintain statewide standards. It is intended also to establish as close a correlation as possible with the federally aided categorical public assistance grants so that a reasonably uniform public assistance program including related social services can be administered in the states for all in need.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing for general assistance."]

(Be it enacted, etc.)

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

2        (1) ["Director"] ["Commissioner"] means the [director of  
3 public welfare] [the commissioner of public welfare].

4        (2) "Department" means the department of [public welfare].

5        (3) "General assistance" means cash payments to needy  
6 persons unable to provide themselves with a decent and health-  
7 ful standard of living who are not otherwise provided for under  
8 the laws of this state and who are willing to work but are  
9 unable to secure employment due either to physical disability  
10 or inability to find work. As provided for in this act, it  
11 may include, in place of or in addition to cash payment,  
12 assistance in goods, shelter, fuel, food, clothing, light,  
13 necessary household supplies, medical, dental, and nursing  
14 care, including drugs and medical supplies, and other necessi-  
15 ties of life. It does not include old-age assistance, aid to  
16 the blind, aid to the permanently and totally disabled, or  
17 aid to families with dependent children.

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2. However, in those states where categorical public assistance is locally administered, the local agency designated to administer general assistance should be the same as the local agency administering other public assistance if the stated objective of the act to "provide an integrated public assistance program for all needy persons" is to be met.

18 (4) "State aid" means state aid to local governments for  
19 general assistance expenditures as in this act prescribed and  
20 provided for.

21 (5) "Local agency" refers to the [identify appropriate  
22 local agency or official with responsibility for administering  
23 general assistance].<sup>1</sup>

24 [(6) "Hearing board" refers to the general assistance  
25 [public assistance] hearing board.]

1 Section 2. Public Policy Regarding General Assistance.

2 (a) The objective of this act and other public assistance  
3 acts is to provide an integrated public assistance program for  
4 all needy persons in the state.

5 (b) It is hereby declared to be the policy of this state  
6 that needy persons, unable to provide for themselves and not  
7 otherwise provided for by law, who meet the eligibility require-  
8 ments of this act and do not refuse suitable employment or  
9 training for self-support work as provided for in this act  
10 shall, while in this state, be entitled to receive such grants  
11 of general assistance and such services as may be necessary to  
12 enable them to maintain a decent and healthful standard of liv-  
13 ing. The furnishing of such assistance and services is a matter  
14 of public concern and a necessity in promoting the public health  
15 and welfare. Furnishing such assistance and services is a  
16 joint responsibility of state and local governments.

17 (c) A principal objective in providing general assistance  
18 and services shall be to aid those persons who can be so  
19 helped to become self-supporting or to attain self-care. To  
20 achieve this aim, the department shall establish such standards  
21 of assistance and services as will enable applicants and re-  
22 cipients to maintain a decent and healthful standard of living  
23 and will encourage and aid them in developing their self-  
24 reliance and realizing their capacities for self-care and self-  
25 support. The maintenance of the family shall be a principal

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1. In those states where categorical public assistance is locally administered, this should be the same agency administering other public assistance.

26 consideration in the administration of this act and all general  
27 assistance policies shall be formulated and administered so  
28 as to further this objective.

1 Section 3. Responsibility to Provide General Assistance.

2 (a) Every [identify the appropriate unit of local govern-  
3 ment] shall provide general assistance to needy persons resid-  
4 ing within its jurisdiction who meet the need [and residence]  
5 requirements of this act. General assistance shall be admin-  
6 istered according to law and rules and regulations promulgated  
7 by the department pursuant to the provisions of this act.

8 (b) State aid shall be available to [identify the appro-  
9 priate unit of local government] to reimburse part of general  
10 assistance expenditures as provided in section 9 of this act.

1 Section 4. Duties of the Department. The Department shall:

2 (1) Supervise the administration of general assistance by  
3 local agencies as provided in this act;

4 (2) Promulgate uniform rules and regulations consistent  
5 with law for carrying out and enforcing the provisions of this  
6 act to the end that general assistance may be administered as  
7 uniformly as possible throughout the state having due regard  
8 for varying costs of living in different parts of the state.  
9 Standards and operating procedures established by the depart-  
10 ment pursuant to this act shall to the extent feasible conform  
11 to similar standards and procedures for other public assist-  
12 ance programs provided for in [cite sections providing for old-  
13 age assistance, aid to the blind, aid to the permanently and  
14 totally disabled, and aid to families with dependent children].  
15 Rules and regulations shall be furnished immediately to all  
16 local agencies. [In promulgating rules and regulations, the  
17 provisions of the [cite the administrative procedures act]  
18 shall apply];

19 (3) Establish standards and requirements as to need for  
20 assistance and as to its nature and extent;

21 (4) Establish standards consistent with law for adminis-  
22 tration by local agencies of community work and training

23 programs for employable general assistance recipients;

24 (5) Allocate moneys appropriated for general assistance  
25 to [identify the appropriate local governments] qualifying  
26 therefor in the manner hereinafter provided;

27 (6) Accept and supervise the disbursement of any funds  
28 that may be provided by the federal government or from other  
29 sources for use in this state for general assistance;

30 (7) Cooperate with other agencies including any agency of  
31 the United States or of another state in all matters concern-  
32 ing the powers and duties of the department under this act;

33 (8) Take measures not inconsistent with the purposes of  
34 this act to assist in meeting special needs of individuals  
35 eligible for assistance to relieve suffering and distress  
36 arising from handicaps and infirmities; to promote their  
37 rehabilitation; to help them if possible to become self-  
38 dependent; to cooperate to the fullest extent with other public  
39 agencies empowered by law to provide vocational training, re-  
40 habilitation, or similar services; and to provide such supple-  
41 mentary funds, services, and facilities as may be found  
42 necessary for this purpose;

43 (9) Gather and study current information and report at  
44 least annually to the governor on the nature and need of  
45 general assistance, the amounts expended under the supervision  
46 of each local agency, and the work of each local agency and  
47 publish reports for the information of the public;

48 (10) Report at least annually to the governor the cost of  
49 living in the various counties, cities, and metropolitan areas  
50 as related to standards of assistance and the amounts expended  
51 for assistance, and make this information available to the  
52 public; and

53 [(11) Enter into reciprocal agreements with other states  
54 to grant general assistance to persons from such states with  
55 less than [the required period] of residence in this state.]

1 [Section 4a. Residence Requirements.

2 (a) Any person who resides within this state for a period

3 of [ ] shall be deemed to meet residence requirements for  
4 general assistance. A person may receive and continue to re-  
5 ceive general assistance for so long as he is and continues to  
6 be a resident of this state.

7 (b) If an applicant for general assistance has resided in  
8 this state for less than [the required period] and the local  
9 agency finds that the applicant will suffer undue hardship  
10 unless assistance is provided him, the local agency may, in  
11 accordance with rules and regulations of the department, pro-  
12 vide general assistance.

13 (c) If an applicant for general assistance has resided in  
14 this state for less than [the required period] and if his  
15 prior state of residence has entered into a reciprocal agree-  
16 ment with this state for the provision of general assistance  
17 he shall be entitled to receive general assistance pursuant  
18 to the reciprocal agreement.]

1 Section 5. Amount of Assistance. (a) The amount of general  
2 assistance granted to any persons shall be determined in accord-  
3 ance with local budget standards prepared pursuant to govern-  
4 ing department rules, due regard being given to the requirements  
5 and conditions existing in each case and to the income and  
6 resources available to such persons from whatever source.  
7 Grants shall be sufficient when added to the income and re-  
8 sources determined to be available to provide a reasonable  
9 subsistence compatible with health and well-being.

10 (b) Except as hereinafter otherwise prescribed, general  
11 assistance shall be granted in cash, but in individual cases  
12 where the granting of cash may be deemed impracticable, general  
13 relief may, in accordance with rules and regulations of the  
14 department, be granted in whole or in part by order. Medical,  
15 dental, and nursing care including drugs and medical materials  
16 and supplies may be granted by order.

1 Section 6. Rehabilitation Services. To aid applicants for  
2 or recipients of general assistance in becoming self-support-  
3 ing or in increasing their capacities for self-care, local

4 agencies shall encourage and assist applicants and recipients  
5 to make maximum use of facilities of public or private educa-  
6 tional, welfare, or other institutions or agencies providing  
7 rehabilitation or vocational treatment, training, or services.  
8 Where such services are not available or are insufficient, the  
9 local agencies may make funds available to existing agencies  
10 for establishing or expanding such programs and services or,  
11 if necessary, may establish and provide such services, but the  
12 expenditure of funds therefor shall be subject to the approval  
13 and supervision of the department. Approved expenditures made  
14 pursuant to this section shall be considered as reimbursable  
15 general assistance expenditures to be reimbursed as provided  
16 in section 9.

1 Section 7. Community Work and Training Programs. (a) Gen-  
2 eral assistance recipients may be required to perform such  
3 work and training as may be assigned to them by the local  
4 agencies pursuant to rules, regulations, and standards promul-  
5 gated by the department. The local agencies shall assign  
6 those general assistance recipients who in their judgment are  
7 able to perform the work indicated and benefit from the training.

8 (b) The conditions applicable to work performed by employ-  
9 able recipients of general assistance shall be the same as  
10 those pertaining to recipients of public assistance for which  
11 federal financial participation is available, [except that  
12 work required to be performed by recipients of general assist-  
13 ance may be work for a public or nonprofit private agency].<sup>2</sup>  
14 Any agency for which work is performed under the provisions of  
15 this section shall reimburse the person performing the work  
16 for any additional expenses reasonably attributable to the  
17 work or shall make provision for meeting the needs for which  
18 the expense would be incurred. The work shall be of a construc-

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2. This option should be viewed in light of constitutional provisions in any given state.

19 tive nature for the conservation of work skills and development  
20 of new skills for individuals under conditions which are de-  
21 signed to assure protection of their health and welfare.

22 (c) Any person who refuses to report for or to perform  
23 work which has been assigned by a local agency shall there-  
24 upon become ineligible for general assistance.

25 (d) Upon submission by any local agency of a plan for a  
26 community work relief and training program to the department  
27 pursuant to this section and in a manner deemed to be con-  
28 sistent with the intent of this section, payments for support  
29 to general assistance recipients participating in such programs  
30 shall be considered as a reimbursable general assistance ex-  
31 penditure.

1 Section 8. Confidentiality of Records. [Use this section  
2 to establish a policy regarding access to general assistance  
3 records consistent with that established for access to cate-  
4 gorical public assistance records.]

1 Section 9. State Aid. (a) Expenditures made by [identify  
2 the appropriate local government] for general assistance and  
3 its administration pursuant to provisions of this act shall, if  
4 approved by the department, be subject to reimbursement by the  
5 state, in accordance with the rules and regulations promulgated  
6 by the department, as follows:

7 (1) Fifty percent of the amount expended for general  
8 assistance;

9 (2) Fifty percent of the amount expended for adminis-  
10 tration of general assistance including expenditures for  
11 salaries of employees of a local agency; operation, maintenance,  
12 and service costs; and such other expenditures such as equip-  
13 ment costs, and rental values as may be approved by the depart-  
14 ment. It shall not include expenditures for capital additions  
15 or improvements nor shall reimbursements be made for the salary  
16 of any employee unless his employment is necessary for the  
17 administration of general assistance; and

18           (3) [Seventy-five] percent of special expenditures  
19 made pursuant to section 6.

20           (b) Money expended for the cost of administration of gen-  
21 eral assistance by any local agency shall not exceed amounts  
22 which have been submitted to and approved by the department  
23 and the compensation rates of all employees or persons paid  
24 from general assistance funds shall be subject to review and  
25 approval of the department.

26           (c) Claims for state reimbursements shall be made in such  
27 form and manner and at such times and for such periods as the  
28 department shall determine.

29           (d) When certified by the department, state reimbursement  
30 shall be paid to [identify appropriate local governments] from  
31 the state treasury upon the audit and warrant of the [insert  
32 the title of appropriate state official] out of funds made  
33 available therefor.

34           (d) The department is authorized in its discretion to make  
35 advances to [identify the appropriate local governments] in  
36 anticipation of the state reimbursement provided for in this  
37 section.

1           Section 10. Non-Compliance with Rules of the Department.

2           (a) If any local agency administering general assistance  
3 is, in the determination of the department, refusing or fail-  
4 ing to comply with the provisions of this act or the rules of  
5 the department, the department shall notify the local agency  
6 and [identify the appropriate local government] promptly by  
7 personal service or by registered or certified mail, citing  
8 the provision or rule which is not being observed, and give  
9 the local agency an opportunity to appear before it. If five  
10 days after receiving such notice the local agency continues  
11 to refuse or fails to comply or fails to avail itself of the  
12 opportunity offered for a hearing before the department, or  
13 if the local agency refuses or fails to comply following a  
14 hearing, the department shall, within a reasonable period of  
15 time, instruct the [state treasurer] to withhold the payment



16 of any further state aid until the local agency has established  
17 compliance. When the department finds that the local agency  
18 has taken such action as the department considers to have  
19 established satisfactory compliance with the act and with  
20 its rules, it shall instruct the [state treasurer] to resume  
21 making payment of state aid.

22 (b) If the department finds that withholding of state aid  
23 would result in undue hardship for recipients, the department  
24 may, pursuant to department rules and regulations, provide  
25 direct general assistance to recipients, including the equiva-  
26 lent of the local share, and require reimbursement from the  
27 [identify the appropriate local government] for its normal  
28 share.

1 Section 11. Appeals from Decisions and Orders and Appeals  
2 of Rules and Regulations. (a) Appeal to Department. Any  
3 applicant or recipient of general assistance aggrieved by any  
4 order or determination of the local agency may appeal from such  
5 order or determination to the department. An appeal may also  
6 be taken if an application for general assistance is not acted  
7 upon by the local agency within a reasonable period of time.  
8 Before making such appeal to the department, the applicant or  
9 recipient shall give written notice to the local agency. The  
10 local agency shall within 30 days after receipt of notice  
11 reconsider its decision. The local agency may adhere to the  
12 decision made or may modify its decision. The applicant may  
13 then, within 30 days after the making of such decision by the  
14 local agency, appeal to the department as herein provided.

15 The department shall, upon receipt of an appeal by an  
16 applicant or recipient notify the local agency and review the  
17 case, giving the applicant or recipient an opportunity for a  
18 fair hearing before the director or his legal representative,  
19 in the county in which the application was originally filed  
20 [and the decision of the director on such appeal shall be  
21 final]. All such appeals shall be in accordance with rules  
22 and regulations established by the department. The director

23 may upon his own motion review any decision made by a local  
24 agency. The director may make such additional investigation  
25 as he deems necessary and shall make such decision as to grant-  
26 ing of assistance and the amount and nature of assistance to  
27 be granted the applicant or recipient as in his opinion is  
28 justified and in conformity with the provisions of the act  
29 and the rules and regulations promulgated under it. All  
30 decisions of the director shall be binding upon a local agency  
31 and the applicant or recipient and complied with by the local  
32 agency.

33 [(b) Appeal to General Assistance [Public Assistance]  
34 Hearing Board.<sup>3</sup>

35 (1) A general assistance applicant or recipient  
36 aggrieved by a decision of the director may appeal to the hear-  
37 ing board as provided in this section.

38 (2) There is hereby established the general assist-  
39 ance [public assistance] hearing board which, for administra-  
40 tive purposes only, shall be in the department, but which shall  
41 be an independent administrative board. The board shall con-  
42 sist of a chairman and [four] members, appointed by the governor  
43 [with the consent of the state senate] [with the consent of the  
44 state legislature]. The term of each member of the hearing  
45 board shall be [five] years. The initial appointments shall  
46 be as follows: the chairman for a term of [five] years; one  
47 member for a term of [two] years; one member for a term of  
48 [three] years; one member for a term of [four] years; and one  
49 member for a term of [five] years. Vacancies on the board  
50 shall be filled for the unexpired term in the same manner as  
51 appointments to full terms.

52 (3) The hearing board shall have jurisdiction to  
53 determine all appeals from determinations of the director  
54 relative to orders or determinations of the local agencies

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3. If the hearing board appeal procedure were established for all public assistance recipients or applicants, the phrase "public assistance" could be substituted for "general assistance" throughout.

55 regarding individual welfare recipients or applicants. The  
56 hearing board may affirm, reverse, or modify any determination  
57 of the department when acting on an appeal from orders or  
58 determinations of local agencies regarding individual welfare  
59 applicants or recipients.

60 (4) Any applicant or recipient aggrieved by the dis-  
61 position of his appeal by the director may appeal therefrom to  
62 the hearing board by filing with such board a written notice  
63 of appeal and serving on the department a certified copy of  
64 such notice. In order to be valid and effective, any such  
65 notice shall be filed and served within [thirty] days of the  
66 disposition from which the appeal is to be taken.

67 (5) Consistent with this act the hearing board shall  
68 provide by rule for appearances before it and the conduct of  
69 its proceedings.

70 (6) The hearing board may hear and determine all  
71 issues of fact and of law but a determination of a local agency  
72 or the director shall be affirmed unless contrary to a  
73 preponderance of the evidence.

74 (7) The hearing board shall establish by rule a  
75 procedure which, to the greatest extent practicable, shall  
76 be informal. The board shall take special care to provide  
77 all aggrieved general assistance applicants or recipients,  
78 wherever located within the state, reasonable and convenient  
79 access to the board and shall sit at such times and places as  
80 may be appropriate to promote such accessibility. The majority  
81 of the members of the hearing board shall constitute a quorum  
82 for the transaction of its business, except that the hearing  
83 board may provide by rule for conducting hearings and taking  
84 of evidence by a single member. A vacancy on the board shall  
85 not impair its powers nor affect its duties.

86 (8) During the pending of the appeal, if the depart-  
87 ment has awarded general assistance to a recipient, the general  
88 assistance shall be paid to him pending the determination of  
89 the appeal. If the appeal shall be from the order of the

90 director raising or lowering the amount paid to a recipient  
91 and if the order shall not be sustained then the recipient  
92 shall receive the amount, if any, theretofore assigned by  
93 the local agency.

94 [(9) Use this subsection to provide procedure for  
95 appeal of hearing board determinations to state supreme  
96 court.]]

97 (c) Original Proceedings in District Court on Rules and  
98 Regulations of the Department; Appeal to the Supreme Court.

99 A local agency may question the validity of any rule or  
100 regulation of the department within 90 days of its promulgation  
101 in the [insert the name of the court of original general juris-  
102 diction for the district within which the capitol is located]  
103 district court, which shall have power to determine the valid-  
104 ity of such rule or regulation by original proceedings in the  
105 court. Either the department or the local agency may appeal  
106 from such decision to the supreme court in the same manner as  
107 other appeals in civil action.

1 Section 12. Separability. [Insert separability clause.]

1 Section 13. Effective Date. [Insert effective date.]



STATE MODEL BUILDING CODE  
AND ESTABLISHMENT OF  
STATEWIDE BUILDING CONSTRUCTION STANDARDS

There are many thousands of local jurisdictions in the United States administering and enforcing building codes with widely varying provisions. Many of the difficulties and needs in building code adoption, administration, and enforcement have been documented in a report of the Advisory Commission on Intergovernmental Relations entitled Building Codes: A Program for Intergovernmental Reform.

The Commission concluded that a widely adopted uniform building code would go far toward eliminating arbitrary restrictions which in turn add to the cost of production. Adoption of uniform building codes would stimulate initiative and innovation in the development of new construction materials and techniques by making possible a prompt, wide market for such products. It would reduce the cost of research and testing which is incurred in the development, maintenance, and servicing of building codes by local governments.

Traditionally, building code preparation, administration, and enforcement have been delegated to local governments by the states as an exercise of the states' police powers. State governments, however, still retain some jurisdiction in building regulatory matters and are frequently involved in administering minimum building and mechanical codes.

State and local governments occupy a key position in efforts to modernize building codes and to achieve uniformity. It is at the state and local levels that broad police power exists to regulate all phases of building construction. The major ultimate responsibility for administration and enforcement of building regulations must and will remain with local jurisdictions. State governments, therefore, have a significant responsibility to provide the framework within which the objectives of modernization and uniformity can be realized.

In its report, the Commission recommended preparation of a model state code and procedures for adoption and maintenance by local governments. It is the purpose of the draft legislation which follows to suggest language which will accomplish this objective. The Commission urges, at a minimum, that states not establishing a model code program, facilitate the adoption and amendment of nationally recognized models by local governments. This can be accomplished through enabling legislation authorizing adoption and amendment of codes by reference.<sup>1</sup>

The Commission also recommended the establishment of an appeals procedure through a state construction review agency to develop

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1. For suggested adoption and amendment by reference legislation see page 522 of this Program.

uniform statewide building standards by an evolutionary process as the need arises. Language to accomplish this objective is also included in the draft legislation.

Adoption of modern and uniform codes throughout a state is increasingly being achieved through the development and maintenance of model state building codes. In Connecticut, New Jersey, and New York, state agencies have been assigned responsibility for developing model building construction codes for optional adoption by local governments. The Minnesota State Building Code for Public Buildings will be available to local governments for adoption by reference in the near future. In North Carolina and Wisconsin, state agencies responsible for the mandatory minimum statewide building regulations over certain types of construction have developed optional model codes for one- and two-family dwellings, not subject to regulation under provisions of the mandatory code.

The most extensive program of state development of model building codes is that of New York. The State Building Construction Code has been adopted by more than 450 communities--nearly two-thirds of the codable municipalities in the state. Local governments may adopt the state code by simple resolution. Once adopted, however, changes of the technical provisions by a community must be approved by the state.

The provisions of the following suggested legislation to develop a model state code are based on the New York State Building Code Law (Article 18 of the Executive Law, Chapter 66 of the Laws of 1964). The provisions for establishing a building construction review authority to develop statewide standards through an appeals procedure, are based in part on Chapter 143, General Laws, Commonwealth of Massachusetts.

The model state building code provisions of the proposed act do not disturb the traditional authority of municipalities and counties for the administration and enforcement of building regulations. They do, however, make available to localities the resources of state government in developing modern, tested performance-type code provisions. The state may maintain its own research facilities and a staff of trained architects and engineers and other specialists. It can evaluate new building materials and devices and adopt appropriate standards, model codes, and product approvals of national groups to assist in keeping the state model up-to-date with the latest developments of the building industry.

The building construction review authority applicable to localities which do not adopt the model state building code would, to the extent it is brought into play through appeals by interested parties, establish standards which localities would be required to apply in the administration and enforcement of building regulations.

Sections 1 and 2 of the suggested statute deal with purpose and definitions. Section 3 of the statute provides for the establishment

of a division of building codes. The bill places the division within an existing state department rather than creating a new independent body, as many states are already involved in regulatory programs governing construction. Section 4 creates a building code advisory council for the division. The chairman of the seven-member council would be the head of the state department in order to provide adequate coordination between the council and the administrative agency. The members are appointed by the governor and one member of the council must be a registered architect or professional engineer licensed to practice within the state. The council is empowered to make recommendations, review rules and regulations of the division, and to provide advice to the division.

Section 5 empowers the division to prepare and adopt the "state building construction code." The agency is also responsible for recommending tests and approvals of materials and methods to ascertain their acceptability under the requirements of the state building construction code. It is required to issue certificates of approval for materials and building systems to guide localities adopting the state model code. This procedure maintains uniformity in the application of the state code standards and facilitates the introduction of new products and technologies.

Section 6 provides that any municipality and county in the state may adopt by resolution the state model building code. Any local government in which the state building code has become applicable, may withdraw after one year has elapsed by a simple resolution of the local legislative body. To further the objectives of uniformity, section 10 prohibits the local government from amending the model code except as authorized by the state administering agency.

Sections 7, 8, and 9, respectively, establish the legislative objectives and standards of the model code, its application, and adoption, amendment, and repeal procedures. Section 11 provides that conformance to the state model building construction code in adopting jurisdictions shall be deemed to constitute conformity to all applicable building regulations.

The draft legislation in section 12 provides for the establishment of a state level board of appeals and review, appointed by the governor, to provide an administrative avenue of relief for all those aggrieved by the decisions of local government participating in the state model code program as well as to provide relief from decisions not arising under the state model code. Section 13 prescribes the powers and duties of the board on appeals from jurisdictions adopting the state model code. The board's jurisdiction is final on all questions of fact relating to interpretation of the provisions of the state model code. The provision of a single authoritative body to which appeals can be taken is essential to promote uniform interpretation of state provisions and minimize variances introduced as a result of local enforcement. Appeals from the board's decisions may, of course, be taken to the courts for review of questions of law.

In addition to hearing appeals from localities adopting the state model code, the provisions of section 14 authorize the board to hear appeals from local decisions in localities which have not adopted the model code. Such appeals would be based on a claim that the proposed use of a material, component, system, or construction method conforms with nationally recognized standards, accepted engineering practices, and state and national model codes. Appellants could include builders, materials' manufacturers, architects, owners, and other affected parties. The purpose of this section is to facilitate the introduction of new materials of construction and building systems by providing an alternative to the costly and time-consuming procedures of approval established in each individual community not adopting the state model code. By empowering a state level agency to hear appeals from local building code actions and to approve alternatives to the materials and method of construction provided in the local code, an increased degree of building code uniformity could be achieved within the state.

Some states not wishing to establish both a state model building code program and a gradual approach to mandatory uniform standards through a construction review procedure based on appeals, may wish to consider establishing the construction board of review as an independent agency with authority to require the use of uniform building regulation standards throughout the state by issuing rulings on appeals. On the other hand, some states may choose to authorize only the model state building code program as the most feasible approach to achieving uniformity.

Section 15 places the full burden of administration and enforcement of the provisions of the state model code on the adopting jurisdictions. Each municipality and county adopting the model code is expressly authorized and empowered to: examine and approve or disapprove plans or specifications for the construction of any building; direct the inspection of such buildings during the course of construction; order the remedying of any condition found to exist in violation of the state model code; issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of buildings; collect fees in connection with issuing building permits; and prohibit construction until a permit has been issued by the local building department. Section 16 authorizes local governments to enjoin violations of any provision of the model code and section 17 establishes penalties for violation.

Section 18 expressly specifies that any municipality or county may continue to enact building regulations, except that jurisdictions accepting the state code may not adopt regulations superseding or more restrictive than the provisions of the model state code. Provisions of this section also specify that nothing in the act shall be construed as abrogating or impairing the power of any local government to enforce provisions of any building regulations, the applicable provisions of the model state code, or to punish violators.



### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize preparation of a state model building code for permissive adoption by local government and to establish a state construction review board."]

(Be it enacted, etc.)

1     Section 1. Findings and Purpose. It is essential that  
2 building codes be adopted and enforced to protect the health,  
3 safety, welfare, comfort, and security of the residents of this  
4 state but buildings should be permitted to be constructed at the  
5 least possible cost consistent with recognized standards of  
6 health and safety. Many persons in the state are unable to  
7 secure adequate housing at prices or rentals which they can  
8 afford. Such conditions are contrary to the public interest,  
9 and threaten the health, safety, welfare, comfort, and security  
10 of the people of the state. Other persons, and commerce and  
11 industry generally are affected by rising costs in the construc-  
12 tion of nonresidential buildings. Construction costs for build-  
13 ings of all types have risen to unprecedented levels.

14     Among the factors inducing high costs of construction are  
15 various laws, ordinances, rules, regulations, and codes regulat-  
16 ing the construction of buildings and the use of materials there-  
17 in. Many such requirements are obsolete and unnecessarily com-  
18 plex. They serve to increase cost, without providing correla-  
19 tive benefits or safety to owners, builders, tenants, and users  
20 of buildings. It is the purpose of this act to institute the  
21 preparation of a state code of building construction to provide,  
22 so far as may be practicable, basic and uniform performance  
23 standards. Thus, while establishing reasonable safeguards for  
24 the security, welfare, and safety of the occupants and users of  
25 buildings, the use of modern methods, devices, materials, and  
26 techniques will be encouraged. This should be effective in  
27 lowering construction costs.

28     Because it is essential that any such code be readily adapt-  
29 able to changing conditions, detailed enactment of all of the

30 provisions of such a code by legislation is impracticable.

1       Section 2. Definitions. The following words and phrases have  
2 the following meanings:

3       (1) "Advisory council" means the state building code advi-  
4 sory council created by this act.

5       (2) "Board of appeals and review" means the state building  
6 construction board of appeals and review created by this act.

7       (3) "Municipality" means any city, town, or village.

8       (4) "County" means any county in this state.<sup>1</sup>

9       (5) "Building regulations" means any law, rule, resolution,  
10 regulation, ordinance, or code, general or special, or compila-  
11 tion thereof, heretofore or hereafter enacted or adopted, by the  
12 state or any municipality, including departments, boards, bureaus,  
13 commissions, or other agencies thereof, relating to the construc-  
14 tion, reconstruction, alteration, conversion, repair, or use of  
15 buildings and installation of equipment therein. The term does  
16 not include zoning ordinances.

17       (6) "Division" means [state agency charged with preparation  
18 and promulgation of state building construction code].

19       (7) "Director" means [the head of the department or agency  
20 charged with the preparation and promulgation of the state build-  
21 ing construction code].

22       (8) "Local building regulations" means building regulations  
23 heretofore or hereafter enacted or adopted by or for any munici-  
24 pality.

25       (9) "Local building department" means the agency or agencies  
26 of any municipality charged with the administration, supervi-  
27 sion, or enforcement of building regulations, approval of plans,  
28 inspection of buildings, or the issuance of permits, licenses,  
29 certificates and similar documents, prescribed or required by  
30 state or local building regulations.

31       (10) "State agency" means any state department, board, bureau,

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1. States that do not presently authorize counties to adopt building codes and that wish to make the state model code available to them, will have to enact additional authorizing legislation.

32 commission, or agency of this state.

33 (11) "Building" means a combination of any materials, whether  
34 portable or fixed, having a roof, to form a structure for the  
35 use or occupancy by persons, animals, or property. The word  
36 "building" shall be construed as though followed by the words  
37 "or part or parts thereof" unless the context clearly requires  
38 a different meaning.

39 (12) "Equipment" means plumbing, heating, electrical, venti-  
40 lating, air conditioning, and refrigerating equipment, elevators,  
41 dumb waiters, escalators, and other mechanical additions or in-  
42 stallations.

43 (13) "Construction" means the constructions, reconstruction,  
44 alteration, conversion, repair, equipment, or use of buildings,  
45 and requirements or standards relating to or affecting materials  
46 used in connection therewith, including provisions for safety  
47 and sanitary conditions.

48 (14) "Owner" means the owner or owners of the freehold of  
49 the premises or lesser estate therein, a mortgagee or vendee in  
50 possession, assignee of rents, receiver, executor, trustee,  
51 lessee or other person, firm, or corporation, in control of a  
52 building.

53 (15) "Local legislative body" means the council, board,  
54 trustees, board of commissioners, or other legislative body  
55 charged with governing the municipality or county.

56 (16) "State building construction code" means the state  
57 building construction code provided for in section 5 hereof, or  
58 any portion thereof of limited application, and any of its modi-  
59 fications or amendments.

1 Section 3. Division of Building Codes. There is hereby  
2 created a division of building codes, hereinafter referred to  
3 as "the division," in the [appropriate state department].<sup>2</sup> The

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2. Practice varies among the states concerning statutory assign-  
ment of responsibility. Some states may wish to assign general re-  
sponsibility to an appropriate existing agency thus giving authority  
to the head of the agency to establish the necessary organizational  
structure within his agency to carry out the purposes of this act.

4 [appropriate state department] shall administer this act through  
5 the division, which shall be headed by a director appointed by  
6 the head of the [appropriate state department].

1 Section 4. Advisory Council. (a) There is hereby created  
2 a building code advisory council, hereinafter referred to as  
3 the "advisory council," of seven members to be appointed by the  
4 governor, including at least one member who is a registered  
5 architect or professional engineer, competent in the field of  
6 building regulations.

7 (b) The director shall serve as secretary of the advisory  
8 council. The governor shall select a chairman from among the  
9 members of the advisory council.

10 (c) The members of the advisory council shall serve at the  
11 pleasure of the governor. A member shall receive no compensa-  
12 tion for his services but shall be entitled to reimbursement for  
13 necessary and actual expenses incurred in his official service  
14 on the advisory council.

15 (d) The advisory council shall consider rules and regula-  
16 tions as provided in section 5 and any other matters related to  
17 the purposes of this act submitted to it by the director and may  
18 make recommendations on its own initiative to the director con-  
19 cerning the administration of this act. The advisory council  
20 shall meet at the call of the chairman or at the written request  
21 of [three] members, but it shall meet at least once a year.

1 Section 5. Powers of the Director. In addition to any other  
2 powers conferred on him by law, the director shall have the pow-  
3 er to:

4 (1) Adopt, amend, and repeal rules and regulations relating  
5 to the construction of all buildings or classes of buildings,  
6 or the installation of equipment therein, and to prescribe  
7 standards or requirements for materials to be used in connection  
8 therewith, including provisions dealing with safety and sanita-  
9 tion. Such rules and regulations shall constitute the "state  
10 building construction code" and when adopted as herein provided,  
11 shall be acceptable for the buildings to which it is applicable.

12 (2) Hold hearings relating to any aspect of or matter in the

13 administration of this act, and in connection therewith, issue  
14 subpoenas to compel the attendance of witnesses and the produc-  
15 tion of evidence.

16 (3) Issue such orders as necessary to effectuate the pur-  
17 poses of this act and enforce the same by all appropriate ad-  
18 ministrative and judicial proceedings.

19 (4) Enter, inspect, and examine buildings or premises neces-  
20 sary for the proper performance of its duties under this act.

21 (5) Study the operation of the state building construction  
22 code, local building regulations, and other laws related to the  
23 construction of buildings to ascertain their effects upon the  
24 cost of building construction and the effectiveness of their  
25 provisions for health, safety, and security.

26 (6) Recommend tests and approvals or require the testing  
27 and approval of materials, devices, and methods of construction  
28 to ascertain their acceptability under the requirements of the  
29 state building construction code and issue certification of such  
30 acceptability.

31 (7) Provide for the testing and approval of materials, de-  
32 vices, and methods of construction.

33 (8) Appoint experts, consultants, technical advisers, and  
34 advisory committees for assistance and recommendations relative  
35 to the formulation and adoption of the state building construc-  
36 tion code.

37 (9) Advise, consult, and cooperate with the advisory council  
38 and other agencies of the state, local governments, industries,  
39 and interested persons or groups.

40 (10) Make rules for the organization and internal management  
41 of the division, and for such other purposes as necessary and  
42 desirable or proper in carrying out the powers and duties of  
43 this act.

1 Section 6. Procedure for Acceptance [and Withdrawal] by  
2 Municipalities and Counties. (a) The state building construc-  
3 tion code shall be applicable in each municipality and county  
4 in the state in which the legislative body has adopted or en-  
5 acted a resolution accepting the applicability of such code and

6 shall have filed a certified copy of such resolution in the  
7 office of the division and in the office of the secretary of  
8 state. The state building construction code shall become effec-  
9 tive in such municipalities and counties upon the date fixed by  
10 the municipality or county in such resolution if the date is  
11 not more than [six months] after the date of adoption of the  
12 resolution.

13 [(b) Any municipality or county in which the state building  
14 construction code has become applicable, at any time after one  
15 year has elapsed since such code became applicable to such mu-  
16 nicipality or county by resolution of the local legislative  
17 body, may withdraw from the application of the code; but before  
18 the resolution is voted upon, the local legislative body shall  
19 hold a public hearing after giving not less than [twenty] nor  
20 more than [thirty] days' public notice together with written  
21 notice to the division of the time, place, and purpose of such  
22 hearing. A certified copy of the vote of the local legislative  
23 body thereon shall be transmitted, within [ten] days after the  
24 vote is taken to the division and to the [secretary of state]  
25 for filing in the office of the [department of state]. The  
26 resolution shall become effective at a time to be specified  
27 therein, which shall be not less than [one hundred eighty] days  
28 after the date of adoption. Upon the effective date of the  
29 resolution, the state building construction code shall no longer  
30 apply to the municipality or county except that construction of  
31 any building pursuant to a permit theretofore issued shall not  
32 be affected by the withdrawal.

33 (c) A municipality or county which has withdrawn from the  
34 application of the state building construction code, at any time  
35 thereafter, may restore the application of the code in the same  
36 manner as specified in subsection (a) of this section.]

1 Section 7. Standards for Code. The state building construc-  
2 tion code shall be designed to effectuate the general purposes  
3 of this act and the following specific objectives and standards:

4 (1) To provide reasonably uniform standards and requirements  
5 for construction and construction materials, consonant with

6 accepted standards of engineering and fire-prevention practices.

7 (2) To formulate these standards and requirements, utilize  
8 existing standards, or to formulate new standards where no  
9 adequate standard currently exists, so far as may be practicable,  
10 in terms of performance objectives, so as to make adequate per-  
11 formance for the use intended the test of acceptability.

12 (3) To permit to the fullest extent feasible, the use of  
13 modern technical methods, devices, and improvements which tend  
14 to reduce the cost of construction consistent with reasonable  
15 requirements for the health, safety, and security of the occu-  
16 pants or users of buildings.

17 (4) To encourage, so far as may be practicable, the stand-  
18 ardization of construction practices, methods, equipment, mate-  
19 rial, and techniques.

20 (5) To eliminate restrictive, obsolete, conflicting, and  
21 unnecessary building regulations and requirements which tend to  
22 increase unnecessarily construction costs or retard unneces-  
23 sarily the use of new materials, or provide unwarranted prefer-  
24 ential treatment to types or classes of materials or products  
25 or methods of construction.

1 Section 8. Limitation of Application. The director may  
2 limit the application of any rule or regulation or portion of  
3 the state building construction code so as to include or exclude:

4 (1) Specified classes or types of buildings, according to  
5 use, or such other distinctions as may make differentiation or  
6 separate classification or regulation necessary, proper, or  
7 desirable.

8 (2) Specified areas of the state based upon size, popula-  
9 tion, density, special conditions prevailing therein, or such  
10 other factors as may make differentiation or separate classifi-  
11 cation or regulation necessary, proper, or desirable.

1 Section 9. Procedure for Adoption of Rules and Regulations  
2 and Their Modification, Amendment, or Repeal. (a) No rule or  
3 regulation and no amendment or repeal of the state building  
4 construction code shall take effect except after public hearing  
5 on due notice [as provided in the state administrative procedure

6 act] [insert desired procedural details, if there is no appli-  
7 cable statute], and the advisory council has been afforded not  
8 less than [thirty] days, prior to publication of the proposed  
9 text, to comment thereon.

10 (b) Nothing in this section shall be construed to require  
11 a hearing prior to the issuance of an emergency order pursuant  
12 to sections 13 and 14 of this act.

13 (c) The text of any proposed rule or regulation or modifi-  
14 cation, amendment, or repeal of a rule or regulation shall be  
15 made available for inspection at the office or offices of the  
16 division and shall be distributed to state agencies, local  
17 building departments, state municipal law offices, and other  
18 interested persons, groups, associations, and societies as may  
19 request copies thereof.

20 (d) Every rule or regulation or modification, amendment, or  
21 repeal of a rule or regulation adopted by the director shall  
22 state the date on which it takes effect.

23 (e) Every rule or regulation or modification, amendment, or  
24 repeal of a rule or regulation, immediately after adoption,  
25 shall be certified by the director and transmitted to the [secre-  
26 tary of state] for filing in the office of the [department of  
27 state]. Upon filing, the rule or regulation or modification,  
28 amendment, or repeal of a rule or regulation shall have the  
29 force and effect of law, and the state building construction  
30 code shall be deemed amended to the extent thereof and as re-  
31 quired thereby. Copies thereof shall be sent by the director  
32 to all state, municipal, and county officers having jurisdiction  
33 over the construction of buildings affected thereby.

34 (f) The provisions of this section shall not apply to any  
35 rule or regulation applicable solely to the organization or  
36 internal management of the division.

1 Section 10. Incorporation of Different Standards by Director  
2 Upon Recommendation of a Municipality or County. The local  
3 legislative body of any municipality or county by resolution  
4 duly enacted or adopted may recommend to the director the adop-  
5 tion of rules and regulations imposing different standards for



6 construction in that municipality or county than provided gen-  
7 erally for such municipality in the state building construction  
8 code.

9 If the director finds that different standards are reasonably  
10 necessary because of special conditions prevailing within the  
11 municipality or county and that the standards conform to ac-  
12 cepted engineering and fire prevention practices and the pur-  
13 poses of this act, the director may adopt rules or regulations  
14 establishing the standards, in whole or part. The director shall  
15 have the power to limit the term or duration of such rules or  
16 regulations, to impose conditions in connection with the adop-  
17 tion thereof, and to terminate the rules and regulations at  
18 such times and in such manner as the director deems necessary,  
19 desirable, or proper.

1 Section 11. Issuance of Licenses, Permits, and Certificates.

2 Any building hereafter constructed in conformity to the provi-  
3 sions of the state building construction code and the provisions  
4 of this act shall be deemed to comply with all state, municipal,  
5 and county building regulations, unless modified by section 10,  
6 whenever the state building construction code has been adopted  
7 by a municipality or county. The owner, builder, architect,  
8 lessee, tenant or their agents, or other interested person, upon  
9 a showing of compliance with such code, may demand and obtain,  
10 upon proper payment being made therefore in appropriate cases,  
11 any permit, license, certificate, authorization, or other re-  
12 quired document, the issuance of which is authorized pursuant  
13 to any state or local building regulation, and it is the duty  
14 of the appropriate state, municipal, or county officer having  
15 jurisdiction over the issuance to issue permit, license, certi-  
16 ficate, authorization, or other required document, as provided  
17 herein.

1 Section 12. State Building Construction Board of Appeals and

2 Review. (a) There is hereby created a state building construc-  
3 tion board of appeals and review of seven members to be appointed  
4 by the governor, including at least one member who is a registered  
5 architect or professional engineer competent in the field of

6 building regulations, and one member who has had experience in  
7 the field of building inspection.

8 (b) The director shall serve as secretary of the board. The  
9 governor shall select a chairman from among the members of the  
10 board.

11 (c) The members of the board serve at the pleasure of the  
12 governor. The members shall receive no compensation for their  
13 services but shall be entitled to reimbursement for necessary  
14 and actual expenses incurred in their official service on the  
15 board. The board shall meet at the call of the chairman or at  
16 the written request of [three] members. The board, however,  
17 shall meet within [thirty] days following receipt of any appeal.

1 Section 13. Appeals Under the State Building Construction  
2 Code; Powers and Duties of the State Building Construction Board  
3 of Appeals and Review. (a) The board has exclusive and final  
4 jurisdiction of all questions of fact arising from the adminis-  
5 tration and enforcement of the state building construction code  
6 by any state agency or local building department.

7 (b) The board has the power on satisfactory proof, after a  
8 public hearing:

9 (1) To vary or modify, in whole or part, the applica-  
10 tion of any provision or requirement of the state building con-  
11 struction code if strict compliance with the provision or re-  
12 quirement would cause any undue hardship; but no variance or  
13 modification shall affect adversely provisions for health,  
14 safety, and security and equally safe and proper alternatives  
15 may be prescribed therefor.

16 (2) To reverse, modify, or annul, in whole or part,  
17 any ruling, direction, determination, or order of any state  
18 agency or local building department affecting or relating to  
19 the construction of any building, the construction of which is  
20 pursuant or purports to be pursuant to the provisions of the  
21 state building construction code.

22 (3) To review, after disapproval or upon failure to  
23 approve within sixty days after submission, any application for  
24 permission for the construction of a building pursuant to the

25 provisions of the state building construction code, or plans or  
26 specifications submitted in connection therewith; to reverse,  
27 modify, or annul the disapproval in whole or part; and to make  
28 a determination that the application or plans or specifications  
29 are in compliance with the provisions of such code. If this  
30 determination is made, the state, municipal, or county officer  
31 charged with the duty shall forthwith issue any permit, license,  
32 certificate, authorization, or other document required for the  
33 construction.

34 (c) An application for a variance, modification, reversal,  
35 annulment, or review may be made by any person aggrieved at that  
36 time, and pursuant to this procedure, conditions and rules as  
37 prescribed by the board. The board may charge and collect  
38 reasonable fees therefore and make rules governing such charges.  
39 The board shall fix a time for the hearing of an application  
40 and shall require that due notice of the time and place of the  
41 hearing be given to the applicant, the state agency or local  
42 building department involved, and other interested persons as  
43 may be concerned. Any person or a duly authorized representa-  
44 tive of any state agency or local building department may ap-  
45 pear at the hearing and be heard on the application.

46 (d) The board may subpoena all of the papers and documents  
47 constituting the record upon which the application for a vari-  
48 ance, modification, reversal, annulment, or review is based,  
49 and the state, municipal, or county officer in charge thereof  
50 shall forthwith upon receipt of the subpoena, transmit the  
51 papers and documents to the board.

52 (e) An application for a variance, modification, reversal,  
53 annulment, or review shall stay all proceedings in furtherance  
54 of the action appealed from unless there is a showing by the  
55 state agency or the local building department that a stay would  
56 involve imminent peril to life or property.

57 (f) The board, in hearings conducted under this section,  
58 shall not be bound by common law or statutory rules of evidence  
59 or by technical or formal rules of procedure.

60 (g) Applications shall be decided on promptly. In every

61 case the board shall state generally the reason or reasons for  
62 its decision.

63 (h) All decisions of the board require concurrence of at  
64 least two of its members if a minimum quorum is present to be-  
65 come effective.

66 (i) The decision of the board shall state the date on which  
67 it takes effect, and a copy thereof, duly certified by the  
68 chairman of the board, shall be filed as a public record in the  
69 office of the division and a copy thereof shall be sent to the  
70 parties and to all state agencies or local building departments  
71 affected thereby.

72 (j) The decision of the board shall be final as to all ques-  
73 tions of fact. Within [thirty] days after the mailing of notice  
74 of a decision by the board, any party in interest who appeared  
75 before the board in connection with the application may petition  
76 the [insert court of original jurisdiction] in the judicial  
77 district where the building is located for the review of ques-  
78 tions of law involved in such decision in the manner provided  
79 in [cite appropriate provisions of judicial review statute].  
80 The petitioner shall serve a copy of the petition and the ac-  
81 companying papers upon the board at least [eight] days prior to  
82 the date for which the application for relief is notices, unless  
83 a shorter time is prescribed by an order to show cause granted  
84 by the court to which application is made or a judge thereof.  
85 The board, in its discretion, may certify to the court in which  
86 the proceeding is pending questions of law involved in its deci-  
87 sion. Such proceeding to review and the questions so certified  
88 are entitled to a preference. Appeals may be taken from the  
89 decision of the court in the manner and subject to the limita-  
90 tions provided in the [judicial review statute]. It is not  
91 necessary to file exceptions to the rulings of the board. Upon  
92 final determination of the proceeding to review, the board shall  
93 enter a decision in accordance with such determination.

94 (k) A record of all decisions of the board properly indexed  
95 shall be kept in the office of the board. The record shall be  
96 open to public inspection at all time during business hours.

1        Section 14. Appeals from Municipalities and Counties Not  
2 Adopting the State Building Construction Code; Powers and Duties  
3 of the State Building Construction Board of Appeals and Review.<sup>3</sup>

4        (a) The board shall have the authority to review, upon appeal  
5 by a person aggrieved by an order, requirement, or direction of  
6 a local or state building official, the requirements and provi-  
7 sions of local or state building regulations as they apply to  
8 proposed uses of materials, components, systems, or construction  
9 methods with respect to conformity with nationally recognized  
10 standards, accepted engineering practices, or state and national  
11 model codes; but review in this section does not apply to orders,  
12 requirements, or directives issued pursuant to the state build-  
13 ing construction code.<sup>4</sup>

14        (b) Any person aggrieved by an order, requirement, or direc-  
15 tive of a municipal or county inspector of buildings, within  
16 thirty days after the service thereof, may appeal to the board  
17 for relief. The board shall examine the matter and hear the  
18 parties within [thirty] days following receipt of any appeal,  
19 and within ten days after the hearing, may alter, annul, or  
20 affirm the order, requirement, or directive. The decision of  
21 the board has the same effect as the original order, require-  
22 ment, or directive of the municipal or county inspector. If the  
23 decision annuls or alters the order, requirement, or directive  
24 of the inspector, the board shall order the inspector not to  
25 enforce his order, requirement, or directive. Copies of the  
26 decision of the board shall be transmitted to each municipality

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3. Some states may wish to proceed with the establishment of a review board independently of taking action on a model state building code. While the necessary language will vary depending on whether the board is established in an existing agency or as an independent agency, this section will provide the basis for the powers and functions of the board. Additional language will be required to specify the relation of the board's review authority to the existing building construction regulatory authority of other agencies. Consideration must be given to the extent to which the board can overrule other state agencies and local governments.

4. This proviso will not be needed for a state considering the establishment of the board without including authority for development of a model building code.

27 and county within this state to inform code enforcing jurisdic-  
28 tions that the alternative material and type or method of con-  
29 struction approved or disapproved, may or may not, as the case  
30 may be, be used for building construction.

31 (c) The board, in arriving at its decisions, shall determine  
32 whether the materials or method or system will provide adequate  
33 performance for the purposes for which the use is intended.  
34 Adequate performance shall be determined in conformity to ac-  
35 cepted standards of engineering practice and national or state  
36 model building codes. To the extent that they are applicable,  
37 the board shall apply the standards and provisions of the state  
38 model building code.<sup>5</sup>

39 (d) In arriving at its decision, the board may adopt regu-  
40 lations setting forth alternatives to the materials and to the  
41 type or method of construction specified in any ordinance, rule,  
42 or regulation, in any special law applicable to a municipality  
43 or county, related to the construction, reconstruction, altera-  
44 tion, and repair, demolition, removal, use, or occupancy, and to  
45 the standards of materials to be used in construction, recon-  
46 struction, alteration, repair, demolition, removal, use, or  
47 occupancy, or buildings or other structures in any municipality  
48 or county. These alternatives shall provide adequate perform-  
49 ance for the purposes for which their use is intended. Adequate  
50 performance shall be determined in conformity to accepted stand-  
51 ards of engineering practice as to the materials and type or  
52 method of construction therein referred to. And, to the extent  
53 that they are applicable, the board shall apply the standards  
54 and provisions of the state model building code.<sup>6</sup> The board  
55 shall deposit a certified copy of the regulations with the  
56 [secretary of state].

57 (e) Upon the deposit of the regulations with the [secretary  
58 of state], the regulations shall be used in reviewing the

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5. This sentence will not be applicable to a state considering establishment of a building construction board of appeals and review without including authority for development of a model building code.

6. See footnote 5.

59 decisions of local government officials and agencies rendered  
60 pursuant to [appropriate statutory authority permitting local  
61 governments to adopt building codes]. Copies of the regulations  
62 of the board shall be transmitted to each municipality within  
63 this state.

1       Section 15. Administration. (a) The examination and ap-  
2 proval or disapproval of plans and specifications, the issuance  
3 and revocation of building permits, licenses, certificates, and  
4 similar documents, the inspection of buildings and the adminis-  
5 tration and enforcement of building regulations shall continue  
6 to be the responsibility of the municipalities and counties of  
7 the state. Except as otherwise expressly provided herein, the  
8 administration and enforcement of the provisions of the state  
9 building construction code are the responsibility of the munici-  
10 palities and counties as prescribed by local law or ordinance.  
11 All provisions of law relating to the administration and enforce-  
12 ment of local building regulations in any municipality or county  
13 shall be applicable to the administration and enforcement of the  
14 state building construction code in such municipality or county.

15       (b) For and in aid of the administration and enforcement of  
16 the state building construction code, and in addition to and not  
17 in limitation of powers heretofore or hereunder vested in them  
18 by law, each municipality or county of the state may:

19           (1) Examine and approve or disapprove plans and speci-  
20 fications for the construction of any building, the construction  
21 of which is pursuant or purports to be pursuant to the provi-  
22 sions of the state building construction code, and direct the  
23 inspection of such buildings during and in the course of con-  
24 struction.

25           (2) Require that the construction of the building be  
26 in accordance with the applicable provisions of the state build-  
27 ing construction code, subject to the powers of variance or modi-  
28 fication granted to the board in sections 13 and 14 of this act.

29           (3) Order in writing the remedying of any condition  
30 found to exist in, on, or about any building in violation of  
31 the state building construction code. Orders may be served upon

32 the owner or his authorized agent personally or by sending by  
33 registered mail a copy of the order to the owner or his author-  
34 ized agent at the address set forth in the application for per-  
35 mission for the construction of the building. Any local build-  
36 ing department, by action of an authorized officer thereof, may  
37 grant in writing such time as may be reasonably necessary for  
38 achieving compliance with the order.

39 (4) Issue certificates of occupancy, permits, licenses,  
40 and such other documents in connection with the construction of  
41 the buildings as required by building regulations or which the  
42 director may deem necessary, desirable, or proper. A certifi-  
43 cate of occupancy for a building constructed in accordance with  
44 the provisions of the state building construction code shall  
45 certify that such building conforms to the requirements of the  
46 building regulations applicable to it. The certificate shall  
47 be in such form as the director prescribes. Every certificate  
48 of occupancy, unless and until set aside or vacated by the board  
49 or a court of competent jurisdiction, is binding and conclusive  
50 upon all state, municipal, and county agencies, as to all mat-  
51 ters therein set forth and no order, directive, or requirement  
52 at variance therewith may be made or issued by any other state,  
53 municipal, or county agency.

54 (5) Make, amend, and repeal rules for the administra-  
55 tion and enforcement of the provisions of this section, and for  
56 the collection of reasonable fees in connection therewith, which  
57 fees shall be comparable to fees imposed or prescribed by exist-  
58 ing local building regulations.

59 (6) Prohibit the commencement of construction until a  
60 permit therefore has been issued by the local building depart-  
61 ment after a showing of compliance with the requirements of the  
62 applicable provisions of the state building construction code.

1 Section 16. Injunction and Abatement of Illegal Construction.

2 If the construction of a building is pursuant, or is purported  
3 to be pursuant to the provisions of the state building construc-  
4 tion code, the construction or use thereof in violation of any  
5 provision of the state building construction code or any lawful



6 order of a local building department made thereunder may be en-  
7 joined by a judge of the [insert county court of original juris-  
8 diction] in the judicial district in which the building is  
9 located on the petition of an appropriate municipal or county  
10 officer or any other person aggrieved thereby, and the removal  
11 of the building or its abatement as a public nuisance may be  
12 ordered.

1 Section 17. Penalties for Violation. Any person, having  
2 been served with an order pursuant to the provisions of section  
3 15(b)(3), who fails to comply with the order within [thirty]  
4 days after service or within the time fixed by the local build-  
5 ing department for compliance, whichever is the greater, and  
6 any owner, builder, architect, tenant, contractor, subcontractor,  
7 construction superintendent, or their agents, or any other per-  
8 son taking part or assisting in the construction or use of any  
9 building who knowingly violates any of the applicable provisions  
10 of the state building construction code or any lawful order of  
11 a local building department made thereunder shall be punishable  
12 by [a fine of not more than [five hundred] dollars, or [thirty]  
13 days in jail, or both] [civil penalty of [ ] dollars per day  
14 during the continuance of the violation].

1 Section 18. Local Building Regulations. (a) Nothing in  
2 this act shall be construed as prohibiting any municipality or  
3 county from adopting or enacting any building regulations re-  
4 lating to any building within its limits, but no municipality or  
5 county in which the state building construction code has been  
6 accepted and is applicable may have the power to supersede,  
7 void, or repeal or make more restrictive any of the provisions  
8 of this act or of the rules and regulations adopted by the di-  
9 vision hereunder.

10 (b) Nothing in this act shall be construed as abrogating or  
11 impairing the power of any municipality or county or local build-  
12 ing department to enforce the provisions of any building regu-  
13 lation, or the applicable provisions of the state building con-  
14 struction code, or to prevent violations or punish violators  
15 thereof, except as otherwise expressly provided in this act.

1     Section 19. Separability. [Insert separability clause.]

1     Section 20. Effective Date. [Insert effective date.]

## STATE LICENSING OF BUILDING INSPECTORS

Adequate enforcement of building regulations is of direct concern to state governments in their exercise of the police power to protect the health and safety of their citizens. Building inspection requires technical competence to administer modern performance-type codes, and advances expected in building technology demand a more expert knowledge of a wide variety of building practices and materials. Recognizing the need for qualified personnel to meet these demands, the Advisory Commission on Intergovernmental Relations recommended in its report, Building Codes: A Program for Intergovernmental Reform, that professional qualifications be established for building inspectors and that they be licensed by the state.

The suggested legislation authorizes the creation of a state licensing board empowered to establish qualifications for certified building inspectors and to license candidates who establish their fitness on the basis of examinations. The bill attempts to meet objections sometimes raised regarding occupational licensing programs by: (a) clearly establishing that the primary purpose of the legislation is to protect the public health and safety and (b) making the membership of the licensing board representative of the broad public interest.

The bill establishes procedures for the certification of any person using the title of professional building inspector or certified building inspector, electrical inspector, mechanical inspector, and gives recognition to trainees. It provides that all building inspection for state or local governments be performed under the direct supervision of a certified inspector.

The proposal does not contemplate licensing persons responsible for inspection of buildings with respect to maintenance standards such as those contained in housing codes. It does require, however, that inspections of new construction, alterations, or renovations be performed by licensed inspectors. In jurisdictions where both types--maintenance and new construction--of inspections are performed by the same personnel, inspectors are required to be licensed. Where inspection staff responsibilities are separated, maintenance inspectors are exempt from the provisions of this act.

Section 3 establishes a seven-member board appointed by the governor, and serving at his pleasure. At least one of the members must be a licensed certified inspector. The chairman of the board is designated by the governor. It is suggested that the board be established in an existing state agency responsible for building regulation or in a centralized occupational licensing department if one exists, rather than creating an independent agency.

Section 4 provides that the head of the state agency in which the board is established be designated as secretary. The secretary is empowered to appoint personnel or provide staff services necessary to assure the efficient operation of the board to carry out its

responsibilities. The board is required to adopt rules and regulations for the discharge of its responsibilities and all meetings must be open to the public. Section 5 specifies the penalty for illegal use of the title "certified inspector."

Five categories for licenses are established in section 6, including: professional building inspector; certified building inspector; certified electrical inspector; certified mechanical inspector; and trainees for certified inspector. While the categories reflect varying degrees of responsibility, training, and experience, the draft bill attempts to ensure open entry into the field. There are no major barriers to the right of an individual to become a certified inspector if he is acquiring experience in building inspection. Public agencies, of course, may develop training programs for sub-professional inspection personnel to encourage trainees to qualify for certification.

Section 7 establishes procedures for disciplinary action. All proceedings of the board must be conducted in accordance with the state administrative procedure act. Grounds for disciplinary action are specified in subsection 7(c).

The board is authorized in section 8 to establish fees for examinations, issuance of licenses, and renewal of licenses. Revenue from such fees is to be deposited in the general fund of the state. Section 9 includes optional language to those states that may wish to certify automatically without examination all those persons holding positions as building inspectors at the time of the adoption of the act.

Section 10 establishes qualifications for building inspectors employed by state and local code enforcing agencies. Such persons are required to hold the appropriate certified inspector's certificate in one of the five categories specified in section 6. Finally, section 11 provides for possible judicial review of all final administrative actions of the board.

It can be expected that under a state licensing program, salaries of local building inspectors would have to be increased to attract candidates with necessary qualifications. States may also wish to consider a program of state salary supplements to accompany the adoption of licensing as authorized in the draft bill, "State Assistance to Local Governments for Building Inspection," on page

#### Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1     Section 1. Purpose. Because recent advances in building

2 technology require expert knowledge of a wide variety of build-  
3 ing practices and materials and because of the need for compe-  
4 tent officials properly to carry out their responsibilities in  
5 the interest of the public health, safety, and welfare in ad-  
6 ministering and enforcing modern performance-type building codes,  
7 it is the purpose of this act to establish procedures for the  
8 certification of any person holding a position as a building  
9 inspector, electrical inspector, or mechanical inspector.<sup>1</sup> It  
10 is the further purpose of this act to require all persons per-  
11 forming duties with respect to the inspection of building con-  
12 struction for any state agency or department or for any politi-  
13 cal subdivision within this state to be licensed as certified  
14 inspectors as provided in this act.

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

2 (1) "Board" means state board of building inspectors.

3 (2) "Building" means a structure built, erected, and framed  
4 of component structural parts, designed for the housing, shel-  
5 ter, enclosure, occupancy, use, and support of individuals,  
6 animals, or property of any kind.

7 (3) "Building inspection" is the inspecting of the workman-  
8 ship, materials and manner of construction of buildings and  
9 structures and the examination and approval of plans and speci-  
10 fications, to determine whether prescribed standards are met by  
11 such workmanship, materials and manner of construction, [and to  
12 determine whether there is compliance with zoning, platting,  
13 and subdivision regulations].

14 (4) "Certified inspector" means a person licensed under this  
15 act to engage in the profession of inspecting the workmanship,  
16 materials and manner of construction of buildings and structures,  
17 or portions of buildings and structures, to determine whether  
18 prescribed standards are met by such workmanship, materials and  
19 manner of construction.

1 Section 3. Establishment. (a) There is hereby established

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1. Some states may wish to add additional positions.

2 in the [appropriate state agency or department]<sup>2</sup> a state board  
3 of building inspectors, which shall consist of seven members  
4 appointed by the governor to serve at his pleasure, at least  
5 one of whom shall be a certified inspector in this state. The  
6 governor shall designate one of the members as chairman.

7 (b) The members of the board shall serve without compensa-  
8 tion. Each member shall receive necessary travel and other ex-  
9 penses incurred in the actual performance of his duties. Before  
10 entering upon the discharge of his duties, each member of the  
11 board shall take and subscribe the oath of office and file it  
12 with the [secretary of state].

1 Section 4. Organization. (a) The [appropriate state offi-  
2 cial]<sup>3</sup> shall serve as secretary to the board and shall appoint  
3 personnel or provide staff services adequate for the efficient  
4 operation of the board to carry into effect the provisions of  
5 this act.

6 [(b) The board shall adopt a seal for its own use. The  
7 seal shall have the words "state board of building inspectors"  
8 inscribed thereon.]

9 (c) The secretary shall have the care and custody of the  
10 seal. The secretary shall keep an accurate record of all pro-  
11 ceedings of the board, which shall be open to inspection by the  
12 public at all reasonable times.

13 (d) The board shall adopt necessary rules and regulations  
14 for the discharge of its responsibility. All meetings of the  
15 board shall be open and public, except that executive sessions  
16 of the board may be held to discuss and prepare examination  
17 questions and to grade the examinees.

18 (e) The [board] [appropriate state official] shall refer  
19 alleged violations to [the appropriate state official].

20 (f) The board may, in accordance with the provisions of

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2. E.g., a department with responsibility for building codes, mechanical codes, etc., or a centralized occupational licensing department as proposed in the 1953 Program of Suggested State Legislation of the Council of State Governments.

3. The head of the state agency or centralized occupational licensing department, as the case may be. See preceding footnote.

21 [cite appropriate state administrative procedure act] adopt,  
22 amend, or repeal such rules and regulations as are reasonably  
23 necessary to govern the examinations of applicants for certifi-  
24 cation as certified inspectors.

1     Section 5. Application of Act. (a) It shall be unlawful  
2 for any person, on and after [effective date],<sup>4</sup> without  
3 possessing a valid certificate, to use the title or term, "cer-  
4 tified inspector," or to use, without possessing such a valid  
5 certificate, the title or term "professional building inspector,"  
6 "certified building inspector," "certified electrical inspector,"  
7 "certified mechanical inspector," or "trainee for certified in-  
8 spector" in any sign, card, listing, advertisement, or in any  
9 other manner that would imply or indicate that he is a certi-  
10 fied inspector licensed under this act. Violation of this sub-  
11 section shall constitute a misdemeanor, punishable by a fine of  
12 not less than \$[     ] nor more than \$[     ] or by imprisonment  
13 in the county jail not exceeding [     ], or by both such fine  
14 and imprisonment.

1     Section 6. Issuance of Certificates. (a) Subject to the  
2 rules and regulations governing examinations, a candidate for  
3 a certificate of a type issued under this act shall be entitled  
4 to an examination for such a certificate if he meets the quali-  
5 fications prescribed by this section for the certificate. Be-  
6 fore taking the examination, he shall file his application with  
7 the secretary and pay the application fee as may be established  
8 by the board.

9             (1) A candidate for a certificate as a "professional  
10 building inspector" shall meet one of the following qualifica-  
11 tions:

12                     (i) be a registered civil engineer, mechanical  
13 engineer, electrical engineer, or architect, or

14                     (ii) have completed [four] years of technical or  
15 university training in the field of civil engineering, mechanical

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4. Leave sufficient time to permit organization of the agency and development and administration of the initial examination under the act.

16 engineering, electrical engineering, or architecture and have  
17 had at least [two] years of building inspection experience.

18 (2) A candidate for a certificate as a "certified  
19 building inspector" shall have a high school education or the  
20 equivalent thereof or formal schooling and actual experience  
21 and shall also meet one of the following qualifications:

22 (i) have been a journeyman building trades crafts-  
23 man for at least [four] years, at least [two] years of which  
24 were as a building trades craftsman foreman; and, in addition,  
25 have had at least [two] years of service as a building inspec-  
26 tor, or

27 (ii) have been a journeyman building trades crafts-  
28 man for at least [four] years and have had at least [three]  
29 years of service as a building inspector, or

30 (iii) have had at least [six] years of building  
31 inspection experience.

32 (3) A candidate for a certificate as a "certified  
33 electrical inspector" shall have a high school education or the  
34 equivalent thereof in formal school and actual experience, and  
35 shall also meet one of the following qualifications:

36 (i) have been a journeyman electrician for at  
37 least [four] years, at least [two] years of which were as an  
38 electrician foreman, and in addition have had at least [two]  
39 years of service as a building inspector of electrical systems,  
40 or

41 (ii) have been a journeyman electrician for at  
42 least [four] years and have had at least [three] years of serv-  
43 ice as a building inspector of electrical systems, or

44 (iii) have had at least [six] years of experience  
45 inspecting building electrical systems.

46 (4) A candidate for a certificate as a "certified  
47 mechanical inspector" shall have a high school education or the  
48 equivalent thereof in formal schooling and actual experience,  
49 and shall also meet one of the following qualifications:

50 (i) have been a journeyman plumber, refrigeration  
51 man, sheet metal man, or steamfitter for at least [four] years,



52 at least [two] of which were as a foreman, and in addition have  
53 had at least [two] years service as a building inspector of  
54 plumbing, heating, ventilating, or air-conditioning systems, or

55 (ii) have been a journeyman plumber, refrigeration  
56 man, sheet metal man, or steamfitter for at least [four] years  
57 and have had at least [three] years service as a building in-  
58 spector of plumbing, heating, ventilating, air-conditioning  
59 systems, or

60 (iii) have had at least [six] years of experience  
61 inspecting building, plumbing, heating, ventilating, or air-  
62 conditioning systems.

63 (5) A "trainee for certified inspector" shall have a  
64 high school education or the equivalent thereof in formal  
65 schooling or actual experience.

66 Public agencies may establish training programs for  
67 certified inspectors. The board shall promulgate rules and  
68 regulations establishing procedures for approving training pro-  
69 grams under which trainees may acquire the necessary experience  
70 to qualify for certified inspector. A trainee acquiring in-  
71 spection experience in an approved program to qualify for certi-  
72 fication as a certified inspector shall perform his services  
73 under the direct supervision of a certified inspector who is a  
74 holder of a certificate of the type issued in paragraphs (1),  
75 (2), (3), and (4) of this subsection. Such experience shall be  
76 deemed to meet inspection experience requirements of this sub-  
77 section.

78 (b) The board, from time to time, may establish additional  
79 categories of inspectors and provide for the qualifications  
80 thereof as may be determined expedient and necessary.

81 (c) The board shall ascertain by written examination that  
82 an applicant is qualified for a certificate of the type for  
83 which he has applied by his knowledge and understanding of the  
84 work performed by inspectors in the field covered by the certi-  
85 ficate. If the applicant's examination is satisfactory, and if  
86 the board finds that the applicant is of good moral character,  
87 upon the payment of the certificate fee fixed by this act, the

88 secretary shall issue a certificate to the applicant, signed by  
89 the chairman and the secretary, sealed with the seal of the  
90 board, showing that the person named therein passed the examin-  
91 ation and is entitled to practice as a designated type of cer-  
92 tified inspector in this state, in accordance with the provi-  
93 sions of this act. The board may deny or refuse to issue a  
94 certificate to an applicant upon proof of the commission by the  
95 applicant of any act or omission which would constitute grounds  
96 for disciplinary action under this act if committed by a certi-  
97 fied inspector.

98 (d) The board shall keep a record of the names and addresses  
99 of all certificate holders and such additional personal data as  
100 the board may require. A proper index and record of each cer-  
101 tificate issued shall be kept by the board. Each certificate  
102 shall contain such identifying information as the board may re-  
103 quire. Certificates issued to practice as a certified inspector  
104 within the provisions of this act shall be periodically reviewed  
105 by the board. Certificates shall be renewable until revoked or  
106 suspended for cause. A duplicate certificate to practice as a  
107 certified inspector in place of one which has been lost, de-  
108 stroyed, or mutilated, shall be issued upon proper application,  
109 subject to the rules and regulations of the board. A duplicate  
110 certificate fee fixed by this act shall be charged for the  
111 issuance of such duplicate certificate.

1 Section 7. Discipline. (a) The board may upon its own  
2 motion, and shall upon the verified complaint in writing of any  
3 person, investigate the actions of any certified inspector, and  
4 may suspend for a period not exceeding one year, or may revoke,  
5 the certificate of any certified inspector who is found guilty  
6 of any one or more of the acts or omissions constituting grounds  
7 for disciplinary action under this act. Every accusation  
8 against a certified inspector shall be filed within a six month  
9 period, during which the inspector is within the jurisdiction  
10 employing him, after discovery of the act or omission alleged  
11 as the ground for disciplinary action, and with respect to an  
12 accusation alleging a violation of subsection (c)(8) of this

13 section, the accusation shall be filed within a six month peri-  
14 od, during which the inspector is within the jurisdiction em-  
15 ploying him, after the discovery by the board of the alleged  
16 facts constituting the fraud of misrepresentation prohibited by  
17 subsection (c)(8) of this section. If any such accusation is  
18 not filed within the time provided in this subsection, no action  
19 against a certified inspector shall be commenced under the pro-  
20 visions of this section.

21 (b) All proceedings for the suspension or revocation of  
22 certificates under this act shall be conducted [in accordance  
23 with the state administrative procedure act]. The board shall  
24 have all the powers granted therein. After revocation of a  
25 certificate upon any of the grounds set forth in this act, the  
26 board may not renew or reissue such certificate; however, a  
27 person may file with the board a new application for an examin-  
28 ation. Upon showing that all loss caused by the act or omission  
29 for which the certificate was revoked has been fully satisfied  
30 and that all conditions imposed by the decision of revocation  
31 have been complied with, the board, at its discretion, may  
32 issue a new certificate.

33 (c) A certificate may be suspended or revoked if the board  
34 determines that the holder:

35 (1) Is practicing in violation of the provisions of  
36 this act.

37 (2) Has obtained the certificate by fraud or misrepre-  
38 sentation, or the person named in the certificate has obtained  
39 it by fraud or misrepresentation.

40 (3) Is impersonating a certified inspector or former  
41 certified inspector of the same or similar name, or is practic-  
42 ing under an assumed, fictitious, or corporate name.

43 (4) Has aided or abetted in practice as a certified  
44 inspector any person not authorized to practice as a certified  
45 inspector under the provisions of this act.

46 (5) Has been guilty of fraud or deceit in practice as  
47 a certified inspector.

48 (6) Has been guilty of negligence or willful misconduct

49 constituting grounds for disciplinary action in practice as a  
50 certified inspector.

51 (7) Has been guilty of gross incompetence.

52 (8) Has affixed his signature to a report of inspection  
53 or other instrument of service where no inspection has been made  
54 by him or under his immediate and responsible direction, or has  
55 permitted his name to be used for the purpose of assisting any  
56 person, not a certified inspector, to evade the provisions of  
57 this act.

58 (d) The conviction of a felony in connection with the prac-  
59 tice as a certified inspector constitutes grounds for revocation  
60 or suspension of a certificate. A plea or verdict of guilty or  
61 a conviction following a plea of nolo contendere made to a  
62 charge of a felony is deemed to be a conviction within the mean-  
63 ing of this section. The board may order the certificate sus-  
64 pended or revoked or may decline to issue a certificate if the  
65 time for appeal has elapsed or the judgment of conviction has  
66 been affirmed on appeal or if an order granting probation is  
67 made suspending the imposition of sentence irrespective of a  
68 subsequent order under the provisions of [cite appropriate sec-  
69 tion of penal code] allowing the person to withdraw his plea of  
70 guilty and to enter a plea of not guilty, or setting aside the  
71 verdict of guilty, or dismissing the accusation, information or  
72 indictment.

1 Section 8. Fees. The board may establish examination, li-  
2 cense, and renewal fees as may be necessary to execute the pur-  
3 poses of this act. Such fees shall be deposited in the general  
4 revenue fund of the state.

1 Section 9. Temporary Provisions. (a) Notwithstanding the  
2 provisions of section 3, it is not required that there be at  
3 least one licensed certified inspector on the board during the  
4 first [four] years after the effective date of this act; how-  
5 ever, there shall be at least one member with all the other  
6 qualifications specified in this act for a type of certificate,  
7 except a trainee for certified inspector, which is issued under  
8 this act.

9 (b) For the first two years subsequent to the effective date  
10 of section 10, trainees for certified inspector may credit  
11 experience acquired in inspection duties prior to effective date  
12 of section 10 toward minimum experience qualifications set forth  
13 in paragraphs (1), (2), (3), and (4) of section 6(a).

14 [(c) Notwithstanding any other provisions of this act, any  
15 person holding a position upon the effective date of this act  
16 as a building inspector, electrical inspector, or mechanical  
17 inspector, or any field of inspection provided for by this act,  
18 shall be entitled to receive a certified inspector's certificate  
19 in the appropriate inspector's classification set forth in para-  
20 graphs (2), (3), and (4) of section 6(a), if he files an appli-  
21 cation therefor.]

1 Section 10. Qualifications for Local and State Building In-  
2 spectors. After [appropriate date], all building inspection  
3 duties performed on behalf of any [county, city, village,  
4 borough] or of the state shall be performed by a holder of a  
5 certified inspectors' certificate pursuant to section 6(a)(1),  
6 (2), (3), and (4) of this act. Trainees for certified inspector  
7 shall perform their services under the direct supervision of a  
8 certified inspector.

1 Section 11. Judicial Review. All final administrative deci-  
2 sions of the board hereunder shall be subject to judicial review  
3 pursuant to the laws of this state.

1 Section 12. Separability. [Insert separability clause.]

1 Section 13. Effective Date. [Insert effective date.]

STATE ASSISTANCE TO LOCAL GOVERNMENTS  
FOR BUILDING INSPECTION

The states have a significant responsibility to provide the framework and machinery within which the objectives of modernization and uniformity of building codes can be realized. The adoption of modern, up-to-date local building codes and competent administration and enforcement of such codes are matters of statewide concern in the protection of the health and safety of its citizens.

The report of the Advisory Commission on Intergovernmental Relations, Building Codes: A Program for Intergovernmental Reform, indicates those building regulatory practices of a governmental nature that tend to inhibit the advancement of housing and building technology. Among the several recommendations for federal, state, and local action are those to improve the quality of administration and personnel at the local level. The draft bill, "State Model Building Code" on page        of this publication, would encourage uniformity of building codes through local adoption of a statewide model code and establishment of a state-level appeals and review agency for interpretation of local building codes decisions. To professionalize building inspection, a draft bill, "State Licensing of Building Inspectors," on page        has been prepared.

The following suggested act gives the state a positive role in upgrading and improving the quality of local building code administration. It includes five assistance programs that could be undertaken by state government. The state is authorized to: provide technical and advisory assistance on the adoption, administration, and enforcement of building codes; provide financial assistance to supplement salaries of local building inspectors; provide inspection services by the state to local governments on a reimbursable basis; establish minimum staffing requirements for local building inspection services; and conduct training programs for building officials.

Section 1 sets forth briefly the purpose of the act and section 2 deals with definitions.

Section 3 authorizes establishment of technical and financial assistance to local governments. Subsection (b) empowers the state agency to provide technical assistance, on request, to local governing bodies. Such assistance could include: serving as a clearing-house of information for the benefit of local government about the problems of building code administration and enforcement; reviewing proposed local building regulations; promoting the use of up-to-date methods for sound building inspection programs; studying the problems affecting building code programs of local government and recommending to the governor and legislature such changes as may seem necessary to strengthen local government building inspection practices.

Subsection (c) authorizes the state agency to supplement salaries of local building inspectors. Grants may be made to individual local governments for expenditures incurred for salaries of building

inspectors. Recent examples of state salary supplement programs can be cited for tax assessors in Maryland and for sewage treatment plant operators who meet state technical qualifications in New York. The availability of state money for this program could be related to minimum staffing requirements as suggested in section 5 of the suggested act. The eligibility criteria to qualify for the supplement program are based on local financial resources, including income from permit fees, number of building permits issued and dollar value of construction.

Section 4 of this act authorizes the state agency to provide building inspection services on a reimbursable basis to those local governments unable to maintain satisfactory performance either because of inadequate staff or fiscal resources, or both. The state agency then bills the local government for the cost of providing inspection services. This program may be used to assure continuance of local inspection programs in cases where local governments did not meet state mandated minimum staffing requirements as authorized in section 5.

To advance the level of competence of local inspection practices, section 5 authorizes the state agency to establish minimum staffing requirements for all local governments. Such requirements may lead to some difficulties for the smaller jurisdictions if they are required to employ full-time officials. There are, however, several alternative ways in which this difficulty can be overcome. Two or more small municipalities may jointly employ a single inspector or enter into an agreement with the county for part-time employment of an inspector; or they might employ a professional consultant, or join with several other jurisdictions for the purpose of building code administration. The salary supplement program, authorized in section 3, could be utilized in some instances, to help local governments meet the state's minimum staffing requirements by making employment more attractive to qualified persons.

Section 6 authorizes the state to conduct training and educational programs on building inspection. The state agency is authorized to cooperate with associations of public officials, professional building officials organizations, university faculties, and others in formulating and administering such programs. Pre-entry and in-service training of building inspectors is an indispensable prerequisite for code enforcement programs. Competent, knowledgeable inspectors, with an established reputation for honesty and sound judgment are a priceless asset and should be considered the precondition for the ideal development of building code enforcement programs. Extension courses, correspondence courses, and seminars conducted by universities have been undertaken in a few states, such as Connecticut, New York, New Jersey, Pennsylvania, and North Carolina. These courses usually have been joint undertakings of a college or university and one of the national or state building officials organizations. Finally, in those states establishing a licensing program for building inspectors, the state licensing board and the state agency responsible for training, should cooperatively develop training programs designed to qualify candidates for an inspector's license.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1     Section 1. Purpose. It is hereby declared to be the public  
2 policy of this state to protect the health and safety of its  
3 citizens through improved administration and enforcement of  
4 building codes. Recent advances in building technology demand  
5 increasingly expert knowledge by building officials of a wide  
6 variety of building practices and materials and place additional  
7 demands on the capabilities and resources of local governments  
8 in maintaining adequate building inspection services. It is the  
9 purpose of this act to aid local governments in the performance  
10 of their responsibilities in administering and enforcing building  
11 codes by providing state assistance, including: technical and  
12 advisory assistance in the adoption, administration, and enforce-  
13 ment of building codes; financial assistance to supplement  
14 salaries of local building inspectors; provision of state in-  
15 spection services to local governments on a reimbursable basis;  
16 and provision of training courses in building inspection for  
17 local and state building officials. It is also the purpose of  
18 this act to assure adequate performance of building inspection  
19 services by establishing minimum staffing requirements for local  
20 government building inspection.

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

2     (1) "Local government" means any county, city, village, or  
3 town within this state.

4     (2) "Agency" means [insert name of the appropriate state  
5 agency or state government].<sup>1</sup>

6     (3) "Building code" means building regulations heretofore  
7 or hereafter enacted or adopted pursuant to [cite appropriate  
8 statutes enabling local governments to adopt and enforce

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1. The agency charged with this function will vary from state to state. Normally, it would be located in one of the functions assigned to an existing agency responsible for building codes, local affairs, or local planning and development assistance.



9 building codes].

10 (4) "Certified inspector" means a person licensed to engage  
11 in the inspection of workmanship, materials, and manner of con-  
12 struction of buildings and structures to determine whether pre-  
13 scribed standards are met.<sup>2</sup>

1 Section 3. State Technical and Financial Assistance. (a)  
2 Purpose. It is the intent of this section to provide technical  
3 assistance to local governments in drafting, adopting, adminis-  
4 tering, and enforcing building codes and financial assistance  
5 in the form of grants to supplement salaries of local building  
6 inspection personnel.

7 (b) Authorization of State Technical Assistance. The agency  
8 is authorized and directed to provide technical and advisory  
9 assistance regarding the adoption, administration, and enforce-  
10 ment of building codes to local governments on request. In pro-  
11 viding this assistance the agency is authorized and directed:

12 (1) To serve as a clearinghouse, for the benefit of  
13 local governments, of information concerning the problems of  
14 building code administration and enforcement.

15 (2) To provide, on request, advisory review of pro-  
16 posed local building regulations, including technical and legal  
17 evaluation.

18 (3) To promote the use by local governments of such  
19 methods for sound building inspection programs as modern per-  
20 formance-type codes and regulations, competent staffing, and in-  
21 service training.

22 (4) To study problems that affect building code pro-  
23 grams of local government and to recommend to the governor and  
24 the legislature such changes as may seem necessary to maintain  
25 and strengthen local government building inspection practices.

26 (5) To supply, when requested, information, advice and  
27 assistance to governmental and civic groups which are studying  
28 problems of local government inspection practices.

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2. Draft legislation to provide for the licensing of building inspectors, "State Licensing of Building Inspectors," may be found on page 289 of this publication.

29           (6) To consult and cooperate with other state agencies,  
30 with local governments and officials, and with federal agencies  
31 and officials, in carrying out the purposes of this subsection.

32           (c) Salary Supplements for Local Building Code Inspectors.<sup>3</sup>

33           (1) The agency is hereby authorized to make grants to  
34 local governments to supplement salaries of local building in-  
35 spectors. Such grants shall be apportioned from appropriations  
36 made by the legislature. The agency is authorized in its dis-  
37 cretion to make advances in anticipation of state reimbursement  
38 provided for in this subsection.

39           (2) Grants to individual local governments shall not  
40 exceed [20] percent of that amount approved by the agency as  
41 having been duly expended by the local government for the sala-  
42 ries of licensed professional building inspectors. Such state  
43 assistance shall be paid on account of such salary expenditures  
44 after the termination of the fiscal year of the local government  
45 and after the agency shall have determined, in accordance with  
46 this subsection that:

47                   (i) the total of such expenditures is properly  
48 attributable to salaries, and

49                   (ii) the application for funds complies with the  
50 qualifications for state assistance.

51           (3) Subject to the grant limitations established in  
52 paragraph (2) of this subsection, the agency shall, in accord-  
53 ance with its rules and regulations, establish criteria to de-  
54 termine need for and amount of such state assistance. Such  
55 criteria shall be based on measurements reflecting the added  
56 salary costs in recruitment of licensed building inspectors and  
57 meeting minimum staffing requirements established by the state.

58           (4) All payments of such state assistance shall be made  
59 to the local government from the state treasury upon the audit

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3. This section is primarily intended for use by states re-  
quiring local governments to employ licensed professional inspectors  
because of anticipated higher salary requirements resulting from a  
state licensing program (see proposed bill on page 289 of this pub-  
lication) or from state minimum staffing requirements as provided in  
section 5 of this act.

60 and warrant of the [insert title of appropriate state official].  
61 (5) A local government applying for state assistance  
62 pursuant to this subsection shall submit to the agency within  
63 [60] days after the termination of the fiscal year of the local  
64 government an application in such form and containing such in-  
65 formation as the agency shall require in order to effecuate the  
66 provisions of this subsection.

1 Section 4. Inspection Services on a Reimbursable Basis.

2 (a) Purpose. It is the intent of this section to provide state  
3 building inspection services to those local governments unable  
4 to maintain satisfactory building inspection services because  
5 of the unavailability of adequate staff resources or because of  
6 the greater expense of maintaining services of certain local  
7 governments.

8 (b) Authorization. The agency is hereby authorized within  
9 its discretion and upon written request from a local government,  
10 to provide inspection services upon payment by the local gov-  
11 ernment making the request, of the cost of such services. The  
12 agency may employ or contract for the services of personnel  
13 necessary to carry out the provisions of this section, subject  
14 to the limitations of [cite appropriate statute].

15 (c) Reimbursement to Appropriation. All monies received by  
16 the agency in payment for furnishing inspection services author-  
17 ized under this section shall be deposited to the credit of the  
18 appropriation or appropriations from which the cost of providing  
19 inspection services has been paid or is to be charged.<sup>4</sup>

20 (d) Reports. The agency shall furnish annually to the gov-  
21 ernor [and the legislature] a report on the scope of the serv-  
22 ices so provided.

1 Section 5. Minimum Staffing Requirements for Local Building

2 Departments. (a) Purpose. The intent of this section is to  
3 establish minimum staffing requirements for building departments  
4 of all local governments within this state with respect to

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4. This subsection may require adjustment to comply with state constitutional requirements.

5 enforcement and administration of building codes adopted pur-  
6 suant to [cite appropriate statutes enabling local governments  
7 to adopt and enforce building code regulations] in order to  
8 assure that code enforcing jurisdictions are properly carrying  
9 out their responsibilities in the interest of public health,  
10 safety, and welfare in administering and enforcing building  
11 codes.

12 (b) Authorization. The agency is hereby authorized to make  
13 and publish rules and regulations prescribing standards with  
14 respect to the number and qualifications of personnel engaged  
15 in inspecting the workmanship, materials, and manner of con-  
16 struction of buildings and structures, or portions of buildings  
17 and structures, for municipal and county building departments  
18 within the state. Such standards shall be based on, but not be  
19 limited to:

20 (1) The volume, dollar value, and type of building con-  
21 struction activity and number of permits issued within the code  
22 enforcing jurisdiction.

23 (2) The budget and staffing, including work load,  
24 training, and experience, of the local building department.

25 (c) Certification and Hearings. The agency shall certify  
26 those local government building departments satisfactorily meet-  
27 ing such standards as provided in subsection (b). The agency  
28 may revoke or suspend local certification on its own motion.  
29 Hearings shall be held and appeals permitted on any such pro-  
30 ceedings for certification or revocation of certification as  
31 provided [cite state administrative procedure act].

32 (d) Failure to Meet Certification. If the local government  
33 has not corrected those acts or omissions for which certifica-  
34 tion was refused, revoked, or suspended, the agency may, at its  
35 discretion, provide such staff services as may be necessary to  
36 carry out the purposes of this section. The agency shall bill  
37 the local government for such inspection services until such  
38 time as it is fully satisfied that all conditions imposed by the  
39 decision of refusal of certification, revocation, or suspension  
40 shall have been complied with. All monies received by the

41 agency in payment for providing inspection services as may be  
42 required under this subsection shall be deposited to the credit  
43 of the appropriation or appropriations from which the cost of  
44 providing inspection services has been charged.

1       Section 6. Training Programs. (a) Purpose. It is the  
2 intent of this section to authorize state participation and  
3 support of training programs to maintain and strengthen the  
4 competence of building code officials by keeping building offi-  
5 cials abreast of increasingly complex advances in building  
6 technology.

7       (b) Authorization. The agency is hereby authorized to con-  
8 duct or sponsor in-service and pre-entry training programs on  
9 the technical, legal, and administrative aspects of building  
10 code administration and enforcement. For this purpose it may  
11 cooperate with education institutions, local, regional, state,  
12 or national building officials organizations, and with any other  
13 appropriate professional organizations. The agency may contract  
14 for services with such institutions, governmental jurisdictions,  
15 and organizations as may be necessary in carrying out the pur-  
16 poses of this section.

17       (c) Agency Approval of Training Programs. The agency shall  
18 approve those training programs in which state building offi-  
19 cials and other employees participate under the provisions of  
20 this section.

21       (d) Reimbursement of Participation Expenses. The agency  
22 may reimburse the participation expenses incurred by building  
23 officials and other employees of the state and its subdivisions  
24 whose attendance at in-service training programs is approved by  
25 the agency. Participants shall retain their [seniority, sick  
26 leave, tenure, insurance, retirement, and other fringe benefits]  
27 while in attendance at in-service training programs approved by  
28 the agency.<sup>5</sup>

29       (e) Authorizing Leave With Pay For Training Programs. [The

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5. If general statutes do not provide adequate protection for state officials attending training programs, special provisions may be necessary.

30 [administrative head] of any agency of this state with building  
31 code regulatory responsibilities is authorized to grant leave  
32 with pay for attendance at in-service training programs approved  
33 by the agency for short periods not to exceed [ ] weeks; for  
34 longer periods up to [ ] leave with pay shall be authorized  
35 by the [administrative head] with the approval of the [governor,  
36 state personnel agency, state budget officer].]

1 Section 8. Separability. [Insert separability clause.]

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

## 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 sewage disposal 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 sewage disposal 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 decision exists.

In view of the need for adequate water supply and sewerage system planning and control and the varying requirements of different parts of urban areas, the Advisory Commission on Intergovernmental Relations in its report, Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas, has recommended that "legislation be enacted endowing the appropriate state and local agencies with regulatory authority over individual wells and septic tank installations, with a view to minimizing and limiting their use to exceptional situations consistent with comprehensive land use goals." Three model state statutes to meet these needs have been developed by the U. S. Public Health Service with the assistance of a special advisory committee that included representatives from the Public Health Service, the Commission, the Housing and Home Finance Agency, the National League of Cities, American Society of Planning Officials, National Association of Counties, National Association of Home Builders, Water Systems Council, Conference of State Sanitary Engineers, and the Septic Tanks Industry. The first statute, "The

Urban Water Supply and Sewerage Systems Act," has been endorsed by a number of groups including the State and Territorial Health Officers, the Conference of State Sanitary Engineers, and the Interstate Conference on Water Problems.

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

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

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

(2) Portions where individual water supply and sewage disposal 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 sewage disposal systems may be installed and used for an indefinite period, if the state health department judges their use to be adequate and safe.

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

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



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

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

The state health department has authority to approve or disapprove community plans; and all its actions, including disapprovals, are subject to judicial review.

The health department is also empowered by the act to provide technical assistance to municipalities in preparing and coordinating community plans; to administer state grants to municipalities for preparing community plans; and to accept and administer federal grants.

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

The second statute, "Water Well Construction and Pump Installation Act," regulates the development of ground water systems and the location, construction, repair, and abandonment of water wells, and the installation and repair of pumps and pumping equipment to assure protection against possible contamination and to maintain a safe and potable water supply. The third statute, "Individual Sewage Disposal Systems Act," regulates the planning, design, construction, installation, operation, and maintenance of individual disposal systems.

The department administering the Water Well Act is authorized to designate areas within which prior permission for the construction or abandonment of wells or the installation of pumping equipment will be required. In all other areas the department must be notified of such work. There is provision for licensing water well and pump installation contractors. Under the provisions of the "Sewage Disposal Systems Act" permits issued by municipalities are required for the installation, alteration, or repair of individual

sewage disposal systems. There is an optional provision for the licensing of installers. Both acts include inspection and enforcement procedures and hearing and judicial review provisions. The department is authorized to delegate any of its authority under the act to any municipality and it is provided that local law establishing standards affording greater protection than those established pursuant to the act shall prevail within the locality.

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

### Suggested Legislation

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

[Title should conform to state requirements.]

(Be it enacted, etc.)

1       Section 1. Short Title. This act shall be known and may be  
2 cited as the "[state] Urban Water Supply and Sewerage Systems  
3 Act."

1       Section 2. Findings and Policy. (a) The legislature finds  
2 that properly planned and installed individual and community  
3 water supply systems and sewerage systems in and near urban  
4 areas:

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

7           (2) promote the health and welfare of citizens of this  
8 state by preventing the pollution of ground and surface water;

9           (3) eliminate nuisances and hazards to the public  
10 health;

11           (4) contribute to proper conservation and use of ground  
12 water;

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

16       (b) It is, therefore, declared to be the public policy of  
17 this state to eliminate and prevent health and safety hazards

18 and to promote the economical and orderly development and uti-  
19 lization of water and land resources of this state by encourag-  
20 ing planning and provision for adequate individual and community  
21 water supply systems and sewerage systems and by providing for  
22 the standards and regulations necessary to accomplish these  
23 purposes.

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

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

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

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

17       (4) "Department" means the [designated agency presently  
18 having authority to regulate sanitary practices within the  
19 state, usually the state department of health].

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

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

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

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

37 (9) "Potable water" means water free from impurities in  
38 amounts sufficient to cause disease or harmful physiological  
39 effects with the bacteriological and chemical quality conform-  
40 ing to applicable standards of the department.<sup>2</sup>

41 (10) "Subdivision"<sup>3</sup> means the division of a single tract or  
42 other parcel of land, or a part thereof, into two or more lots,  
43 for the purpose, whether immediate or future, of sale or of  
44 building development, and shall also include changes in street  
45 lines or lot lines; but divisions of land for agriculture pur-  
46 poses into parcels of more than [ ] acres not involving any  
47 new street or easement of access, shall not be included within  
48 the meaning of "subdivision."

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

8 (b) Within an appropriate area for development of a single

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1. The definitions should be consistent with any definitions of the same terms established in the state's planning, subdivision control, and zoning enabling acts. There should be included necessary additional provisions to accommodate the definitions to condominium and cooperative developments where there are individual interests in land occupied by multiple dwellings and multiple occupancy developments on a single lot.

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

3. See footnote 1.

9 plan for water and sewerage systems, the required community  
10 plan, any amendment or revision thereof may be submitted jointly  
11 by the municipalities concerned.

12 (c) Every community plan shall delineate, in accordance  
13 with applicable regulations adopted by the department pursuant  
14 to section 5 of this act, those areas where:

15 (1) (A) community water supply systems must be pro-  
16 vided;

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

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

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

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

27 (C) individual sewage disposal systems may be  
28 installed and used for an indefinite period.

29 (d) In addition, every required community plan shall:

30 (1) provide for the orderly expansion and extension  
31 of community water supply systems and community sewerage sys-  
32 tems in a manner consistent with the needs and plans of the  
33 area;

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

39 (3) delineate with all practicable precision those  
40 portions of the municipality in which community systems may  
41 reasonably be expected to serve within five years, within ten  
42 years, and after ten years, and any portions in which the pro-  
43 vision of such services is not reasonably foreseeable, taking

44 into consideration all related aspects of planning, zoning,  
45 population estimates, engineering, and economics, and any exist-  
46 ing state plan affecting the development, use, and protection of  
47 water resources;

48 (4) establish procedures for delineating and acquiring  
49 on a time schedule, pursuant to subsection (d)(3) of this sec-  
50 tion, necessary rights-of-way or easements for community sys-  
51 tems;

52 (5) set forth a time schedule and proposed methods of  
53 financing the construction and operation of each programed com-  
54 munity system together with the estimated cost thereof;

55 (6) be submitted for review to official planning agen-  
56 cies having jurisdiction, including a comprehensive planning  
57 agency with areawide jurisdiction if one exists, for consist-  
58 ency with programs of planning for the area, and such reviews  
59 shall be transmitted to the department with the proposed plans;  
60 and

61 (7) include provision for periodic amendment or revi-  
62 sion of the plan.

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

2 (a) The department shall adopt and from time to time amend  
3 rules and regulations which provide for:

4 (1) the control, limitation, or prohibition of instal-  
5 ling, and use of individual and community water supply systems  
6 and sewerage or sewage disposal systems in accordance with the  
7 provisions of this act;

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

11 (3) the minimum contents of such plans;

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

14 (5) such other matters as may be necessary or appro-  
15 priate to the administration of this act.

16 (b) Such regulations in providing criteria for the

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

28 (c) Such regulations shall:

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

37 (2) permit, in areas where community water supply sys-  
38 tems or community sewerage systems are not available nor re-  
39 quired to be installed under subsection 5(c)(1) of this act,  
40 but are programed to become available within a reasonable per-  
41 iod of time not to exceed [ ] years,<sup>4</sup> individual water supply  
42 systems or individual sewage disposal systems, or both, if:  
43 (A) such individual water supply systems or individual sewage  
44 disposal systems are adjudged by the department to be adequate  
45 and safe for use during the period before a community water  
46 supply system or a community sewerage system, as the case may  
47 be, are scheduled to become available; and (B) adequate provi-  
48 sions are made prior to or at the time of the installation of  
49 such individual systems to permit the discontinuance of their

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

50 use and the connection of the premises served thereby to the  
51 community water supply system and the community sewerage system,  
52 respectively, in as economical and convenient a way as can be  
53 foreseen. Such provision for any subdivision shall include  
54 either the posting of a bond, with satisfactory surety, to  
55 secure to the municipality the actual construction and installa-  
56 tion of such systems at a time fixed by the municipality not in  
57 excess of [ ] years<sup>5</sup> and in accordance with the regulations  
58 issued hereunder and with all other state and municipal require-  
59 ments, or such other arrangements as may be deemed necessary  
60 and adequate to accomplish the purposes of this section; and

61 (3) permit in areas where community water supply sys-  
62 tems or community sewerage systems are not available nor re-  
63 quired to be installed under subsection 5(c)(1) of this act,  
64 nor programed to become available within a reasonable period of  
65 time not in excess of [ ] years,<sup>6</sup> individual water supply  
66 systems or individual sewage disposal systems, or both as the  
67 case may be, if such individual systems are adjudged by the  
68 department to be adequate and safe.

69 (d) The department is authorized to issue such additional  
70 regulations as may be necessary to carry out the provisions of  
71 this act.

72 (e) The department shall designate municipalities which are  
73 required to submit community plans, amendments, and revisions  
74 thereof in which applicable regulations shall apply as may be  
75 necessary to accomplish the purposes of this act. The designa-  
76 tion shall take into consideration such factors as present and  
77 future population trends and densities, patterns of urban  
78 growth, geographic features and political boundaries, the loca-  
79 tion and plans for location of utility systems, the distribu-  
80 tion of industrial, commercial, residential, governmental, in-  
81 stitutional, and other activities, and the existence of any

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

6. See footnote 5.



82 area for which comprehensive planning is being undertaken.

83 (f) After public hearing upon not less than sixty (60) days'  
84 prior notice published in one or more newspapers as may be  
85 necessary to assure general circulation throughout the state,<sup>7</sup>  
86 such regulations shall be adopted, amended, or revised.

87 (g) The department is hereby authorized to approve or dis-  
88 approve community plans submitted in accordance with section 4.  
89 The department may approve a community plan in part provided  
90 that the part approved includes all the required elements for  
91 such plan and applies to at least ninety percent of that geo-  
92 graphic area of the municipality for which a plan is required.  
93 When the plan is disapproved, in whole or in part, the depart-  
94 ment shall notify the municipality in writing setting forth the  
95 reasons for such disapproval. Any such disapprovals and any  
96 other actions of the department under this law are subject to  
97 judicial review as to whether they are arbitrary, capricious,  
98 or unreasonable, and otherwise as provided for under the laws  
99 of this state.<sup>8</sup>

100 (h) The department, upon request, shall provide technical  
101 assistance and consultation to municipalities in preparing and  
102 coordinating community plans required in section 4 of this act,  
103 including revisions of such plans.

104 (i) The department may conduct studies, surveys, investi-  
105 gations, research, and analyses to accomplish the purposes of  
106 this act.

107 (j) [Use this subsection to establish a program of state  
108 aid to municipalities for preparing and keeping current commu-  
109 nity plans required by section 4 of this act.]

110 (k) For purposes of this act, the department is authorized  
111 to accept and administer federal grants.

112 (l) For purposes of this act, the department shall

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

8. 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.

113 cooperate with all appropriate federal, state, and local units  
114 of government, and with appropriate private organizations.

1       Section 6. Conformance to Approved Community Plan. (a)

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

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

19       (c) After nine months following the submission of a commu-  
20 nity plan, amendment, or revision thereof, or nine months fol-  
21 lowing the time within which a community plan, amendment, or  
22 revision thereof is required to be submitted under subsection  
23 (a) of this section, whichever is earlier, or after such later  
24 date as may be established by the department for good cause  
25 shown, no community water supply system or community sewerage  
26 system, or individual water supply system or individual sewage  
27 disposal system may be installed in those geographic areas to  
28 which such community plan, amendment, or revision thereof re-  
29 lates unless a community plan and any required amendments or  
30 revisions have been approved for such areas, and such system  
31 and installation are consistent with such community plan includ-  
32 ing any required amendment and revision thereof and with appli-  
33 cable rules and regulations.

34 (d) No state or local authority empowered to grant building  
35 permits or to approve subdivision plans, maps, or plats shall  
36 grant any such permit or approve any such plan, map, or plat  
37 which provides for individual or community water supply systems  
38 or sewerage systems unless such systems are found to be in con-  
39 formance with the community plant, amendments, and revisions  
40 thereof approved by the department and applicable rules and  
41 regulations.<sup>9</sup> As a condition of such approval, the transfer of  
42 community systems to a municipality may be required by [appro-  
43 priate state or municipal authority] in accordance with appli-  
44 cable provisions of state law as to compensation.

45 (e) Applicants for building permits and subdivision approv-  
46 als, and water supply systems and sewerage or sewage disposal  
47 systems construction approval, shall submit to the approving  
48 authority such information in such form as may be reasonably  
49 necessary and required to show compliance with subsection (c)  
50 of this section.

51 (f) Any violation of subsection (c) of this section shall  
52 be punishable by a fine not to exceed \$[ ].<sup>10</sup> The imposi-  
53 tion of any such fine shall not bar any other relief or penalty  
54 otherwise applicable.

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

1 Section 8. Appropriation. There is appropriated \$[ ] to  
2 cover necessary expenses of the department in administering  
3 this act.

1 Section 9. Conflict With Other Laws. The provisions of any  
2 zoning ordinance, subdivision regulation, building code, or  
3 other law or regulation of any municipality of the state estab-  
4 lishing standards designed to afford greater protection to the

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9. See footnote 8.

10. 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.

5 public health, safety, and welfare of the community shall not  
6 be limited or superceded by regulations adopted pursuant to  
7 this act within the area over which the municipality has juris-  
8 diction.

1 Section 10. Separability. [Insert separability clause.]

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

b. WATER WELL CONSTRUCTION AND PUMP INSTALLATION

[Title should conform to state requirements.]

(Be it enacted, etc.)

1       Section 1. Short Title. This act shall be known and may be  
2 cited as the "[state] Water Well Construction and Pump Instal-  
3 lation Act."

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

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

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

6       (2) "Construction of water wells" means all acts necessary  
7 to obtain ground water by wells, including the location and  
8 excavation of the well, but excluding the installation of pumps  
9 and pumping equipment.

10       (3) "Department" means the [designated agency presently  
11 having authority to regulate sanitary practices within the  
12 state, usually the state department of health].

13       (4) "Installation of pumps and pumping equipment" means the  
14 procedure employed in the placement and preparation for opera-  
15 tion of pumps and pumping equipment, including all construction  
16 involved in making entrance to the well and establishing seals,  
17 but not including repairs, as defined in this section, to exist-  
18 ing installations.

19       (5) "Municipality" means a city, town, borough, county,

20 parish, district, or other public body created by or pursuant  
21 to state law, or any combination thereof acting cooperatively  
22 or jointly.

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

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

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

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

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

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

1 Section 4. Scope. No person shall construct, repair, or  
2 abandon, or cause to be constructed, repaired, or abandoned, any  
3 water well, nor shall any person install, repair, or cause to  
4 be installed or repaired, any pump or pumping equipment con-  
5 trary to the provisions of this act and applicable rules and

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1. Some states may wish to include within the coverage of this definition seismological, geophysical, prospecting, observation, or test wells.

6 regulations, provided that this act shall not apply to any dis-  
7 tribution of water beyond the point of discharge from the stor-  
8 age or pressure tank, or beyond the point of discharge from the  
9 pump if no tank is employed, nor to wells used or intended to  
10 be used as a source of water supply for municipal water supply  
11 systems, nor to any well, pump, or other equipment used tempor-  
12 arily for dewatering purposes.

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

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

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

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

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

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

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

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

4           (1) the construction of any water well;  
5           (2) the abandonment of any water well; and  
6           (3) the first installation of any pump or pumping  
7 equipment in any well,  
8 in any geographical area where the department determines such  
9 permission to be reasonably necessary to protect the public  
10 health, taking into consideration other applicable state laws,  
11 provided that in any area where undue hardship might arise by  
12 reason of such requirement, prior permission will not be re-  
13 quired.

14       (b) The department shall be notified of any of the follow-  
15 ing whenever prior permission is not required:

- 16           (1) the construction of any water well;  
17           (2) the abandonment of any water well;  
18           (3) the first installation of any pump or pumping  
19 equipment in any well; and  
20           (4) any repair, as defined in this act, to any water  
21 well or pump.

1       Section 7. Existing Installations. No well or pump instal-  
2 lation in existence on the effective date of this act shall be  
3 required to conform to the provisions of subsection (a) of sec-  
4 tion 6 of this act, or any rules or regulations adopted pur-  
5 suant thereto; but any well now or hereafter abandoned, includ-  
6 ing any well deemed to have been abandoned, as defined in this  
7 act, shall be brought into compliance with the requirements of  
8 this act and any applicable rules or regulations with respect  
9 to abandonment of wells; and any well or pump installation  
10 supplying water which is determined by the department to be a  
11 health hazard must comply with the provisions of this act and  
12 applicable rules and regulations within a reasonable time after  
13 notification of such determination has been given.

1       Section 8. Inspection. (a) The department is authorized  
2 to inspect any water well, abandoned water well, or pump instal-  
3 lation for any well. Duly authorized representatives of the  
4 department may at reasonable times enter upon, and shall be



5 given access to, any premises for the purpose of such inspec-  
6 tion.

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

14 (c) Any person aggrieved by the disapproval of a well or  
15 pump installation shall be afforded the opportunity of a hear-  
16 ing as provided in section 13 of this act.

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

5 (b) The department may adopt, and from time to time amend,  
6 rules and regulations governing applications for water well  
7 contractor licenses or pump installation contractor licenses;  
8 but the department shall license, as a water well contractor or  
9 pump installation contractor, any person properly making appli-  
10 cation therefor, who is not less than twenty-one (21) years of  
11 age, is of good moral character, has knowledge of rules and  
12 regulations adopted under this act, and has had not less than  
13 two (2) years' experience in the work for which he is applying  
14 for a license; and the department shall prepare an examination  
15 which each such applicant must pass in order to qualify for  
16 such license.

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

21 (d) A county, municipality, or other political subdivision  
22 of the state engaged in well drilling or pump installing shall  
23 be licensed under this act, but shall be exempt from paying the

24 license fees for the drilling or installing done by regular  
25 employees of, and with equipment owned by, the governmental  
26 entity.

27 (e) Any person who was engaged in the business of a water  
28 well contractor or pump installation contractor, or both, for  
29 a period of two (2) years immediately prior to (date of enact-  
30 ment) shall, upon application made within twelve (12) months of  
31 (date of enactment), accompanied by satisfactory proof that he  
32 was so engaged, and accompanied by payment of the required fees,  
33 be licensed as a water well contractor, pump installation con-  
34 tractor, or both, as provided in subsection (b) of this section,  
35 without fulfilling the requirement that he pass any examination  
36 prescribed pursuant thereto.

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

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

54 (h) Whenever the department determines that the holder of  
55 any license issued pursuant to this section has violated any  
56 provision of this act, or any rule or regulation adopted pur-  
57 suant thereto, the department is authorized to suspend or re-  
58 voke any such license. Any order issued pursuant to this sub-  
59 section shall be served upon the license holder pursuant to the

60 provisions of subsection (a) of section 12 of this act. Any  
61 such order shall become effective [ ] days after service  
62 thereof, unless a written petition requesting hearing, under  
63 the procedure provided in section 13, is filed sooner. Any  
64 person aggrieved by any order issued after such hearing may  
65 appeal therefrom in any court of competent jurisdiction as  
66 provided by the laws of this state.

67 (i) No application for a license issued pursuant to this  
68 section may be made within one (1) year after revocation there-  
69 of.

1 Section 10. Exemptions. (a) Where the department finds  
2 that compliance with all requirements of this act would result  
3 in undue hardship, an exemption from any one or more such re-  
4 quirements may be granted by the department to the extent neces-  
5 sary to ameliorate such undue hardship and to the extent such  
6 exemption can be granted without impairing the intent and pur-  
7 pose of this act.

8 (b) Nothing in this act shall prevent a person who has not  
9 obtained a license pursuant to section 9 of this act from con-  
10 structing a well or installing a pump on his own or leased  
11 property intended for use only in a single family house which  
12 is his permanent residence, or intended for use only for farm-  
13 ing purposes on his farm, and where the waters to be produced  
14 are not intended for use by the public or in any residence  
15 other than his own. Such person shall comply with all rules  
16 and regulations as to construction of wells and installation of  
17 pumps and pumping equipment adopted under this act.

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

2 (1) A fee of \$[ ] shall accompany each application  
3 for permission required under section 6(a) of this act.

4 (2) A fee of \$[ ] shall accompany each application  
5 for a license required under section 9 of this act.

1 Section 12. Enforcement. (a) Whenever the department has  
2 reasonable grounds for believing that there has been a viola-  
3 tion of this act, or any rule or regulation adopted pursuant

4 thereto, the department shall give written notice to the per-  
5 son or persons alleged to be in violation. Such notice shall  
6 identify the provision of this act, or regulation issued here-  
7 under, alleged to be violated and the facts alleged to consti-  
8 tute such violation.

9 (b) Such notice shall be served in the manner required by  
10 law for the service of process upon person in a civil action,  
11 and may be accompanied by an order of the department requiring  
12 described remedial action, which if taken within the time spec-  
13 ified in such order will effect compliance with the require-  
14 ments of this act and regulations issued hereunder. Such order  
15 shall become final unless a request for hearing as provided in  
16 section 13 of this act is made within [ ] days from the date  
17 of service of such order. In lieu of such order, the depart-  
18 ment may require the person or persons named in such notice to  
19 appear at a hearing, at a time and place specified in the notice.

1 Section 13. Hearing. [Unless already prescribed in state  
2 law, this section should be used to specify procedures for ad-  
3 ministrative hearing.]

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

1 Section 15. Penalties. Any person who violates any provi-  
2 sion of this act, or regulations issued hereunder, or order pur-  
3 suant hereto, shall be subject to a penalty of \$[ ]. Every  
4 day, or any part thereof, in which such violation occurs shall  
5 constitute a separate violation.

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

1 Section 17. Separability. [Insert separability clause.]

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

c. INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

[Title should conform to state requirements.]

(Be it enacted, etc.)

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

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

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

6             (2) prevent nuisances;

7             (3) eliminate hazards to the public health by minimiz-  
8 ing pollution of water supplies and hazards to recreational  
9 areas; and

10            (4) minimize disease transmission potential.

11           (b) It is, therefore, declared to be the public policy of  
12 this state to eliminate and prevent health and safety hazards  
13 by regulating the design, construction, installation, operation,  
14 and maintenance of individual sewage disposal systems and the  
15 proper planning thereof; authorizing the issuance of permits  
16 for the construction, alteration, repair or extension of indi-  
17 vidual sewage disposal systems; licensing of installers of  
18 individual sewage disposal systems; requiring registration of  
19 those who clean systems and dispose of wastes therefrom; and,  
20 providing penalties for violations.

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

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

7             (2) "Department" means the [designated agency presently  
8 having authority to regulate sanitary practices within the  
9 state, usually the state department of health].

10            (3) "Industrial wastes" means liquid wastes resulting from

11 the processes employed in industrial and commercial establish-  
12 ments.

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

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

20 (6) "Person" means any institution, public or private cor-  
21 poration, individual, partnership, or other entity.

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

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

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

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

1 Section 5. Authority to Adopt Rules, Regulations, and Pro-  
2 cedures. The department shall have general supervision and  
3 authority over the design, construction, installation, and  
4 operation of individual sewage disposal systems, and shall be

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

5 responsible for the administration of this act. With respect  
6 thereto, it shall:

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

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

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

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

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

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

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

31 (5) issue permits, licenses, registration, and other docu-  
32 ments, including the establishment of procedures and forms for  
33 the submission, review, approval, and rejection of applications  
34 required under this act; and

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

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2. Optional with locality.

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

37 act.

1       Section 6. Existing Installations. No individual sewage  
2 disposal system in existence on the effective date of this act  
3 shall be required to conform to the design, construction, and  
4 installation provisions of this act, or any rules or regulations  
5 adopted pursuant thereto; but any individual sewage disposal  
6 system being used which is determined by the department to be a  
7 health hazard must conform with the provisions of this act and  
8 applicable rules and regulations within a reasonable time after  
9 notification of such determination has been given.

1       Section 7. Inspections. (a) The municipality is hereby  
2 authorized and directed to make inspections of individual sew-  
3 age disposal systems as may be necessary to determine substan-  
4 tial compliance with this act and regulations adopted hereunder,  
5 and such systems shall not be used unless approved by the munic-  
6 ipality. Upon the basis of such inspections, the department  
7 shall either approve or disapprove the individual sewage dis-  
8 posal system, and if disapproved the system shall not be used.

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

15       (c) In the event an inspection is not made upon notifica-  
16 tion of the municipality that the installation is completed and  
17 ready for inspection, the system shall be deemed approved after  
18 [    ] days<sup>4</sup> from date of official notification.

19       (d) Any person aggrieved by the disapproval of an individ-  
20 ual sewage disposal system installation shall be afforded the  
21 opportunity of a hearing as provided in section 13 of this act.

1       Section 8. Permits. (a) It shall be unlawful for any per-  
2 son to construct, alter, repair, or extend individual sewage

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



3 disposal systems unless he holds a valid permit<sup>5</sup> issued by the  
4 municipality in the name of such person for the specific con-  
5 struction, alteration, repair, or extension proposed, except  
6 that emergency repairs may be undertaken without prior issuance  
7 of a permit, provided a permit is subsequently obtained within  
8 [     ] days after the repairs are made.

9       (b)<sup>6</sup> Permits shall be issued only to licensed installers  
10 as provided in section 9 of this act, or to an owner or lessee  
11 of a lot on the condition that the said owner or lessee per-  
12 forms all labor in connection with the installation of the  
13 individual sewage disposal system on such lot.

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

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

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

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

1       Section 9. Licensing of Installers.<sup>7</sup> (a) Every person en-  
2 gaged in the business of installing individual sewage disposal

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

6. Optional provision, see section 9.

7. Optional provision.

3 systems within the state shall obtain from the department a  
4 license to conduct such business.

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

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

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

22 (e) Whenever the department determines that the holder of  
23 any license issued pursuant to this section has violated any  
24 provision of this act, or any rule or regulation adopted pur-  
25 suant thereto, the department is authorized to suspend or revoke  
26 any such license. Any order issued pursuant to this subsection  
27 shall be served upon the license holder pursuant to the provi-  
28 sions of section 12 of this act. Any such order shall become  
29 effective [ ] days after service thereof, unless a written  
30 petition requesting hearing, under the procedure provided in  
31 section 13, is filed sooner. Any person aggrieved by any order  
32 issued after such hearing may appeal therefrom in any court of  
33 competent jurisdiction as provided by the laws of this state.

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

1 Section 10. Required Registration for Cleaning Systems and  
2 Disposal of Wastes. (a) The provisions of this section shall  
3 not apply to any municipality, sanitation district, or sewer

4 maintenance district, or to any agency or institution of the  
5 state or federal government.

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

11 (c) All applications for registration under this section  
12 shall be made in writing in a form prescribed by the department,  
13 and shall include such information as the department deems nec-  
14 essary to determine the qualification of the applicant, includ-  
15 ing a knowledge of the regulations.

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

21 (e) Whenever the department determines that the holder of  
22 any registration issued pursuant to this section has violated  
23 any provision of this act, or any rule or regulation adopted  
24 pursuant thereto, the department is authorized to suspend or  
25 revoke any such registration. Any order issued pursuant to this  
26 subsection shall be served upon the registration holder pursuant  
27 to the provisions of section 12 of this act. Any such order  
28 shall become effective [ ] days after service thereof, unless  
29 a written petition requesting hearing, under the procedure pro-  
30 vided in section 13, is filed sooner. Any person aggrieved by  
31 any order issued after such hearing may appeal therefrom in any  
32 court or competent jurisdiction as provided by the laws of this  
33 state.

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

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

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

1     Section 12. Enforcement. (a) Whenever the department has  
2 reasonable grounds for believing that there has been a viola-  
3 tion of this act, or any rule or regulation adopted pursuant  
4 thereto, the department shall give written notice to the per-  
5 son or persons alleged to be in violation. Such notice shall  
6 identify the provision of this act, or regulation issued here-  
7 under, alleged to be violated and the facts alleged to consti-  
8 tute such violation.

9     (b) Such notice shall be served in the manner required by  
10 law for the service of process upon person in a civil action,  
11 and may be accompanied by an order of the department requiring  
12 remedial action, which if taken within the time specified in  
13 such order will effect compliance with the requirements of this  
14 act and regulations issued hereunder. Such order shall become  
15 final unless a request for hearing as provided in section 13 of  
16 this act is made within [     ] days from the date of service of  
17 such order. In lieu of such order, the department may require  
18 the person or persons named in such notice to appear at a hear-  
19 ing, at a time and place specified in this notice.

1     Section 13. Hearing. [Unless already prescribed in state  
2 law, this section should be used to specify procedures for ad-  
3 ministrative hearing.]

1     Section 14. Judicial Review. [Unless already prescribed  
2 in state law, this section should be used to specify proce-  
3 dures for judicial review.]

1     Section 15. Penalties. (a) Any person who fails to comply  
2 with any provision of this act, or regulations issued here-  
3 under, or order pursuant hereto, shall be subject to a penalty

4 of \$[     ]. Every day, or any part thereof, in which such vio-  
5 lation occurs shall constitute a separate violation.

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

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

1       Section 17. Separability. [Insert separability clause.]

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

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8. In accordance with applicable state procedural requirements.

## 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. Article VII, section 27 of the Michigan constitution provides an example of constitutional language to accomplish this objective.

## 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 apprise 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:

- (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

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

1        Section 2. Definitions. (a) "Local government" means



2 a county, city, village, town, township, school district, and  
3 other special-purpose district, authority, or public corpora-  
4 tion within the state and authorized by the state to issue  
5 bonds and other long-term obligations.

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

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

10 (d) "Chief financial officer" means [the comptroller,  
11 treasurer, director or finance or other local government offi-  
12 cial charged with managing the fiscal affairs of a local govern-  
13 ment official charged with managing the fiscal affairs of a  
14 local government].

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

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

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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.

1       Section 4. Advisory Review of Proposed Local Government  
2 Debt Issues. At the request of the governing body of any  
3 local government, the [agency] is authorized to review a pro-  
4 posed debt issue and to render an advisory opinion based upon  
5 the facts concerning the proposed issue. Any request for an  
6 advisory review shall be submitted to the [agency] in such  
7 form and with such information as the [agency] may require.

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

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

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

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

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

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

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

27 (6) To compile and publish annually a report on its tech-  
28 nical assistance and advisory activities. Such report shall  
29 include detailed information on local government long-term  
30 debt issued and retired during the previous [calendar or fiscal]  
31 year and outstanding at the close of the previous [calendar or  
32 fiscal] year, and such additional statistical data on local  
33 government finances that are obtained by the [agency] pursuant  
34 to paragraph (1) of this section.

## TITLE II

### STANDARDS FOR OFFICIAL STATEMENTS ON LOCAL DEBT OFFERINGS

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

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

1 Section 3. Notice of Sale Advertisement. The notice of  
2 sale advertisement shall set forth the purpose of the bond  
3 issue, principal amount of the bond issue, designation of  
4 type of bond issue according to the authorizing statute,  
5 date of issue, the method of bond repayment, showing the  
6 denominations and maturities offered for sale, the basis of  
7 bidding and award of the bonds, the date, hour, and place

8 that bids will be opened, the name of the chief financial  
9 officer who will furnish additional information about the issu-  
10 ing local government or the bond sale, and any other appropriate  
11 information, in accordance with the regulations prepared by  
12 the [agency].

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

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

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

### TITLE III

#### SEPARABILITY AND EFFECTIVE DATE

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

1 Section 2. Effective Date. [Insert effective date.]

## MASS TRANSPORTATION IN METROPOLITAN AREAS

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

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

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

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

### Suggested Legislation

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

(Be it enacted, etc.)

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

1       Section 2. General Functions and Powers. The [director of  
2       the office of local government or the head of such other agency  
3       of the state government as the governor may designate], (here-  
4       inafter referred to as the director), shall have the following  
5       functions, powers and duties:

6       (1) To advise and assist the governor in (i) formulating a  
7       mass transportation policy for the state, including coordina-  
8       tion of policies and activities among the state departments and  
9       agencies; (ii) developing policies and proposals designed to  
10      help meet and resolve special problems of mass transportation  
11      within the state; (iii) recommending programs of financial  
12      and technical assistance for the comprehensive planning, develop-  
13      ment, and administration of mass transportation facilities and  
14      services.

15      (2) To make such studies of mass transportation problems and

16 to render such technical assistance as may be requested by  
17 units of local government.

18 (3) To consult and cooperate with officials and representa-  
19 tives of neighboring states, of the federal government, and of  
20 interstate agencies on problems affecting mass transportation  
21 in the state and with officials and representatives of carriers  
22 and transportation facilities in the state and other persons,  
23 organizations and groups utilizing, served by, interested in,  
24 or concerned with mass transportation facilities and services.

25 (4) To appear and participate, with the approval of the  
26 governor, in proceedings before any federal, state, or local  
27 regulatory agencies involving or affecting mass transportation  
28 in the state.

29 (5) To foster experimentation in developing new mass trans-  
30 portation facilities and services.

31 (6) To recommend policies, programs and actions designed to  
32 improve utilization of urban and commuter mass transportation  
33 facilities.

34 (7) To exercise such other functions, powers and duties  
35 in connection with mass transportation problems as the governor  
36 may require.

1 Section 3. Assistance From Other Agencies. All departments,  
2 divisions, boards, bureaus, commissions or other agencies of  
3 the state or any political subdivisions thereof or any public  
4 authorities are authorized and directed to provide such assit-  
5 ance and data to the director as will enable him to carry out  
6 his functions, powers and duties.

1 Section 4. Inspections; Investigations And Hearings;  
2 Witnesses; Books And Documents. The director at reasonable  
3 times may inspect the property and examine the books and papers  
4 dealing with the type and adequacy of services of any person,  
5 firm or corporation engaged in operating a public mass trans-  
6 portation facility or system in whole or in part within the  
7 state; and may hold investigations and hearings within or with-  
8 out the state. The provisions of this section shall not be

9 construed to include any authority or responsibility to exer-  
10 cise the regulatory power of the state with respect to trans-  
11 portation rates and services.

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

1 Section 6. Reports. The director shall make an annual  
2 report to the governor and the legislature, including recommenda-  
3 tions for executive and legislative action to further the pur-  
4 poses of this act.

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

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



## C. METROPOLITAN AND REGIONAL ORGANIZATION AND ADMINISTRATION

### 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.

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

In brief, the Commission proposes enactment by state legislatures of a range of permissive powers to be utilized by the residents of the metropolitan areas as they see fit. Included in this section are proposals for metropolitan study commissions empowered to recommend metropolitanwide organizational plans subject to popular referendum, regional councils of public officials to serve as a medium for consultation on common problems, and metropolitan functional authorities to provide such regional services as may be authorized by popular referendum. 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. Similarly, regional planning and development commissions are suggested to provide regional coordination.

## METROPOLITAN STUDY COMMISSIONS

The Advisory Commission's report, Governmental Structure, Organization, and Planning in Metropolitan Areas, contained a 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 recommended 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 this recommendation.

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

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

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

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

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

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

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

The draft legislation is based on 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.)

1        Section 1. Declaration of Policy, Purpose. (a) It is  
2 hereby declared to be the public policy of this state to pro-  
3 vide for the residents of the metropolitan areas in the state  
4 the means of improving their local governments so that they  
5 can provide essential services more effectively and economi-  
6 cally. The growth of urban population and the movement of  
7 people into suburban areas has created problems relating to  
8 water supply, sewage disposal, transportation, parking, parks  
9 and parkways, police and fire protection, refuse disposal,  
10 health, hospitals, welfare, libraries, air pollution control,

11 housing, urban renewal, planning and zoning. These problems  
12 when extending beyond the boundaries of individual units of  
13 local government frequently cannot be adequately met by such  
14 individual units.

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

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

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

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

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

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

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

13 (6) "Metropolitan area" means an area the boundaries of  
14 which are determined by a metropolitan study commission pur-  
15 suant to sections 9 and 10 of this act.

16 (7) "Metropolitan services" means any one or more of the  
17 following services when provided for all or substantially all  
18 of an entire metropolitan area or an entire metropolitan area  
19 exclusive of incorporated cities lying therein: (i) planning;  
20 (ii) sewage disposal; (iii) water supply; (iv) parks and recrea-  
21 tion; (v) public transportation; (vi) fire protection; (vii)  
22 police protection; (viii) health; (ix) welfare; (x) hospitals;  
23 (xi) refuse collection and disposal; (xii) air pollution con-  
24 trol; (xiii) libraries; (xiv) housing; (xv) urban renewal; (xvi)  
25 [other].

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

31 (9) "Unit of local government" means a county, city or  
32 [insert name of other units of general government, such as  
33 village, township, or borough] lying, in whole or in part,  
34 within a metropolitan area which is providing one or more  
35 governmental services listed in subsection (7) of this section.

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

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

15 (2) A petition requesting such an election shall be signed  
16 by at least [ ] percent of all the qualified voters residing

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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.

17 within the tentative metropolitan area, and shall be filed  
18 with the [appropriate official] of the central county. Upon  
19 receipt of such a petition, the [appropriate official] shall  
20 examine the source and certify to the sufficiency of the sig-  
21 natures thereon. Within 30 days following receipt of such  
22 petition, the [appropriate official] shall transmit the same  
23 to the [governing body] of the central county together with  
24 his certificate as to the sufficiency thereof.<sup>2</sup>

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

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

19 Establishment of Metropolitan Study Commission

20 "Shall a metropolitan study commission be established for  
21 the area described in a [joint resolution adopted by the  
22 governing bodies of [insert names of counties, cities, other

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

23 units] [petition filed with the [appropriate official] of the  
24 central county on the [ ] day of [ ], 19[ ]?

25 YES . . . . .

26 NO . . . . .

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

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

1 Section 5. Selection of Metropolitan Study Commission.

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

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

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

12 (3) One member representing all cities under 2,500  
13 population and [insert name of other types of units of general  
14 government] to be selected by the [insert name of chief elected  
15 official, such a mayor or council president] of such cities and  
16 [insert name of other units]; but if the combined population  
17 of such cities and [insert name of other units] exceeds [ ],  
18 they shall be entitled to one more member for each [ ] addi-  
19 tional population or fraction thereof.

20 The members from such cities and [insert name of other units]  
21 shall be elected as follows: The [insert name of chief elective  
22 official] of all such units of government shall meet on the  
23 second Tuesday following the establishment of a metropolitan



24 study commission and thereafter on [date] of each even-numbered  
25 year at [ ] o'clock at the office of the [insert name of  
26 governing body] of the central county. The chairman of such  
27 [county governing body] shall preside. After nominations are  
28 made, ballots shall be taken and the [ ] candidate[s] receiv-  
29 ing the highest number of votes cast shall be considered elected.<sup>3</sup>

30 (4) One member, who shall be chairman of the metro-  
31 politan study commission, selected by the other members of the  
32 commission.

33 (b) Each member selected under the provisions of subsection  
34 (a) paragraphs (1) and (2) of this section shall reside at the  
35 time of his appointment in the [insert name of unit] by which  
36 appointed and each member selected under paragraph (3) shall  
37 reside at the time of his appointment in one of the cities  
38 [or other types of units] participating in the selection.

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

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

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

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

11 (c) Further meetings of the commission shall be held upon  
12 call of the chairman, the vice chairman in the absence or

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

13 inability of the chairman, or a majority of the members of  
14 the commission.

1       Section 8. Vacancies, Compensation, Open Meetings, Quorum,

2 Rules. (a) In case of a vacancy for any cause, a new member  
3 shall be appointed in the same manner as the member he replaced.

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

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

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

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

1       Section 9. Metropolitan Service Boundaries. A commission

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

1       Section 10. Considerations in Setting Boundaries. In

2 recommending boundaries and determining the need for furnishing

3 metropolitan services, a commission shall study and take into  
4 consideration:

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

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

13 (3) The boundaries of existing units of local government;

14 (4) Population density, distribution and growth;

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

18 (6) The true cash value of taxable property and differences  
19 in valuation under various possible boundaries for a metropol-  
20 itan area;

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

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

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

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

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

- 7 (1) Consolidation of any existing [insert names of units  
8 of general government other than county] with any other exist-  
9 ing [repeat insert];
- 10 (2) Consolidation of any [insert names of units of general  
11 government other than county] with the county in which it lies;
- 12 (3) Consolidation of two or more counties;
- 13 (4) Annexation of unincorporated territory to an existing  
14 city;
- 15 (5) Consolidation of any existing special service district  
16 with one or more other special service districts to perform all  
17 of the services provided by any of them;
- 18 (6) Creation of a new special service district to perform  
19 one or more metropolitan services, with provision for the dis-  
20 solution of any existing special service districts performing  
21 like service or services within the proposed boundaries of  
22 such new district;
- 23 (7) Performance of one or more metropolitan services by  
24 any existing unit of local government;
- 25 (8) Consolidation of specified metropolitan services by  
26 transfer of functions, by creation of joint administrative  
27 agencies or by contractual agreements;
- 28 (9) Creation of a permanent urban area council, consisting  
29 of members of governing bodies of units of local government  
30 within the metropolitan area; and
- 31 (10) Any other change it considers desirable involving  
32 creation, dissolution, or consolidation of units of local  
33 government in the metropolitan area, or involving alteration  
34 of their boundaries, powers, and responsibilities, consistent  
35 with provisions of the constitution of this state.

1 Section 13. Adjustment of Property and Debts. (a) The  
2 Commission shall determine the value and amount of all property  
3 used in performing any metropolitan service and all bonded and  
4 other indebtedness of units of local government attributable  
5 to the acquisition of such property and affected by its com-  
6 prehensive program for metropolitan services and shall determine  
7 and provide in its comprehensive program an equitable adjustment

8 of such property and debts of each unit of local government.

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

1 Section 14. Public Hearings on Proposed Program. Within  
2 two years after the date of its organization, a commission shall  
3 complete the preparation of its preliminary determination of  
4 boundaries and program for furnishing metropolitan services,  
5 and shall provide for adequate publication and explanation  
6 of the program. The commission shall fix the dates and places  
7 for public hearings on the program. Notice of hearings shall  
8 be published once each week for at least two weeks preceding a  
9 hearing, in at least one newspaper of general circulation in  
10 each component county. The notice of hearing shall state the  
11 time and place for the hearing.

1 Section 15. Submission of Recommendation. After public  
2 hearing, the commission may submit proposals contained in its  
3 comprehensive program for approval as follows: (1) proposals  
4 including charters, charter amendments, or any other necessary  
5 legal instrument for creation of a new unit of local government  
6 shall require approval by a majority of eligible voters thereon  
7 in the jurisdiction of the proposed new unit; (2) proposals  
8 for abolishing or consolidating existing units of local govern-

9 ment, or changing their boundaries, shall require approval by  
10 a majority of the eligible voters voting in each of the units  
11 affected; (3) any other proposals which are submitted by the  
12 commission and which under existing law can be carried into  
13 effect by action of the governing bodies of the units affected,  
14 shall be effective if approved by a majority of eligible voters  
15 voting thereon in each of the units affected.<sup>4</sup> Referendums shall  
16 be held at the next state general or primary election, occurring  
17 not sooner than 60 days after submission of the proposals by  
18 the commission.<sup>5</sup>

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

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

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

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

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

3       (1) To contract and cooperate with such other agencies,

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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 initi-  
ative and referendum on such proposals. On other proposals, a com-  
mission may recommend necessary enabling legislation or charter amend-  
ments to the appropriate governing body or the Legislative Assembly.

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

4 public or private, as it considers necessary for the rendition  
5 and affording of such services, facilities, studies and reports  
6 to the commission as will best assist it to carry out the pur-  
7 poses for which the commission was established. Upon request  
8 of the chairman of a commission, all state agencies and all  
9 counties and other units of local government, and the officers  
10 and employees thereof, shall furnish such commission such infor-  
11 mation as may be necessary for carrying out its functions and  
12 as may be available to or procurable by such agencies or units.

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

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

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

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

1 Section 20. State Matching Funds. In order to encourage  
2 and assist in the establishment and operation of metropolitan  
3 study commissions, the [if state has office of local govern-  
4 ment, insert its name] is authorized to enter into contracts to  
5 make grants to metropolitan study commissions to help finance  
6 their activities. The amount of any such grant may equal but  
7 not exceed the amount of funds appropriated by local units of  
8 government pursuant to section 19.

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

5 able to such earlier termination.

1 Section 22. Separability. [Insert separability clause.]

1 Section 23. Effective Date. [Insert effective date.]





## REGIONAL COUNCILS OF PUBLIC OFFICIALS

Among the many devices proposed or used to enable citizens and local government officials of metropolitan areas to cope more effectively with the growing number of areawide problems is the regional or metropolitan council of public officials. These are voluntary associations of public officials, usually elected, from most or all of the governments of a metropolitan area, formed to seek a better understanding among the governments and officials in the area, to develop a consensus regarding metropolitan needs, and to promote coordinated action in solving their problems.

At least twenty regional councils have been established since the first, the Supervisors Inter-County Committee, was organized in 1954 in the Detroit area. Among the well-known councils, besides the Detroit group, are the Metropolitan Regional Council of New York, New Jersey, and Connecticut, in the New York City area; the Association of Bay Area Governments in the San Francisco area; the Mid-Willamette Valley Intergovernmental Cooperation Council (Salem, Oregon); and the Metropolitan Council of Governments in Washington, D. C.

Although councils vary with respect to their manner of establishment and membership, they usually have three characteristics: (1) They cut across or embrace several local jurisdictions, and sometimes do not stop at state lines. (2) They are composed of the chief elected officials of the local governments, and sometimes have representation from the state government. (3) An association of representatives from individual governments which retain their power to act as they please with reference to the decisions of the regional councils, they function primarily as forums for discussion, research, and recommendation only. None has powers to compel either participation in the first instance or acceptance of recommendations in the end. Such operating functions as they may be given by their participating governments are always legally subject to the right of any individual constituent to withhold its support. Each, therefore, is voluntary in the fullest sense of the word. (4) They are multi-purpose, concerning themselves with many areawide problems. (5) They employ a full-time staff.

There has been a growing interest in regional councils, as reflected in the gradual increase in their number. It is anticipated, moreover, that the number will experience rapid expansion as a consequence of Section 1102(c) of the Federal Housing and Urban Development Act of 1965. This provision makes federal grants available to organizations composed of public officials whom (the Secretary of the Department of Housing and Urban Development) finds to be representative of the political jurisdictions within a metropolitan area or urban region for the purpose of assisting such organizations to undertake studies, collect data, develop regional plans and programs, and engage in such other activities as the Secretary finds necessary or desirable for the solution of the metropolitan or regional problems in such areas or regions. Grants may be as much as two-thirds

of the estimated cost of the work assisted.

In light of these developments it seems that states would be well advised to grant local officials necessary authority to form regional councils. Two basic methods have been used to provide this authority. The first is passage of special acts by the state legislature creating each council. This is the method followed in the 1957 Michigan Legislature for the Supervisors Intercounty Committee (Michigan Public Acts 1957, No. 21). The alternative, and more common approach, is a general interlocal cooperation enabling act that permits local units of government to undertake jointly any action they are empowered to undertake separately. A model interlocal agreement act of this kind has been previously proposed by the Advisory Commission and is presented on page 477 below. Such general authority has been used to establish the Association of Bay Area Governments in California and the Mid-Willamette Valley (Oregon) Council of Governments.

A third statutory approach is provided in the statute presented below. This is a bill authorizing local governments to join together for the specific purpose of forming and operating a regional council of officials.

Section 1 provides that the governing bodies of any two or more general purpose units of local government, such as cities and counties, may establish a regional council of public officials. It authorizes agreements to be made with governing bodies of similar units in other states in order to permit establishment of a council which would draw membership throughout the entire territory of an interstate metropolitan area. Some states might wish to broaden permissive membership to include representatives from local school districts or from the state government.

Section 2 specifies that each constituent local unit shall be represented by its elected chief executive or if it has no elected chief executive, by a member of its governing body chosen by that body. Reflecting the voluntary nature of the organization, it further provides that any constituent unit may withdraw at will upon giving 60 days' notice.

Two types of powers are authorized by section 3. The first, which may be exercised by vote of the council, includes the power to make studies of areawide problems of common interest, promote cooperation among the members, and make recommendations to the members and other public agencies operating in the area. These powers are purely of an advisory, research, encouragement, and recommendation nature. They do not involve carrying out any kind of "line" function normally carried out by the member governments within their individual jurisdictions.

The second category of powers are all other powers that the member governments may exercise individually. Since these would involve direct public services, the application of such powers to

each participating government is a matter of basic importance to the governing bodies of those governments. Therefore it is provided that for such powers to be exercised by the council, appropriate action by each constituent government would be required.

The remaining sections authorize the council to adopt by-laws, employ staff and consultants, and receive funds from all sources, including grants from the federal government. Governing bodies of the member governments are permitted to appropriate funds for the council.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize regional councils of public officials."]

(Be it enacted, etc.)

1     Section 1. Establishment. The [governing bodies] of any  
2 two or more counties, cities, [other general purpose units of  
3 local government] by appropriate action, may enter into an  
4 agreement with each other, or with the governing bodies of any  
5 counties, cities, [other general purpose units as above] of  
6 any other state to the extent that laws of such state permit,  
7 for establishment of a regional council of public officials.

1     Section 2. Membership. Membership of the council shall  
2 consist of one representative from each county, city, [other  
3 general purpose units] entering into the agreement. The repre-  
4 sentative from each member county, city, [other general pur-  
5 pose units] shall be the elected chief executive of the member  
6 county, city, [other general purpose units], or, if such county,  
7 city, [other general purpose units] does not have an elected  
8 chief executive, a member of its governing body chosen by such  
9 body to be its representative.<sup>1</sup> Any county, city, [other general

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1. If the area contains many local governments, states may wish to provide another basis of representation, analogous to that provided in model legislation for a metropolitan planning commission (see page 393) or a metropolitan functional authority (see page 380). States may also wish to consider including other local government units for membership, such as school districts and special districts; and may wish to provide for participation by the state and federal governments.

10 purpose units] which has become a member of the council may  
11 withdraw upon 60 days notice subsequent to formal action by its  
12 governing body.

1 Section 3. Powers and Duties. (a) The council shall have  
2 the power to: (1) study such area governmental problems com-  
3 mon to two or more members of the council as it deems appro-  
4 priate, including but not limited to matters affecting health,  
5 safety, welfare, education, economic conditions, and regional  
6 development; (2) promote cooperative arrangements and coordi-  
7 nate action among its members; and (3) make recommendations for  
8 review and action to the members and other public agencies that  
9 perform functions within the region.

10 (b) The council may, by appropriate action of the govern-  
11 ing bodies of the member governments, exercise such other pow-  
12 ers as are exercised or capable of exercise by the member gov-  
13 ernments and necessary or desirable for dealing with problems  
14 of mutual concern.

1 Section 4. By-Laws. The council shall adopt by-laws desig-  
2 nating the officers of the council and providing for the con-  
3 duct of its business.

1 Section 5. Staff. The council may employ such staff, and  
2 consult and retain such experts, as it deems necessary.

1 Section 6. Finances; Annual Report. (a) The governing  
2 bodies of the member governments may appropriate funds to meet  
3 the expenses of the council. Services of personnel, use of  
4 equipment and office space, and other necessary services may be  
5 accepted from members as part of their financial support.

6 (b) The council may accept funds, grants, gifts, and serv-  
7 ices from the government of the United States or its agencies,  
8 from this state or its departments, agencies or instrumentali-  
9 ties, or from any other governmental unit whether participating  
10 in the council or not, and from private and civic sources.

11 (c) It shall make an annual report of its activities to the  
12 member governments.

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

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

## METROPOLITAN FUNCTIONAL AUTHORITIES

A notable phenomenon of the past decade has been the proliferation of local public "authorities" or "special districts," generally created to provide a single type of governmental service or facility, e.g., housing, some phase of natural resources activity, sewage disposal, parks, hospital service, water supply, or other utility services. In 1962 there were 18,323 special district governments, half again as many as there were in 1952.<sup>1</sup> Much of the increase occurred in metropolitan areas; between 1957 and 1962, the number of special districts in the 212 areas officially recognized as SMSA's in 1962 rose from 3,736 to 5,411.<sup>2</sup> While most special districts are located outside city borders, a sizeable number (probably over 500) serve or are included in the metropolitan area central cities.

The spread of functional authorities has caused concern among public administrators, scholars, and political leaders in metropolitan areas. The authority approach has been denounced as "super-government," 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

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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.

2. See footnote 1.

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

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

The text of the suggested legislation is based on the provisions of Chapter 213, 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 to provide and coordinate certain specified public services and functions for particular areas."]

(Be it enacted, etc.)

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3. 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.

Title I

Purpose of Act, and Definitions

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

1     Section 2. As used herein:

2       (1) "Metropolitan service corporation" means a municipal  
3 service corporation of the state of [        ] created pursuant  
4 to this act.

5       (2) "Metropolitan area" as used herein is an area designated  
6 as a "standard metropolitan statistical area" by the U. S. Bureau  
7 of the Census in the most recent nationwide Census of the Pop-  
8 ulation.<sup>1</sup>

9       (3) "Service area" means the area contained within the  
10 boundaries of an existing or proposed metropolitan service

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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."

- 11 corporation.
- 12 (4) "City" means an incorporated city or town.
- 13 (5) "Component city" means an incorporated city or town  
14 within a service area.
- 15 (6) "Component county" means a county of which all or part  
16 is included within a service area.
- 17 (7) "Central city" means the city with the largest popula-  
18 tion in a service area.
- 19 (8) "Central county" means the county containing the city  
20 with the largest population in a service area.
- 21 (9) "Special district" means any municipal corporation  
22 of the state of [ ] other than a city, town, county, school  
23 district, or metropolitan service corporation.
- 24 (10) "Metropolitan council" means the legislative body of a  
25 metropolitan service corporation.
- 26 (11) "City council" means the legislative body of any city  
27 or town.
- 28 (12) "Population" means the number of residents as shown by  
29 the figures released from the most recent official federal  
30 Census of Population.
- 31 (13) "Metropolitan function" means any of the functions of  
32 government named in title I, section 2 of this act.
- 33 (14) "Authorized metropolitan function" means a metropolitan  
34 function which a metropolitan service corporation shall have  
35 been authorized to perform in the manner provided in this act.

## Title II

### Area and Functions of a Metropolitan Service Corporation

1 Section 1. A metropolitan service corporation may be organi-  
2 zed to perform certain metropolitan functions, as provided  
3 in this act, for a service area consisting of contiguous terri-  
4 tory which comprises all or part of a metropolitan area and in-  
5 cludes the entire area or two or more cities, of which at least  
6 one has a population of [50,000] or more; but if a  
7 metropolitan service corporation shall be authorized to perform  
8 the function of metropolitan comprehensive planning it shall



9 exercise such power, to the extent found feasible and appro-  
10 priate, for the entire metropolitan area rather than only for  
11 some smaller service area. No metropolitan service corporation  
12 shall have a service area which includes only a part of any city,  
13 and every city shall be either wholly included or wholly ex-  
14 cluded from the boundaries of a service area. No territory  
15 shall be included within the service area of more than one  
16 metropolitan service corporation.

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

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

1 Section 3. With respect to each function it is authorized  
2 to perform, a metropolitan service corporation shall make ser-  
3 vice corporation shall make services available throughout its  
4 service area on a uniform basis, or subject only to classifica-  
5 tions or distinctions which are applied uniformly throughout  
6 the service area and which are reasonably related to such rel-  
7 evant factors as population density, topography, types of users,  
8 and volume of services used. As among various parts of the  
9 service area, no differentiation shall be made in the nature  
10 of services provided, or in the conditions of their availability,  
11 which is determined by the fact that particular territory is  
12 located within or outside of a component city.

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

Title III

Establishment and Modification of a  
Metropolitan Service Corporation

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

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

8            (1) the city council of a central city; or

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

11           (3) the board of commissioners of a central county.

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

15        (b) A petition calling for such an election shall be signed  
16 by at least [4] percent of the qualified voters residing with-  
17 in the metropolitan area and shall be filed with the [appropriate  
18 official] of the central county.

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

28        Upon receipt of such a petition, the [official] shall ex-  
29 amine the same and certify to the sufficiency of the signatures  
30 thereon. Within thirty days following the receipt of such  
31 petition, the [official] shall transmit the same, together with  
32 his certificate as to the sufficiency thereof, to the legislative



32 meeting of the metropolitan council which shall be held not  
33 later than thirty days after the date of such election. A  
34 copy of such resolution shall be transmitted to the legislative  
35 body of each component city and county and of each special  
36 district which shall be affected by the particular metropolitan  
37 functions authorized.

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

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

1     Section 4. The service area of a metropolitan service cor-  
2 poration may be extended, subject to the general geographical  
3 conditions stated in title II, section 1, in the manner pro-  
4 vided in this section.

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

19 for the public hearing.

20 (b) The metropolitan council shall hold the public hearing  
21 so announced, to receive testimony on the question of extending  
22 the boundaries of the service area, and it may hold further  
23 public hearings on the matter, subject in each instance to pub-  
24 lished notice in a newspaper having general circulation in the  
25 area, at least [three] days in advance.

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

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

42 To be sufficient, a petition calling for a popular referendum  
43 on the prospective annexation of particular territory to the  
44 service area of a metropolitan service corporation shall be  
45 signed by at least either: (1) [4] percent of the qualified  
46 voters residing within the entire service area of the corpora-  
47 tion as prospectively enlarged; or (2) [20] percent of the  
48 qualified voters residing within the territory concerning which  
49 a referendum is proposed. The petition shall indicate such  
50 territory, in terms of any one or more entire areas specified  
51 for annexation by the metropolitan council resolution which is  
52 described in paragraph (c) above. Such petition shall be filed  
53 with the [appropriate official] of the central county within

54 [thirty] days of the publication of the annexation resolution  
55 by the metropolitan council. The [official] shall examine the  
56 same and certify to the sufficiency of the signatures thereon.  
57 If a sufficient petition is filed, the question specified by  
58 such petition shall be submitted at the next regular primary  
59 for general election held throughout the metropolitan area.  
60 If, at such election, a majority of the vote cast on the ques-  
61 tion within the service area of the metropolitan service cor-  
62 poration as prospectively enlarged shall vote against the annex-  
63 ation of a particular area or areas, the action of the metropol-  
64 itan council with respect to such area or areas shall thereby  
65 be nullified.<sup>3</sup>

#### Title IV

##### Organization and Governing Body of a Metropolitan Service Corporation

1 Section 1. A metropolitan service corporation shall be  
2 governed by a metropolitan council composed of the following:<sup>4</sup>  
3 (1) one member selected by, and from, the board of com-  
4 missioners of each component county;  
5 (2) one member who shall be the mayor of the central city;  
6 (3) one member from each of the three largest component  
7 cities other than the central city, selected by, and from, the  
8 mayor and city council of each of such cities;  
9 (4) [ ] members representing all component cities other  
10 than the four largest cities to be selected from the mayors and  
11 city councils of such smaller cities by the mayors of such cities  
12 in the following manner: the mayors of all such cities shall  
13 meet on the second Tuesday following the establishment of a  
14 metropolitan service corporation and thereafter on [date] of  
15 each even-numbered year at [ ] o'clock at the office of the

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

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.

16 board of county commissioners of the central county. The chair-  
17 man of such board shall preside. After nominations are made,  
18 ballots shall be taken and the [ ] candidate[s] receiving  
19 the highest number of votes cast shall be considered selected;

20 (5) one member, who shall be chairman of the metropolitan  
21 council, selected by the other members of the council. He shall  
22 not hold any additional public office other than that of notary  
23 public or member of the military forces of the United States  
24 or of this state, not on active duty.

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

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

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

1       Section 5. The chairman of the metropolitan council shall  
2 receive such compensation as the other members of the metropol-  
3 itan council shall provide. Members of the council other than  
4 the chairman shall receive compensation for attendance at  
5 metropolitan council or committee meetings of [     ] dollars  
6 per diem but not exceeding a total of [     ] dollars in any  
7 one month, in addition to any compensation which they may re-  
8 ceive as officers of component cities or counties; but officers  
9 serving in such capacities on a full time basis shall not re-  
10 ceive compensation for attendance at metropolitan council or  
11 committee meetings. Members of the council may be reimbursed  
12 for expenses actually incurred by them in the conduct of offi-  
13 cial business for the metropolitan service corporation.

1       Section 6. The name of a metropolitan service corporation  
2 shall be established by its metropolitan council. Each metro-  
3 politan service corporation shall adopt a corporate seal con-  
4 taining the name of the corporation and the date of its forma-  
5 tion.

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

7       (a) To establish offices, departments, boards and commissions  
8 in addition to those provided by this act which are necessary



9 to carry out the purposes of the metropolitan services corpora-  
10 tion, and to prescribe the functions, powers and duties thereof.

11 (b) To appoint or provide for the appointment of, and to  
12 remove or to provide for the removal of, all officers and  
13 employees of the metropolitan service corporation except those  
14 whose appointment or removal is otherwise provided for by this  
15 act [subject to the civil service provisions of [cite appro-  
16 priate civil service statute provisions].

17 (c) To fix the salaries, wages and other compensation of  
18 all officers and employees of the metropolitan service corpora-  
19 tion except those otherwise fixed in this act [subject to the  
20 civil service provisions of [cite appropriate civil service  
21 statute provisions].

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

#### Title V

##### Duties of a Metropolitan Service Corporation

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

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

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

5 perform.

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

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

8 (2) To review proposed zoning ordinances and resolutions  
9 or comprehensive plans of component cities and counties and  
10 make recommendations thereon. Such proposed zoning ordinances  
11 and resolutions or comprehensive plans must be submitted to the  
12 metropolitan council prior to adoption and may not be adopted  
13 until reviewed and returned by the metropolitan council. The  
14 metropolitan council shall cause such ordinances, resolutions  
15 and plans to be reviewed by the planning staff of the metropol-  
16 itan service corporation and return such ordinances, resolutions  
17 and plans, together with their findings and recommendations  
18 thereon, within ninety days following their submission.

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

1 Section 5. A metropolitan service corporation shall offer  
2 to employ every person who on the date such corporation acquires  
3 a metropolitan facility is employed in the operation of such  
4 facility by a component city or county or by a special district.  
5 Where a metropolitan service corporation employs a person em-  
6 ployed immediately prior thereto by a component city or county,  
7 or by a special district, such employee shall be deemed to re-  
8 main an employee of such city, county, or special district for  
9 the purposes of any pension plan of such city, county, or  
10 special district, and shall continue to be entitled to all  
11 rights and benefits thereunder as if he had remained as an  
12 employee of the city, county, or special district, until the  
13 metropolitan service corporation has provided a pension plan

14 and such employee has elected, in writing, to participate  
15 therein. Until such election, the metropolitan service corpor-  
16 ation shall deduct from the remuneration of such employee the  
17 amount which such employee is or may be required to pay in  
18 accordance with the provisions of the plan of such city, county,  
19 or special district and the metropolitan service corporation  
20 shall pay to the city, county, or special district any amounts  
21 required to be paid under the provisions of such plan by em-  
22 ployer and employee.

## Title VI

### General Powers of a Metropolitan Service Corporation

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

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

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

1     Section 4. A metropolitan service corporation shall have  
2 power to acquire by purchase, condemnation, gift, or grant and  
3 to lease, construct, add to, improve, replace, repair, maintain,  
4 operate and regulate the use of facilities requisite to its  
5 performance of authorized metropolitan functions, together with  
6 all lands, properties, equipment and accessories necessary for  
7 such facilities. Facilities which are owned by a city or  
8 special district may, with the consent of the legislative body  
9 of the city or special districts owning such facilities, be

10 acquired or used by the metropolitan service corporation.  
11 Cities and special districts are hereby authorized to convey  
12 or lease such facilities to a metropolitan service corporation  
13 or to contract for their joint use on such terms as may be  
14 fixed by agreement between the legislative body of such city  
15 or special district and the metropolitan council, without  
16 submitting the matter to the voters of such city or district.

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

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

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

12 council shall by resolution transfer it to such city or county.

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

#### Title VII

#### Financial Powers of a Metropolitan Service Corporation<sup>5</sup>

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

1     Section 2. A metropolitan service corporation shall have  
2 the power to issue bonds for any authorized capital purpose  
3 of the metropolitan service corporations; but a proposition  
4 authorizing the issuance of such bonds shall have been submitted  
5 to the electors of the metropolitan service corporation at a  
6 special election and assented to by a majority of the persons  
7 voting on said proposition at said election.<sup>6</sup>

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

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5. 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.

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

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

1       Section 5. All banks, trust companies, bankers, savings  
2 banks and institutions, building and loan associations, savings  
3 and loan associations, investment companies, and other persons  
4 carrying on a banking or investment business, all insurance  
5 companies, insurance associations, and other persons carrying  
6 on an insurance business, and all executors, administrators,  
7 curators, trustees and other fiduciaries, may legally invest  
8 any sinking funds, moneys, or other funds belonging to them  
9 or within their control in any bonds or other obligations issued  
10 by a metropolitan service corporation pursuant to this act.  
11 Such bonds and other obligations shall be authorized security  
12 for all public deposits in this state.

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

#### Title VIII

##### Separability and Effective Date

1       Section 1. [Insert separability clause.]

1       Section 2. [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 overall interests. State legislation should therefore permit local latitude in the agreements whereby metropolitan area planning commissions are established, while at the same time setting minimum standards for the organization and powers of such commissions.

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

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

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

that the Congress in the Housing Act of 1961 has granted advance consent to interstate compacts for urban planning functions in interstate metropolitan areas.

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 Interlocal Contracting and Joint Enterprises Act, page 477 below 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 the Interlocal Contracting and Joint Enterprises Act in any one of several ways: (1) if a statute similar to the Interlocal Contracting and Joint Enterprises 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 states wishes to authorize is only in the field of planning, the Interlocal Contracting and Joint Enterprises 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 Contracting and Joint Enterprises 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 Contracting and Joint Enterprises 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 371.

#### Suggested Legislation

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

(Be it enacted, etc.)

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

1        Section 2. Creation of a Metropolitan Area Planning Com-  
2 mission. A metropolitan area planning commission may be estab-  
3 lished pursuant to the following procedures:

4        (1) Two or more adjacent incorporated municipalities, two  
5 or more adjacent counties, or one or more counties and a city  
6 or cities within or adjacent to the county or counties may, by  
7 agreement among their respective governing bodies, create a  
8 metropolitan area planning commission, if (i) in the case of

9 municipalities and cities, the largest one within the metropol-  
10 itan planning area, as defined in section 3, shall be a party  
11 to the agreement; and (ii) the number of counties, cities,  
12 other municipalities, townships, school and other special dis-  
13 tricts or independent governmental bodies party to the agree-  
14 ment shall equal 60 per cent or more of the total number of  
15 such counties, cities and other local units of government with-  
16 in the metropolitan area,<sup>1</sup> as defined in section 3. The agree-  
17 ment shall be effected through the adoption by each governing  
18 body concerned, acting individually, of an appropriate resolu-  
19 tion. A copy of such agreement shall be filed with the [chief  
20 state records officer], [state office of local affairs] and  
21 [state planning agency.]

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

29 Any additional county, municipality, town, township, school  
30 district or special district within the metropolitan planning  
31 area, as defined in section 3, may become party to the agree-  
32 ment.

1 Section 3. Designation of a Metropolitan Planning Area.

2 "Metropolitan area" as used herein is an area designated as  
3 a "standard metropolitan statistical area" by the U. S. Bureau  
4 of the Census in the most recent nationwide Census of the

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

5 Population.<sup>2</sup> The specific geographic area in which a metropol-  
6 itan area planning commission shall have jurisdiction shall be  
7 stipulated in the agreement by which it is established.

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

19 The commission shall adopt an annual budget, to be submitted  
20 to the participating governments which shall each contribute to  
21 the financing of the commission according to a formula speci-  
22 fied in the agreement. Subject to approval of any application  
23 therefor by the [appropriate state agency], a metropolitan area  
24 planning commission established pursuant to this act may make

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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.

25 application for, receive and utilize grants or other aid from  
26 the Federal Government or any agency thereof.<sup>3</sup>

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

1     Section 6. Powers and Duties. The metropolitan area plan-  
2 ning commission shall:

3     (1) Prepare and from time to time revise, amend, extend or  
4 add to a plan or plans for the development of the metropolitan  
5 area. The plans shall be based on studies of physical, social,  
6 economic and governmental conditions and trends, and shall aim  
7 at the coordinated development of the metropolitan area in  
8 order to promote the general health, welfare, convenience and  
9 prosperity of its people. The plans shall embody the policy  
10 recommendations of the metropolitan area planning commission,  
11 and shall include, but not be limited to:

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

14             (ii) Recommendations for the most desirable pattern  
15 and intensity of general land use within the metropolitan area,  
16 in the light of the best available information concerning  
17 natural environmental factors, the present and prospective  
18 economic and demographic bases of the area, and the relation

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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.

19 of land use within the area to land use in adjoining areas.  
20 The land use pattern shall include provision for open as well  
21 as urban, suburban, and rural development.

22 (iii) Recommendations for the general circulation  
23 pattern for the area, including land, water and air transporta-  
24 tion and communication facilities, whether used for movement  
25 within the area or to and from adjoining areas.

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

31 (v) Recommendation for the long-range programming and  
32 financing of capital projects and facilities.

33 (vi) Such other recommendations as it may deem appro-  
34 priate concerning current and impending problems as may affect  
35 the metropolitan area.

36 (2) Prepare, and from time to time revise, recommended  
37 zoning and subdivision and platting regulations which would  
38 implement the metropolitan area plan.

39 (3) Prepare studies of the area's resources, both natural  
40 and human, with respect to existing and emerging problems of  
41 industry, commerce, transportation, population, housing, agri-  
42 culture, public service, local governments and any other  
43 matters which are relevant to metropolitan area planning.

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

49 (5) Participate with other government agencies, educational  
50 institutions and private organizations in the coordination of  
51 metropolitan research activities defined under paragraphs (3)  
52 and (4) of the section.

53           (6) Cooperate with, and provide planning assistance to  
54 county, municipal or other local governments, instrumentalities  
55 or planning agencies within the metropolitan area and coordinate  
56 metropolitan area planning with the planning activities of the  
57 state and of the counties, municipalities, special districts  
58 or other governmental local units within the metropolitan area,  
59 as well as neighboring metropolitan areas and the programs of  
60 federal departments and agencies.

61           (7) Provide information to officials of departments, agencies  
62 and instrumentalities of federal, state and local governments,  
63 and to the public at large, in order to foster public awareness  
64 and understanding of the objectives of the metropolitan area  
65 plan and the functions of metropolitan and local planning, and  
66 in order to stimulate public interest and participation in the  
67 orderly, integrated development of the region.

68           (8) Receive and review for compatibility with metropolitan  
69 area plans all proposed comprehensive land use, circulation,  
70 and public facilities plans and projects, zoning and subdivision  
71 regulations, official maps and building codes of local govern-  
72 ments in the geographic area and all amendments or revisions  
73 of such plans, regulations and maps, and make recommendations  
74 for their modification where deemed necessary to achieve such  
75 compatibility.

76           (9) Review participating local government applications for  
77 capital project financial assistance from state and federal  
78 governments, and comment upon their consistency with the metro-  
79 politan development plan; and review and comment upon state  
80 plans for highways and public works within the area to promote  
81 coordination of all intergovernmental activities in the metro-  
82 politan area on a continuing basis.

83           (10) Exercise all other powers necessary and proper for the  
84 discharge of its duties.

85           The metropolitan planning commission may exercise its powers  
86 jointly or in cooperation with agencies or political subdivisions  
87 of this state or any other state, or with agencies of the United  
88 States, subject to statutory provisions applicable to inter-

89 jurisdictional agreements.

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

1       Section 8. Cooperation by Local Governments and Planning  
2 Agencies. Any local government, governmental district or  
3 special purpose authority within the metropolitan area may,  
4 and all participating local governments, governmental districts  
5 and special purpose authorities shall, file with the metropolitan  
6 planning commission all current and proposed plans, zoning  
7 ordinances, official maps, building codes, subdivision regula-  
8 tions, and project plans for capital facilities and amendments  
9 to and revisions of any of the foregoing, as well as copies  
10 of their regular and special reports dealing with planning  
11 matters. Each governmental unit within the geographic area  
12 over which a metropolitan area planning commission has juris-  
13 diction shall afford such commission a reasonable opportunity  
14 to comment upon any such proposed plans, zoning, subdivision  
15 and platting ordinances, regulations and capital facilities  
16 projects and shall consider such comments, if any, prior to  
17 adopting any such plan, ordinance, regulation or project. By  
18 appropriate provision of an agreement, the parties thereto  
19 may require that as a condition precedent to their adoption,

20 any or all proposed plans, zoning, subdivision and platting  
21 ordinances, regulations, and capital facilities projects of  
22 their respective jurisdictions be determined by the metropolitan  
23 area planning commission to be [in conformity with] [not in con-  
24 flict with] the relevant plan of the commission, but any power  
25 so to pass upon proposed plans, ordinances, regulations or  
26 projects shall be exercisable only with respect to the juris-  
27 dictions party to the agreement.

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

1       Section 10. Separability. [Insert separability clause.]

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



## REGIONAL PLANNING AND DEVELOPMENT COMMISSIONS

In the nationwide concern for the alleviation of economic hardship, it has become apparent that hard core areas of poverty and lagging development lie in small towns and farm communities of the nation as well as in major urban centers. Commonly cited illustrations, for example, are the Appalachian hollow and the small town that once served as the hub of commercial activity and supplied the needs of the surrounding countryside but is now steadily falling farther behind its bigger competitor on down the highway.

An effective attack on the problems of underdeveloped areas, urban or rural, requires action by local, state, and federal governments in partnership with the private sector of the economy. Local governments are obviously unable to cope on their own with the root causes of poverty and economic underdevelopment. On the other hand, they can take many steps to help their communities become more attractive as places in which to live and carry on productive enterprises. The trouble is, local governments in many areas of sparse population and after years of declining activity have limited fiscal and human resources to draw upon. Such resources are vital, just to take advantage of assistance programs increasingly available from state and federal governments. Moreover, the geographic jurisdiction of individual local units of government, even as broad as the county, is frequently not large enough to constitute a viable base for economic development.

Rural farm and nonfarm communities in a number of states are now moving into better positions to overcome these basic inadequacies of small communities, with the assistance of state legislation and state technical and financial assistance. In such states as Wisconsin, Georgia, Tennessee, and Missouri, they have undertaken to pool the financial and human resources of local communities over a broader yet essentially homogeneous area, for the purpose of studying economic and social needs and resources, making plans for best development of their resources, and acting cooperatively, usually through existing units of local government, to carry out the plans. The instrument for doing this is an areawide planning and development commission, representing the local governments of the area and employing a trained technical staff equipped to develop workable long range plans and work closely and effectively with community organizations, public and private, in carrying them out.

A major effort to help underdeveloped areas has at the same time been mounted by the federal government. The Economic Development Administration, as did the predecessor Area Redevelopment Administration, aim at providing economic stimulants through public works loans and grants. The Appalachian Regional Commission focuses on the economic and social problems of an area covering largely mountainous territory and small towns of parts of 12 states. The Economic Opportunity Act is directed toward rooting out and preventing poverty wherever it exists, and was amended in 1965 with specific direction to see that appropriate resources are devoted to the

poverty-stricken of both rural and urban areas. These programs are in addition to Department of Agriculture programs aimed basically at raising the income and improving the lot of the individual farmer and rural resident, and the Department's more recent efforts through its rural community development service to provide technical assistance to farm communities in planning and developing their local economies. Finally, the Administration proposed to the Congress in 1966 a Community Development District program, under which rural communities would be given incentives and assistance to engage in orderly planning for the development of large rural areas.

Certain problems of interlevel and interprogram coordination have emerged from these new federal and state efforts. One is the danger that many different state, local, and federal programs in the same basic field--physical, economic, and social development--will exhaust the leadership and organizational resources available in the rural communities. Another problem is the likelihood of overlapping, confusing, and perhaps contradictory requirements for local communities to comply with in order to take advantage of programs offered by federal and state governments. Thus, for example, the principal program under the Economic Opportunity Act--the Community Action Program--is administered at the local and multi-county level through community action agencies, pursuant to organization and procedural requirements set forth in detail by the Office of Economic Opportunity. The Economic Development Administration has its own requirements for participation in its areawide program of stimulating loans and grants. The Appalachian Regional Development Act sets forth still additional requirements for local development districts. In each case, however, the governor of the state has, or may have, a hand in designating or approving designation of the boundaries of the respective development districts, and thus the state has leverage to effect some coordination.

It was in consideration of these conditions and the need to provide the framework for most effective use of limited resources, particularly in nonmetropolitan areas, that the Advisory Commission on Intergovernmental Relations in its 1966 report on Intergovernmental Relations in the Poverty Program made the following recommendation:

...that States authorize and provide financial incentives for creation and operation of multi-purpose regional public agencies in non-metropolitan areas to undertake physical, economic and human resource planning and development programs (including community action, economic and rural development, and areawide planning) over multi-county areas, particularly those areas in which local institutions have been unwilling or unable to respond to existing needs.

The Commission further recommends that where States have taken such action, the head of each Federal department and agency administering grants for physical,

economic and human resource planning and development be required, by statute or Executive Order, to: (a) require use of the geographic base established pursuant to such State action as a condition of Federal grants to such area; (b) utilize, to the maximum extent feasible, such multi-purpose agencies as the recipients of such grants; and (c) where other than the multi-purpose agency is used, require establishment of adequate checkpoint procedures to assure program coordination with, and the maximum use of the governing body, technical staff, and physical facilities of such multi-functional agencies.

The following draft statute would provide legislative authority and financial incentives for carrying out this recommendation at the state and local levels. To some extent it reflects experience in Georgia with areawide planning and development commissions. Some of these commissions have operated as community action agencies under the Economic Opportunity Act and the governor has also indicated that he will designate the commissions to serve as development districts under the Economic Development Act, and, if passed, the Community Development District Act of 1966. Like the Georgia experience, in addition, the statute provides for state matching grants to encourage establishment and assist in operation of the areawide commissions. The draft act also reflects to some degree reference to the Wisconsin regional planning law, the Missouri state and regional planning and community development act, and the Tennessee economic development district act. A section-by-section summary follows.

After the declaration of purpose (section 1) and definitions (section 2), the statute makes the governor responsible for laying out multi-county planning and development districts (section 3) and for establishing commissions to carry on the planning and development functions in the districts (section 4). State stimulation for formation and operation of the districts is provided by authorizing state appropriations to match the local contribution up to a specified maximum (subsection 6(g)). Thus the statute gives the state some basic duties and responsibilities for the regional approach to economic and social planning and development.

At the same time, the act places major responsibility on local units of government in creation and operation of the commissions, reflecting the need to enlist their active support and participation. It makes county governing bodies responsible for initiating the designation by the governor of the development districts (subsection 3(a)), and all local units of general government for determining among themselves the composition of the commissions, subject to the requirement that commission members must be local elected officials (subparagraph 4(1)).

In the belief that states may differ as to the degree to which they wish to make the commission capable of carrying on operating and construction activities on their own, two basic alternatives are

presented with respect to the powers of the commissions. The first (section 5) empowers a commission to perform planning activities and, under contract or agreement with one or more local units, administer on their behalf programs available under federal planning and development legislation. The latter include community action and other activities under the Economic Opportunity Act and public works facilities construction under the Economic Development Act. Financing of the commission (section 6) is limited essentially to dues assessed against the local units of government, charges for special services, federal grants, state incentive matching grants, and revenues received from local units under contracts or agreements to administer federal programs for them.

The second alternative authorizes the same planning activities as under the first, but in addition, in bracketed subparagraphs of section 5, empowers a commission to act on its own in conducting operating and construction programs under federal and state development legislation. Bracketed subsections of section 6 give the commissions powers of property taxation, borrowing, and special assessments to support their direct operating and construction responsibilities.

Other provisions are the same under both alternatives. The governor is empowered to designate, unless precluded specifically by federal law, regional planning and development districts to serve as planning and development districts for purposes of federal planning and development programs. This provision, plus the provision for the commissions to act either on their own or on behalf of local governments in administering state and federal grants (subparagraph 5(2)), would provide the framework for having federal and state planning and development programs administered within the same geographic boundaries and making most effective use of leadership and staffing. The commissions are also empowered to assist state agencies in providing technical assistance to local governments, for example, assisting the state office of economic opportunity in providing technical assistance under the Economic Opportunity Act (subparagraph 5(2)).

#### Suggested Legislation

[Title should conform to state requirements. The following is one suggestion: "An act providing for the establishment of multi-county regional planning and development commissions."]

(Be it enacted, etc.)

- 1     Section 1. Purpose. The legislature finds that: (1) many
- 2     citizens of the state, particularly those residing outside of
- 3     major urban centers, are not able to participate fully in the
- 4     economic opportunities afforded to other citizens, largely

5 because many of these areas are economically and physically  
6 underdeveloped; (2) despite the best efforts of local units of  
7 government, these areas are in need of assistance in planning  
8 and developing their economic, physical, and human resources;  
9 (3) successful achievement of these objectives requires a com-  
10 prehensive, coordinated, and orderly program by which the re-  
11 sources of a number of communities may be pooled to overcome  
12 the effects of sparsity of population and inadequacies of eco-  
13 nomic and other resources; (4) the Congress has enacted a  
14 number of laws, including the Economic Opportunity Act, [the  
15 Appalachian Regional Development Act<sup>1</sup>], the Public Works and  
16 Economic Development Act, [and the Community Development Dis-  
17 trict Act<sup>2</sup>] which provide assistance in carrying out planning  
18 and development activities to meet the needs of the citizens  
19 and to more fully develop areas of lagging growth; (5) these  
20 federal laws have separate and different requirements as to  
21 the organizational structure and geographic areas of local or  
22 areawide units administering their programs, with consequent  
23 overlapping and confusion and excessive demands on local lead-  
24 ership and staff resources; and (6) the assistance of the state  
25 is needed to make the most effective use of these and other  
26 programs in organizing and administering programs to meet the  
27 needs of the citizens of such areas. It is the purpose of this  
28 act, therefore, to provide more effective means and incentives  
29 for planning and development of the physical, economic, and  
30 human resources of the state, including a regional framework  
31 for effective execution and coordination of federal planning  
32 and development programs.

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

2 (1) "Governing body" means the board, body, or persons in  
3 which the powers of local units are vested.

4 (2) "Local units of government" or "local units" include

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1. Applicable to 12 states affected by the Appalachian Regional Development Act.

2. Inclusion is conditioned on passage of Community Development District Act.

5 cities, villages, towns, counties [enumerate other units of  
6 general local government].

7 (3) "Population" means the number of residents as shown by  
8 the most recent nationwide census of population.

9 (4) "District" means an area of two or more contiguous  
10 counties designated by the governor as a regional planning and  
11 development district pursuant to section 3 of this act.

12 (5) "Commission" means a regional planning and development  
13 commission established pursuant to section 4 of this act.

1 Section 3. Designation of Regional Planning and Develop-

2 ment Districts. (a) The governor may designate regional plan-  
3 ning and development districts when he finds the following  
4 conditions exist: (1) the governing bodies of two or more  
5 contiguous counties signify by resolution that they desire  
6 designation of such counties as a district for purposes of this  
7 act; (2) the public has had an opportunity to register its  
8 views on the proposed creation of such a district, either at a  
9 public hearing held by the governing bodies upon adequate public  
10 notice prior to the adoption of the resolution, or through such  
11 other means as the governor shall find satisfactory; (3) there  
12 exists within the proposed district a clear need to plan and  
13 develop its physical, economic, and social resources, and the  
14 area contains adequate financial and other resources to sup-  
15 port successful achievement of these objectives, including a  
16 minimum population of [ ], but the governor may waive such  
17 population limitation if he finds that the purposes of this act  
18 require such action; (4) the area within the proposed district  
19 has sufficient elements of homogeneity based upon, but not  
20 limited to, such considerations as topographic and geographic  
21 conformations, extent of urban development, the existence of  
22 special or acute agricultural, forestry, conservation or other  
23 rural problems, uniformity of social or economic interests and  
24 values, park and recreational needs, civil defense, or the  
25 existence of physical, social, and economic problems of a  
26 regional character; and (5) the proposed district meets such  
27 other reasonable and necessary general conditions, standards,

28 and criteria as the governor may establish to further the pur-  
29 poses of this act. In establishing standards the governor  
30 shall afford all affected parties adequate notice and an oppor-  
31 tunity to present relevant information.

32 (b) Regional planning and development districts designated  
33 by the governor under this section shall be used as the basis  
34 for proposing or designating areas for the purposes of the  
35 following federal acts, to the extent not precluded by such  
36 acts, unless the governor finds it necessary to waive or re-  
37 vise the districts to fulfill the purposes of this act: (1)  
38 the Economic Opportunity Act of 1964; (2) section 403 of the  
39 Public Works and Economic Development Act of 1965; (3) section  
40 301 of the Appalachian Redevelopment Act of 1965; [(4) section  
41 3 of the Community Development District Act of 1966 (S. 2934)<sup>3</sup>];  
42 and (5) such other federal acts, existing or hereafter enacted,  
43 as may authorize financial assistance for undertaking physical,  
44 economic, and human resource planning and development programs.

45 (c) The governor may, after consultation with the govern-  
46 ing bodies of the counties involved, revise the designation of  
47 districts as required to reflect changing conditions or other-  
48 wise to fulfill the purposes of this act.

49 (d) The [state planning office, office of local affairs,  
50 or other appropriate state agency] may assist interested local  
51 units in arranging for designation of a planning and develop-  
52 ment district and in establishing a regional planning and de-  
53 velopment commission as provided in sections 3 and 4 of this  
54 act. All departments and agencies of the state and any poli-  
55 tical subdivisions and public authorities thereof, are author-  
56 ized and directed to provide such assistance and data as may  
57 be needed in carrying out the purposes of this act, including  
58 designation of districts and establishment of commissions.

59 (e) The governor may enter into agreements with the gov-  
60 ernors of any adjoining states to establish interstate regional

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3. Inclusion is conditioned upon passage of Community Development District Act.

61 planning and development districts consisting of one or more  
62 counties in each of the affected states. In negotiating the  
63 agreements, the governor shall be guided by the provisions of  
64 this act with respect to the area of such districts and the  
65 selection, composition, powers, and functions of district com-  
66 missions. Any agreement shall specify: (1) its duration; (2)  
67 the precise organization, composition, and nature of the legal  
68 or administrative entity created thereby together with the  
69 powers delegated thereto; (3) its purpose or purposes; (4) the  
70 manner of financing the joint or cooperative undertaking and of  
71 establishing and maintaining a budget therefor; (5) the permis-  
72 sible method or methods to be employed in accomplishing the  
73 partial or complete termination of the agreement and for dis-  
74 posing of property upon partial or complete termination; and  
75 (6) any other necessary and proper matters.

1     Section 4. Establishment of Regional Planning and Develop-  
2 ment Commissions. The governor may approve the establishment  
3 of a regional planning and development commission for each  
4 regional planning and development district to assist the local  
5 units of government within the district in carrying out the pur-  
6 poses of this act. Commissions approved by the governor shall  
7 conform to the following requirements:

8         (1) A commission shall consist of representatives of local  
9 units of government within the district, who shall be elected  
10 officials of the units. Their number, terms, and manner of  
11 selection shall be specified in resolutions of the governing  
12 bodies of the local units in the district representing in the  
13 aggregate at least two-thirds of the population of the district.  
14 For the purposes of this determination, a county shall be as  
15 one local unit and the population of the county shall be based  
16 upon the inhabitants residing in the unincorporated area of  
17 such county as determined by the last decennial census of the  
18 United States.

19         (2) No compensation shall be paid members of a commission.  
20 This shall not affect in any way remuneration received by a  
21 state or local official who in addition to his responsibilities.



22 as a state or local official serves as a member of a commission.  
23 All members of a commission may be reimbursed for reasonable  
24 and necessary expenses incurred in the performance of their  
25 duties as members of the commission.

26 (3) Commissions shall comply with such other reasonable and  
27 necessary general standards, conditions, and criteria as the  
28 governor may establish in order to further the purposes of this  
29 act, but the governor, in establishing the standards, shall  
30 afford all affected parties adequate notice and an opportunity  
31 to present relevant information.

1 Section 5. Powers and Functions of Commissions. A regional  
2 planning and development commission shall have the following  
3 powers and functions:

4 (1) Elect its own chairman, and establish rules of proce-  
5 dure, officers, and organization necessary for carrying out its  
6 prescribed functions. The commission may authorize, in conform-  
7 ity with established rules, an executive committee or officer of  
8 the commission to act for it on all matters. It shall meet at  
9 least once a year and shall keep a record of its resolutions,  
10 transactions, findings, and determinations which shall be a pub-  
11 lic record. It shall appoint a director who shall serve at the  
12 pleasure of the commission. The director shall be the chief ad-  
13 ministrative officer of the commission and shall appoint and re-  
14 move necessary staff subject to such personnel policies and  
15 standards as the commission may establish. The commission shall  
16 fix the compensation of all employees.

17 (2) Prepare and from time to time revise, amend, extend, or  
18 add to plans for development of the district. The plans shall be  
19 based on studies of physical, social, economic, and governmental  
20 conditions and trends and shall aim to coordinate development of  
21 the district in order to promote the general health, welfare,  
22 convenience, and prosperity of its people. The plans shall em-  
23 body the policy recommendations of the commission and shall be  
24 fully coordinated with the planning of state agencies and depart-  
25 ments engaged in related activities, including [enumerate agencies].

26 (3) Enter into contracts or agreements with one or more  
27 local units and private nonprofit groups within the district to  
28 act on their behalf in applying for, administering, and coor-  
29 dinating grants and contracts available for programs authorized  
30 by state and federal laws for physical, economic, and human  
31 resources planning and development, including but not limited  
32 to the Economic Opportunity Act of 1964, the Public Works and  
33 Economic Development Act of 1965, [the Appalachian Regional  
34 Development Act of 1965<sup>4</sup>], and [the Community Development Dis-  
35 trict Act of 1966<sup>5</sup>].

36 [(4) Apply for, administer, and coordinate grants and con-  
37 tracts available for programs authorized by state and federal  
38 laws for physical, economic, and human resources planning and  
39 development, including but not limited to the Economic Oppor-  
40 tunity Act of 1964, the Public Works and Economic Development  
41 Act of 1965, [the Appalachian Regional Development Act of  
42 1965<sup>4</sup>], and [the Community Development District Act of 1966<sup>5</sup>].]

43 [(5) Sue and be sued; acquire by purchase and condemnation  
44 all lands and property rights necessary for its purposes; lease,  
45 construct, maintain, and operate the use of facilities requisite  
46 to its performance of authorized functions, together with all  
47 lands, properties, equipment and accessories for such facili-  
48 ties; and sell or otherwise dispose of any real or personal  
49 property acquired and which is no longer required for the pur-  
50 poses of the commission.]<sup>6</sup>

51 (6) Enter into contracts with state agencies, including the  
52 state office of economic opportunity, to act on behalf of or  
53 assist such agencies in providing technical assistance and  
54 other services to communities within its jurisdiction.

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4. Applicable to the 12 states affected by the Appalachian Regional Development Act.

5. Inclusion conditioned on passage of the CDD Act.

6. States may consider it desirable to adopt optional subparagraph (4) in order to empower the commission to receive and administer development grants on its own, rather than on behalf of the local governments pursuant to contracts or agreements. In that case it would also need the instrumental powers provided in bracketed subparagraph (5).

55 (7) Submit and adopt all necessary plans, enter into con-  
56 tracts, accept gifts, grants, and federal funds, prepare and  
57 submit budgets, make rules and regulations and do all things  
58 necessary for carrying out the purposes of this act.

59 (8) Exercise its powers jointly or in cooperation with  
60 agencies or political subdivisions of this state or any other  
61 state, or with agencies of the United States, subject to statu-  
62 tory provisions applicable to interjurisdictional agreements.

1 Section 6. Financial Support of Commissions. (a) For the  
2 purpose of providing funds to meet its expenses, a commission  
3 may levy dues on the local units of government within the dis-  
4 trict. Such dues shall be fair and equitable and shall be  
5 based on the population of each local unit as determined on the  
6 basis of the latest decennial census.<sup>7</sup> For the purposes of  
7 this determination, a county shall be as one local unit and the  
8 population of the county shall be based upon the inhabitants  
9 residing in the unincorporated area of the county as determined  
10 by the last decennial census of the United States. By agree-  
11 ment between the commission and a local unit, special addi-  
12 tional charges may be levied on such local unit as reimburse-  
13 ment for unique or special services provided by the commission.

14 [(b) A commission shall annually fix the amount of money  
15 necessary to be raised by taxation upon the taxable property  
16 in its district, as revenue to meet its expenses and pay its  
17 indebtedness for the current fiscal year. Annually before  
18 [insert date], the assessor of each [insert name of local unit  
19 performing assessment] shall transmit to the commission a  
20 written statement showing the taxable value of all property  
21 within the jurisdiction of such [local unit performing assess-  
22 ment] which lies within the district. The value shall be as-  
23 certained from the [assessment records] for the year, as equal-  
24 ized and corrected by the [state property tax review agency].  
25 On [insert date], the commission shall fix the tax rate, [not

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7. Alternatively, dues may be based on the equalized assessed value of the units of government.

26 to exceed [     ]], based upon the aggregate of equalized values  
27 transmitted by the assessors. On [insert date] the tax rate  
28 shall be certified to the governing bodies of the counties  
29 within the district and taxes shall be levied and collected for  
30 the commission in the same manner as taxes levied for county  
31 purposes.]

32     [(c) A commission may set and collect charges for services  
33 it supplies and for use of facilities it provides.]

34     [(d) A commission may issue bonds for any capital purpose  
35 of the commission, but a proposition authorizing issuance of  
36 bonds shall have been submitted to the electors of the district  
37 at a special election and assented to by a majority of the  
38 persons voting on the proposition at the election.]

39     [(e) A commission may levy special assessments payable  
40 over a period of not exceeding [     ] years on all property  
41 within the district specially benefited by an improvement, on  
42 the basis of special benefits conferred, to pay in whole or in  
43 part the damages or costs of the improvement.]

44     [(f) A commission may by majority vote of all the members  
45 borrow money from any local unit of government and the local  
46 units are hereby authorized to make loans or advances on terms  
47 mutually agreed upon by the commission and the legislative  
48 bodies of the local units.]<sup>8</sup>

49     (g) To assist financially with the development and coor-  
50 dination of activities of regional planning and development  
51 commissions, appropriations are authorized for grants to the  
52 commission. The grants shall be administered by the [specify  
53 state office<sup>9</sup>] and shall equal [25, 33-1/3, 50] percent of the  
54 annual budget of the commission, but not to exceed \$[     ] for  
55 any commission for any fiscal year. The grants may also be  
56 used for the purpose of matching federal programs of assistance

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8. Alternative subsections (b) - (f) would be appropriate for consideration if the commission is given operating powers by section 5, alternative subsection (4).

9. Possibilities are the state planning office or office of local affairs.

57 for planning and development.

1       Section 7. Advisory Committees. A commission may appoint  
2 advisory committees whose membership may consist of individ-  
3 uals whose experience, training, or interest in one or more  
4 programs, or representation of particular groups or areas, may  
5 qualify them to render valuable assistance to the commission  
6 by acting in an advisory capacity or consulting with the com-  
7 mission on its activities. Members of the advisory committees  
8 shall receive no compensation for their services, but may be  
9 reimbursed for actual expenses incurred in performance of their  
10 duties.

1       Section 8. Report and Evaluation. (a) A regional plan-  
2 ning and development commission shall make an annual report of  
3 its activities to the chief executive officers, legislative  
4 bodies, and planning agencies of all local units of government  
5 within the district, the members of the [legislature] elected  
6 from [legislative] districts lying wholly or partially within  
7 the district, and the governor.

8       (b) The governor shall from time to time evaluate the ef-  
9 fectiveness and activities of districts designated and commis-  
10 sions established under this act and may take actions, includ-  
11 ing the withholding of state funds authorized under subsection  
12 6(g) and the revision of designation of districts required  
13 under federal planning and development programs, necessary to  
14 accomplish the purposes of this act. The governor shall afford  
15 the affected parties a full opportunity to present their views  
16 and shall make a full and prompt report to the legislature of  
17 actions taken.

1       Section 9. Separability. [Insert separability clause.]

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



## D. LOCAL GOVERNMENT ORGANIZATION AND POWERS

### 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.

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. 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 authorization of optional forms of municipal and county government provides a desirable flexibility in choosing among forms of government for localities. The Commission has urged that strict standards be applied to incorporations and that annexation be encouraged so that an undue multiplication of small incorporations, often of a defensive nature, may be discouraged. An incorporation proposal provides standards supervised by a state agency; alternative approaches to annexation are presented in another proposal. In order to encourage a meaningful and effective home rule for local governments the Commission has recommended the adoption of the "residual functional powers" approach, which makes available to local governments all functional powers not specifically denied by

the constitution, legislation, or their charter.

Intergovernmental agreements provide for the conduct of activities jointly or cooperatively by several governmental units and for the contracting by one unit for the performance of a service by another. Interlocal agreements are useful in broadening the geographic base for planning and administering governmental services and controls and thereby making possible the provision of services in areas where they might not otherwise be available, the more efficient provision of services, and lower unit costs. Where agreements are used to extend city services to developing fringe areas they may be helpful in guiding orderly metropolitan growth. Two proposals in this section authorize interlocal agreements and contracting and provide a constitutional basis for them. Another method for facilitating the administration of functions on the most effective area basis is to provide for transfer of functions between municipalities and counties.

Special districts have been widely used in some states and in certain functional areas particularly to overcome some of the legal restraints and area limitations on local governments. They can serve a useful and necessary function. However, they further diffuse local government responsibility and blur political responsibility. The use of general units of government to administer programs should be encouraged when feasible, the activities of special districts should be supervised by an appropriate state agency, and steps should be taken to insure that special district activities are related to those of general local government.

The Commission has recommended that planning and land use controls be exercised on as broad an area base as possible by local governments. Two proposals deal with this approach--one providing for extraterritorial exercise of these powers and the other for their exercise only by counties and larger municipalities.



## OPTIONAL FORMS OF MUNICIPAL GOVERNMENT

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

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

The range of choice available in framing local charters currently varies considerably from state to state and among types of municipalities within a given state. Over two-thirds of the states have some provision for classification of municipalities by size and for the provision of varying choices of organizational structure depending on the classification. Some few states grant virtually all charters by special act of the legislature. In another group of states, all municipalities within a given class must be organized on a similar basis, sometimes with a limited number of options regarding size of council, types of election, and the area from which councilmen will be elected. In the so-called "optional charter" states, municipalities are given a wider range of choices of charters from among which to choose. These will normally include at least the mayor-council, council-manager, and commission form of government and frequently will also provide for the weak mayor-council form in which the mayor is the presiding officer of the council with power to vote only in case of a tie. There may also be an option in which a chief administrative officer is specifically established by charter in a

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

The following suggested optional municipal charter law is designed to provide flexibility to municipalities in selecting their charters, while supplying necessary basic guidelines. The model, based on the 1950 New Jersey Optional Municipal Charter Law, presents the options of a strong mayor-council or a council-manager form of government with additional options regarding the size of the governing body; its election from wards, at large, or both; and its election on a partisan or nonpartisan basis. The option of a chief executive officer as the mayor's assistant in the mayor-council form is also included. The inclusion of these specific options gives a broad opportunity to citizens for the selection of particular features which they may believe essential for their community's development, while providing assurance that the charters will be technically in conformance with all the requirements of state law. Under the act, a charter commission may be elected to study the local government and make a recommendation for no change, amendments to the existing charter, or one of the optional charters. There is also an opportunity for a community in which a general consensus may have been arrived at to petition for a referendum on one of the available optional forms without recourse to a charter commission.

The model consists of five articles. Article 1 provides the basic procedure for the selection, organization, and functions of the charter commission and for the presentation of an optional plan. Article 2 deals with the legal status of an approved charter and the applicable general law and with the general powers of municipalities under the act. Articles 3 and 4 present the mayor-council and council-manager plan. Article 5 consists of transitional provision for going from the former to the new charter.

Sections 1 through 10 provide for an ordinance or a referendum to establish a charter commission and for its election and duties, and its report and discharge. A charter commission is empowered by section 11 to recommend that the existing charter be amended, a referendum be held on one of the optional forms of government, or that the form of government of the municipality remain unchanged. Sections 12 through 15 provide for a referendum on adoption of optional plans and for a request to the legislature for amendments to an existing charter and prohibit a petition for the election of a charter commission while any other petitions regarding charter changes are pending or within four years after the submission of a petition. Sections 16 through 19 provide for the adoption of an optional plan by direct petition and referendum of the voters. Sections 20 through 22 affirm the taking effect of a charter upon approval, declare it to be a complete form of government, and prohibit subsequent votes on changes for a designated period. Section 23 provides for the abandonment of an optional plan and prohibits a vote on abandonment oftener than once every five years.

In article 2, section 24 deals with the laws applicable after adoption of an optional form of government, section 25 provides for the continuation of a municipality as a body corporate and politic and section 26 defines "general law" to which municipalities will be subject. Sections 27 and 28 should be considered in connection with existing constitutional and statutory provisions conferring functional home-rule powers on municipalities. The two sections affirm the normal corporate powers of municipal corporations, provide for authority to organize and regulate internal affairs, and call for liberal construction of the powers but do not deal with specific functional authority such as the police power, the construction and operation of public works, and the exercise of other program, regulatory, and service powers of local government. The Advisory Commission in its report recommended that home rule to provide for the structure and organization of local government be treated separate from functional home rule. The Commission has recommended a residual powers approach to constitutional functional home rule. A suggested constitutional amendment providing such authority appears below on page 475 of this volume.

Sections 29 through 48 (article 3) constitute the provisions for the mayor-council plan of government. Under the provisions of section 32 there is an independently elected mayor who under sections 39, 40, and 46 is given the executive authority of the municipality to appoint department heads, enforce the charter and ordinances, prepare the budget, and in other respects act as chief executive. Section 33 provides for the size, manner of election, and terms of council members with alternatives regarding the number of members; their election on a partisan or nonpartisan basis; their election at large, from wards, or both; the length of their terms and whether they are staggered or concurrent; and the date of election and of taking office. Provision is made in section 43 for a chief administrative officer. The option is provided either to have him appointed by the mayor with the advice and consent of the council or to have him appointed by the mayor without council action. In either case he would not be subject to Civil Service regulations. Provision is also made for deputy department directors not subject to Civil Service regulations in larger municipalities. Section 43 delegates to the council the authority to establish by ordinance other administrative departments with directors appointed by the mayor with the advice and consent of the council. The mayor is given the discretion of removing department heads after notice and hearing. Sections 45 through 48 provide for the preparation of the budget by the mayor with assistance of the CAO if desired, its submission to and consideration by the council, the development of a system of work programs and quarterly allotments, and a post-audit system.

Sections 49 through 66 (article 4) present the council-manager option of local government. The same options as those in section 33 for the mayor-council form of government are provided in section 51 for the council. Under the provisions of sections 53 and 54 the mayor is chosen by the council to preside at meetings and to execute bonds, notes, contracts, and written obligations of the municipality.

If there is a desire for popular election of a mayor with similar functions to serve as a political leader, the National Municipal League's Model City Charter alternative form may be consulted. Section 56 provides for the appointment of a municipal manager and clerk, who may be the same person, by the municipal council. Section 57 authorizes the council to continue or create executive and administrative departments and determine and define their powers and duties. Sections 59 through 64 confer powers upon the manager as the chief executive and administrative official of the municipality and provide for the preparation of the budget and establishment of work program and quarterly allotments by him. Section 65 provides that laws conferring powers upon the mayor or other executive head of a municipality shall be construed as meaning the municipal manager in a municipality governed by article 4.

Article 5 consists of transitional provisions. Sections 67 through 72 provide for the designation of election district lines by the existing council in those municipalities choosing the district option for election of councilmen. Sections 73 through 76 deal with the schedule of the installation of the optional plan adopted, superseded charters, existing offices abolished upon the effective date of the new charter, and pending actions and proceedings.

Since the emphasis in the suggested legislation is on the basic structure and form of government, the optional charters do not include provisions dealing with planning, the capital program and budget, election procedures, personnel administration, or direct legislation (initiative, referendum, and recall) which may be incorporated into basic charters. It is assumed that general state laws and local ordinances will cover these matters.

Information regarding the New Jersey law upon which the draft is based and experience under it over a period of 15 years is available in a report entitled New Jersey's Optional Municipal Charter Law published by the National Municipal League. While the specific form of the options presented in the New Jersey act is somewhat different and while there are other differences, the general discussion and descriptive material, the review of experience under the act, and the citation to judicial rulings provide useful annotation.

In some states the legislature may lack authority to provide optional forms of local government. The following constitutional language would provide a clear constitutional direction to the legislature:

The legislature shall by general law provide optional forms of government for [cities, towns, villages, municipalities].

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing optional forms of municipal government."]

(Be it enacted, etc.)

ARTICLE 1. PROCEDURE FOR ADOPTION OF OPTIONAL CHARTER PLANS

A. Charter Commission

1        Section 1. Election on Question of Establishing Charter Com-  
2 mission. (a) Whenever authorized by ordinance of the govern-  
3 ing body or upon petition of the registered voters of any munic-  
4 ipality, an election shall be held in the municipality upon the  
5 question: "Shall a charter commission be elected to study the  
6 charter of [     ] and to consider a new charter or improvements  
7 in the present charter and to make recommendations thereon?"  
8 The petition calling for such election shall be in the form re-  
9 quired by subsection (b) hereof and shall be signed by the fol-  
10 lowing per centum of registered voters of the municipality:

11            [25]% in municipalities of [7,000] or less inhabitants;

12            [20]% in municipalities of more than [7,000] and less  
13 than [70,000] inhabitants;

14            [10]% in municipalities of [70,000] or more inhabitants.

15        In either event, the municipal clerk shall provide for the  
16 submission of the question and for the election of a charter  
17 commission at the next general or regular municipal election,  
18 occurring not less than [75] days after the passage of the  
19 ordinance or the filing of the petition with the clerk. At the  
20 election the question above stated shall be submitted as other  
21 public questions are submitted to the voters of a single munic-  
22 ipality.

23        (b) A petition under this section shall conform to the re-  
24 quirements of form for petitions under [cite existing initiative  
25 and referendum or other appropriate petition procedure] (except  
26 that there shall be no reference therein to any ordinance) and  
27 shall be subject to examination, certification, and amendment  
28 as therein provided.

1       Section 2. Election of Charter Commission Members at Same  
2 Time Public Question is Submitted. A charter commission of  
3 [five] members shall be elected by the qualified voters at the  
4 same time as the public question is submitted. Duly nominated  
5 candidates for the office of charter commissioner shall be  
6 placed upon the ballot containing the public question in the  
7 same manner as is provided by law for candidates nominated by  
8 petition for other offices elective by the people of a single  
9 municipality, except that they shall be listed without any des-  
10 ignation or slogan. Each voter shall be instructed to vote on  
11 the question and, regardless of the manner of his vote on the  
12 question, to vote for [five] members of a charter commission  
13 who shall serve if the question is determined in the affirmative.

1       Section 3. Candidates for Charter Commission; Nomination.  
2 Candidates for the charter commission shall be registered voters  
3 of the municipality. They may be nominated by petition signed  
4 by at least [three] per centum [3]%, but not less than [ten],  
5 of the registered voters of the municipality, and filed with the  
6 municipal clerk not less than [sixty] days prior to the date of  
7 the election.

8       (a) Each nominating petition shall set forth the names,  
9 places of residence, and post-office addresses of the candidate  
10 or candidates thereby nominated, that the nomination is for the  
11 office of charter commissioner and that the petitioners are  
12 legally qualified to vote for such candidate or candidates.  
13 Every voter signing a nominating petition shall add to his sig-  
14 nature, his place of residence, post-office address and street  
15 number, if any. No voter shall sign a petition or petitions for  
16 more than [five] candidates.

17       (b) Each nominating petition shall, before it may be filed  
18 with the municipal clerk, contain an acceptance of such nomina-  
19 tion in writing, signed by the candidate or candidates therein  
20 nominated, upon or annexed to such petition, or if the same per-  
21 son or persons be named in more than one petition, upon or an-  
22 nexed to one of such petitions. Such acceptance shall certify  
23 that the candidate is a registered voter of the municipality,

24 that the nominee consents to stand as a candidate at the election  
25 and that if elected he agrees to take office and serve.

26 (c) Each nominating petition shall be verified by an oath or  
27 affirmation of one or more of the signers thereof, taken and sub-  
28 scribed before a person qualified under the laws of [ ] to  
29 administer an oath, to the effect that the petition was signed  
30 by each of the signers thereof in his proper handwriting, that  
31 the signers are, to the best knowledge and belief of the affiant,  
32 registered voters of the municipality, and that the petition is  
33 prepared and filed in good faith for the sole purpose of endors-  
34 ing the person or persons named therein for election as stated  
35 in the petition.

1 Section 4. Canvass of Election. The result of the votes  
2 cast for and against the adoption of the public question shall  
3 be returned by the election officers, and a canvass of such  
4 election had, as is provided by law in the case of other public  
5 questions put to the voters of a single municipality. The votes  
6 cast for members of the charter commission shall be counted and  
7 the result thereof returned by the election officers, and a can-  
8 vass of such election had as is provided by law in the case of  
9 the election of members of the local governing body. The [five]  
10 candidates receiving the greatest number of votes shall be elected  
11 and shall constitute the charter commission, but if a majority  
12 of those voting on the public question shall vote against the  
13 election of a charter commission, none of the candidates shall  
14 be elected. If two or more candidates shall be equal and great-  
15 est in votes they shall draw lots to determine which one shall  
16 be elected.

1 Section 5. Organization of Charter Commission. As soon as  
2 possible and in any event no later than fifteen days after its  
3 election, the charter commission shall organize and hold its  
4 first meeting and elect one of its members as chairman, fix its  
5 hours and place of meeting, and adopt such rules for the conduct  
6 of its business as it may deem necessary and advisable. A  
7 majority of the members of said commission shall constitute a  
8 quorum for the transaction of business but no recommendation of

9 said commission shall have any legal effect pursuant to sections  
10 13 and 14 of this act unless adopted by a majority of the whole  
11 number of the members of the commission.

1 Section 6. Vacancies in Charter Commission. In case of any  
2 vacancy in the charter commission, the remaining members of such  
3 commission shall fill it by appointing thereto some other prop-  
4 erly qualified citizen.

1 Section 7. Duties of Charter Commission--Study and Reports.

2 (a) It shall be the function and duty of the charter commission  
3 to study the form of government of the municipality, to compare  
4 it with other available forms under the laws of this state, to  
5 determine whether its operation could be more economical or ef-  
6 ficient, under a changed form of government.

7 (b) The charter commission shall report its findings and  
8 recommendations to the citizens of the municipality within [nine]  
9 calendar months from the date of its election. For this purpose  
10 it shall file with the municipal clerk an original signed copy  
11 of any final report containing its findings and recommendations.  
12 It shall also deliver to the municipal clerk sufficient copies  
13 of any such report to permit distribution to any interested  
14 citizen. The municipal clerk shall deliver a copy of any such  
15 report to each member of the governing body. If the charter  
16 commission, or any member or members thereof, recommended the  
17 adoption of any of the optional plans of government as author-  
18 ized in paragraph (1) of section 11. The report shall contain  
19 the complete plan as recommended.

1 Section 8. Expenses of Commission Members; Consultants and  
2 Assistants. Members of the charter commission shall serve with-  
3 out compensation but shall be reimbursed by the municipality for  
4 their necessary expenses incurred in the performance of their  
5 duties.

6 The municipal governing body of any municipality within which  
7 a charter commission has been established pursuant to the pro-  
8 visions of this act shall make an appropriation sufficient to  
9 enable the charter commission to carry out its duties. Within  
10 the limits of the appropriation and such privately contributed  
11 funds and services as shall be made available to it, the charter



12 commission may appoint one or more consultants and clerical and  
13 other assistants to serve at the pleasure of the commission and  
14 may fix a reasonable compensation to be paid such consultants  
15 and clerical and other assistants.

1 Section 9. Hearings; Public Forums. The charter commission  
2 shall hold public hearings and sponsor public forums and gen-  
3 erally shall provide for the widest possible public information  
4 and discussion respecting the purposes and progress of its work.

1 Section 10. Discharge of Charter Commission; Amended Report.  
2 The charter commission shall be discharged upon the filing of  
3 its report; but if the commission's recommendations require  
4 further procedure on the part of the governing body or the peo-  
5 ple of the municipality pursuant to section 13 or 14 of this  
6 act, the commission shall not be discharged until the procedure  
7 required under those sections has been finally concluded.

1 Section 11. Reports and Recommendations Which the Commission  
2 May Make. The charter commission may report and recommend that:

3 (1) a referendum shall be held to submit to the qualified  
4 voters of the municipality the question of adopting one of the  
5 optional forms of government authorized in article 3 or 4 of  
6 this act, to be specified by the commission; or

7 (2) the governing body shall petition the legislature for  
8 the enactment of one or more specific amendments of or to the  
9 charter of the municipality, the text of which shall be appended  
10 to the charter commission's report pursuant to [cite appropriate  
11 constitutional and statutory provisions for amending existing  
12 charters granted under general or special laws] to the extent  
13 that such legislation is not inconsistent herewith; or

15 (3) the form of government of the municipality shall remain  
16 unchanged; or

17 (4) such other action be taken as it may deem advisable,  
18 consistent with its functions as set forth in section 7 of this  
19 article.

1 Section 12. Form of Submission of Question of Adoption of  
2 Optional Plans of Government. The question to be submitted to  
3 the voters for the adoption of any of the optional plans of

4 government authorized by articles 3 and 4 of this act shall be  
5 submitted in the following form:

6 "Shall [insert name of plan] of the Optional Municipal Char-  
7 ter Law, be adopted by [insert name of municipality]?"

1 Section 13. Ballots; Submission of Question of Adoption of  
2 Optional Form of Government. If the charter commission recom-  
3 mends that the question of adopting one of the optional forms  
4 of government authorized by articles 3 or 4 of this act shall  
5 be submitted to the voters of the municipality, it shall be the  
6 duty of the municipal clerk to cause the question of adoption  
7 or rejection to be placed upon the ballot at such time as the  
8 commission shall in its report specify. The commission may  
9 cause the question to be submitted to the people at the next  
10 general or regular municipal election, occurring not less than  
11 [sixty] days following the filing of a copy of the commission's  
12 report with the clerk, or at a special election occurring not  
13 less than [sixty] days or more than [one hundred twenty] days  
14 after the filing of the report, at such time as the commission's  
15 report shall direct. At such election the question of adopting  
16 that form of government recommended by the charter commission  
17 shall be submitted to the voters of the municipality in the  
18 same manner as other public questions to be voted upon by the  
19 voters of a single municipality. The charter commission shall  
20 frame the question to be placed upon the ballot as provided in  
21 section 12, and, if it deems appropriate, an interpretative  
22 statement to accompany such question.

1 Section 14. Request for Legislative Action on Amendments to  
2 Existing Charter. If the charter commission proposes a specific  
3 amendment or amendments to the existing charter of the munic-  
4 ipality, [it is the duty of the governing body of the municipality  
5 forthwith to petition the legislature for [appropriate action]  
6 pursuant to [cite appropriate constitutional and statutory pro-  
7 vision for amending existing charters granted under general or  
8 special laws] to carry out the recommendations of the charter  
9 commission] [the council shall amend the charter].

1 Section 15. Limitation on Proceedings. No ordinance may be

2 passed and no petition may be filed for the election of a char-  
3 ter commission pursuant to section 1 of this act while proceed-  
4 ings are pending under any other petition or ordinance filed or  
5 passed under article 1 of this act, or while proceedings are  
6 pending pursuant to sections 16 through 18 hereof [or any other  
7 statute providing for the adoption of any other charter or form  
8 of government available to the municipality], nor within [four]  
9 years after an election shall have been held pursuant to any such  
10 ordinance or petition passed or filed pursuant to section 1 here-  
11 of.

B. Procedure to Adopt Optional Plan  
by Petition and Referendum

1 Section 16. Adoption of Optional Plan Without Charter Com-  
2 mission. The legally qualified voters of any municipality may  
3 adopt any of the optional plans provided in articles 3 or 4 of  
4 this act upon petition and referendum, without a charter commis-  
5 sion, as hereinafter provided.

1 Section 17. Petition for Election on the Adoption of Optional  
2 Plan of Government. Upon petition of the registered voters of  
3 any municipality, an election shall be held in the municipality  
4 upon the question of adopting any of the optional plans of gov-  
5 ernment provided in articles 3 and 4 of this act. The petition  
6 calling for such election shall be subject to the provisions of  
7 section 1 hereof and shall be signed by the following per centum  
8 of registered voters of the municipality:

9 (1) [25]% in municipalities of [7,000] or less inhabitants;

10 (2) [20]% in municipalities of more than [7,000] and less  
11 than [70,000] inhabitants;

12 (3) [10]% in municipalities of [70,000] or more inhabitants.

13 The petition shall designate the plan to be voted upon, and  
14 the question to be placed upon the ballot shall be in the same  
15 form as is required by section 12 of this article.

1 Section 18. Submission of Question. The municipal clerk  
2 shall provide for the submission of the question at the next  
3 general or regular municipal election if one is to be held not

4 less than [sixty] days nor more than [one hundred twenty] days  
5 after the filing of the petition, and if a general or regular  
6 municipal election is not to be held within that time, at a  
7 special election within such time. The question of adoption of  
8 an optional plan of government shall be submitted to the voters  
9 of the municipality in the same manner as other public questions  
10 to be voted upon by the voters of a single municipality.

1 Section 19. Limitation on Proceedings. No petition for sub-  
2 mission of the question of adopting an optional plan of govern-  
3 ment pursuant to sections 16 through 18 of this act may be filed  
4 while proceedings are pending pursuant to another such petition,  
5 or under an ordinance passed or petition filed pursuant to sec-  
6 tion 1 of this act, [or while proceedings are pending pursuant  
7 to any other statute for the adoption of any other charter or  
8 form of government available to the municipality], nor within  
9 [four] years after an election shall have been held pursuant to  
10 any such petition filed pursuant to sections 16 through 18 of  
11 this act.

#### C. Provisions Applicable To All Referenda On Charter Changes

1 Section 20. Vote in Favor of Change in Form of Government.  
2 Whenever the legally qualified voters of any municipality by a  
3 majority of those voting on the question, vote in favor of  
4 adopting a change in their form of government pursuant to this  
5 act, either by the charter commission method or by direct peti-  
6 tion and referendum, the proposed charter or charter amendment  
7 or amendments shall take effect according to its terms.

1 Section 21. Limitation on Votes or Subsequent Change. The  
2 voters of any municipality which has adopted an optional form  
3 of government pursuant to this act may not vote on the question  
4 of adopting another form of government until [five] years there-  
5 after.

1 Section 22. Each Optional Form a Complete Form of Government.  
2 For the purposes of this act each of the optional forms of gov-  
3 ernment provided in articles 3 or 4 of this act, and each of

4 said optional forms as modified by any available provisions con-  
5 cerning size of council and number of wards, is hereby declared  
6 to be a complete and separate form of government for submission  
7 to the voters of the municipality.

D. Abandonment of An Optional Plan and Reversion  
To a Prior Form

1 Section 23. Petition and Referendum on Reversion to Prior  
2 Plan. Any municipality may, subject to the provisions of sec-  
3 tion 21 of this act, abandon its optional plan and revert to  
4 the form of government under which it was governed immediately  
5 prior thereto, upon the filing of a petition and referendum as  
6 follows:

7 (1) Upon petition of the registered voters of the municipal-  
8 ity signed by the same number thereof as required in section 17,  
9 for an election to submit the question of abandonment and rever-  
10 sion as herein provided, the municipal clerk shall provide for  
11 submission of the question in like manner as provided in section  
12 18.

13 (2) The form of the question shall be as follows: Shall  
14 [name of municipality] abandon its present form of government  
15 and revert to its prior form of government, known as [popular  
16 name of plan] as provided by [statutory reference of prior plan]?

17 (3) If a majority of those voting on the question vote in  
18 the affirmative the municipality shall revert to its prior form  
19 of government as of twelve o'clock noon of the sixtieth day fol-  
20 lowing the election of officers under the form of government to  
21 which the municipality will revert. [The first officers under  
22 such form of government shall be elected at the next regular  
23 municipal or general election, as the case may be, at which  
24 officers under the form of government to which the municipality  
25 will revert would be elected if such form were then in effect  
26 in the municipality.]<sup>1</sup> It shall be the duty of the municipal  
27 clerk to perform all the duties respecting such election as

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1. In some states a more detailed provision may be necessary to accommodate its terms of office and election procedures.

28 would be required of a municipal clerk for elections under the  
29 form of government to which the municipality will revert. When-  
30 ever a municipality has reverted to any form of government pro-  
31 viding for elections with party designation, at a later date  
32 than the one fixed for the filing of nominating petitions at  
33 the primary election, the candidates to be first elected shall  
34 be nominated by direct petition in the manner provided by law  
35 for nomination by direct petition for a general election.

36 If a majority of those voting on the question vote in the  
37 negative, the question of abandonment and reversion shall not  
38 again be submitted for [five] years.

39 (4) The reversion to a prior form of government shall take  
40 effect as provided in article 5 of this act for transition to  
41 an optional plan hereunder.

## ARTICLE 2. INCORPORATION AND POWERS

1 Section 24. Laws Governing After Adoption of Optional and  
2 Alternative Forms of Government. Upon the adoption by the qual-  
3 ified voters of any municipality of any of the optional forms  
4 of government set forth in this act, the municipality shall  
5 thereafter be governed by the plan adopted, by the provisions  
6 of this act common to optional plans, and by all applicable pro-  
7 visions of general law, subject to the transitional provisions  
8 of article 5 of this act, unless and until the municipality  
9 should adopt another form of government as provided by law.

1 Section 25. Municipality Remains Body Corporate and Politic.  
2 Upon such adoption of a plan under this act, the inhabitants of  
3 any municipality or municipalities within the corporate limits  
4 as now or hereafter established shall be and remain a body cor-  
5 porate and politic with perpetual succession, and with such  
6 corporate name as it has adopted or may adopt.

1 Section 26. "General Law" Defined. For the purposes of this  
2 act a "general law" shall be deemed to be any law or provision  
3 of law, not inconsistent with this act, which is by its terms  
4 applicable or available to [all municipalities] [municipalities

5 of designated classes] and the following additional laws whether  
6 or not such additional laws are applicable or available to [all  
7 municipalities] [municipalities of designated classes].<sup>2</sup>

1 Section 27. General Powers of Municipalities Governed by an  
2 Optional Form of Government.<sup>3</sup> Each municipality governed by an  
3 optional form of government pursuant to this act shall, subject  
4 to the provisions of this act or other general laws, have full  
5 power to:

6 (1) organize and regulate its internal affairs, and to es-  
7 tablish, alter, and abolish offices, positions and employments  
8 and to define the functions, power and duties thereof and fix  
9 their term, tenure, and compensation;

10 (2) sue and be sued, to have a corporate seal, to contract  
11 and be contracted with, to buy, sell, lease, hold and dispose  
12 of real and personal property, to appropriate and expend moneys,  
13 and to adopt, amend and repeal such ordinances and resolutions  
14 as may be required for the good government thereof;

15 (3) exercise powers of condemnation, borrowing and taxation  
16 in the manner provided by general law.

1 Section 28. Power of Local Self-Government; Construction of  
2 Grants of Power. The general grant of municipal power contained  
3 in this article is intended to confer the greatest power of  
4 local self-government consistent with the constitution of this  
5 state. Any specific enumeration of municipal powers contained  
6 in this act or in any other general law shall not be construed  
7 in any way to limit the general description of power contained  
8 in this article, and any such specifically enumerated municipal  
9 powers shall be construed as in addition and supplementary to

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2. States may wish to reserve authority to the legislature to act by other than general law applicable to all municipalities or to designated classes of municipalities in some areas such as taxation, for example.

3. States with broad constitutional or general law functional home rule provisions such as provided in "Local Government Residual Powers," p. of this volume or the home rule section on p. 16 of the National Municipal League's Model State Constitution may not need all of these specific grants of powers. On the other hand, states without home rule provisions or with narrowly construed home rule provisions, may want to add additional functional powers, such as those in section 40:69A-29(b) of the New Jersey Optional Municipal Charters Act (N. J. Stats. Ann.).

10 the powers conferred in general terms by this article. All grant  
11 of municipal power to municipalities governed by an optional  
12 alternative plan under this act, whether in the form of specific  
13 enumeration or general terms, shall be liberally construed [as  
14 required by the constitution of this state] in favor of the munic  
15 pality.

### ARTICLE 3. MAYOR-COUNCIL PLAN

#### A. Form of Government

1 Section 29. Applicable Form. The form of government pro-  
2 vided in this article shall be known as the "mayor-council plan"  
3 and shall, together with articles 2 and 5, govern any munici-  
4 pality, the voters of which have adopted it pursuant to this  
5 act.

1 Section 30. Council, Mayor, and Appointed Officers and Em-  
2 ployees. The government of the municipality under this article  
3 shall consist of an elected council, an elected mayor, and such  
4 other officers and employees as may be duly appointed pursuant  
5 to this article, general law, or ordinance.

1 Section 31. Election Districts.<sup>4</sup> The municipality shall be  
2 divided into [two to nine election districts].

#### B. Elected Officials

1 Section 32. Election of Mayor and Term.<sup>5</sup> The mayor shall be  
2 elected by the voters of the municipality [at a regular munici-  
3 pal election] [at the general election to be held on the first  
4 Tuesday after the first Monday in November or at such other time  
5 as may be provided by law for holding general elections] and  
6 shall serve for a term of [four] years beginning on the first  
7 day of [July next following his election] [January next follow-  
8 ing his election].

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4. The number of election districts will depend on the number of council members chosen under section 3<sup>3</sup> and whether they are to be elected entirely from districts or some from districts and some at large.

5. The choice between alternative election and inaugural dates would depend on provisions for other local government, a primary consideration being whether the office is to be partisan or nonpartisan.



1        Section 33. Election of Council Members and Term.<sup>6</sup> (a) The  
2 council shall consist of [five to nine] members. Councilmen  
3 shall serve for a term of [four] years [except as hereinafter  
4 provided for those first elected], beginning on the first day of  
5 [July next following their election] [January next following  
6 their election]. They shall be elected [at large] [at large and  
7 by election districts] [by election districts], [at regular  
8 municipal elections] [at the general election to be held on the  
9 first Tuesday after the first Monday in November or at such  
10 other times as may be provided by law for holding general elec-  
11 tions].

12        [(b) Council members shall be elected in the following man-  
13 ner:

14                (1) in a municipality having two election districts and  
15 five councilmen, one councilman shall be elected from each  
16 election district and three at large;

17                (2) in a municipality having three election districts  
18 and five councilmen, one councilman shall be elected from each  
19 election district and two at large;

20                (3) etc.]<sup>7</sup>

21        [(c) At the first election as provided in [cite appropriate  
22 election laws or code] following the adoption by a municipality  
23 of this plan, [five, seven, or nine] councilmen shall be elected  
24 and shall serve for the following terms: if the municipal coun-  
25 cil is to consist of five members, two shall serve for four  
26 years and three for two years; if the municipal council is to  
27 consist of seven members, three shall serve for four years and  
28 four for two years; if the municipal council is to consist of  
29 nine members, four shall serve for four years and five for two

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6. States wishing to specify a minimum local population re-  
quired for organization into election districts and wishing to relate  
the number of districts to total population are referred to the pro-  
vision in the Ohio optional charter law, section 705.72, Ohio Revised  
Code Annotated, 1954. States wishing to consider the additional op-  
tion of at-large elections with nominations by district are referred  
to the National Municipal League, Model City Charter, alternative  
section 2.01, p. 5.

7. Optional subsection (b) is to be used if a combination of  
ward and at-large elections are desired.

30 years. The length of the term of the respective members of the  
31 first council shall be determined by lot immediately after the  
32 organization of the council next following the election.]<sup>8</sup>

33 [(d) At the first election as provided in [cite appropriate  
34 section laws or code] following the adoption by a municipality  
35 of this plan [five, seven, or nine] councilmen shall be elected.  
36 The councilmen elected at large shall serve for a term of four  
37 years and the councilmen elected from election districts, for a  
38 term of two years.]<sup>9</sup>

1 Section 34. Vacancies in Elective Offices. Vacancies in any  
2 elective office shall be filled by election for the remainder  
3 of the unexpired term at the next general election occurring not  
4 less than sixty days after the occurrence of the vacancy. Such  
5 election to fill a vacancy shall be upon direct nomination by  
6 petition in the manner provided by law for the filling of vacan-  
7 cies in municipal offices where candidates are nominated by di-  
8 rect petition for a general election. The council shall fill  
9 vacancies temporarily by appointment to serve until the qualifi-  
10 cation of a person so elected.

#### C. Council

1 Section 35. Legislative Power. The legislative power of  
2 the municipality shall be exercised by the municipal council,  
3 except as may be otherwise provided by general law.

1 Section 36. Presiding Officer. The council shall elect a  
2 presiding officer from among its members.

1 Section 37. Removal of Officers. The council, in addition  
2 to such other powers and duties as may be conferred upon it by  
3 this charter or otherwise by general law, may:

4 (1) require any municipal officer, in its discretion, to  
5 prepare and submit sworn statements regarding his official  
6 duties in the performance thereof, and otherwise to investigate

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8. Optional subsection (c) to be used if staggered terms are desired with at-large elections.

9. Optional subsection (d) to be used if staggered terms are desired with a combination of election districts and at-large election.

7 the conduct of any department, office or agency of the municipal  
8 government;

9 (2) remove any municipal officer, other than the mayor or  
10 a member of the council, for cause, upon notice and an oppor-  
11 tunity to be heard.

1 Section 38. Municipal Clerk. The council shall appoint a  
2 municipal clerk, who shall serve as clerk of the council, keep  
3 its minutes and records of its proceedings, maintain and com-  
4 pile its ordinances and resolutions as this act requires, and  
5 perform such functions as may be required by law. The municipal  
6 clerk shall, prior to his appointment, have been qualified by  
7 training or experience to perform the duties of the office.

#### D. Mayor and Administration

1 Section 39. Executive Power. The executive power of the  
2 municipality shall be exercised by the mayor.

1 Section 40. Duties of Mayor. The mayor shall enforce the  
2 charter and ordinances of the municipality and all general laws  
3 applicable thereto. He shall annually report to the council  
4 and the public on the work of the previous year and on the con-  
5 dition and requirements of the municipal government and shall  
6 from time to time make such recommendations for action by the  
7 council as he may deem in the public interest. He shall super-  
8 vise all departments of the municipal government and shall re-  
9 quire each department to make an annual and such other reports  
10 of its work as he may deem desirable.

1 Section 41. Approval or Veto of Ordinances by Mayor; Attend-  
2 ing Meetings. (a) Ordinances adopted by the council shall be  
3 submitted to the mayor, and he shall within [ten] days after  
4 receiving any ordinance, either approve the ordinance by affix-  
5 ing his signature thereto or return it to the council by deliver-  
6 ing it to the municipal clerk together with a statement setting  
7 forth his objections thereto or to any item or part thereof.  
8 No ordinances or any item or part thereof shall take effect  
9 without the mayor's approval, unless the mayor fails to return  
10 an ordinance to the council within [ten] days after it has been

11 presented to him, or unless council upon reconsideration thereof  
12 on or after the [third] day following its return by the mayor  
13 shall by a vote of two-thirds of the members resolve to override  
14 the mayor's veto.

15 (b) The mayor may attend meetings of the council and may  
16 take part in discussions of the council but shall have no vote.

1 Section 42. Acting Mayor. The mayor shall designate [the  
2 chief administrative officer,] any department head, or the mu-  
3 nicipal clerk as acting mayor. The acting mayor shall serve as  
4 mayor when the mayor shall be prevented by absence from the mu-  
5 nicipality, disability, or other cause from attending to the  
6 duties of his office. During such time, the person so designated  
7 by the mayor shall possess all the powers and duties of mayor.

1 Section 43. Departments. (a) The municipality shall have  
2 a department of administration and such other departments, not  
3 exceeding [nine] in number, as council may establish by ordi-  
4 nance. All of the administrative functions, powers, and duties  
5 of the municipality, other than those vested in the office of  
6 municipal clerk, shall be allocated and assigned among and with-  
7 in such departments.

8 (b) Each department shall be headed by a director, who shall  
9 be appointed by the mayor with the advice and consent of the  
10 council, [except that the mayor may appoint a chief administra-  
11 tive officer, who shall serve at his pleasure and who may head  
12 a department of administration]. Each department head shall  
13 serve during the term of office of the mayor appointing him,  
14 and until the appointment and qualification of his successor.

15 (c) The mayor may in his discretion remove any department  
16 head.

17 (d) Department heads shall appoint subordinate officers and  
18 employees within their respective departments and may, with  
19 approval of the mayor, remove such officers and employees sub-  
20 ject to the provisions of the [cite appropriate civil service  
21 provision] but the council may provide by ordinance for the  
22 appointment and removal by the mayor of members of specific  
23 boards or commissions.

1       Section 44. Deputy Director of Department. (a) The direc-  
2       tor of each department in any city more than [     ] population  
3       may appoint a deputy director of his department who shall serve,  
4       and be removable at the pleasure of the director, in the unclas-  
5       sified service of the civil service of the city and shall receive  
6       such salary as shall be fixed by the director with the approval  
7       of the council.

8       (b) The director shall prescribe, in writing, the powers  
9       and duties of the deputy so appointed by him and the acts of  
10      such deputy, within the scope of his authority, shall in all  
11      cases be as legal and binding as if done and performed by the  
12      director for whom he is acting.

#### E. Budget and Control

1       Section 45. Preparation of Budget. The municipal budget  
2       shall be prepared by the mayor [with the assistance of the chief  
3       administrative officer]. During the month of [November], the  
4       mayor shall require all department heads to submit requests for  
5       appropriations for the ensuing budget year, and to appear before  
6       the mayor [or the chief administrative officer] at public hear-  
7       ings, which shall be held during that month, on the various re-  
8       quests.

1       Section 46. Submission of Recommended Budget. On or before  
2       the [fifteenth] day of [January] of each year, the mayor shall  
3       submit to council for approval his recommended budget together  
4       with such explanatory comment or statement as he may deem de-  
5       sirable. The budget shall be in such form as is required by law  
6       for municipal budgets. The council may reduce any item or items  
7       in the mayor's budget by a vote of a majority of the council,  
8       but the addition of or an increase in any item or items therein  
9       shall become effective only upon an affirmative vote of two-  
10      thirds of the members of the council.

1       Section 47. System of Work Programs and Quarterly Allotments.  
2       The council shall where practicable provide for the maintenance  
3       of a system of work programs and quarterly allotments, for oper-  
4       ation of the budget. It shall be the duty of the office or

5 department administering any such program to develop and report  
6 appropriate unit costs of budgeted expenditures.

1 Section 48. Post-Audit. The council shall provide by ordi-  
2 nance, not subject to mayoral veto, for post-auditing the finan-  
3 cial transactions of the municipality.

#### ARTICLE 4. COUNCIL-MANAGER PLAN

##### A. Form of Government; Election of Councilmen

1 Section 49. Applicable Laws. The form of government pro-  
2 vided in this article shall be known as the "council-manager  
3 plan" and shall, together with articles 2 and 5, govern any mu-  
4 nicipality, the voters of which have adopted this plan pursuant  
5 to this act.

1 Section 50. Government by Elected Council and Appointed  
2 Manager; Other Officers and Employees. The government of each  
3 municipality under this article shall consist of an elected  
4 council, an appointed municipal manager, and such other officers  
5 and employees as may be duly appointed pursuant to this article,  
6 general law or ordinance.

1 Section 51. Election of Council, Members and Term. Note:  
2 See section 33 above for text.

1 Section 52. Vacancies in Council. Note: See section 34  
2 above for text.

##### B. Council

1 Section 53. Organization of Council; Mayor.<sup>10</sup> On the [first]  
2 day of [July] following their election, the members-elect of  
3 the municipal council shall assemble at the usual place of meet-  
4 ing of the governing body of the municipality and organize and  
5 elect one of their number as mayor to serve for a term of [ ]  
6 years. The mayor shall be chosen by ballot by majority vote of  
7 all members of the municipal council. If the members shall be

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10. States wishing to provide for an elective mayor, with duties similar to those of the mayor herein provided for, are referred to alternative section 2.03 of the National Municipal League's Model City Charter, p. 6.

8 unable, within five ballots to be taken within two days of said  
9 organization meeting, to elect a mayor, then the member who in  
10 the election for members of the council received the greatest  
11 number of votes shall be the mayor. Should such person decline  
12 to accept the office, then the person receiving the next highest  
13 vote shall be the mayor, and so on, until the office is filled.

1 Section 54. Duties of Mayor. The mayor shall preside at all  
2 meetings of the council and shall have a voice and vote in its  
3 proceedings. All bonds, notes, contracts, and written obliga-  
4 tions of the municipality shall be executed on its behalf by the  
5 mayor or, in the event of his inability to act, by such council-  
6 man as the municipal council shall designate to act as mayor  
7 during his absence or disability. The powers and duties of the  
8 mayor shall be only such as are expressly conferred upon him by  
9 this article.

1 Section 55. Powers of Municipality Vested in Council; Ex-  
2 ceptions. All powers of the municipality and the determination  
3 of all matters of policy shall be vested in the council, except  
4 as otherwise provided by this act or by general law.

1 Section 56. Appointment of Municipal Manager and Clerk. The  
2 council shall appoint a municipal manager and a municipal clerk.  
3 Both of such offices may be held by the same person. The coun-  
4 cil may provide for the manner of appointment of [a municipal  
5 attorney, any planning board, zoning board of adjustment or per-  
6 sonnel board in the municipality], and may create commissions  
7 and other bodies with advisory powers.

1 Section 57. Departments, Boards and Offices; Deputy Manager.  
2 The council shall continue or create, and determine and define  
3 the powers and duties of such executive and administrative de-  
4 partments, boards and offices, in addition to those provided for  
5 herein, as it may deem necessary for the proper and efficient  
6 conduct of the affairs of the municipality, including the office  
7 of deputy manager which shall not be included in the classified  
8 service under [cite appropriate service provision]. Any depart-  
9 ment, board or office so continued or created may at any time  
10 be abolished by the municipal council.

1       Section 58. Council to Act as a Body, Administrative Serv-  
2 ice to be Performed Through Manager, Committees. It is the in-  
3 tention of this article that the municipal council shall act in  
4 all matters as a body, and it is contrary to the spirit of this  
5 article for any of its members to seek individually to influence  
6 the official acts of the municipal manager, or any other officer,  
7 or for the council or any of its members to direct or request  
8 the appointment of any person to, or his removal from, office;  
9 or to interfere in any way with the performance by such officers  
10 of their duties. The council and its members shall deal with  
11 the administrative service solely through the manager and shall  
12 not give orders to any subordinates of the manager, either pub-  
13 licly or privately. Nothing herein contained shall prevent the  
14 municipal council from appointing committees or commissions of  
15 its own members or of citizens to conduct investigations into  
16 the conduct of any officer or department, or any matter relating  
17 to the welfare of the municipality, and delegating to such com-  
18 mittees or commissions such powers of inquiry as the municipal  
19 council may deem necessary.

1       Section 59. Qualifications of Municipal Managers. The munic-  
2 ipal manager shall be chosen by the council solely on the basis  
3 of his executive and administrative qualifications with special  
4 reference to his actual experience in, or his knowledge of the  
5 duties of his office as hereinafter set forth. At the time of  
6 his appointment, he need not be a resident of the municipality  
7 or state, but during his tenure of office he may reside outside  
8 the municipality only with the approval of council.

1       Section 60. Term of Municipal Manager, Removal, Suspension.  
2 The municipal manager shall hold office for an indefinite term  
3 and may be removed by a majority vote of the members of the  
4 council.<sup>11</sup>

1       Section 61. Absence or Disability of Manager. The manager

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11. The National Municipal League's Model City Charter in its removal provisions (section 3.02) provides for a hearing if requested by the manager.



2 may designate a qualified administrative officer of the municipi-  
3 pality to perform his duties during his temporary absence or  
4 disability. In the event of his failure to make such designa-  
5 tion, the council may by resolution appoint an officer of the  
6 municipality to perform the duties of the manager during such  
7 absence or disability and until he shall return or his disability  
8 shall cease.

1 Section 62. Powers and Duties of Manager. The municipal  
2 manager shall:

3 (1) be the chief executive and administrative official of  
4 the municipality;

5 (2) execute all laws and ordinances of the municipality;

6 (3) appoint and remove a deputy manager if one be author-  
7 ized by the council, all department heads and all other officers,  
8 subordinates, and assistants for whose selection or removal no  
9 other method is provided in this article, except that he may  
10 authorize the head of a department to appoint and remove sub-  
11 ordinates in such department, supervise and control his ap-  
12 pointees, and report all appointments or removals at the next  
13 meeting thereafter of the municipal council;

14 (4) negotiate contracts for the municipality subject to the  
15 approval of the municipal council, make recommendations concern-  
16 ing the nature and location of municipal improvements, and ex-  
17 ecute municipal improvements as determined by the municipal  
18 council;

19 (5) see that all terms and conditions imposed in favor of  
20 the municipality or its inhabitants in any statute, public  
21 utility franchise or other contract are faithfully kept and per-  
22 formed, and upon knowledge of any violation call the same to  
23 the attention of the municipal council;

24 (6) attend all meetings of the municipal council with the  
25 right to take part in the discussions, but without the right to  
26 vote;

27 (7) recommend to the municipal council for adoption such  
28 measures as he may deem necessary or expedient, keep the coun-  
29 cil advised of the financial condition of the municipality,

30 make reports to the council as required by it, and at lease  
31 once a year make an annual report of his work for the information  
32 of the council and the public;

33 (8) investigate at any time the affairs of any officer or  
34 department of the municipality;

35 (9) perform such other duties as may be required of the mu-  
36 nicipal manager by ordinance or resolution of the municipal  
37 council.

38 The municipal manager shall be responsible to the council for  
39 carrying out all policies established by it and for the proper  
40 administration of all affairs of the municipality within the  
41 jurisdiction of the council.

1 Section 63. Preparation of Budget by Manager. The munici-  
2 pal budget shall be prepared by the municipal manager. During  
3 the month of [November] in each year, the municipal manager  
4 shall require all department heads to submit requests for appro-  
5 priations for the ensuing budget year, and to appear before him  
6 at public hearings, which shall be held during that month, on  
7 the various requests.

1 Section 64. Submission of Recommended Budget by Manager;  
2 Work Programs and Quarterly Allotments. On or before the [fif-  
3 teenth] day of [January] the municipal manager shall submit to  
4 the council his recommended budget together with such explana-  
5 tory comment or statement as he may deem desirable. The budget  
6 shall be in such form as is required by law for municipal bud-  
7 gets.

8 The council shall, where practicable, provide by ordinance  
9 for the operation of a system of work programs and quarterly  
10 allotments for operation of the budget, and for development and  
11 reporting of appropriate unit costs of budgeted expenditures.

1 Section 65. Construction of Laws Conferring Power Upon Mayor.

2 Any provision of general law conferring the appointing power or  
3 other power upon the mayor or other executive head of the munic-  
4 ipality shall be construed as meaning the municipal manager in  
5 a municipality governed under this article, and the appointments  
6 or the power exercised by the municipal manager in accordance

7 with such provision shall be given the same force and effect as  
8 if executed by the official named therein [except that members  
9 of the board of [ ]<sup>12</sup> whenever required to be appointed by  
10 any such provision by any board or official of the municipality,  
11 shall be appointed under this article by [the mayor] [the city  
12 council]].

1 Section 66. Post-Audit. The council shall provide by ordi-  
2 nance for post-auditing the financial transactions of the mu-  
3 nicipality.

#### ARTICLE 5. ADDITIONAL PROVISIONS COMMON TO OPTIONAL PLANS<sup>13</sup>

##### A. Election Districts<sup>14</sup>

1 Section 67. Division of Municipalities Into Election Dis-  
2 tricts. Whenever a municipality adopts articles 3 or 4 with a  
3 provision for election of council members from election districts,  
4 said municipality shall be divided into districts by the munic-  
5 ipal governing body as hereinafter provided.

1 Section 68. Division Into Election Districts. Within five  
2 days following the election at which the voters of the munic-  
3 ipality shall have adopted one of said optional plans, the munic-  
4 ipal governing body shall meet and shall, within thirty days of  
5 the adoption of said optional plan, divide the municipality into  
6 such number of election districts as is specified in the adopted  
7 plan.

1 Section 69. Boundaries of Election Districts; Population  
2 Difference. The governing body shall fix and determine the

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12. Insert the names of policymaking boards such as the board of education or the library board if provided for by general law.

13. These provisions are concerned only with transitional matters from one form of local government to another adopted under the optional plan provisions. It is assumed that general laws will cover election procedures, official conduct, recall, referendum, initiative, personnel, planning, etc.

14. States wishing to provide for division into wards by the city council existing before the change may refer to the provision in section 705.73 of the Ohio Optional Charter Law, Ohio Revised Code, Annotated, 1954.

3 district boundaries so that each district is formed of compact  
4 and contiguous territory, and will comply with the legal require-  
5 ments for equal representation. [The district so created shall  
6 not deviate in population, according to the most recent federal  
7 census, by more than [ten] per centum [10%] from the figure ob-  
8 tained by dividing the total population of the municipality by  
9 the number of council members to be elected from districts.]

1 Section 70. Adjustments in Election District Boundaries  
2 Following Census. Within three months following each decennial  
3 federal census, the governing body of the municipality shall  
4 meet, in the manner heretofore provided in this article for the  
5 purpose of making such adjustments in district boundaries as  
6 shall be necessary pursuant to section 69 of this article.

1 Section 71. Failure of Municipal Governing Body to Apportion  
2 or Reapportion. If a municipal governing body fails to appor-  
3 tion or reapportion election districts as required by sections  
4 67 and 70, the [board of county commissioners] [appropriate  
5 county court] shall apportion or reapportion the governing body  
6 of the municipality in accordance with sections 68 and 69.

1 Section 72. Officers of Existing Election Districts. All  
2 officers elected for existing districts in any municipality  
3 wherein district lines are changed pursuant to section 70 of  
4 this article, shall continue in office until their respective  
5 terms of office shall expire and until their successors are  
6 elected and qualified.

#### B. Succession in Government

1 Section 73. Schedule of Installation of Optional Plan  
2 Adopted. The schedule of installation of an optional plan  
3 adopted pursuant to this act shall, as provided herein, take  
4 the following course:

5 (1) an election to submit the question of adoption of an  
6 optional plan may be held at any time in accordance with the  
7 provisions of article 1 of this act;

8 (2) in the event of a favorable vote of the voters at the  
9 above election, the first election of officers under the adopted

10 plan shall take place on (1) the [second Tuesday in May] occur-  
11 ring not less than [seventy-five] days next following the adop-  
12 tion of one of the optional plans in municipalities adopting a  
13 charter providing for election at a regular municipal election;  
14 or (2) at the next general election occurring no less than  
15 [seventy-five] days next following the adoption of one of the  
16 optional or alternative plans in municipalities adopting a char-  
17 ter providing for election at a general election.

18 Whenever a municipality has adopted a charter providing for  
19 partisan election, prior to the last day fixed for the filing  
20 of nominating petitions for the primary election, the candidates  
21 to be first elected shall be nominated in the manner provided  
22 by [cite appropriate election law or code provisions] with re-  
23 spect to the filling of certain vacancies in nominations for  
24 county or municipal offices to be filled at the general election;

25 (3) an optional plan shall take effect, in accordance with  
26 the further provisions of this article at (1) twelve o'clock  
27 noon on the [first] day of [July] next following the first elec-  
28 tion of officers in municipalities adopting a charter providing  
29 for elections at a municipal election, or (2) twelve o'clock  
30 noon on the first day of January next following the first elec-  
31 tion of officers in municipalities adopting a charter providing  
32 for elections at a general election.

1 Section 74. Charters Superseded; Existing Ordinances Remain-  
2 ing in Force. Upon the effective date of an optional charter  
3 adopted pursuant to this act, any other charter and its amend-  
4 ments and supplements theretofore applicable to the municipality  
5 shall be superseded with respect to such municipality. All  
6 ordinances and resolutions of the municipality to the extent  
7 that they are not inconsistent with the provisions of this act  
8 shall remain in full force and effect until modified or repealed  
9 as provided by law.

1 Section 75. Existing Officers and Employees.

NOTE: Use this section for transitional provisions appli-  
cable to present officers and employees. They should deal  
with matters such as continuation in employment and grade,  
protection of tenure, seniority rights, pensions, etc., and

must be tailored to existing provisions of state law. Sample provisions are available in the National Municipal League's Model City Charter, article X, Transitional Provisions, pp. 69-72.

1       Section 76. Appointments Between Election and Time of Taking  
2 Office; Pending Actions. (a) No subordinate board, department,  
3 body, office, position or employment shall be created and no  
4 appointments shall be made to any subordinate board, department  
5 or body, or to any office, employment or position, including  
6 without limitation patrolmen and firemen, between the date of  
7 election of officers and the date the newly elected officers  
8 take office under any optional plan.

9       (b) All actions and proceedings of a legislative, executive,  
10 or judicial character which are pending upon the effective date  
11 of an optional plan adopted pursuant to this act may continue,  
12 and the appropriate officer or employee under such optional plan  
13 shall be substituted for the officer or employee theretofore  
14 exercising or discharging the function, power or duty involved  
15 in such action or proceeding.

1       Section 77. Separability. [Insert separability clause.]

1       Section 78. Effective Date. [Insert effective date.]

## OPTIONAL FORMS OF COUNTY GOVERNMENT

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

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

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

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

its own form of county government.

The new Michigan constitution (Article VII, Section 2) specifically authorizes counties to adopt home rule charters pursuant to state law. The constitutions of Alaska (Article X, Section 3), Hawaii (Article VII, Section 1), Kansas (Article 9, Sections 1 and 2), and Virginia (Article VII, Section 110) authorize the establishment of counties pursuant to general act of the legislature. The constitutions of California (Article XI, Section 7-1/2) and New York (Article IX, Section 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 (North Carolina, General Statutes, Chapter 153, Article III).

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize optional forms of county government."]

(Be it enacted, etc.)

- 1        Section 1. Optional Forms of County Government Authorized.
- 2        Any county in this state may, pursuant to the provisions of
- 3        this act and any other appropriate provisions of law, adopt any



4 one of the optional forms of county government herein provided.

1 Section 2. [County Commissioners] Form. (a) [County Com-  
2 missioners] Form Defined. [The county commissioners] form of  
3 county government shall be that form in which the government is  
4 administered by [a board of county commissioners.]

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

1 Section 3. Manager Form. (a) Manager Appointed or Desig-  
2 nated. The [board of county commissioners] may appoint a county  
3 manager who shall be the administrative head of the county gov-  
4 ernment, and shall be responsible for the administration of all  
5 departments of the county government which the [board of county  
6 commissioners] has the authority to control. He shall be ap-  
7 pointed with regard to merit only, and he need not be a resident  
8 of the county at the time of his appointment. In lieu of the  
9 appointment of a county manager, the [board] may impose and  
10 confer upon the [chairman of the board of county commissioners]  
11 the duties and powers of a manager, as hereinafter set forth,  
12 and under such circumstances said chairman shall be considered  
13 a full-time chairman. Or the [board] may impose and confer  
14 such powers and duties upon any other officer or agent of the  
15 county who may be sufficiently qualified to perform such duties,  
16 and the compensation paid to such officer or agent may be re-  
17 vised or adjusted in order that it may be adequate compensation  
18 for all the duties of his office. The term "manager" herein  
19 used shall apply to such chairman, officer, or agent in the  
20 performance of such duties.

21 (b) Duties of the Manager. It shall be the duty of the  
22 county manager:

23 (1) to see that all the orders, resolutions, and reg-  
24 ulations of the [board] are faithfully executed;

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

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

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

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

1       Section 4. [Elected County Executive]. (a) [Elected County  
2 Executive] Form Defined. The [elected county executive] form of  
3 government shall be that form in which the government is ad-  
4 ministered by a single county official, elected at large by the  
5 qualified voters of the county. The [board of county commis-  
6 sioners] shall act as the legislative body of the county under  
7 this form of county government. The elected county executive  
8 shall be responsible for the administration of all departments  
9 of the county government. Qualifications for the office of  
10 elected county executive shall be the same as those for the  
11 [board of county commissioners].

13       (b) Duties of the [Elected County Executive]. It shall be  
14 the duty of the elected county executive:

15           (1) to see that all the orders, resolutions, and regu-  
16 lations of the [board] are faithfully executed;

17           (2) to attend all the meetings of the [board] and rec-  
18 ommend such measures for adoption as he may deem expedient;

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

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

26           (5) to perform such other duties as may be required

27 of him by the [board].

1       Section 5. Procedure. The [board of county commissioners]  
2 may, upon its own motion, or shall upon receipt of a petition  
3 so requesting, signed by at least [     ] percent of qualified  
4 voters within the county, submit to referendum vote of all  
5 qualified electors within the county the question of whether  
6 one of the optional forms of county government shall be estab-  
7 lished within a county. If a majority of those voting on the  
8 question favor the adoption of a new form of county government,  
9 election of county officers for such optional form of county  
10 government shall be held at the next general election held within  
11 the county. If a majority of the voters disapprove, the exist-  
12 ing form shall be continued and no new referendum may be held  
13 during the next [two] years following the date of such disap-  
14 proval.

1       Section 6. Effective Date. [Insert effective date.]

## MUNICIPAL INCORPORATIONS

In its report on Governmental Structure, Organization, and Planning in Metropolitan Areas, the Advisory Commission pointed out that only the states have the power to halt the chaotic spread of small municipalities within existing and emerging metropolitan areas. It recommended that states enact legislation providing rigorous statutory standards for the establishment of new municipal corporations within the geographic boundaries of metropolitan areas and that proposed new incorporations be subject to the review and approval of a unit of state government. The suggested legislation which follows specifically implements those recommendations. The Georgia and Kansas legislatures have recently passed laws establishing 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 complied with fully, and (b) the proposed incorporation would assist, not hinder, the orderly development of local government within metropolitan areas.

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

Only one task has been assigned to the proposed state Office of Municipal Incorporation Review. However, some states either now or at a later time may want to expand the function of the office to include such related duties as: review of petitions for annexation to municipalities of contiguous unincorporated and incorporated property; review of proceedings for detachment of property from a

municipality; determination whether areas should be annexed to existing municipalities or incorporated as separate entities due to change or growth in population as indicated by official census.

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

#### Suggested Legislation

[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.)

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

1     Section 2. Creation of an Office of Municipal Incorporation  
2     Review. There is hereby created an Office of Municipal Incor-  
3     poration Review [in the department of state government in charge  
4     of local affairs if such exists] to review petitions for the  
5     incorporation of territory into municipalities.<sup>1</sup>

6     The Office shall be administered by a [director] who shall  
7     be appointed by the governor. The staff of the Office shall be  
8     appointed by the [director] [subject to state civil service  
9     regulations].

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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.

1        Section 3. Incorporation Procedure and Standards. (a) Standards for Initiating Petition.<sup>2</sup> 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 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.

18        (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

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2. For example, the following minimums have been adopted by several jurisdictions: (1) California: 500 population except Los Angeles County which requires 1,500; (2) Minnesota: 500 population; (3) Ontario: village - 500 population, town - 2,000, city - 15,000 or 25,000 depending upon present status; (4) Wisconsin: metropolitan village - area of 2 square miles with 2,500 population and density of 500 per square mile, metropolitan city - area of 3 square miles with 5,000 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 5,000 population (or less) if within 3 air miles, or of city of 5,000 (or more) if within 6 air miles.

27 the hearing to be sent, at least fourteen days in advance of  
28 such hearing, to the chairman of the county board, the govern-  
29 ing body of all other governmental jurisdictions in which all  
30 or part of the territory to be incorporated is located, the  
31 governing body of any municipality of [ ] population within  
32 [ ] miles of the proposed incorporation, and any duly con-  
33 stituted municipal or regional planning commission exercising  
34 planning authority over all or part of the territory to be in-  
35 corporated. Any persons so notified may submit briefs, prior  
36 to the hearing, for or against the proposed incorporation.  
37 Notice shall be posted not less than 20 days before the hearing  
38 in three public places in the area described in the petition,  
39 with a notice fourteen days prior to the hearing to be pub-  
40 lished in a newspaper qualified as a medium of official and  
41 legal publication of general circulation in the area to be  
42 incorporated.

43 (c) Director's Order. Pursuant to a hearing on a petition  
44 for the incorporation of a municipality under subsection (a)  
45 of this section, the director shall affirm the petition for in-  
46 corporation if he finds the territory to be incorporated so  
47 conditioned as to be properly subjected to municipal govern-  
48 ment and otherwise in the public interest. As a guide in  
49 arriving at a determination, the director shall consider the  
50 following factors among others: (1) population and population  
51 density of the area within the boundaries of the proposed in-  
52 corporation; (2) land area, topography, natural boundaries, and  
53 drainage basins of the proposed incorporations; (3) area of  
54 platted land relative to unplatted with assessed value of  
55 platted land relative to assessed value of unplatted areas;  
56 (4) extent of business, commercial, and industrial development;  
57 (5) past expansion in terms of population and construction;  
58 (6) likelihood of significant growth in the area, and in adja-  
59 cent areas, during the next ten years; (7) the present cost and  
60 adequacy of governmental services and controls in the area and  
61 the probable effect of the proposed action and of alternative

62 courses of action on the cost and adequacy of local government-  
63 al services and regulation in the area and in adjacent areas;  
64 (8) effect of the proposed action, and of alternative actions,  
65 on adjacent areas, and on the local governmental structure of  
66 the entire urban community.

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

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

83 If the proposed corporation is to assume any property and  
84 obligations of a unit of government [such as county or town-  
85 ship] having jurisdiction within any part of the proposed in-  
86 corporation area prior to the incorporation, the director shall  
87 apportion such property and obligations in such manner as shall  
88 be just and equitable having in view the value of all such  
89 property, if any, located in the area to be incorporated, the  
90 assessed value of all the taxable property in each of the  
91 jurisdictions concerned, both within and without the area to  
92 be incorporated, the indebtedness, the taxes due and the delin-  
93 quent and other revenue accrued but not paid to such jurisdic-  
94 tions. Subsequent to the apportionment, the area incorporated  
95 will not be liable for the remaining debts of such jurisdictions.

96 The director shall enter an order affirming or denying the



97 petition. He shall issue the order within a reasonable time  
98 after the termination of the hearing. If the petition is  
99 denied, no petition for incorporation may be submitted which  
100 includes all or a part of the same area, within two years after  
101 the date of the director's order. If the petition is denied  
102 in part, no petition for annexation to the newly formed municipi-  
103 pality as hereinafter provided, which includes all or a part of  
104 the area deleted from the original petition, may be submitted  
105 within two years after the date of the denial order.

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

125 (e) Filing of Incorporation Document. Immediately upon the  
126 completion of the counting of the ballots, the [Board of Elec-  
127 tions] shall execute a signed and verified certificate declar-  
128 ing the time and place of holding the referendum, that it has  
129 canvassed the ballots cast, and the number cast both for and  
130 against the proposition, and it shall then file the certificate  
131 with the director of the Office of Municipal Incorporation

132 Review. The director shall attach the certificate to the  
133 original petition, the original order affirming the petition  
134 as submitted or as amended in the order, and the original proofs  
135 of the posting of the election notice. If the certificate shows  
136 that a majority of the votes cast were "For Incorporation", the  
137 director shall forthwith make and transmit to appropriate state  
138 officials and to the governing bodies of all other jurisdictions  
139 affected by the incorporation, a certified copy of the docu-  
140 ments to be then filed as a public record, at which time the  
141 incorporation shall be deemed complete. If the certificate  
142 shows that a majority of the votes cast were "Against Incor-  
143 poration," the provisions of subsection (c) restricting subse-  
144 quent incorporation petitions shall be applicable.

1     Section 4. Appeals to the Supreme Court from Orders of the  
2 Director.<sup>3</sup> The [court] shall have original jurisdiction upon  
3 appeal to review the final orders of the director. Any party  
4 may appeal to the [court] within thirty days after service of  
5 a copy of such order by service of a written notice of appeal  
6 on the director of the Office of Municipal Incorporation Re-  
7 view. Upon service of the notice of appeal, the director shall  
8 file with the clerk of the [court] a certified copy of the order  
9 appealed from, together with the findings of fact and the  
10 record, on which the same is based. The person serving such  
11 notice of appeal shall, within five days after the service  
12 thereof, file the same with proof of service with the clerk of  
13 the [court]; thereupon the [court] shall have jurisdiction over  
14 the appeal.

15     In reviewing the order of the director, the [court] shall  
16 limit its review to questions affecting the jurisdiction of the  
17 Office of Municipal Incorporation Review, the regularity of the  
18 proceedings, and, as to the merits of the order, whether the  
19 determination was arbitrary, oppressive, unreasonable, fraudulent,

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3: As an alternative to section 4, if the state has an admin-  
istrative procedure act providing for judicial review, orders of the  
director should be made subject to that act.

20 or without substantial evidence to support it. The [court] may  
21 reverse and remand the decision of the director with directions  
22 as it may deem appropriate and permit him to take additional  
23 evidence, or to make additional findings in accordance with law.  
24 Such appeal shall not stay or supersede the order appealed from  
25 unless the [court] upon examination of the order and the return  
26 made on the appeal, and after giving the respondent notice and  
27 opportunity to be heard, shall so direct; however, in no event  
28 shall the [court] so direct, when an order contemplates a refer-  
29 endum until subsequent to the said election.

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

1 Section 5. Separability. [Insert separability clause.]

2 Section 6. Effective Date. [Insert effective date.]

## MUNICIPAL ANNEXATION

New legislative developments in several states in recent years now offer alternatives under which municipal annexation of unincorporated territory can become a more effective process for boundary adjustment in all states. Prior to 1900, the Nation's large cities attained their present size largely through annexation. Around the turn of the century, the process became more difficult as suburbs were established and state constitutions and statutes were changed to forestall their absorption by central cities. Many states gave fringe area residents exclusive authority to initiate annexation proceedings, and required separate majority votes in both the annexing city and the territory to be annexed. New cities and villages gradually were incorporated around the edges of the central cities and amendments to many state annexation laws made it difficult to annex any but unincorporated areas. These changes made extensive inroads on the territory available for annexation by central cities and had a deterrent effect on annexation efforts down through World War II.

In the post-war years, under the pressures of burgeoning population and urbanization, there has been a strong upsurge of annexation. In 1964, continuing a 20 year trend, 751 cities of 5,000 population or more completed annexations, of which 165 annexed one-half square mile or more. Despite this overall trend, however, municipalities in some states still labor under handicaps to an effective annexation procedure. The worst of these are the prohibition against municipalities initiating annexations, and the right of the annexed territory to exercise an irrevocable veto over an annexation. As a result of these and other defects, urban governments in such states sometimes are allowed to extend over vast rural areas, but are barred from clearly urban places; "defensive incorporations" occur in reaction to threatened annexation, causing fragmentation of local government and making coordinated economic development impossible; and the requirement for elections makes neighborhood pride the primary determinant of whether municipal government will be extended. In sum, annexations often can not be completed as urban areas expand, or the procedure is so cumbersome or restrictive as to make annexation lag far behind population expansion.

Responding to these conditions, a number of states in recent years have taken several different statutory approaches to liberalize the annexing powers of municipalities and provide more effectively for extending boundaries in accordance with fringe growth, while at the same time protecting outlying residents against inequitable or arbitrary action. These statutes involve, on one hand, modification of the exclusive power of unincorporated areas to initiate annexation actions and their power to veto proposed annexations; on the other, legislative prescription of rational standards which must be met to assure that annexation is desirable and that the annexed area will receive the benefits which absorption by a municipality are presumed to bestow.

In its 1961 report, Governmental Structure, Organization and Planning in Metropolitan Areas, the Commission urged states to "examine types of legislation which in certain states have already been adopted to facilitate desirable municipal annexations, with a view to enacting such facilitative provisions as may be suitable to their respective needs and circumstances." Examples of several such state statutes, and a proposed model act, are described below. In addition the text of one of these state statutes--North Carolina's--is reproduced at the end of this statement, with slight modifications, as an illustration of one possible approach to liberalization of annexation procedures. Individual states may wish to combine parts of the North Carolina approach with other possibilities described.

The North Carolina statute (C. 1009, Laws of 1959), authorizes municipal councils to annex unilaterally. Annexations are limited to contiguous unincorporated territory qualifying under rather detailed standards of urbanization and development. No local vote is required in the annexed areas, but the annexing ordinance is subject to statutory standards with respect to the ability of the municipality to provide municipal services to the annexed area and required criteria of contiguity and urbanization of the annexed area. Judicial relief is provided if statutory standards are not met.

In two states, Minnesota and California, annexation is not unilateral but provision is made for conditions which reduce resistance to annexation in the unincorporated areas. Both provide administrative bodies, for Minnesota at the state level, for California at the county level, with authority to approve or disapprove both annexation and new incorporation. With the power to disapprove new incorporations, these agencies are in a position to prevent unincorporated areas from resorting to defensive incorporations which thwart annexation. In addition, the statutes in both states prescribe factors which must be considered in approving annexations. These include conditions that help assure the annexed territory that it will not be damaged by the annexation. In Minnesota, for example, a guideline that must be considered is "the feasibility and practicability of the annexing territory to provide them governmental services presently or when they become necessary. . ."

The Minnesota law (M.S.A. 414.01 ff.), enacted in 1959, provides for a three-man state commission, appointed by the governor, to review incorporation proposals and to approve all proposals to annex unincorporated territory. A petition for annexation may be initiated by resolution of the annexing municipality or by the freeholders of the territory. The commission may alter the boundaries of a proposed annexation by increasing or decreasing the area. After considering factors outlined in the statute, if the commission approves the annexation, it must be ratified by the residents of the annexed area to become effective. Disapprovals may be appealed to the

courts.<sup>1</sup>

The 1963 California legislation established local agency formation commissions with powers to approve or disapprove proposed annexations, municipal incorporations, and creations of special districts (Cal. Govt. Code. Sec., 54765). The commissions, usually consisting of two county officials, two city officials, and one member representing the general public, are formed for each county, and have jurisdiction over proposed annexations within their respective counties. Factors they must consider in reviewing an annexation proposal include population, population density, need for organized community services, and the probable future needs for governmental services and controls. Commission disapproval kills a proposal. Approval means the proposal is submitted to a vote of the people of the area to be annexed and the governing body of the annexing municipality.<sup>2</sup>

Reflecting these and other recent experiences, the Harvard<sup>3</sup> Student Legislative Research Bureau published in 1965 a model act creating a state boundary adjustment board, made up of three members appointed by the governor. The board would have power over annexations, detachments, incorporations, and consolidations, similar to the California commissions. Annexation proceedings could be initiated by the board or by the following: municipal governing bodies, township and county boards, areawide planning bodies, 10 percent of the voters of the municipality or territory, or owners of 25 percent of the assessed value of real property in the territory. Rulings would be made by committees, consisting of the board plus two or more residents representing the county or counties containing the territory affected by the annexation. The statute also prescribes standards which must be met in order for the committees to approve a proposed annexation; for example, the present or probable future character of the territory must be urban or suburban, and the annexed territory must be contiguous to the municipality. It also sets forth criteria which the committees must consider in determining whether the standards have been met. These include the effect of the proposed annexation on the population growth of an assessed value of the real property in the territory and the municipality; and the need for municipal services in the territory. Provision is made for appeal to the courts by any person aggrieved by a decision of

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1. The proposal on page 450 of this program, while dealing only with municipal incorporations, is based on the Minnesota Act and could, as indicated on page 450, be revised to include annexation review and approval among the Commission's responsibilities.

2. The proposal on page 491 of this program, dealing only with special district creation, consolidation and dissolution, is based in part, on the California act which provides local agency formation commissions with authority over municipalities as well as special districts.

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

the committees. Decision of the committees would not be subject to vote of the people of the territory annexed or the people or governing body of the annexing municipality.

The draft statute reproduced below is based nearly entirely on the North Carolina statute. Section 1 declares state policy, including orderly extension of municipal boundaries to assure provision of urban services pursuant to legislative standards. Section 2 vests authority to annex in the governing bodies of municipalities of a specified minimum size. Section 3 requires the annexing municipality to make plans for extension of services to the area proposed to be annexed, and sets forth the information to be included in the report of the plans.

Section 4 specifies the character of the area that may be annexed. The area must be adjacent or contiguous to the municipality's boundaries; at least one-eighth of its boundaries must coincide with the municipality's boundaries; and it may not be included within the boundaries of another municipality. Part or all of the area must be developed for urban purposes, which is defined in three alternative ways, reflecting population density, lot size, and land use. The municipality may also include in the area to be annexed certain areas not to be developed for urban purposes, but which constitute necessary land connections between the municipality and areas developed for urban purposes, or between two or more areas developed for urban purposes.

Section 5 prescribes the procedure of annexation, including notice of intent and notice of public hearing, approval of the report of plans, and passage of the annexation ordinance following the public hearing and revision of the original plans as a result of the hearing. The ordinance must include findings that the area to be annexed meets the requirements of section 4; a statement of the municipality's intent to provide services to the area in accord with the report under section 3; a finding that on the date of the annexation the municipality will have funds or borrowing power to finance extension of utility lines or streets to the area; and the effective date of annexation.

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

Section 6 provides for court appeal by property owners within the annexed area who believe they will be injured materially because of failure of the municipality to comply with the act's procedure. The court may affirm the action of the municipality, remand the ordinance to the municipality for further proceedings to overcome procedural irregularities, reduce the area annexed, or amend the plans for services to the annexed area.

Section 7 provides for recording of the annexation. Section 8 authorizes municipal expenditures for purposes in connection with preparing for the annexation or providing services to the annexed area. Section 9 contains definitions. Section 10 specifies the manner of making population and land estimates for the purposes of the act.

### Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

1        Section 1. Declaration of Policy. It is hereby declared  
2 as a matter of state policy that:

3        (1) Sound urban development is essential to the continued  
4 economic development of this state;

5        (2) Municipalities are created to provide the governmental  
6 services essential for sound urban development and for the pro-  
7 tection of health, safety and welfare in areas being intensively  
8 used for residential, commercial, industrial, institutional  
9 and governmental purposes or in areas undergoing such develop-  
10 ment;

11        (3) Municipal boundaries should be extended, in accordance  
12 with legislative standards applicable throughout the state, to  
13 include such areas and to provide the high quality of govern-  
14 mental services needed therein for the public health, safety,  
15 and welfare;

16        (4) Areas annexed to municipalities in accordance with such  
17 uniform legislative standards should receive the services pro-  
18 vided by the annexing municipality as soon as possible follow-  
19 ing annexation.

1        Section 2. Definitions. The following terms were used in  
2 this act shall have the following meanings, except where the  
3 context clearly indicates a different meaning:

4        (1) "Contiguous area" shall mean any area which, at the  
5 time annexation procedures are initiated, either abuts directly  
6 on the municipal boundary or is separated from the municipal  
7 boundary by a street or street right-of-way, a creek or river,



8 the right-of-way of a railroad or other public service corpora-  
9 tion, lands owned by the city or some other political subdivi-  
10 sion, or lands owned by the state.

11 (2) "Used for residential purposes" shall mean any lot or  
12 tract [ ] acres or less in size on which is constructed a  
13 habitable dwelling unit.

1 Section 3. Authority to Annex. The governing board of any  
2 municipality having a population of [ ] or more persons  
3 according to the last federal decennial census may extend the  
4 corporate limits of such municipality under the procedure set  
5 forth in this act.

1 Section 4. Prerequisites to Annexation: Ability to Serve.  
2 A municipality exercising authority under this act shall make  
3 plans for the extension of services to the area proposed to be  
4 annexed and shall, prior to the public hearing provided for in  
5 section 6 of this act, prepare a report setting forth such  
6 plans to provide services to such area. The report shall in-  
7 clude:

8 (1) A map or maps of the municipality and adjacent terri-  
9 tory to show the following information:

10 (i) The present and proposed boundaries of the munic-  
11 ipality.

12 (ii) The present streets, major trunk water mains,  
13 sewer interceptors and outfalls and other utility lines, and  
14 the proposed extensions of such streets and utility lines as  
15 required in paragraph (3) of this section.

16 (iii) The general land use pattern in the areas to  
17 be annexed.

18 (2) A statement showing that the area to be annexed meets  
19 the requirements of section 5 of this act.

20 (3) A statement setting forth the plans of the municipality  
21 for extending to the area to be annexed each major municipal  
22 service performed within the municipality at the time of annexa-  
23 tion. Specifically, such plans shall:

24 (i) Provide for extending police protection, fire  
25 protection, garbage collection, and streets and street mainte-

26 nance services to the area to be annexed on the date of annexa-  
27 tion on substantially the same basis and in the same manner  
28 as such services are provided within the rest of the municipi-  
29 pality prior to annexation.

30 (ii) Provide for extension of streets and of major  
31 trunk water mains, sewer outfall lines, and other utility ser-  
32 vices into the area to be annexed, so that when such streets  
33 and utility lines are constructed, property owners in the area  
34 to be annexed will be able to secure such services, according  
35 to the policies in effect in such municipality for extending  
36 such services to individual lots or subdivisions.

37 (iii) If extension of streets and water, sewer or other  
38 utility lines into the area to be annexed is necessary, set  
39 forth a proposed timetable for construction of such streets  
40 and utility lines as soon as possible following the effective  
41 date of annexation. In any event, the plans shall call for  
42 contracts to be let and construction to begin within twelve  
43 months following the effective date of annexation.

44 (iv) Set forth the method under which the municipality  
45 plans to finance extension of services into the area to be  
46 annexed.

1 Section 5. Character of Area to be Annexed. (a) A municipi-  
2 pal governing board may extend the municipal corporate limits  
3 to include any area:

4 (1) Which meets the general standards of subsection  
5 (b) of this section, and

6 (2) Every part of which meets the requirements of  
7 either subsection (c) or subsection (d) of this section.

8 (b) The total area to be annexed must meet the following  
9 standards:

10 (1) It must be adjacent or contiguous to the municipi-  
11 pality's boundaries at the time the annexation proceeding is  
12 begun.

13 (2) At least one-eighth of the aggregate external  
14 boundaries of the area must coincide with the municipal bound-  
15 ary.

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

18           (c) Part or all of the area to be annexed must be developed  
19 for urban purposes. An area developed for urban purposes is  
20 defined as any area which meets any one of the following stand-  
21 ards:

22           (1) Has a total resident population equal to at least  
23 two persons for each acre of land included within its bound-  
24 aries; or

25           (2) Has a total resident population equal to at least  
26 one person for each acre of land included within its boundaries,  
27 and is subdivided into lots and tracts such that at least [    ] ]  
28 percent of the total acreage consists of lots and tracts [    ] ]  
29 acres or less in size and such that at least [    ] ] percent of  
30 the total number of lots and tracts are [    ] ] acre or less in  
31 size; or

32           (3) Is so developed that at least [    ] ] percent of  
33 the total number of lots and tracts in the area at the time of  
34 annexation are used for residential, commercial, industrial,  
35 institutional or governmental purposes, and is subdivided into  
36 lots and tracts such that at least [    ] ] percent of the total  
37 acreage, not counting the acreage used at the time of annexa-  
38 tion for commercial, industrial, governmental or institutional  
39 purposes, consists of lots and tracts [    ] ] acres or less in  
40 size.

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

45           (1) Lies between the municipal boundary and an area  
46 developed for urban purposes so that the area developed for  
47 urban purposes is either not adjacent to the municipal boundary  
48 or cannot be served by the municipality without extending ser-  
49 vices and/or utility lines through such sparsely-developed  
50 area; or

51 (2) Is adjacent, on at least [ ] percent of its  
52 external boundary, to any combination of the municipal boundary  
53 and the boundary of an area or areas developed for urban pur-  
54 poses as defined in subsection (c) of this section.

55 The purpose of this subsection is to permit municipal govern-  
56 ing boards to extend corporate limits to include all nearby  
57 areas developed for urban purposes and where necessary to in-  
58 clude areas which at the time of annexation are not yet devel-  
59 oped for urban purposes, but which constitute necessary land  
60 connections between the municipality and areas developed for  
61 urban purposes or between two or more areas developed for urban  
62 purposes.

63 (e) In fixing new municipal boundaries, a municipal govern-  
64 ing board shall, wherever practical, use natural topographic  
65 features, such as ridge lines and streams and creeks as bound-  
66 aries, and if a street is used as a boundary, include within  
67 the municipality land on both sides of the street and such out-  
68 side boundary may not extend more than [ ] feet beyond the  
69 right-of-way of the street.

1 Section 6. Procedure of Annexation. (a) Notice of Intent.

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

10 (b) Notice of Public Hearing. The notice of public hear-  
11 ing shall:

12 (1) Fix the date, hour, and place of the public hearing,

13 (2) Describe clearly the boundaries of the area under  
14 consideration,

15 (3) State that the report required in section 4 of this  
16 act will be available at the office of the municipal official  
17 at least [ ] days prior to the date of the public hearing.

18       Such notice shall be given by publication in a newspaper  
19 having general circulation in the municipality [    ] a week  
20 for at least [    ] successive weeks prior to the date of  
21 the hearing. The period from the date of the first publication  
22 to the date of the last publication, both dates inclusive, shall  
23 be not less than [    ] days including Sundays, and the date of  
24 the last publication shall be not more than [    ] days preced-  
25 ing the date of public hearing. If there be no such newspaper,  
26 the municipality shall post the notice in at least [    ] public  
27 places within the municipality and at least [    ] public places  
28 in the area to be annexed for [    ] days prior to the date of  
29 public hearing.

30       (c) Action Prior to Hearing. At least [    ] days before  
31 the date of the public hearing, the governing board shall  
32 approve the report provided for in section 4 of this act, and  
33 shall make it available to the public at the office of the  
34 municipal official. In addition, the municipality may prepare  
35 a summary of the full report for public distribution.

36       (d) Public Hearing. At the public hearing, a representative  
37 of the municipality shall first make an explanation of the  
38 report required in section 4 of this act. Following such ex-  
39 planation, all persons resident or owning property in the  
40 territory described in the notice of public hearing, and all  
41 residents of the municipality, shall be given an opportunity  
42 to be heard.

43       (e) Passage of the Annexation Ordinance. The municipal  
44 governing board shall take into consideration facts presented  
45 at the public hearing and shall have authority to amend the  
46 report required by section 4 of this act, to make changes in  
47 the plans for serving the area proposed to be annexed so long  
48 as such changes meet the requirements of section 4. At any  
49 regular or special meeting held no sooner than [    ] days  
50 following the public hearing and no later than [    ] days fol-  
51 lowing such public hearing, the governing board shall have  
52 authority to adopt an ordinance extending the corporate limits of  
53 the municipality to include all, or such part, of the area

54 described in the notice of public hearing, which meets the re-  
55 quirements of section 5 of this act, and which the governing  
56 board has concluded should be annexed. The ordinance shall:

57 (1) Contain specific findings showing that the area  
58 to be annexed meets the requirements of section 5 of this  
59 act. The external boundaries of the area to be annexed shall  
60 be described by metes and bounds. In showing the application  
61 of subsections 5(c) and 5(d) to the area, the governing board  
62 may refer to boundaries set forth on a map of the area and  
63 incorporate same by reference as a part of the ordinance.

64 (2) A statement of the intent of the municipality to  
65 provide services to the area being annexed as set forth in  
66 the report required by section 4 of this act.

67 (3) A specific finding that on the effective date of  
68 annexation, the municipality will have funds appropriated in  
69 sufficient amount to finance construction of any streets or  
70 utility lines, found necessary in the report required by  
71 section 4 to extend the basic utility system of the municipality  
72 into the area to be annexed, or that on the effective date of  
73 annexation the municipality will have authority to issue bonds  
74 in an amount sufficient to finance such construction. If  
75 authority to issue such bonds must be secured from the elector-  
76 ate of the municipality prior to the effective date of annexa-  
77 tion, then the effective date of annexation shall be no earlier  
78 than the day following the statement of the successful result  
79 of the bond election.

80 (4) Fix the effective date of annexation. The effec-  
81 tive date of annexation may be fixed for any date within twelve  
82 months from the date of passage of the ordinance.

83 (f) Effect of Annexation Ordinance. From and after the  
84 effective date of the annexation ordinance, the territory and  
85 its citizens and property shall be subject to all debts, laws,  
86 ordinances and regulations in force in such municipality and  
87 shall be entitled to the same privileges and benefits as other  
88 parts of such municipality. The newly annexed territory shall

89 be subject to municipal taxes levied for the fiscal year follow-  
90 ing the effective date of annexation. Annexed property which  
91 is part of a sanitary district or other special service district  
92 which has installed water, sewer, or other utilities or improve-  
93 ments, paid for by the residents of said district, shall not  
94 be subject to that part of the municipal taxes levied for debt  
95 service for the first [ ] years after the effective date of  
96 annexation. If the effective date of annexation falls between  
97 January 1 and June 30, the municipality shall, for purposes of  
98 levying taxes for the fiscal year beginning July 1 following  
99 the date of annexation, obtain from the county a record of  
100 property in the area being annexed, which was listed for taxa-  
101 tion as of said January 1.

102 (g) Simultaneous Annexation Proceedings. If a municipality  
103 is considering the annexation of two or more areas which are  
104 all adjacent to the municipal boundary but are not adjacent to  
105 one another, it may undertake simultaneous proceedings under  
106 authority of this act for the annexation of such areas.

107 (h) If, not earlier than one year from the effective date  
108 of annexation, and not later than fifteen months from the  
109 effective date of annexation, any person owning property in  
110 the annexed territory shall believe that the municipality has  
111 not followed through on its service plans, adopted under the  
112 provisions of section 4, paragraph (3) and subsection 6(e),  
113 such person may apply for a writ of mandamus under the pro-  
114 visions of [cite appropriate statute]. Relief may be granted  
115 by the [court of appropriate jurisdiction]:

116 (1) If the municipality has not provided the services  
117 set forth in its plan submitted under the provisions of sec-  
118 tion 4, subparagraph (3) (i) on substantially the same basis  
119 and in the same manner as such services were provided within  
120 the rest of the municipality prior to the effective date of  
121 annexation; and

122 (2) If at the time the writ is sought such services  
123 set forth in the plan submitted under the provisions of section  
124 4, subparagraph (3)(i) are still being provided on substantially

125 the same basis and in the same manner as on the date of annexa-  
126 tion of the municipality. Relief may also be granted by the  
127 [court of appropriate jurisdiction]: (1) if the plans sub-  
128 mitted under the provisions of section 4, subparagraph (3)(iii)  
129 require the construction of streets or utility services; and  
130 (2) if contracts for such construction have not yet been let.  
131 If a writ is issued, costs in the action, including a reason-  
132 able attorney's fee for such aggrieved person, shall be charged  
133 to the municipality.

1     Section 7. Appeal. (a) Within thirty days following the  
2 passage of an annexation ordinance under authority of this act,  
3 any person owning property in the annexed territory who shall  
4 believe that he will suffer material injury, by reason of the  
5 failure of the municipal governing board to comply with the  
6 procedure set forth in this act or to meet the requirements  
7 set forth in section 5 of this act as they apply to his pro-  
8 perty, may file a petition in the [court of appropriate juris-  
9 diction] of the county in which the municipality is located,  
10 seeking review of the action of the governing board.

11     (b) Such petition shall explicitly state what exceptions  
12 are taken to the action of the governing board and what relief  
13 the petitioner seeks. Within [     ] days after the petition  
14 is filed with the court, the person seeking review shall serve  
15 copies of the petition by registered mail, return receipt  
16 requested, upon the municipality.

17     (c) Within [     ] days after receipt of the copy of the  
18 petition for review, or within such additional time as the  
19 court may allow, the municipality shall transmit to the re-  
20 viewing court: (1) a transcript of the portions of the municipi-  
21 pal journal or minute book in which the procedure for annexa-  
22 tion has been set forth; and (2) a copy of the report setting  
23 forth the plans for extending services to the annexed area as  
24 required in section 4 of this act.

25     (d) If two or more petitions for review are submitted to  
26 the court, the court may consolidate all such petitions for  
27 review at a single hearing, and the municipality shall be



28 required to submit only one set of minutes and one report as  
29 required in subsection (c) of this section.

30 (e) At any time before or during the review proceeding,  
31 any petitioner or petitioners may apply to the reviewing court  
32 for an order staying the operation of the annexation ordinance  
33 pending the outcome of the review. The court may grant or deny  
34 the stay in its discretion upon such terms as it deems proper,  
35 and it may permit annexation of any part of the area described  
36 in the ordinance concerning which no question for review has  
37 been raised.

38 (f) The court shall fix the date for review of annexation  
39 proceedings under this act, which review date shall preferably  
40 be within [ ] days following the last day for receiving  
41 petitions to the end that review shall be expeditious and with-  
42 out unnecessary delays. The review shall be conducted by the  
43 court without a jury. The court may hear oral arguments and  
44 receive written briefs, and may take evidence intended to show  
45 either: (1) that the statutory procedure was not followed; or  
46 (2) that the provisions of section 4 were not met; or (3) that  
47 the provisions of section 5 have not been met.

48 (g) The court may affirm the action of the governing board  
49 without change, or it may:

50 (1) Remand the ordinance to the municipal governing  
51 board for further proceedings if procedural irregularities are  
52 found to have materially prejudiced the substantive rights of  
53 any of the petitioners.

54 (2) Remand the ordinance to the municipal governing  
55 board for amendment of the boundaries to conform to the pro-  
56 visions of section 5 if it finds that the provisions of sec-  
57 tion 5 have not been met; but the court cannot remand the  
58 ordinance to the municipal governing board with directions to  
59 add area to the municipality, which was not included in the  
60 notice of public hearing and not provided for in plans for  
61 service.

62 (3) Remand the report to the municipal governing  
63 board for amendment of the plans for providing services to the

64 end that the provisions of section 4 of this act are satisfied.

65 If any municipality shall fail to take action in accordance  
66 with the court's instructions upon remand within [ ] months  
67 from receipt of such instructions, the annexation proceeding  
68 shall be deemed null and void.

69 (h) Any party to the review proceedings, including the  
70 municipality, may appeal to the [Appellate or Supreme] Court  
71 from the final judgment of the lower court under rules of pro-  
72 cedure applicable in other civil cases. The appealing party  
73 may apply to the lower court for a stay in its final determina-  
74 tion, or a stay of the annexation ordinance, whichever shall be  
75 appropriate, pending the outcome of the appeal to the higher  
76 court; provided, that the lower court may, with the agreement  
77 of the municipality, permit annexation to be effective with  
78 respect to any part of the area concerning which no appeal is  
79 being made and which can be incorporated into the city without  
80 regard to any part of the area concerning which an appeal is  
81 being made.

82 (i) If part or all of the area annexed under the terms of  
83 an annexation ordinance is the subject of an appeal to the  
84 lower or higher court on the effective date of the ordinance,  
85 then the ordinance shall be deemed amended to make the effec-  
86 tive date with respect to such area the date of the final  
87 judgment of the lower or higher court, whichever is appro-  
88 priate, or the date the municipal governing board completes  
89 action to make the ordinance conform to the court's instruc-  
90 tions in the event of remand.

1 Section 8. Annexation Recorded. Whenever the limits of a  
2 municipality are enlarged in accordance with the provisions  
3 of this act, it shall be the duty of the mayor (or other  
4 appropriate official) of the municipality to cause an accurate  
5 map of such annexed territory, together with a copy of the  
6 ordinance duly certified, to be recorded in the office of the  
7 county official of the county or counties in which such terri-  
8 tory is situated and in the office of the secretary of state

9 or other appropriate state official.

1       Section 9. Authorized Expenditures. Municipalities initiat-  
2 ing annexations under the provisions of this act are authorized  
3 to make expenditures for surveys required to describe the prop-  
4 erty under consideration, or for any other purpose necessary  
5 to plan for the study and/or annexation of unincorporated  
6 territory adjacent to the municipality. In addition, following  
7 final passage of the annexation ordinance, the annexing munic-  
8 ipality shall have authority to proceed with expenditures for  
9 construction of streets, utility lines and other capital facil-  
10 ities and for any other purpose calculated to bring services  
11 into the annexed area in a more effective and expeditious  
12 manner prior to the effective date of annexation.

1       Section 10. Population and Land Estimates. In determining  
2 population and degree of land subdivision for purposes of meet-  
3 ing the requirements of section 5 of this act, the municipality  
4 shall use methods calculated to provide reasonably accurate re-  
5 sults. In determining whether the standards set forth in sec-  
6 tion 5 have been met on appeal to the [court of appropriate  
7 jurisdiction] under section 7 of this act, the reviewing court  
8 shall accept the estimates of the municipality:

9       (1) As to population, if the estimate is based on the num-  
10 ber of dwelling units in the area, multiplied by the average  
11 family size in such area or in the township or townships of  
12 which such area is a part, as determined by the last preceding  
13 federal decennial census; or if it is based on a new enumera-  
14 tion carried out under reasonable rules and regulations by  
15 the annexing municipality; but the court shall not accept such  
16 estimates if the petitioners demonstrate that such estimates  
17 are in error in the amount of [     ] percent or more.

18       (2) As to total area if the estimate is based on an actual  
19 survey, or on county tax maps or records, or on aerial photo-  
20 graphs, or on some other reasonably reliable map used for  
21 official purposes by a governmental agency, unless the peti-  
22 tioners on appeal demonstrate that such estimates are in error

23 in the amount of [ ] percent or more.

24 (3) As to degree of land subdivision, if the estimates  
25 are based on an actual survey, or on county tax maps or records,  
26 or on aerial photographs, or on some other reasonably reliable  
27 source, unless the petitioners on appeal show that such esti-  
28 mates are in error in the amount of [ ] percent or more.

1 Section 11. Separability. [Insert separability clause.]

1 Section 12. Effective Date. [Insert effective date.]

## 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.

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

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

Residual Powers Constitutional Provision

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

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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."

## INTERLOCAL CONTRACTING AND JOINT ENTERPRISES

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

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

Because local governments and subdivisions have responsibility for the administration of certain state functions, and because the state in turn bears certain responsibilities for its subdivisions, some degree of control over interlocal agreements is both necessary and desirable. The suggested act provides this control by specifying the basic contents of such agreements 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 apply to any local function. However, it is recognized that some activities may present special problems and that states may wish to continue the practice of making special statutory provision for such types of interlocal cooperation. It would be quite possible for a state to enact this statute for use with reference to most types of interlocal cooperation and to make provision elsewhere in state law for types of interlocal functions requiring special handling.

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.

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 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 nonperforming locality.



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

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

#### Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

- 1     Section 1. Purpose. It is the purpose of this act to per-
- 2     mit local governmental units to make the most efficient use of
- 3     their powers by enabling them to cooperate with other locali-
- 4     ties on a basis of mutual advantage and thereby to provide
- 5     services and facilities in a manner and pursuant to forms of

6 governmental organization that will accord best with geographic,  
7 economic, population, and other factors influencing the needs  
8 and development of local communities.

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

1 Section 3. Definitions. For the purposes of this act:

2 (1) The term "public agency" shall mean any political sub-  
3 division [insert enumeration, if desired] of this state; any  
4 agency of the state government or of the United States; and any  
5 political subdivision of another state.

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

1 Section 4. Interlocal Agreements. (a) Any power or powers,  
2 privileges or authority exercised or capable of exercise by a  
3 public agency of this state may be exercised and enjoyed jointly  
4 with any other public agency of this state [having the power or  
5 powers, privilege or authority], and jointly with any public  
6 agency of any other state or of the United States to the ex-  
7 tent that laws of such other state or of the United States per-  
8 mit such joint exercise or enjoyment. Any agency of the state  
9 government when acting jointly with any public agency may exer-  
10 cise and enjoy all of the powers, privileges and authority  
11 conferred by this act upon a public agency.

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

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

19 (1) Its duration.

20 (2) The precise organization, composition and nature

21 of any separate legal or administrative entity created thereby  
22 together with the powers delegated thereto, provided such entity  
23 may be legally created.

24 (3) Its purpose or purposes.

25 (4) The manner of financing the joint or cooperative  
26 undertaking and of establishing and maintaining a budget there-  
27 for.

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

32 (6) Any other necessary and proper matters.

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

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

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

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

52 (f) Every agreement made hereunder shall, prior to and as a  
53 condition precedent to its entry into force, be submitted to  
54 the attorney general who shall determine whether the agreement  
55 is in proper form and compatible with the laws of this state.  
56 The attorney general shall approve any agreement submitted to

57 him hereunder unless he shall find that it does not meet the  
58 conditions set forth herein and shall detail in writing addressed  
59 to the governing bodies of the public agencies concerned the  
60 specific respects in which the proposed agreement fails to meet  
61 the requirements of law. Failure to disapprove an agreement  
62 submitted hereunder within [ ] days of its submission shall  
63 constitute approval thereof.

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

1 Section 5. Filing, Status, and Actions. Prior to its entry  
2 into force, an agreement made pursuant to this act shall be  
3 filed with [the keeper of local public records] and with the  
4 [secretary of state]. In the event that an agreement entered  
5 into pursuant to this act is between or among one or more public  
6 agencies of this state and one or more public agencies of an-  
7 other state or of the United States said agreement shall have  
8 the status of an interstate compact, but in any case or contro-  
9 versy involving performance or interpretation thereof or liabil-  
10 ity thereunder, the public agencies party thereto shall be real  
11 parties in interest and the state may maintain an action to re-  
12 coup or otherwise make itself whole for any damages or liability  
13 which it may incur by reason of being joined as a party therein.  
14 Such action shall be maintainable against any public agency or  
15 agencies whose default, failure of performance, or other con-  
16 duct caused or contributed to the incurring of damage or liabil-  
17 ity by the state.

1 Section 6. Additional Approval in Certain Cases. In the  
2 event that an agreement made pursuant to this act shall deal in  
3 whole or in part with the provision of services of facilities  
4 with regard to which an officer or agency of the state govern-  
5 ment has constitutional or statutory powers of control, the  
6 agreement shall, as a condition precedent to its entry into  
7 force, be submitted to the state officer or agency having such  
8 power of control and shall be approved or disapproved by him or  
9 it as to all matters within his or its jurisdiction in the same  
10 manner and subject to the same requirements governing the action

11 of the attorney general pursuant to section 4(f) of this act.  
12 This requirement of submission and approval shall be in addition  
13 to and not in substitution for the requirement of submission  
14 to and approval by the attorney general.

1 Section 7. Appropriations, Furnishing of Property, Personnel and Service. Any public agency entering into an agreement  
2 pursuant to this act may appropriate funds and may sell, lease,  
3 give, or otherwise supply the administrative joint board or  
4 other legal or administrative entity created to operate the  
5 joint or cooperative undertaking by providing such personnel or  
6 services therefor as may be within its legal power to furnish.

1 Section 8. Interlocal Contracts. Any one or more public  
2 agencies may contract with any one or more other public agencies  
3 to perform any governmental service, activity, or undertaking  
4 which [[each public agency] or [any of the public agencies]]  
5 entering into the contract is authorized by law to perform,  
6 provided that such contract shall be authorized by the governing  
7 body of each party to the contract. Such contract shall  
8 set forth fully the purposes, powers, rights, objectives, and  
9 responsibilities of the contracting parties.<sup>1</sup>

1 Section 9. Separability. [Insert separability clause.]

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

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

## 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 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 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 acutally 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 on page 477. Limitations of the type contained therein may be illustrative of the situations in which statutory implementation or restriction of the constitutional authority here granted would be appropriate.

#### Suggested Constitutional Amendment

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

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

11 Any other provision of this constitution to the contrary



12 notwithstanding, an officer or employee of the state or any  
13 municipal corporation or other subdivision or agency thereof  
14 may serve on or with any governmental body as a representative  
15 of the state or any municipal corporation or other subdivision  
16 or agency thereof, or for the purpose of participating or  
17 assisting in the consideration or performance of joint or co-  
18 operative undertakings or for the study of governmental prob-  
19 lems, and shall not be required to relinquish his office or  
20 employment by reason of such service. The legislature by  
21 statute may impose such restrictions, limitations or condi-  
22 tions on such service as it may deem appropriate.

VOLUNTARY TRANSFER OF FUNCTIONS BETWEEN  
MUNICIPALITIES AND COUNTIES

It is suggested that states enact legislation authorizing the legislative bodies of municipalities and counties located within metropolitan areas to take mutual and coordinate action to transfer responsibility for specified governmental services from one unit of government to the other. Specifically, it is proposed that the states enact a statute authorizing voluntary transfer of functions between municipalities and counties within metropolitan areas to the extent agreed by the governing boards of these respective types of units.<sup>1</sup> If desired, the statute could spell out the functions authorized for such voluntary transfer in order to make sure that responsibilities carried on by counties as agents of the state were not transferred to municipal corporations. Within a particular metropolitan area, for example, such a statute would enable the board of county commissioners and the mayors and councils of municipalities to assess collectively the manner in which particular service-type functions were being carried out. By concurrent action, the governing boards might have the county assume functions such as water supply, sewage disposal, etc., throughout the area, relieving the municipalities of their respective fragmented responsibilities in those functional areas. Conversely, they might agree that the county government should cease to carry on certain functions within the boundaries of the municipalities, with the municipalities assuming such responsibility on an exclusive basis.

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

Suggested Legislation

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

(Be it enacted, etc.)

- 1     Section 1. (a) "Metropolitan area" as used herein is an
- 2     area designated as a "standard metropolitan statistical area"
- 3     by the U. S. Bureau of the Census in the most recent nationwide

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

4 census of the population.<sup>1</sup>

5 (b) "Local service function" as used herein is a local  
6 governmental service or group of closely allied local govern-  
7 mental services performed by a county or a city for its inhab-  
8 itants and for which, under constitutional and statutory pro-  
9 visions, and judicial interpretations, the county or city, as  
10 distinguished from the state, has primary responsibility for  
11 provision and financing. [Without in any way limiting the  
12 foregoing, the following are examples of such local service  
13 functions: (1) street and sidewalk maintenance; (2) trash and  
14 garbage collection and disposal; (3) sanitary and health in-  
15 spection; (4) water supply; (5) sewage disposal; (6) police  
16 protection; (7) fire protection; (8) library services; (9)  
17 planning and zoning; (10) . . . , etc.]<sup>2</sup>

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

7 (b) The [expression of official action]<sup>3</sup> transferring such  
8 function shall make explicit: (1) the nature of the local  
9 service function transferred; (2) the effective date of such  
10 transfer; (3) the manner in which affected employees engaged  
11 in the performance of the function will be transferred, re-  
12 assigned or otherwise treated; (4) the manner in which real

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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.

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

13 property, facilities, equipment, or other personal property  
14 required in the exercise of the function are to be transferred,  
15 sold, or otherwise disposed between the city and the county;  
16 (5) the method of financing to be used by the receiving juris-  
17 diction in the exercise of the function received; and (6) other  
18 legal, financial, and administrative arrangements necessary to  
19 effect the transfer in an orderly and equitable manner.<sup>4</sup>

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

6 (b) Responsibility for a county government's performance  
7 of a local service function within the municipal boundaries  
8 of such city or cities may be transferred to such city or  
9 cities by concurrent affirmative action of the governing boards  
10 of such county and of such city or cities.

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

1 Section 4. [Insert appropriate separability section.]

1 Section 5. [Insert effective date.]

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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.

## CREATION AND CONSOLIDATION OR DISSOLUTION OF SPECIAL DISTRICTS

The 1962 Census of Governments indicated the existency 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 or unable to provide a service desired by the people. This aspect of the draft bill is patterned after legislation adopted by California, Nevada and Texas in 1963. The bill also establishes a procedure whereby existing districts can be merged, consolidated or dissolved when they have outlived their usefulness.

The draft bill contains no specific definition of special districts. In view of the diversity in the utilization of special districts by the individual states, each state must determine for itself what governmental entities should be affected by this statute. Generally speaking, those entities included as special districts by the Bureau of the Census should be included within the definition. In addition states may wish to include a number of other semi-autonomous governmental entities.

Section 2 authorizes the creation of a county special district commission in each county of the state. The commission would be composed of executive or legislative officials of the county government and municipalities within the county and consequently would not constitute a significant cost. Such a body would be activated only when and if the need arose. Section 3 defines the powers of the commission to review proposals for the creation or dissolution, merger, or consolidation of special districts. Sections 4, 5, 6, 8, and 9 spell out the basic procedures to be utilized by the commission in reviewing such proposals, including the holding of public hearings. Section 7 details various factors that must be considered by the commission in reaching its decision. In those states where an agency such as the commission cannot constitutionally exercise the full range of authority conferred in this bill on the proposed commissions, it would be necessary to substitute local legislative bodies for such commissions.

Section 11 provides for review of proposals for the creation of new special districts, approved by the local agency formation commission, by a state agency where the state is engaged in a regulatory or operational program which would be affected by the activities of the proposed special district. No specific programs are mentioned, but special districts engaged in such activities as water supply, flood control and sewerage disposal are examples of districts which might have a significant impact on statewide programs. The essential purpose of this review would be to insure that the proposed special district would not adversely affect the statewide program.

Finally, section 12 provides for judicial review of state or local decisions disapproving proposals to create a special district, and local agency decisions ordering consolidation, merger, or dissolution of existing special districts.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act establishing county commissions to review proposals for the creation, consolidation, merger, or dissolution of special districts."]

(Be it enacted, etc.)

1        Section 1. Definitions. (a) "Special District" means  
2 [any agency or political subdivision of the state organized for  
3 the purpose of performing governmental or prescribed functions  
4 within limited boundaries. It includes all political subdivisions  
5 of the state except a city, a county, a town, or a school  
6 district].<sup>1</sup>

7        (b) "County Officer" means (1) a chief elected county  
8 official or (2) a member of the [elected governing body of a  
9 county].

10       (c) "City Officer" means (1) a mayor or (2) member of a  
11 [city council or legislative body of a city].

1        Section 2. County Special District Commission. (a) There  
2 is hereby authorized to be created in each county of the state  
3 a county special district commission, hereafter called com-  
4 mission, consisting of [five] members selected as follows:  
5 (1) [two] representing the county, each of whom shall be a  
6 county officer appointed by the [county governing body]; (2)  
7 [two] representing the cities in the county, each of whom shall  
8 be a city officer appointed by the [chief executive officers]  
9 of the cities within the county at a joint meeting; and (3)  
10 [one] representing the general public, who shall be chairman  
11 of the commission, appointed by the four other members of  
12 the commission.

13       (b) The term of each member shall be four years and until  
14 the appointment and qualification of his successor, except that  
15 the term of each county officer and each city officer shall  
16 expire upon the termination of his county or city office. Any  
17 city or county member may be removed by his appointing authority.

18       (c) Vacancies on the commission shall be filled for the  
19 unexpired term by the appointing authority which originally  
20 appointed the member whose position has become vacant. Com-  
21 mission members who are full-time city or county officers  
22 shall serve without compensation but shall be reimbursed the

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1. Some states may wish to define special districts by reference to the statutes authorizing their creation.

23 actual amounts for their reasonable and necessary expenses  
24 incurred in attending meetings and in performing the duties of  
25 their office. Commission members who are not [full-time] city  
26 or county officers shall receive such compensation as the  
27 [county governing body] may determine.

28 (d) Prior to establishment of a commission in a county,  
29 any proposals for the creation of a special district, or  
30 petition for the merger, consolidation, or dissolution of an  
31 existing special district shall be submitted to the [clerk of  
32 the county governing body] as otherwise provided in the act.  
33 Upon receipt of such proposal or petition the [clerk] shall  
34 immediately notify the [county governing body] and the [govern-  
35 ing bodies of all cities] within the county of such receipt.  
36 The county and cities shall then proceed to establish a com-  
37 mission.

1 Section 3. Powers and Duties of Commission. The commission  
2 shall have the following powers and duties:

3 (1) To review and approve or disapprove with or without  
4 amendment wholly, partially, or conditionally proposals to  
5 create special districts within the county;

6 (2) To review and approve or disapprove petitions for the  
7 dissolution, consolidation, or merger of special districts  
8 within the county; and

9 (3) To adopt standards and procedures consistent with the  
10 provisions of this act for the evaluation of proposals for  
11 the creation, dissolution, consolidation, and merger of special  
12 districts.

1 Section 4. Proposals for Creation of Special Districts.

2 (a) Any proposal for the creation of a special district shall  
3 be submitted to the commission prior to [insert appropriate  
4 reference to legislation authorizing creation of special  
5 districts which would minimize cost and expense of creating  
6 special districts if a commission decision were to be against  
7 creation of the proposed district. For example, where a refer-  
8 endum is required, action of the commission should take place



9 prior to the holding of such referendum] by those parties  
10 authorized by law to initiate proceedings for the creation of  
11 a special district.

12 (b) Upon receiving notice of a proposal to create a special  
13 district the commission shall direct the [clerk of the county  
14 governing body] to notify: (1) each city within [ ] miles  
15 of the territory of the proposed district; (2) each special  
16 district whose boundaries are adjacent to the proposed bounda-  
17 ries of the proposed district and is performing the same type  
18 of service that the proposed district would perform; and (3)  
19 the [county governing body] of the proposal to create a special  
20 district.

21 (c) At the same time the commission shall cause to be  
22 published in [ ] newspapers of general circulation in the  
23 county an announcement of its receipt of the aforementioned  
24 proposal, and notice of intention to hold a public hearing on  
25 a proposal to create the proposed district, which hearing shall  
26 be held not less than [20] nor more than [40] days from re-  
27 ceipt of the notification of the proposal to create the special  
28 district.

1 Section 5. Merger, Consolidation, or Dissolution of Special

2 Districts. (a) Any city, county, or special district may, by  
3 resolution adopted by its governing body, petition the com-  
4 mission requesting the merger, dissolution, or consolidation of  
5 any special district within the county. Merger or consolidation  
6 petitions shall include such information as will permit the  
7 commission to evaluate the degree to which the proposed action  
8 will permit more effective and efficient performance of the  
9 service provided by the special district.

10 (b) The residents of any special district may petition the  
11 commission requesting the merger, dissolution, or consolida-  
12 tion of any special district in which they reside. Such peti-  
13 tion shall be signed by at least [ ] percent of the residents  
14 actually residing within the territory of the district.

15 (c) Upon receipt of a petition for the merger, dissolution,

16 or consolidation of a special district, the commission shall  
17 direct the [clerk of the county governing body] to notify:  
18 (1) each city within [ ] miles of the territory of the  
19 district specified in the petition; (2) each special district  
20 whose boundaries are adjacent to the boundaries of the district  
21 specified in the petition and which is performing the same type  
22 of service as is the special district; (3) the [county govern-  
23 ing body]; and (4) the governing body of the district which  
24 is the subject of the petition.

25 (d) At the same time the commission shall cause to be  
26 published in [ ] newspapers of general circulation in the  
27 county an announcement of its receipt of the aforementioned  
28 petition and notice of intention to hold a public hearing on  
29 the petition to dissolve, merge, or consolidate said special  
30 district, which hearing shall be held not less than [20] nor  
31 more than [40] days from receipt of the petition.

1 Section 6. Hearings. At public hearings held pursuant to  
2 this act, the commission shall hear any interested party hav-  
3 ing made a written request to be heard, and shall receive a  
4 report of the commission staff on the proposal before it. The  
5 commission shall have the power to make and enforce such rules  
6 and regulations as shall provide for orderly and fair hearings  
7 on the issues before it.

1 Section 7. Factors to be Considered. (a) Factors to be  
2 considered in the review of a proposal for creation, consolida-  
3 tion, merger, or dissolution of a special district shall include  
4 but not be limited to:

5 (1) Population; population density; land area and land use;  
6 per capita assessed valuation; topography, natural boundaries,  
7 and drainage basins; proximity to other populated areas; the  
8 the likelihood of significant growth in the area, and in  
9 adjacent incorporated and unincorporated areas, during the  
10 next [10] years;

11 (2) Need for organized community services; the present cost  
12 and adequacy of governmental services and controls in the area;

13 probable future needs for such services and controls; probable  
14 effect of the proposed formation and of alternative courses of  
15 action on the cost and adequacy of services and controls in  
16 the area and adjacent areas; and

17 (3) The effect of the proposed action, and of alterna-  
18 tive actions, on adjacent areas, on mutual social and economic  
19 interests and on the local governmental structure of the county.

20 (b) Any city, county, or special district receiving notifica-  
21 tion of hearings to be held by the commission may:

22 (1) In the case of a petition for creation of a new  
23 district indicate to the commission its willingness and ability  
24 to provide the service to be undertaken by the proposed district.  
25 Such notification shall include references to appropriate legal  
26 authority empowering such city, county, or special district to  
27 assume responsibility for providing such service within the  
28 territory of the proposed district and shall include appropriate  
29 evidence of its financial ability to provide same. It may also  
30 include reasons why it rather than the proposed district should  
31 provide the service.

32 (2) In the case of a petition for the dissolution,  
33 consolidation, or merger of a special district, submit to the  
34 commission its recommendations concerning such proposals. If  
35 the petition for dissolution, consolidation, or merger is based  
36 upon a city, county, or special district assuming the function  
37 undertaken by the subject special district, the notification  
38 shall include reference to appropriate legal authority empower-  
39 ing such city, county, or special district to assume responsi-  
40 bility for providing such service within the territory of the  
41 subject district and shall include appropriate evidence of its  
42 financial ability to provide same. It may also include reasons  
43 why it rather than the subject district should provide the  
44 service.

1 Section 8. Multi-County Special Districts. In the event  
2 that the territory of any special district lies in two or  
3 more counties, proposals to create, or petitions to merge,

4 consolidate or dissolve special districts shall be forwarded to  
5 the commission in each of the counties affected. The commissions  
6 shall within [10] days agree upon a date and place for a joint  
7 public hearing and shall proceed jointly as otherwise directed  
8 by this act, except that all time spans shall be measured from  
9 the date of such agreement.

1 Section 9. Decisions of Commission. (a) Upon conclusion  
2 of the hearing, the commission may take the matter under con-  
3 sideration and shall, within [30] days following conclusion of  
4 the hearing, present its decision. The commission may also  
5 adjourn a hearing from time to time, but not to exceed a total  
6 of [60] days.

7 (b) If the commission approves the formation of the pro-  
8 posed district, proceedings for its formation, subject to sec-  
9 tion 11 of this act, may be continued as otherwise provided  
10 by law. If the commission approves the proposed formation  
11 with modifications or conditions, further proceedings for its  
12 formation may be continued only in compliance with such modi-  
13 fications or conditions. If the commission disapproves the  
14 formation of the proposed special district no further action  
15 may be taken to create the special district and notice of in-  
16 tention to create such a district may not be presented to the  
17 commission for at least [2] years after the date of disapproval.

18 (c) The commission may order the merger, dissolution, or  
19 consolidation of a special district where the factors speci-  
20 fied in section 8 indicate such action is appropriate and  
21 finds:

22 (1) That a petitioning city, county, or existing  
23 special district adjacent to the subject district can provide  
24 the service to the residents of the subject district more  
25 effectively and more economically; or

26 (2) Where it finds that there is no longer a need  
27 for the service provided by a subject district.

28 (d) Decisions approving proposals for the merger, consolida-  
29 tion, or dissolution of a special district shall provide for

30 the equitable disposition of the assets of the subject district,  
31 for the adequate protection of the legal rights of employees  
32 of the district as specified in [cite here statutes which  
33 afford various civil service and tenure protection to employees  
34 of special districts], and for adequate protection of the legal  
35 rights of creditors.

1     Section 10. Administration. (a) The [county governing  
2 body] shall furnish the commission with quarters, equipment,  
3 and supplies necessary to perform its duties, and the usual and  
4 necessary operating expenses incurred by the commission shall  
5 be a charge to the [county] except that counties are authorized  
6 to enter into agreements with cities within its borders pursuant  
7 to which the expenses of the commission will be shared by the  
8 parties to the agreement.

9     (b) The commission may appoint an executive officer who  
10 shall conduct and perform day-to-day business of the commission.  
11 If the commission does not appoint an executive officer, the  
12 county [administrative officer or clerk] shall act as the  
13 executive officer of the commission.

14     (c) The commission may appoint and assign staff personnel  
15 necessary to the performance of its duties and may employ or  
16 contract for professional or consultant services to carry out  
17 its responsibilities specified in this act. Cities, counties,  
18 and existing special districts are directed to furnish all  
19 reasonable assistance and service to the commission as it may  
20 request in order to fulfill its responsibilities.

1     Section 11. State Approval of Proposed District.<sup>3</sup> Where  
2 a commission approves the creation of a special district under-  
3 taking a function or service which affects a state regulator or  
4 operational program, the commission shall immediately notify

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3. States may wish to specify those functions for which proposals for creation of special districts must receive state agency approval. Functions in this category should be those for which the state has either supervisory or operator responsibilities. For instance, water resource development--water supply, conservation, and irrigation districts; pollution control--sewerage districts.

5 the [secretary of state] who shall immediately forward the  
6 notification to the state agency responsible for the state  
7 program of its action. Such notification shall include a  
8 complete record of the proceedings before the commission. The  
9 state agency shall, within [30] days of such notification,  
10 either give its approval of the creation of proposed special  
11 districts or indicate its reasons for initially denying such  
12 approval and schedule a public hearing on the question of the  
13 creation of the district within the county of the proposed  
14 district within [45] days of receipt of notification from the  
15 commission. Within [30] days after the hearing the state  
16 agency shall either approve or disapprove creation of the pro-  
17 posed district. Decisions of the state agency shall be based  
18 on whether or not the proposed district will further or hamper  
19 the effectiveness of the state regulatory or operational pro-  
20 gram.

1 Section 12. Judicial Review. All final determinations of  
2 a commission or a state agency shall be reviewable [pursuant  
3 to the state administrative procedure act] [by a court of  
4 appropriate jurisdiction].

1 Section 13. Separability. [Insert separability clause.]

1 Section 14. Effective Date. [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 either the municipality or the county, or both, of land acquisitions by special districts located in the county or municipality and, where the activity engaged in by the district affects a state function, by the appropriate state agency. If a local government or a state agency denies approval of the proposed land acquisition, the special district may seek judicial review of the decision.

Section 4 provides for an advisory review by a unit of general local government and, where appropriate, by state agencies of proposed capital improvements by a special district. Such review is merely advisory.

Section 5 requires that notification be given a state official and a county official of activities of existing and newly created special districts.

Section 6 directs a state agency, to the extent feasible, to establish uniform budget and account standards for all special districts and to audit or approve private audits of district accounts.

Section 7 provides a means whereby the taxpayer can be informed of all special district property taxes and assessments he pays at the same time that he is informed of county and municipal taxes and assessments.

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

Finally, Section 9 provides for review and approval or modification, by a state agency, of service charges or tolls assessed by special districts where such services and tolls are not already approved or reviewed by a local government or a state or federal agency.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to coordinate special district activities with activities of other governments and to insure public availability of information relating to special district activities."]

(Be it enacted, etc.)

1        Section 1. Purpose and Policy. It is the purpose of this  
2 act to establish certain minimum procedures to insure that the  
3 activities of special districts are properly coordinated with  
4 those of other governmental units within the state. Further,  
5 it is essential that special districts, as well as other govern-  
6 mental units, take affirmative action to insure that the public  
7 is fully aware of the activities of all governmental entities  
8 operating within a particular community.

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

2        (1) "Special district" means [any agency, authority, or  
3 political subdivision of the state organized for the purpose  
4 of performing governmental or prescribed functions within  
5 limited boundaries. It includes all political subdivisions of  
6 state except a city, a county, a town, or a school district].

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

1        Section 3. Land Acquisitions by Special Districts.

2        (a) Prior to acquisition of title to any land by a special



3 district authorized by law to acquire land, the district shall  
4 submit to the city and/or county in which such land is located  
5 a statement indicating its intention to acquire the land. If  
6 the land is located within the territorial limits of two or  
7 more cities and/or counties, the statement shall be submitted  
8 to each of them.

9 (b) The statement shall be in the form of a resolution  
10 adopted by the governing body of the district, indicating the  
11 intention of the district to acquire the land, and shall con-  
12 tain a brief but appropriate identification of the land to be  
13 acquired, an indication of the use to which it will be put, and  
14 other information the district deems appropriate.

15 (c) Within [30] days after receipt of the statement of  
16 intention to acquire land, the governing bodies of the city  
17 or county or cities or counties shall by resolution indicate  
18 their approval or disapproval of the proposed acquisition;  
19 a resolution disapproving the proposed acquisition shall state  
20 the reasons therefor.

21 (d) If the special district is performing a function which  
22 directly affects a program conducted by the state, upon receiv-  
23 ing approval for the acquisition pursuant to subsection (b),  
24 it shall transmit a copy of its statement of intention and  
25 the approving resolution or resolutions to the [office of local  
26 affairs or the secretary of state] who shall immediately refer  
27 the material to the [state agency responsible for the administra-  
28 tion of the state program involved]. The state agency shall, [30]  
29 days from receipt of the material, either approve or disapprove  
30 the proposed acquisition. The agency shall approve the pro-  
31 posed acquisition of land unless it finds that the acquisition  
32 or proposed use would be inconsistent or in conflict with state  
33 policy or an approved state plan for providing governmental  
34 services. The state agency's action shall be communicated to  
35 the governing body of the district by an order signed by the  
36 [head of the state agency], and if the proposed acquisition  
37 is disapproved, the order shall state the reasons therefor.

38 (e) Upon receiving approvals required pursuant to this

39 section, a special district may proceed with the acquisition  
40 of land as otherwise authorized by law.

41 (f) If any governing body of a city or county or a state  
42 agency refuses to give approval to the proposed acquisition  
43 of land, the special district may challenge the decision by  
44 bringing suit in the [county court of general jurisdiction] in  
45 which the land is located. The court shall review the material  
46 pertinent to the proposed land acquisition and reasons for dis-  
47 approval of the acquisition and shall render a decision either  
48 sustaining or overruling the disapproval. Finding of the  
49 agency or local government shall be conclusive as to questions  
50 of fact. The court may affirm the decision or remand the  
51 matter for further consideration. The court may reverse a  
52 denial where it finds that the denial was arbitrary or capri-  
53 cious or characterized by abuse of discretion or clearly an  
54 unwarranted exercise of discretion.

1 Section 4. Capital Improvements by Special Districts.

2 (a) Any proposal by a special district for the construc-  
3 tion of capital improvements shall be submitted, for comment,  
4 to the governing bodies of cities and counties within which  
5 the proposed improvements would be made, and in the event that  
6 the district is performing a function that directly affects  
7 a program conducted by the state, to the [office of local  
8 affairs or secretary of state] for transmittal to the state  
9 agency responsible for the operation of the state program at  
10 least [60] days prior to final action of the governing body  
11 of the district adopting the proposed capital improvement.

12 (b) Cities, counties, and/or state agencies receiving  
13 proposals for special district capital improvements shall  
14 review such proposals and, within [60] days after receipt  
15 thereof, may submit their comments thereon to the governing  
16 body of the special district. Upon receipt of the comments  
17 of all jurisdictions or agencies notified pursuant to this  
18 section, or [60] days after the transmittal of the proposed  
19 improvement program to such jurisdictions and agencies, the

20 governing body of the district may adopt the proposed capital  
21 improvements, with or without modification, as part of the  
22 district program as otherwise authorized by law.

1       Section 5. Reporting the Creation of Special Districts.

2       (a) The governing body of any existing special district  
3 shall, within [30] days after the adoption of this act, notify  
4 the [office of local affairs or secretary of state] and the  
5 [clerk of the county governing body or bodies] in which it is  
6 authorized to operate of its existence. The notification shall  
7 include a citation to the statute pursuant to which it was  
8 created and a brief description of its activities and service  
9 area.

10       (b) The governing body of a newly created special district  
11 shall submit, at its first meeting, notification of its exist-  
12 ence as directed in subsection (a), and within one year of  
13 such meeting, a brief description of its activities and service  
14 area.

1       Section 6. Uniform Special District Accounts.

2       (a) The [appropriate state agency]<sup>1</sup> shall establish minimum  
3 standards of uniformity for the budget and accounts of all  
4 special districts operating within this state.

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

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1. If there is an agency of state government exercising supervisory responsibility over the fiscal affairs or activities of local government, this agency should be inserted. If no such agency exists, either an office of local affairs or the state audit agency should be inserted.

1       Section 7. Special District Property Taxes and Special  
2 Assessments. (a) Every special district authorized by law  
3 to levy a property tax or a special assessment shall annually  
4 inform each county and city within which it operates of the  
5 tax and/or special assessment rate levied by the district and  
6 the assessed valuation of property against which the tax is  
7 levied and the basis for the assessment rate.

8       (b) The counties and cities so notified shall provide an  
9 itemization of special district property taxes and assessments  
10 levied against the property when furnishing tax [bills or re-  
11 cepts] to property owners within their borders.

1       Section 8. City and County Annual Reports. The annual re-  
2 port of any county or city issuing a report shall include, in  
3 addition to any other information required by law, pertinent  
4 information on the activities of all special districts operat-  
5 ing wholly or partially within the territory of the city or  
6 county.

1       Section 9. Review of Special District Service Charges.  
2 The [state public service commission] shall review and approve,  
3 disapprove, or modify proposed service charges or tolls assessed  
4 by special districts within the state authorized to levy such  
5 charges or tolls, but the review shall not extend service  
6 charges or tolls levied by special districts which are other-  
7 wise approved or reviewed by the governing body of a county  
8 or a city or a state or federal agency. If the [public service  
9 commission] finds that the proposed service charge or toll is  
10 unreasonable [or is excessive in relation to the value of the  
11 service provided or to be provided], it may disapprove or  
12 modify the proposed charge or toll. The [public service  
13 commission] is authorized to establish necessary rules and  
14 procedures to carry out its responsibilities under this section.

1       Section 10. Separability. [Insert separability clause.]

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

EXTRATERRITORIAL PLANNING, ZONING,  
AND SUBDIVISION REGULATION

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

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

About 30 states have authorized extraterritorial subdivision regulation, and approximately 15 have authorized extraterritorial zoning. In addition, extraterritorial planning authority may be exercised in some states under the municipal planning enabling statute. Some of the existing statutory grants, however, are limited in application to one or at most a few municipalities. A recent example of a grant of extraterritorial authority is a 1963 act of the Texas Legislature giving cities subdivision control over territory within one-half to five miles of their boundaries, the distance depending on the size of the city.

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

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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.

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 450).

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

numerous citations to state statutes and court decisions affecting extraterritorial jurisdiction.

### Suggested Legislation

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

(Be it enacted, etc.)

1        Section 1. [Appropriate citation to existing planning, zon-  
2        ing, and subdivision regulation law] is hereby amended by add-  
3        ing the following new sections at the end thereof:

4        "Section [     ]. Extraterritorial Jurisdiction. (a) Plan-  
5        ning. In any county not having a county planning agency with  
6        jurisdiction in the unincorporated territory, the legislative  
7        body of any municipality whose population at the time of the  
8        latest decennial census of the United States was [     ] or  
9        more may exercise the comprehensive planning powers granted in  
10       [cite appropriate statutes] not only within its corporate limits  
11       but also within [     ] mile[s] in all directions of its corpor-  
12       ate limits and not located in any other municipality;

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

21       (c) Subdivision Regulations. In any county not having  
22       county subdivision regulations applicable to the unincorporated  
23       territory, the legislative body of any municipality whose pop-  
24       ulation at the time of the latest decennial census of the United  
25       States was [     ] or more may exercise the subdivision regulation

26 powers granted in [cite appropriate statutes] not only within  
27 its corporate limits but also within [ ] mile[s] in all  
28 directions of its corporate limits and not located in any other  
29 municipality; but, any ordinance intended to have application  
30 beyond the corporate limits of the municipality shall expressly  
31 so provide, and be adopted in accordance with the provisions  
32 set forth therein.

33 "Section [ ]. Boundary Lines. In the case of land lying  
34 outside a municipality and lying within a distance of [ ]  
35 mile[s] of more than one municipality, the jurisdiction of  
36 each such municipality shall terminate at a boundary line  
37 equidistant from the respective corporate limits of such munic-  
38 ipalities, or at such line as is agreed to by the governing  
39 bodies of the respective municipalities.

40 "Section [ ]. Representation on Boards and Commissions.

41 (a) Planning and Zoning. As a prerequisite to the exercise  
42 of such powers, the membership of the [planning board] [zoning  
43 commission] charged with the preparation of proposed comprehen-  
44 sive planning, zoning, and subdivision regulations for the  
45 [ ] mile area outside the corporate limits shall be increased  
46 to include additional members who shall represent such outside  
47 area. The number of additional members representing such out-  
48 side area shall be [equal in number to the members of the [plan-  
49 ning board] [zoning commission] appointed by the governing body  
50 of the municipality]; but, if the extraterritorial area includes  
51 parts of two or more counties, the area included from each  
52 county shall have additional members [equal in number to the  
53 members of the [planning board] [zoning commission] appointed  
54 by the governing body of the municipality]. Such additional  
55 members shall be residents of the [ ] mile area outside  
56 the corporate limits and shall be appointed by the board of  
57 county commissioners of the county wherein the unincorporated  
58 area is situated. Such members shall have equal rights,  
59 privileges, and duties with the other members of the [planning  
60 board] [zoning commission] in all matters pertaining to the



61 plans and regulations of the area in which they reside, both  
62 in preparation of the original plans and regulations and in  
63 consideration of any proposed amendments to such plans and  
64 regulations.<sup>1</sup>

65 (b) Zoning Adjustment. In the event that a municipal  
66 governing body adopts zoning regulations for the area outside  
67 its corporate limits, it shall increase the membership of the  
68 [board of zoning adjustment] by adding additional members  
69 [equal in number to the members of the [board of zoning adjust-  
70 ment] appointed by the governing body of the municipality];  
71 but, if the extraterritorial area includes parts of two or  
72 more counties, the area included from each county shall have  
73 additional members [equal in number to the members of the  
74 [board of zoning adjustment] appointed by the governing body of  
75 the municipality]. Such members shall be residents of the  
76 [ ] mile area outside the corporate limits and shall be  
77 appointed by the board of county commissioners of the county  
78 wherein the unincorporated area is situated. Such members  
79 shall have equal rights, privileges, and duties with the other  
80 members of the [board of zoning adjustment] in all matters  
81 pertaining to the regulation of such area. The concurring  
82 vote of a majority of the members of such enlarged board shall  
83 be necessary to reverse any order, requirement, decision, or  
84 determination of any administrative official charged with the  
85 enforcement of an ordinance.

86 "Section [ ]. Enforcement. Any municipal governing body  
87 exercising the powers granted by this section may provide for  
88 the enforcement of its regulations for the outside area in the  
89 same manner as the regulations for the area inside the munici-  
90 pality are enforced."

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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.

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

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



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

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

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

...the economic foundation of an entire metropolitan area depends upon the way in which land is zoned and used in each of its component communities. For example, insufficient land for industry and commerce will discourage development of these enterprises, while over-zoning for commercial or industrial land may cause an unhealthy rivalry among individual communities which results in poor allocation of economic resources among them. Because local government relies so heavily upon the property tax, the chief obstacle to sound areawide planning is the competition among municipalities for land use developments which are productive of large tax revenues. The rationale of many zoning ordinances lies in fiscal competition rather than desirable spatial arrangement of uses. This kind of policy is self-defeating, and may result in a reduction of total (metropolitan) economic resources.

Another problem is stated in a more recent report, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs. In many instances, municipal development policies and regulations in metropolitan areas tend to discriminate against groups of persons and certain types of land uses to the disadvantage of residents of the whole region. The responsibility for areawide coordination of planning and zoning matters, therefore, should rest with larger units of government encompassing most, if not all, of the metropolitan area, with

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<sup>#</sup>Some states may prefer to use regional agencies for this purpose.

sufficient legal power to participate in development decisions and at the same time represent a diversity of viewpoints found in the community. In many places, this function could appropriately be lodged within the county government.

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

In the draft bill, a procedure is established for metropolitan areas of the state for county review and approval of certain local planning and zoning actions that have an effect beyond local boundaries or that affect development essential to countywide needs. The principle of county review and approval of local development actions has been adapted in part from referral procedures granted counties in New York under Chapter 1041, Laws of 1960, State of New York, and Chapters 822 and 823, Laws of 1961, State of New York. Precedent for the removal of planning and land use control authority from small municipalities and vesting such powers in the county may be found in Kentucky under Chapter 139, Session Laws of 1964, Commonwealth of Kentucky. This legislation subsequently was repealed by a 1966 enactment (H.B. 390) but Jefferson County (Louisville) continues to exercise planning and land use control powers in small communities. The State of Indiana has gone even further in Title 53, Chapter 9 of the Indiana Annotated Statutes by abolishing all existing city and county planning commissions and boards of zoning appeals and transferring all planning and land use control powers and duties to the Metropolitan Plan Commission, the Metropolitan Board of Zoning Appeals, and the county legislative body in the Indianapolis-Marion County metropolitan area.

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

The draft bill authorizes the county to review all three major regulatory measures of local planning--zoning, subdivision

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

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

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

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

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

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

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

The draft bill is primarily concerned with a review and approval procedure. Many state legislatures may find it desirable, in addition, to redefine existing statutory powers and duties of county or areawide planning agencies. The legislature should provide clear direction for the planning agency to concern itself with matters of county or areawide significance rather than local concerns that have no areawide repercussions. It may be desirable to amend the general planning enabling statutes, therefore, to reflect this objective. The draft legislation for Metropolitan Area Planning Commissions appearing above, beginning on page 389, may be helpful (see especially section 6, Powers and Duties).

#### Suggested Legislation

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

(Be it enacted, etc.)

1        Section 1. Purpose. It is in the public interest that within  
2 metropolitan areas certain classes of proposed municipal  
3 planning and zoning actions be subject to review and approval  
4 by the county planning agency for the county in which such  
5 municipality is located; that abutting municipalities be in-  
6 formed, in certain instances, of such proposed actions in order  
7 to aid in coordinating planning and zoning actions among munic-  
8 ipalities; that the planning and zoning authority of certain  
9 small municipalities and newly incorporated municipalities be

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

10 exercised by the county because of the lack of adequate techni-  
11 cal and administrative resources in such municipalities to plan  
12 effectively for future development; and that counties exercise  
13 such planning and zoning authority by applying such pertinent  
14 intercommunity and countywide considerations as may be set forth  
15 within the [adopted, approved, or filed] county comprehensive  
16 plan or development policy document.

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

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

1 Section 3. Definitions. As used herein:

2 (1) "Metropolitan area" is an area designated as a "stand-  
3 ard metropolitan statistical area" by the U. S. Bureau of the  
4 Census.<sup>2</sup>

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

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

3 (a) Any municipality of less than [30,000] and more than  
4 [5,000] population, as determined by the latest official census,  
5 located within a metropolitan area and in a county that has an  
6 [adopted, approved, or filed] county comprehensive plan or over-  
7 all development policy document shall give notice to the county  
8 of any proposal which, if adopted, would have the result of (1)  
9 changing the types of uses permitted on property abutting any

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

10 federally aided or state highway, parkway, or throughway, or any  
11 county road or parkway or federal, state, or county park within  
12 the municipality, (2) decreasing the required minimum setback  
13 or the minimum frontage or average width of any property abutting  
14 any federal or state highway, parkway, or throughway, or any  
15 county road or parkway or federal, state, or county park within  
16 the municipality, (3) connecting any new street directly into  
17 any federal, state, or county highway, parkway, throughway, or  
18 road, (4) connecting any new drainage lines directly into any  
19 channel lines as established by the county, or (5) reducing  
20 permitted residential density to less than [three] families per  
21 acre. The notice shall be mailed by the municipality to the  
22 county at least [15] days prior to any hearing or other action  
23 scheduled in the municipality to consider the proposal.

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

33 (c) The municipality having jurisdiction shall act in  
34 accordance with the recommendations of the county unless the  
35 municipality adopts a resolution fully setting forth the reasons  
36 for contrary action. The resolution shall be filed with the  
37 county within [7] days from the adoption of the resolution. The  
38 municipal action shall not become effective until [30] days have  
39 elapsed from the date the resolution is filed.

40 (d) Notwithstanding any resolution or action taken pursuant  
41 to subsections (b) and (c) hereof, the county within the [30]  
42 day period may review the municipal action and reverse its  
43 action by resolution of the [county governing body] upon specif-  
44 ic findings of fact that the municipal action is not in



45 accordance with the material provisions of the [adopted, ap-  
46 proved, or filed] county comprehensive plan or overall develop-  
47 ment policy document. The comprehensive plan or development  
48 policy shall contain standards as set forth in section 5 of this  
49 act.

1 Section 5. Standards and Policies for County Review.

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

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

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

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

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

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

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

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

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

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

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

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

17 (b) The municipality to which referral is made [or an  
18 authorized agent of the municipality] may file a memorandum of  
19 its position. If the municipality fails to report within the  
20 period of [15] days after receiving notice of the hearing, the  
21 municipality having jurisdiction to act may do so without the  
22 report. If the contiguous municipality disapproves the proposal,  
23 or recommends changes or modifications thereof, the municipal  
24 agency having jurisdiction shall not act contrary to the dis-  
25 approval or recommendation except by a majority vote of all the  
26 members thereof and after the adoption of a resolution fully  
27 setting forth the reasons for its contrary action. Copies of  
28 the resolution shall be filed with the clerk of the contiguous  
29 municipality and with the county.

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

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

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

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

18 County authority shall be exercised in accordance with, and in  
19 a manner prescribed by, [city statute granting authority for  
20 counties to exercise planning and zoning authority].

21 (b) If any municipalities referred to in subsection (a)  
22 hereof are located in more than one county, the county having  
23 the larger population shall exercise planning and zoning author-  
24 ity within those municipalities.<sup>3</sup>

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

1 Section 9. Separability. [Insert separability clause.]

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

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

ADOPTION AND AMENDMENT OF MODEL  
UNIFORM CODES BY REFERENCE

Building regulations that are uniform from one jurisdiction to another in metropolitan areas have been singled out by the Advisory Commission on Intergovernmental Relations as one of the keys to improved local building and housing code practices. Modernization and uniformity of building codes in metropolitan areas would contribute to lower housing costs. In its report entitled Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, the Advisory Commission recommended "(a) the enactment by the states of legislation authorizing the adoption of uniform housing and building codes within metropolitan areas, and (b) action by local governments to utilize such authority. . ." to encourage uniformity among municipal codes, increase the coverage, and allow more expert application of reasonable requirements. In its report, Building Codes: A Program for Intergovernmental Reform, the Commission points out that local governments are frequently slow to adopt model code changes and recommends that states permit the incorporation of changes made by the model code promulgating body into the local code by administrative action. This would facilitate keeping codes up to date so that localities would not be enforcing antiquated building codes. Any unnecessary lag by local legislative bodies in incorporating code changes reflecting technological advances may result in a decrease in health and safety protection and an increase in building costs.

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

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

or regional agencies for local governments within the boundaries of such county or agencies, as well as model codes prepared by professional code organizations and federal and state agencies and by adding language in section 2 providing for amendment by reference.

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

To assist in keeping the local code current, language in section 2 permits local governments which have adopted a nationally recognized model building code by reference to incorporate subsequent changes made by the model code promulgating agency into the local code by administrative rather than legislative action. Provision is made for the regulation incorporating the amendment by reference to become effective only after it has laid before the local legislative body for a specified period. During this period the legislative body can by resolution disapprove the amendment.

#### Suggested Legislation

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

(Be it enacted, etc.)

1        Section 1. Definitions. As used in this act, the follow-  
2        ing terms shall have the meanings indicated, unless the context  
3        otherwise requires:

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

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

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

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

1 Section 2. Adoption and Amendment of Codes by Reference.

2 (a) Any municipality may adopt or repeal [an ordinance] [a  
3 local law] which incorporates by reference the provisions of  
4 any code or portions of any code, or any amendment thereof, prop-  
5 erly identified as to date and source, without setting forth the  
6 provisions of such code in full. At least [ ] copies of such  
7 code, portion, or amendment which is incorporated or adopted  
8 by reference, shall be filed in the office of the clerk of the  
9 municipality and there kept available for public use, inspec-  
10 tion, and examination. The filing requirements herein pre-  
11 scribed shall not be deemed to be complied with unless the  
12 required copies of such codes, portion, or amendment or public  
13 record are filed with the clerk of such municipality for a  
14 period of [90] days prior to the adoption of the [ordinance]  
15 [local law] which incorporates such code, portion, or amend-  
16 ment by reference. If such a code, portion, or amendment is

17 promulgated by a county, or metropolitan or regional agency,  
18 the adopting unit of local government must be within the ter-  
19 ritorial boundaries of such county or agency.

20 (b) In those municipalities that have adopted building  
21 codes by reference pursuant to subsection (a), the [appropriate  
22 local administrative official] may adopt administrative regula-  
23 tions which incorporate by reference such subsequent changes  
24 and amendments thereof, properly identified as to date and  
25 source, as may be adopted by the agency or association which  
26 promulgated the code, if the [appropriate local administrative  
27 official] finds that the changes and amendments conform to  
28 nationally recognized standards, accepted engineering practices,  
29 or state and national model codes.

30 (c) Any administrative regulations which incorporate build-  
31 ing code amendments by reference shall become effective upon  
32 the expiration of [sixty] calendar days or after the [fourth]  
33 official meeting of the [legislative body] following the pro-  
34 mulgation of the regulation, whichever is later, unless within  
35 that period of time a [resolution] disapproving such administra-  
36 tive regulation shall have been adopted by the [legislative  
37 body].

38 (d) In addition to complying with all requirements for the  
39 issuance of administrative regulations by [the administrative  
40 official], the filing requirement of subsection (a) of this  
41 section and the publication requirement of section 3 of this  
42 act shall be complied with in adopting amendments to building  
43 codes by administrative regulation.

1 Section 3. Publication of Adopting Ordinance. Nothing  
2 contained in this act shall be deemed to relieve any municipal-  
3 ity of the requirement of publishing in full the [ordinance]  
4 [local law] which adopts such code, portion, or amendment by  
5 reference, and all provisions applicable to such publication  
6 shall be fully and completely carried out as if no code, por-  
7 tion, or amendment were incorporated therein.

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

1       Section 5. Separability. [Insert separability clause.]

1       Section 6. Effective Date. [Insert effective date.]



## E. LOCAL GOVERNMENT PROGRAMS

### Introductory Statement

In order to make programs available throughout an entire urban area, the Commission has recommended authorizing counties to provide a broader range of government services. Proposals are included in this section granting authority to counties to administer areawide vocational education programs, urban renewal, and low-rent housing for low-income families. The latter two proposals are complete state acts applicable to governments generally, including counties.

AREAWIDE VOCATIONAL EDUCATION PROGRAMS  
IN METROPOLITAN AREAS

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

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

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

Just how states go about providing necessary direction, coordination, and stimulus will necessarily vary because of wide variations in state and local sharing of responsibility for providing vocational education and retraining programs. These variations concern the relative responsibility vested in the local school boards and the state departments of education, whether administration is under an entirely separate vocational education system, and the relationship

to community colleges. In any case, however, states tend to follow the same administrative pattern for post-high school technical education as they use for general education.

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

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

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

The first three types of areawide arrangement listed above can be undertaken in states authorizing their political subdivisions, including school districts, to enter into interlocal contracts or joint agreements. Such authority is provided in the proposal on "Interlocal Contracting and Joint Enterprises," pp. 477-483.

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

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

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

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

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

#### Suggested Legislation

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

(Be it enacted, etc.)

- 1        Section 1. Establishment of County Vocational School Dis-
- 2        tricts. (a) The [county board] shall vote on the question of
- 3        whether a county vocational school district shall be established
- 4        in the county when it receives:
- 5                (1) a resolution of the [state board of education]

6 that a need exists in the county for operation of county  
7 industrial, commercial, agricultural, or household arts pro-  
8 grams; or

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

16 If the [county board] by a majority vote favors the establish-  
17 ment of such a district in the county, such district shall be  
18 forthwith established and maintained in the county and shall be  
19 known as the "vocational school district of the county of  
20 [ ]."

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

30 "Shall a county vocational school district be  
31 established in the county of [ ] pursuant to  
32 provisions of [cite this statute]?"

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

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

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

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

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

11 (b) Notwithstanding the provisions of subsection (a) of  
12 this Section, any county vocational school district shall in-  
13 clude the territory within the boundaries of any [local] school  
14 district referred to in subsection (a) of this section after  
15 the date of filing in the office of the [state commissioner of  
16 education] of a certified copy of a resolution adopted by the  
17 [county board] of the county subsequent to the organization of  
18 the county vocational school district and of a resolution adopt-  
19 ed by the board of education of the [local] district setting  
20 forth the finding that it is in the best interest of the county  
21 vocational school district and of the [local] district that the  
22 county vocational school district shall include within its  
23 boundaries the territory of the [local] district.

24 (c) The board of education of the county vocational school  
25 district and the board of education of each [local] district  
26 referred to in subsection (b) of this section are each hereby  
27 authorized and empowered to undertake and to enter into agree-  
28 ments of any nature whatsoever necessary, desirable, useful, or  
29 convenient for and with respect to the assumption, operation,

30 or administration by the county vocational school district of  
31 any system of vocational education then being maintained in the  
32 [local] district, including, but not limited to, the transfer  
33 of principals, teachers, employees, pupils, or classes; the  
34 purchase, grant, transfer, or lease to the county vocational  
35 school district of any lands, schools, buildings, furnishings,  
36 equipment, apparatus, or supplies constituting part of or used  
37 in connection with the [local] system; and the making of or  
38 provision for payments, costs, or expenses in connection with  
39 any of the aforesaid, and copy of any such agreement shall be  
40 filed in the office of the [state commissioner of education].

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

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

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

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

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

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

1       Section 7. Qualifications of Board Members. A member of  
2 a board of education created under the provisions of this act  
3 shall be a citizen and resident of the county and shall have  
4 been such citizen and resident for at least three years immedi-  
5 ately preceding his becoming a member of the board.

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

1       Section 9. Board a Body Corporate; Name. The body having  
2 the control and management of a county vocational school district

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

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



3 shall be a body corporate and shall be known as and called "the  
4 board of education of the county vocational school district in  
5 the county of [     ]."

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

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

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

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

1     Section 11. Separability. [Insert separability clause.]

1     Section 12. Effective Date. [Insert effective date.]

## URBAN RENEWAL

All but one state now provides authority for municipalities to undertake urban renewal programs. Only 16 states, however, have enabled counties to undertake urban renewal. According to the best information available, only about 32 counties have urban renewal agencies, with only one-third of these agencies operating in unincorporated areas.

Notwithstanding the relatively small amount of current suburban concern, urban renewal programs are needed and should be carried out in all parts of most of our metropolitan areas. The Advisory Commission on Intergovernmental Relations has recommended:

That States enact legislation authorizing counties in metropolitan areas to provide urban renewal and public housing services to unincorporated areas and small municipalities; and further provide for financial and technical assistance to the counties as well as municipalities for establishing such services and coordinating their administration, especially in multicounty metropolitan areas.\*

In most metropolitan areas throughout the country the central city is making strong efforts to strengthen and renew its deteriorating and blighted neighborhoods. In many suburban areas which surround these central cities the problems are not yet so formidable, although they are likely to become so as the suburbs grow, particularly the older ones whose industry and residential character is becoming more like the central cities they border.

Increased county responsibility for urban renewal programs would tend to broaden the area of jurisdiction by including unincorporated and incorporated areas that do not have programs of their own. In those counties where slum clearance and residential dislocation will be substantial, public housing would probably be necessary to enable relocation needs to be met. This has been the case in central cities where the proportion of families with incomes under \$4,000 is nearly as large as it is in the suburbs. Cooperation between counties and city renewal and housing agencies, and even joint city-county programs in certain cases, would be mutually advantageous. Such cooperation is fairly common where county programs now exist.

County renewal powers would not exclude continued exercise of similar powers by municipal governments and, to the contrary,

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\*Advisory Commission on Intergovernmental Relations, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs (Washington: U. S. Government Printing Office, 1965), p. 114.

might facilitate the program of small municipalities which could not maintain full professional staffs of their own or provide adequate relocation housing within their own borders. Examples of this can be found in the Pittsburgh metropolitan area, among others, where county renewal staffs perform, under contract, the technical services needed to carry out renewal projects for which the individual municipality is the actual sponsor. Larger municipalities within counties, especially major central cities, will undoubtedly want to continue using their own highly developed staffs, with the counties performing renewal services and sponsoring projects only in unincorporated areas. Where central city renewal staff is available, a county might find it advantageous to contract with it for staff services. The indispensable role of the counties is that of project sponsor and provider of workable program certification in unincorporated areas where there is no other government capable of performing this role.

Many counties, both within and outside metropolitan areas, may have large rural populations that might resist having the county provide urban-type renewal services. A municipality with an active renewal program of its own might also resist contributing to a county program out of general county revenues. In such situations, the Commission has recommended that it may be appropriate to create a county subordinate tax area in order to administer and finance a needed service in the selected area. At least 20 states currently utilize the subordinate taxing area device to provide governmental services. Draft legislation establishing county subordinate taxing areas may be found on page 107 of this publication.

State programs of technical and financial assistance can do much to encourage needed urban renewal and public housing programs in small suburban jurisdictions and outlying unincorporated areas. Kentucky and Maine, for example, provide localities with staff assistance to prepare local workable programs needed to qualify for federal urban renewal and public housing grants and to advise local officials on planning and carrying out their programs. The state might also stimulate local programs by matching the local share of costs. Where the establishment of a local renewal agency in small municipalities and unincorporated areas is impractical, the state itself might undertake this responsibility.

The suggested legislation below authorizes municipalities and counties to provide for the rehabilitation, clearance, and redevelopment of slums and blighted areas. The bill contains provisions making local activities eligible for federal assistance under the provisions of recent amendments of the Federal Housing Act. Existing state urban renewal laws may require new or amendatory legislation in order for states and localities to receive the full benefits from the federal program.

The following legislation places the urban renewal responsibility in the hands of the general purpose unit of government rather than in a separate authority. The governing body may

exercise its urban renewal powers through a board or a commissioner or through such offices of a municipality or county as it may by resolution determine. If the local governing body itself does not choose to exercise urban renewal powers, it may have such powers carried out by an urban renewal agency or by the housing authority, if one exists or is subsequently established in the community. The urban renewal agency or the housing authority then is vested with all the urban renewal powers in the same manner as though all powers were vested in the local governing body. The urban renewal agency, however, is given limited autonomy. As required by federal law, it cannot proceed with a renewal project without (a) a workable program supported by the local governing body, (b) approval of the project by the local governing body, (c) conformance with the locality's general plan, (d) provision of the local share of funds by the local governing body, and (e) a public hearing.

The bill would permit political subdivisions to enter into interlocal agreements to jointly or cooperatively undertake urban renewal activities. The initiative in such joint undertakings is left with the localities themselves. The suggested act specifies the basic contents of such agreements and requires review by the attorney general before an agreement goes into effect.

So that the states may assume an appropriate role, provision is made for state technical and financial assistance to municipalities and counties in planning and carrying out urban renewal activities.

In some states it may be desirable to authorize a state agency to exercise the powers given to municipalities and counties under this act. The states could then undertake urban renewal projects in small communities and unincorporated areas where carrying out a program would otherwise be impracticable or impossible. Any state wishing to follow this course might add appropriate provisions to the suggested act. In this case, a finding should be added to section 1 of the act and a new section drafted specifying appropriate procedures to carry out this function.

#### Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing authorization for municipalities and counties to undertake slum clearance and urban renewal."]

(Be it enacted, etc.)

1        Section 1. Findings and Declaration of Necessity. It is  
2 hereby found and declared that there exist in municipalities  
3 and counties of the State slum and blighted areas (as herein  
4 defined) which constitute a serious and growing menace, in-  
5 jurious to the public health, safety, morals and welfare of the

6 residents of the state; that the existence of such areas con-  
7 tributes substantially and increasingly to the spread of dis-  
8 ease and crime, constitutes an economic and social liability  
9 imposing onerous local government burdens which decrease the  
10 tax base and reduce tax revenues, substantially impairs or  
11 arrests the sound growth of communities, retards the provision  
12 of housing accommodations, aggravates traffic problems and sub-  
13 stantially impairs or arrests the elimination of traffic hazards  
14 and the improvement of traffic facilities; and that the preven-  
15 tion and elimination of slums and blight is a matter of state  
16 policy and state concern in order that the state and its com-  
17 munities shall not continue to be endangered by areas which are  
18 focal centers of disease, promote juvenile delinquency, and con-  
19 sume an excessive proportion of its revenues because of the  
20 extra services required for police, fire, accident, hospitali-  
21 zation and other forms of public protection, services and  
22 facilities.

23 It is further found and declared that certain slum or  
24 blighted areas, or portions thereof, may require acquisition,  
25 clearance, and disposition subject to use restrictions, as pro-  
26 vided in this act, since the prevailing condition of decay may  
27 make impracticable the reclamation of the area by conservation  
28 or rehabilitation; that other areas or portions thereof may,  
29 through the means provided in this act, be susceptible of con-  
30 servation or rehabilitation in such a manner that the conditions  
31 and evils hereinbefore enumerated may be eliminated, remedied  
32 or prevented; and that salvageable slum and blighted areas can  
33 be conserved and rehabilitated through appropriate public action  
34 as herein authorized, and the cooperation and voluntary action  
35 of the owners and tenants of property in such areas.

36 It is further found and declared that the powers conferred  
37 by this act on municipalities and counties will enable the  
38 elimination and prevention of slums and blight in a more co-  
39 ordinated, orderly and efficient manner, and the carrying out  
40 of these activities in small communities or unincorporated areas

41 where their undertaking is impractical without the provisions  
42 of this act.

43 It is further found and declared that municipalities and  
44 counties are unable to provide for the rehabilitation, clear-  
45 ance and redevelopment of such slums and blighted areas with-  
46 out state technical services and financial assistance and that  
47 the granting of state financial assistance is a public purpose  
48 for which public monies may be expended.<sup>1</sup>

49 It is further found and declared that the powers conferred  
50 by this act are for public uses and purposes for which public  
51 money may be expended and the power of eminent domain and  
52 police power exercised; and that the necessity in the public  
53 interest for the provisions herein enacted is hereby declared  
54 as a matter of legislative determination.

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

4 (1) "Agency" or "urban renewal agency" means a public agen-  
5 cy created by section 17 of this act.

6 (2) "Municipality" means any [city, village, borough, or  
7 town], but not county.

8 (3) "County" means any county in this state.

9 (4) "Public body" means the state and any county or munic-  
10 ipality; and any board, commission, authority, agency, district,  
11 subdivision or any department, agency, instrumentality, corpor-  
12 ate or otherwise, of any of the foregoing.

13 (5) "Local governing body" means the [council] or [board  
14 of commissioners], or other legislative body charged with gov-  
15 erning the municipality or county.

16 (6) "Mayor" means the mayor of a municipality or other of-  
17 ficer or body having the duties customarily imposed upon the  
18 executive head of a municipality.

19 (7) "County chairman" means the presiding officer of a

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1. If state financial assistance is not to be included in this bill, this paragraph should be omitted.

20 county governing board.

21 (8) "Clerk" means the clerk or other official of the munic-  
22 ipality or county who is the custodian of the official records  
23 of such municipality or county.

24 (9) "Federal government" means any department, agency or  
25 instrumentality, corporate or otherwise, of the United States  
26 of America.

27 (10) "Slum area" means an area in which there is a predomi-  
28 nance of buildings or improvements, whether residential or non-  
29 residential, which by reason of dilapidation, deterioration,  
30 age or obsolescence, inadequate provision for ventilation,  
31 light, air, sanitation, or open spaces, high density of popu-  
32 lation and overcrowding, or the existence of conditions which  
33 endanger life or property by fire and other causes, or any com-  
34 bination of such factors is conducive to ill health, transmis-  
35 sion of disease, infant mortality, juvenile delinquency, or  
36 crime, and is detrimental to the public health, safety, morals  
37 or welfare.

38 (11) "Blighted area" means an area which by reason of the  
39 presence of a substantial number of slum, deteriorated or de-  
40 teriorating structures, predominance of defective or inadequate  
41 street layout, faulty lot layout in relation to size, adequacy,  
42 accessibility or usefulness, insanitary or unsafe conditions,  
43 deterioration of site or other improvements, diversity of own-  
44 ership, tax or special assessment delinquency exceeding the  
45 fair value of the land, defective or unusual conditions of title,  
46 or the existence of conditions which endanger life or property  
47 by fire and other causes, or any combination of such factors,  
48 substantially impairs or arrests the sound growth of a munici-  
49 pality or county, retards the provision of housing accommoda-  
50 tions or constitutes an economic or social liability and is a  
51 menace to the public health, safety, morals, or welfare in its  
52 present condition and use; but if the blighted area consists  
53 of open land, the conditions contained in the proviso in  
54 section 5 (d) shall apply and any disaster area referred to in  
55 subsection 5 (g) shall constitute a "blighted area."

56           (12) "Urban renewal project" means undertakings and activi-  
57 ties in an urban renewal area for the elimination and for the  
58 prevention of the development or spread of slums and blight, and  
59 may involve slum clearance and redevelopment in an urban renewal  
60 area, or rehabilitation or conservation in an urban renewal  
61 area, or a program or code enforcement in an urban renewal area,  
62 or any combination or part thereof in accordance with an urban  
63 renewal plan. Such undertakings and activities may include:

64           (i) Acquisition of a slum area or a blighted area or  
65 portion thereof.

66           (ii) Demolition and removal of buildings and improve-  
67 ments.

68           (iii) Installation, construction, or reconstruction of  
69 streets, utilities, parks, playgrounds, and other improvements  
70 necessary for carrying out in the urban renewal area the urban  
71 renewal objectives of this act in accordance with the urban  
72 renewal plan.

73           (iv) Disposition of any property acquired in the urban  
74 renewal area (including sale, initial leasing or retention by  
75 the municipality or county itself) at its fair value for uses  
76 in accordance with the urban renewal plan.

77           (v) Carrying out plans for a program of code enforce-  
78 ment and a program of voluntary or compulsory repair and re-  
79 habilitation of buildings or other improvements in accordance  
80 with the urban renewal plan.

81           (vi) Acquisition of real property in the urban renewal  
82 area which, under the urban renewal plan, is to be repaired or  
83 rehabilitated for dwelling use or related facilities, repair or  
84 rehabilitation of the structures for guidance purposes, and  
85 resale of the property.

86           (vii) Acquisition of any other real property in the ur-  
87 ban renewal area where necessary to eliminate unhealthful insani-  
88 tary or unsafe conditions, lessen density, eliminate obsolete  
89 or other uses detrimental to the public welfare, or otherwise  
90 to remove or prevent the spread of blight or deterioration, or  
91 to provide land for needed public facilities.



92 (viii) Acquisition, without regard to any requirement  
93 that the area be a slum or blighted area, of air rights in an  
94 area consisting principally of land in highways, railway or sub-  
95 way tracks, bridge or tunnel entrances, or other similar facili-  
96 ties which have a blighting influence on the surrounding area  
97 and over which air rights sites are to be developed for the  
98 elimination of such blighting influences and for the provision  
99 of housing (and related facilities and uses) designed specifi-  
100 cally for, and limited to families and individuals of low or  
101 moderate income.

102 (ix) Construction of foundations and platforms neces-  
103 sary for the provision of air rights sites of housing (and re-  
104 lated facilities and uses) designed specifically for, and limited  
105 to, families and individuals of low or moderate income.

106 (13) "Urban renewal area" means a slum area or a blighted  
107 area or a combination thereof which the local governing body  
108 designates as appropriate for an urban renewal project.

109 (14) "Urban renewal plan" means a plan, as it exists from  
110 time to time, for an urban renewal project, which plan (1) shall  
111 conform to the general plan for the municipality or county as  
112 a whole except as provided in subsection 5(g), and (2) shall be  
113 sufficiently complete to indicate such land acquisition, demo-  
114 lition and removal of structures, redevelopment, improvements,  
115 and rehabilitation as may be proposed to be carried out in the  
116 urban renewal area, zoning and planning changes, if any, land  
117 uses, maximum densities, and building requirements.

118 (15) "Related activities" means (1) planning work for the  
119 preparation of a general neighborhood renewal plan, or for the  
120 preparation or completion of a communitywide plan or program  
121 pursuant to section 6 of this act, and (2) the functions re-  
122 lated to the acquisition and disposal of real property pursuant  
123 to section 7 paragraph (4) of this act.

124 (16) "Real property" means all lands, including improvements  
125 and fixtures thereon, and property of any nature appurtenant  
126 thereto, or used in connection therewith, and every estate,  
127 interest, right and use, legal or equitable, therein, including

128 terms for years and liens by way of judgment, mortgage or other-  
129 wise.

130 (17) "Bonds" means any notes, interim certificates, certi-  
131 ficates of indebtedness, debentures or other obligations.

132 (18) "Obligee" means any bondholder, agent, or trustee for  
133 any bondholders, or lessor demising property used in connection  
134 with urban renewal, or any assignee or assignees of such lessor's  
135 interest or any part thereof, and the federal government when  
136 it is a party to any contract with the municipality or county.

137 (19) "Person" means any individual, firm, partnership, cor-  
138 poration, company, association, joint stock association, or  
139 body politic; and shall include any trustee, receiver, assignee,  
140 or other person acting in a similar representative capacity.

141 (20) "Area of operation" means the area within the corporate  
142 limites of the municipality or the territorial limits of the  
143 county; but a county shall not undertake any project or projects  
144 within the boundaries of any municipality without the request or  
145 consent, by resolution, of the local government body of the  
146 municipality and a municipality cannot undertake any project  
147 or projects outside its area of operation without the request  
148 or consent of the local governing body of the county.

149 (21) "Housing authority" means a housing authority created  
150 by and established pursuant to [insert appropriate statutory  
151 citation].

152 (22) "Board" or "commission" means a board, commission,  
153 department, division, office, body or other unit of the munici-  
154 pality or county, authorized to undertake urban renewal projects.

155 (23) "Public officer" means any officer who is in charge of  
156 any department or branch of the government of the municipality  
157 or county relating to health, fire, building regulations, or to  
158 other activities concerning dwellings in the municipality or  
159 county.

1 Section 3. Encouragement of Private Enterprise. A municipi-  
2 pality or county, to the greatest extent it determines to be  
3 feasible in carrying out the provision of this act, shall afford  
4 maximum opportunity, consistent with the sound needs of the

5 municipality or county as a whole, to the rehabilitation or re-  
6 development of the urban renewal area by private enterprise. A  
7 municipality or county shall give consideration to this objec-  
8 tive in exercising its powers under this act, including the  
9 approval of urban renewal plans, communitywide plans or programs  
10 for urban renewal, and general neighborhood renewal plans, the  
11 exercise of its zoning powers, the enforcement of other laws,  
12 codes and regulations relating to the use of land and the use  
13 and occupancy of buildings and improvements, the disposition of  
14 any property acquired, and the provision of necessary public  
15 improvements.

1 Section 4. Finding of Necessity by Local Governing Body.

2 No municipality or county shall exercise the authority hereafter  
3 conferred upon municipalities or counties by this act until  
4 after the local governing body of the municipality or county  
5 shall have adopted a resolution finding that (1) one or more  
6 slum or blighted areas exist in such municipality or county and  
7 (2) the rehabilitation, conservation, redevelopment, or a com-  
8 bination thereof, of such area or areas is necessary in the  
9 interest of the public health, safety, morals or welfare of the  
10 residents of such municipality or county.

1 Section 5. Preparation and Approval of Plan for Urban Re-  
2 newal Project. (a) An urban renewal project for an urban re-

3 newal area shall not be planned or initiated unless the govern-  
4 ing body has, by resolution, determined such area to be a slum  
5 area or a blighted area or a combination thereof and designates  
6 such area as appropriate for an urban renewal project.

7 (b) The municipality or county may itself prepare or cause  
8 to be prepared an urban renewal plan, or any person or agency,  
9 public or private, may submit such a plan to a municipality or  
10 county. Prior to its approval of an urban renewal project, the  
11 local governing body shall submit the plan to the planning com-  
12 mission of the municipality or county, if any, for review and  
13 recommendations as to its conformity with the general plan for  
14 the development of the municipality or county as a whole. The  
15 planning commission shall submit its written recommendations

16 with respect to the proposed urban renewal plan to the local  
17 governing body within thirty days after receipt of the plan for  
18 review. Upon receipt of the recommendations of the planning  
19 commission or, if no recommendations are received within said  
20 thirty days, then without such recommendations, the local gov-  
21 erning body may proceed with the hearing on the proposed urban  
22 renewal project prescribed by subsection (c) hereof.

23 (c) The local governing body shall hold a public hearing on  
24 an urban renewal project after public notice thereof by publica-  
25 tion in a newspaper having a general circulation in the area  
26 of operation of the municipality or county. The notice shall  
27 describe the time, date, place, and purpose of the hearing,  
28 shall generally identify the urban renewal area covered by the  
29 plan, and shall outline the general scope of the urban renewal  
30 project under consideration.

31 (d) Following such hearing, the local governing body may  
32 approve an urban renewal project and the plan therefor if it  
33 finds that:

34 (1) A feasible method exists for the location of fami-  
35 lies who will be displaced from the urban renewal area in  
36 decent, safe, and sanitary dwelling accommodations within their  
37 means and without undue hardship to such families.

38 (2) The urban renewal plan conforms to the general  
39 plan of the municipality or county as a whole.

40 (3) The urban renewal plan gives due consideration to  
41 the provision of adequate park and recreational areas and  
42 facilities that may be desirable for neighborhood improvement,  
43 with special consideration for the health, safety, and welfare  
44 of children residing in the general vicinity of the site covered  
45 by the plan.

46 (4) The urban renewal plan will afford maximum oppor-  
47 tunity, consistent with the sound needs of the municipality or  
48 county as a whole, for the rehabilitation or redevelopment of  
49 the urban renewal area by private enterprise.

50 If the urban renewal area consists of an area of open land to  
51 be acquired by the municipality or county, the area shall not

52 be so acquired unless:

53 (1) if it is to be developed for residential uses, the  
54 local governing body shall determine that a shortage of housing  
55 of sound standards and design which is decent, safe, and sani-  
56 tary exists in the municipality or county; that the need for  
57 housing accommodations has been or will be increased as a result  
58 of the clearance of slums in other areas; that the conditions  
59 of blight in the area and the shortage of decent, safe, and  
60 sanitary housing cause or contribute to an increase in and  
61 spread of disease and crime and constitute a menace to the pub-  
62 lic health, safety, morals, or welfare; and that the acquisi-  
63 tion of the area for residential uses is an integral part of  
64 and essential to the program of the municipality or county; or

65 (2) if it is to be developed for nonresidential uses,  
66 the local governing body shall determine that such nonresiden-  
67 tial uses are necessary and appropriate to facilitate the proper  
68 growth and development of the community in accordance with sound  
69 planning standards and local community objectives, which acqui-  
70 sition may require the exercise of governmental action, as pro-  
71 vided in this act, because of defective or unusual conditions  
72 of title, diversity of ownership, tax delinquency, improper  
73 subdivisions, outmoded street patterns, deterioration of site,  
74 economic disuse, unsuitable topography or faulty lot layouts,  
75 the need for the correlation of the area with other areas of a  
76 municipality or county by streets and modern traffic require-  
77 ments, or any combination of such factors or other conditions  
78 which retard development of the area.

79 (e) An urban renewal plan may be modified at any time; but  
80 if modified after the lease or sale by the municipality or  
81 county of real property in the urban renewal project area, the  
82 modification may be conditioned upon such approval of the owner,  
83 lessee, or successor in interest as the municipality or county  
84 may deem advisable and in any event shall be subject to such  
85 rights at law or in equity as a lessee or purchaser, or his  
86 successor or successors in interest, may be entitled to assert.

87 (f) Upon the approval by the local governing body of an

88 urban renewal plan or of any modifications thereof, such plan  
89 or modifications shall be deemed to be in full force and effect  
90 for the respective urban renewal area and the municipality or  
91 county may then cause such plan or modification to be carried  
92 out in accordance with its terms.

93 (g) Notwithstanding any other provisions of this act, where  
94 the local governing body certifies that an area is in need of  
95 redevelopment or rehabilitation as a result of flood, fire,  
96 hurricane, earthquake, storm, or other catastrophe respecting  
97 which the governor of the state has certified the need for  
98 disaster assistance under Public Law 875, Eighty-First Congress,  
99 or other federal law, the local governing body may approve an  
100 urban renewal plan and an urban renewal project with respect to  
101 such area without regard to the provisions of subsection (d) of  
102 this section and the provisions of this section requiring a  
103 general plan for the municipality or county and a public hear-  
104 ing on the urban renewal project.

1 Section 6. Neighborhood and Communitywide Plans. (a) A  
2 municipality, county, or any public body authorized to perform  
3 planning work may prepare a general neighborhood renewal plan  
4 for an urban renewal area or areas, together with any adjoining  
5 areas having specially related problems which may be of such  
6 scope that urban renewal activities may have to be carried out  
7 in stages. Such plan may include, but is not limited to, a  
8 preliminary plan which:

9 (1) Outlines the urban renewal activities proposed for  
10 the area or areas involved.

11 (2) Provides a framework for the preparation of urban  
12 renewal plans.

13 (3) Indicates generally the land uses, population  
14 density, building coverage, prospective requirements for re-  
15 habilitation and improvement of property and portions of the  
16 area or areas contemplated for clearance and redevelopment.

17 A general neighborhood renewal plan shall, in the determina-  
18 tion of the local governing body, conform to the general plan  
19 of the locality as a whole.

20 (b) A municipality, county, or any public body authorized  
21 to perform planning work may prepare or complete a community-  
22 wide plan or program for urban renewal which shall conform to  
23 the general plan for the development of the municipality or coun-  
24 ty as a whole and may include, but is not limited to, identifi-  
25 cation of slum or blighted areas, measurement of blight, deter-  
26 mination of resources needed and available to renew such areas,  
27 identification of potential project areas and types of action  
28 contemplated, and scheduling of urban renewal activities.

29 [(c) Authority is hereby vested in every municipality and  
30 county to prepare, to adopt, and to revise from time to time a  
31 general plan for the physical development of the municipality  
32 or county as a whole (giving due regard to the environs and  
33 metropolitan surroundings), to establish and maintain a planning  
34 commission for such purpose and related planning activities,  
35 and to make available and to appropriate necessary funds there-  
36 for.]<sup>2</sup>

1 Section 7. Powers. Every municipality and county shall have  
2 all the powers necessary or convenient to carry out and effec-  
3 tuate the purposes and provisions of this act, including the  
4 following powers in addition to others herein granted:

5 (1) To undertake and carry out urban renewal projects and  
6 related activities within its area of operation; and to make  
7 and execute contracts and other instruments necessary or con-  
8 venient to the exercise of its powers under this act; and to  
9 disseminate slum clearance and urban renewal information.

10 (2) To provide or to arrange or contract for the furnishing  
11 or repair by any person or agency, public or private, of serv-  
12 ices, privileges, works, streets, roads, public utilities or  
13 other facilities for or in connection with an urban renewal  
14 project; to install, construct, and reconstruct streets, utili-  
15 ties, parks, playgrounds, and other public improvements; and to  
16 agree to any conditions that it may deem reasonable and

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2. This subsection is suggested for inclusion only in states where municipalities and counties lack legislative authorization for the preparation of a general plan.

17 appropriate attached to federal financial assistance and imposed  
18 pursuant to federal law relating to the determination of pre-  
19 vailing salaries or wages or compliance with labor standards, in  
20 the undertaking or carrying out of an urban renewal project and  
21 related activities, and to include in any contract let in con-  
22 nection with such a project and related activities, provisions  
23 to fulfill such of said conditions as it may deem reasonable  
24 and appropriate.

25 (3) Within its area of operation, to enter into any build-  
26 ing or property in any urban renewal area in order to make in-  
27 spections, surveys, appraisals, soundings or test borings, and  
28 to obtain an order for this purpose from a court of competent  
29 jurisdiction in the event entry is denied or resisted; to ac-  
30 quire by purchase, lease, option, gift, grant, bequest, devise,  
31 eminent domain, or otherwise, any real property (or personal  
32 property for its administrative purposes) together with any im-  
33 provements thereon; to hold, improve, clear, or prepare for re-  
34 development any such property; to mortgage, pledge, hypothecate,  
35 or otherwise encumber or dispose of any real property; to insure  
36 or provide for the insurance of any real or personal property  
37 or operations of the municipality or county against any risks  
38 or hazards, including the power to pay premiums on any such  
39 insurance; and to enter into any contracts necessary to effec-  
40 tuate the purpose of this act; but no statutory provision with  
41 respect to the acquisition, clearance, or disposition of prop-  
42 erty by public bodies shall restrict a municipality, county, or  
43 other public body exercising powers thereunder, in the exercise  
44 of such functions with respect to an urban renewal project and  
45 related activities, unless the legislature shall specifically  
46 so state.

47 (4) With the approval of the local government body:

48 (i) Prior to approval of an urban renewal plan, or  
49 approval of any modifications of the plan, to acquire real  
50 property in an urban renewal area, demolish and remove any  
51 structures on the property, and pay all costs related to the  
52 acquisition, demolition, or removal, including any administrative



53 or relocation expenses.

54 (ii) To assume the responsibility to bear any loss that  
55 may arise as the result of the exercise of authority under this  
56 subsection in the event that the real property is not made part  
57 of the urban renewal project.

58 (5) To invest any urban renewal funds held in reserve or  
59 sinking funds or any such funds not required for immediate dis-  
60 bursement, in property or securities in which savings banks may  
61 legally invest funds subject to their control; to redeem such  
62 bonds as have been issued pursuant to section 11 of this act at  
63 the redemption price established therein or to purchase such  
64 bonds at less than redemption price, all such bonds so redeemed  
65 or purchased to be cancelled.

66 (6) To borrow money and to apply for and accept advances,  
67 loans, grants, contributions, and any other form of financial  
68 assistance from the federal government, the state, county, or  
69 other public body, or from any sources, public or private, for  
70 the purposes of this act, and to give such security as may be  
71 required and to enter into and carry out contracts or agreements  
72 in connection therewith; and to include in any contract for  
73 financial assistance with the federal government for or with  
74 respect to an urban renewal project and related activities such  
75 conditions imposed pursuant to federal laws as the municipality  
76 or county may deem reasonable and appropriate and which are not  
77 inconsistent with the purposes of this act.

78 (7) Within its area of operation, to make or have made all  
79 surveys and plans necessary to the carrying out of the purposes  
80 of this act and to contract with any person, public or private,  
81 in making and carrying out such plans and to adopt or approve,  
82 modify, and amend such plans, which plans may include, but are  
83 not limited to:

84 (i) Plans for carrying out a program of voluntary or  
85 compulsory repair or rehabilitation of buildings and improve-  
86 ments.

87 (ii) Plans for the enforcement of state and local laws,  
88 codes, and regulations relating to the use of land and the use

89 and occupancy of buildings and improvements and to the compulsor:  
90 repair, rehabilitation, demolition, or removal of buildings and  
91 improvements.

92 (iii) Appraisals, title searches, surveys, studies,  
93 and other plans and work necessary to prepare for the under-  
94 taking of urban renewal projects and related activities.

95 (8) To develop, test, and report methods and techniques,  
96 and carry out demonstrations and other activities within its  
97 area of operation, for the prevention and the elimination of  
98 slums and urban blight and developing and demonstrating new or  
99 improved means of providing housing for families and persons of  
100 low income and to apply for, accept, and utilize grants of funds  
101 from the federal government for such purposes.

102 (9) To prepare plans for and assist in the relocation of  
103 persons (including individuals, families, business concerns,  
104 nonprofit organizations and others) displaced from an urban re-  
105 newal area, and to make relocation payments to or with respect  
106 to such persons for moving and readjustment expenses and losses  
107 of property for which reimbursement or compensation is not other-  
108 wise made, including the making of such payments financed by  
109 the federal government.

110 (10) To appropriate such funds and make such expenditures  
111 as may be necessary to carry out the purposes of this act, and  
112 to levy taxes and assessments for such purposes; to zone or re-  
113 zone any part of the municipality or county within its area of  
114 operation or make exceptions from building regulations; and to  
115 enter into agreements with a housing authority or an urban re-  
116 newal agency vested with urban renewal powers under section 16  
117 of this act (which agreements may extent over any period, not-  
118 withstanding any provision or rule of law to the contrary), re-  
119 specting action to be taken by such municipality or county pur-  
120 suant to any of the powers granted by this act.

121 (11) To close, vacate, plan, or replan streets, roads, side-  
122 walks, ways, or other places; and to plan or replan any part of  
123 the municipality or county.

124 (12) Within its area of operation, to organize, coordinate,

125 and direct the administration of the provisions of this act as  
126 they apply to such municipality or county in order that the ob-  
127 jective of remedying slum and blighted areas and preventing the  
128 causes thereof within such municipality or county may be most  
129 effectively promoted and achieved, and to establish such new  
130 office or offices of the municipality or county or to reorganize  
131 existing offices in order to carry out such purpose most effec-  
132 tively.

133 (13) To exercise all or any part or combination of powers  
134 herein granted.

1 Section 8. Cooperation Among Municipalities and Counties.<sup>3</sup>

2 (a) Any power or powers, privileges, or authority exercised or  
3 capable of exercise by a municipality or a county under this  
4 act may be exercised and enjoyed jointly with any other munici-  
5 pality or county, including but not limited to the preparation  
6 of urban renewal plans, the undertaking and carrying out of  
7 urban renewal projects and related activities, the power of  
8 eminent domain, and the issuance of bonds.

9 (b) Any two or more municipalities, two or more counties,  
10 or any combination thereof may enter into agreements with one  
11 another for joint or cooperative action pursuant to the provi-  
12 sions of this act. Entry into such agreements shall be author-  
13 ized by the local governing bodies of the participating munici-  
14 palities and counties.

15 (c) Agreements entered into pursuant to this section shall  
16 specify the following:

17 (1) The duration of the agreement.

18 (2) The precise organization, composition, and nature  
19 of any separate legal administrative entity created thereby

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3. Section 8 constitutes one method of authorizing two or more municipalities, counties, or combinations of municipalities and counties, to undertake urban renewal projects. It is possible that states which already have a general interlocal cooperation act would not need this specific authorization. Another method would be a separate regional urban renewal law. Each state must carefully consider its own constitutional and legal requirements in determining which method to use. Additionally, local counsel should be consulted particularly concerning bond issuances and other financing problems.

20 together with the powers delegated thereto.

21 (3) The purpose or purposes of the agreement.

22 (4) The manner of financing the joint or cooperative  
23 exercise of powers under this act and of establishing and main-  
24 taining a budget therefor.

25 (5) The permissible method or methods of terminating  
26 the agreement and for the disposal of property upon termination.

27 (6) Any other necessary or proper matters.

28 (d) In the event that the agreement does not establish a  
29 separate legal entity to conduct the joint or cooperative under-  
30 taking, the agreement shall, in addition to items 1, 3, 4, 5,  
31 and 6 enumerated in subdivision (c) hereof, contain the fol-  
32 lowing:

33 (1) Provisions for an administrator or a joint board  
34 responsible for administering the joint or cooperative under-  
35 taking. In the case of a joint board, municipalities and coun-  
36 ties party to the agreement shall be represented.

37 (2) The manner of acquiring, holding, and disposing of  
38 real and personal property used in the joint or cooperative  
39 undertaking.

40 (e) Every agreement made hereunder shall, prior to and as a  
41 condition precedent to its entry into force, be submitted to  
42 the attorney general who shall determine whether the agreement  
43 is in proper form and compatible with the laws of this state.  
44 The attorney general shall approve any agreement submitted to  
45 him hereunder unless he shall find that it does not meet the  
46 conditions set forth herein and shall detail in writing addressed  
47 to the local governing bodies of the municipalities and counties  
48 concerned the specific respects in which the proposed agreement  
49 fails to meet the requirements of law. Failure to disapprove  
50 an agreement submitted hereunder within sixty days of its sub-  
51 mission shall constitute approval thereof.

52 (f) Financing of joint projects by agreement shall be as  
53 provided by law.

54 (g) Prior to its entry into force, an agreement made pur-  
55 suant to this act shall be filed with the municipal or county

56 clerk of the respective municipalities or counties concerned  
57 and with the secretary of state.

58 (h) Any municipality or county entering into an agreement  
59 pursuant to this section may appropriate funds and may sell,  
60 lease, give, or otherwise supply the administrative joint board  
61 or other legal or administrative entity created to operate the  
62 joint or cooperative undertaking by providing personnel or serv-  
63 ices therefor.

64 (i) Any one or more municipalities or counties may contract  
65 with any one or more other municipalities or counties to perform  
66 any governmental service, activity, or undertaking which any  
67 entering into the contract are authorized by law to perform;  
68 but such contract shall be authorized by the local governing  
69 body of each party to the contract. Such contract shall set  
70 forth fully the purposes, powers, rights, objectives, and respon-  
71 sibilities of the contracting parties.

1 Section 9. Eminent Domain. (a) A municipality or county  
2 shall have the right to acquire by condemnation any interest in  
3 real property, including a fee simple title thereto, which it  
4 may deem necessary for or in connection with an urban renewal  
5 project and related activities under this act. A municipality  
6 or county may exercise the power of eminent domain in the manner  
7 provided in [insert appropriate statutory citation], and acts  
8 amendatory thereof or supplementary thereto, or it may exercise  
9 the power of eminent domain in the manner now or which may be  
10 hereafter provided by any other statutory provisions for the  
11 exercise of the power of eminent domain. Property already de-  
12 voted to a public use may be acquired in like manner; but no  
13 real property belonging to the United States, the state, or any  
14 political subdivision of the state, may be acquired without its  
15 consent.

16 (b) In any proceeding to fix or assess compensation for  
17 damages for the taking [or damaging]<sup>4</sup> of property, or any inter-  
18 est therein, through the exercise of the power of eminent domain

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4. Insert if required by state constitution.

19 or condemnation, evidence or testimony bearing upon the follow-  
20 ing matters shall be admissible and shall be considered in fix-  
21 ing such compensation or damages, in addition to evidence or  
22 testimony otherwise admissible:

23 (1) Any use, condition, occupancy, or operation of such  
24 property, which is unlawful or violative of, or subject to  
25 elimination, abatement, prohibition, or correction under, any  
26 law or any ordinance or regulatory measure of the state, county,  
27 municipality, other political subdivision, or any agency there-  
28 of, in which such property is located, as being unsafe, sub-  
29 standard, insanitary, or otherwise contrary to the public health,  
30 safety, or welfare.

31 (2) The effect on the value of such property, or any  
32 such use, condition, occupancy, or operation, or of the elimin-  
33 ation, abatement, prohibition, or correction of any such use,  
34 condition, occupancy, or operation.

35 (c) The foregoing testimony and evidence shall be admissible  
36 notwithstanding that no action has been taken by any public  
37 body or public officer toward the abatement, prohibition, elim-  
38 ination, or correction of any such use, condition, occupancy,  
39 or operation. Testimony or evidence that any public body or  
40 public officer charged with the duty or authority so to do has  
41 rendered, made or issued any judgment, decree, determination,  
42 or order for the abatement, prohibition, elimination, or  
43 correction of any such use, condition, occupancy, or operation  
44 shall be admissible and shall be prima facie evidence of the  
45 existence and character of such use, condition, or operation.

1 Section 10. Disposal of Property in Urban Renewal Area. (a)  
2 A municipality or county may sell, lease, or otherwise transfer  
3 real property or any interest therein acquired by it for an  
4 urban renewal project, and may enter into contracts with respect  
5 thereto, in an urban renewal area for residential, recreational,  
6 commercial, industrial, educational, or other uses or for public  
7 use, or may retain such property or interest for public use, in  
8 accordance with the urban renewal plan, subject to such covenants,  
9 conditions, and restrictions, including covenants running with the

10 land, as it may deem to be necessary or desirable to assist in  
11 preventing the development or spread of future slums or blighted  
12 areas or to otherwise carry out the purposes of this act; but  
13 the sale, lease, other transfer, or retention, and any agreement  
14 relating thereto, may be made only after the approval of the  
15 urban renewal plan by the local governing body. The purchasers  
16 or lessees and their successors and assigns shall be obligated  
17 to devote such real property only to the uses specified in the  
18 urban renewal plan, and may be obligated to comply with such  
19 other requirements as the municipality or county may determine  
20 to be in the public interest, including the obligation to begin  
21 within a reasonable time any improvements on such real property  
22 required by the urban renewal plan. Such real property or  
23 interest shall be sold, leased, otherwise transferred, or re-  
24 tained at not less than its fair value for uses in accordance  
25 with the urban renewal plan. In determining the fair value of  
26 real property for uses in accordance with the urban renewal  
27 plan, a municipality and county shall take into account and  
28 give consideration to the uses provided in such plan; the re-  
29 strictions upon, and the covenants, conditions, and obligations  
30 assumed by the purchaser or lessee or by the municipality or  
31 county retaining the property; and the objectives of such plan  
32 for the prevention of the recurrence of slum or blighted areas.  
33 The municipality or county in any instrument of conveyance to  
34 a private purchaser or lessee may provide that such purchaser  
35 or lessee shall be without power to sell, lease, or otherwise  
36 transfer the real property without the prior written consent of  
37 the municipality or county until he has completed the construc-  
38 tion of any or all improvements which he has obligated himself  
39 to construct thereon. Real property acquired by a municipality  
40 or county which, in accordance with the provisions of the urban  
41 renewal plan, is to be transferred, shall be transferred as  
42 rapidly as feasible in the public interest consistent with the  
43 carrying out of the provisions of the urban renewal plan. Any  
44 contract for such transfer and the urban renewal plan (or such

45 part or parts of such contract or plan as the municipality or  
46 county may determine) may be recorded in the land records of  
47 the [appropriate jurisdiction] in such manner as to afford actual  
48 or constructive notice thereof.

49 (b) A municipality and county may dispose of real property  
50 in an urban renewal area to private persons only under such  
51 reasonable competitive bidding procedures as it shall prescribe  
52 or as hereinafter provided in this subsection. A municipality  
53 and county may, by public notice by publication in a newspaper  
54 having a general circulation in the community (thirty days prior  
55 to the execution of any contract to sell, lease, or otherwise  
56 transfer real property and prior to the delivery of any instru-  
57 ment of conveyance with respect thereto under the provisions of  
58 this section), invite proposals from and make available all  
59 pertinent information to private redevelopers or any persons  
60 interested in undertaking to redevelop or rehabilitate an urban  
61 renewal area, or any part thereof. Such notice shall identify  
62 the area, or portion thereof, and shall state that proposals  
63 shall be made by those interested within thirty days after the  
64 date of publication of such notice, and that such further in-  
65 formation as is available may be obtained at such office as  
66 shall be designed in said notice. The municipality or county  
67 shall consider all such redevelopment or rehabilitation proposals  
68 and the financial and legal ability of the persons making such  
69 proposals to carry them out, and may negotiate with any persons  
70 for proposals for the purchase, lease, or other transfer of any  
71 real property acquired by the municipality or county in the  
72 urban renewal area. The municipality or county may accept such  
73 proposal as it deems to be in the public interest and in further-  
74 ance of the purposes of this act; but a notification of inten-  
75 tion to accept such proposal shall be filed with the governing  
76 body not less than thirty days prior to any such acceptance.  
77 Thereafter, the municipality or county may execute such contract  
78 in accordance with the provisions of subsection (a) and deliver  
79 deeds, leases, and other instruments and take all steps neces-  
80 sary to effectuate such contract.



81 (c) A municipality and county may temporarily operate and  
82 maintain real property acquired by it in an urban renewal area  
83 for or in connection with an urban renewal project pending the  
84 disposition of the property as authorized in this act, without  
85 regard to the provisions of subsection (a) above, for such uses  
86 and purposes as may be deemed desirable even though not in con-  
87 formity with the urban renewal plan.

88 (d) Any real property acquired pursuant to section 7 para. (4) may  
89 be disposed of without regard to other provisions of this sec-  
90 tion if the local governing body has consented to the disposal.

91 (e) Notwithstanding any other provisions of this act, where  
92 the municipality or county is situated in an area designated as  
93 a redevelopment area under the Federal Area Redevelopment Act  
94 (Public Law 87-27), or any act supplementary thereto, land in  
95 an urban renewal project area designated under the urban renewal  
96 plan for industrial or commercial uses may be disposed of to  
97 any public body or nonprofit corporation for subsequent disposi-  
98 tion as promptly as practicable by the public body or corpora-  
99 tion for redevelopment in accordance with the urban renewal plan,  
100 and only the purchaser from or lessee of the public body or cor-  
101 poration, and their assignees, shall be required to assume the  
102 obligation of beginning the building of improvements within a  
103 reasonable time. Any disposition of land to a public body or  
104 corporation under this subsection shall be made at its fair  
105 value for uses in accordance with the urban renewal plan.

1 Section 11. Issuance of Bonds.<sup>5</sup> (a) A municipality and  
2 county shall have power to issue bonds from time to time in its  
3 discretion to finance the undertaking of any urban renewal proj-  
4 ect under this act, including, without limiting the generality  
5 thereof, the payment of principal and interest upon any advances  
6 for surveys and plans or preliminary loans, and shall also have

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5. In some states, municipalities and counties may already have adequate statutory bonding powers which can be used for urban renewal purposes. In these cases, these bonding powers could be incorporated by reference in this bill. Local counsel should be consulted concerning the legal acceptability of this method.

7 power to issue refunding bonds for the payment or retirement of  
8 the bonds previously issued by it. Bonds shall be made payable,  
9 as to both principal and interest, solely from the income, pro-  
10 ceeds, revenues, and funds of the municipality or county derived  
11 from or held in connection with its undertaking and carrying out  
12 of urban renewal projects under this act; but payment of the  
13 bonds, both as to principal and interest, may be further secured  
14 by a pledge of any loan, grant, or contribution from the fed-  
15 eral government or other source, in aid of any urban renewal  
16 projects of the municipality or county under this act, and by  
17 a mortgage of any such urban renewal projects, or any part  
18 thereof, title to which is in the municipality or county.

19 (b) Bonds issued under this section shall not constitute an  
20 indebtedness within the meaning of any constitutional or statu-  
21 tory debt limitation or restriction, and shall not be subject  
22 to the provisions of any other law or charter relating to the  
23 authorization, issuance, or sale of bonds. Bonds issued under  
24 the provisions of this act are declared to be issued for an  
25 essential public and governmental purpose and, together with  
26 interest thereon and income therefrom, shall be exempted from  
27 all taxes.

28 (c) Bonds issued under this section shall be authorized by  
29 resolution or ordinance of the local governing body and may be  
30 issued in one or more series and shall bear such date or dates,  
31 be payable upon demand or mature at such time or times, bear  
32 interest at such rate or rates, not exceeding six per centum  
33 per annum, be in such denomination or denominations, be in such  
34 form either with or without coupon or registered, carry such  
35 conversion or registration privileges, have such rank or prior-  
36 ity, be executed in such manner, be payable in such medium of  
37 payment, at such place or places, and be subject to such terms  
38 of redemption (with or without premium), be secured in such  
39 manner, and have such other characteristics, as may be provided  
40 by such resolution or ordinance, or trust indenture or mortgage  
41 issued pursuant thereto.

42 (d) Bonds may be sold at not less than par at public sales

43 held after notice published prior to such sale in a newspaper  
44 having a general circulation in the area of operation and in  
45 such other medium of publication as the municipality and county  
46 may determine or may be exchanged for other bonds on the basis  
47 of par; but bonds may be sold to the federal government at  
48 private sale at not less than par, and, in the event less than  
49 all of the authorized principal amount on the bonds is sold to  
50 the federal government, the balance may be sold at private sale  
51 at not less than par at an interest cost to the municipality or  
52 county of not to exceed the interest cost to the municipality  
53 or county of the portion of the bonds sold to the federal gov-  
54 ernment.

55 (e) In case any of the public officials of the municipality  
56 or county whose signatures appear on any bonds or coupons  
57 issued under this act shall cease to be such officials before  
58 the delivery of the bonds, such signatures shall, nevertheless,  
59 be valid and sufficient for all purposes, the same as if the  
60 officials had remained in office until such delivery. Any pro-  
61 visions of any law to the contrary notwithstanding, any bonds  
62 issued pursuant to this act shall be fully negotiable.

63 (f) In any suit, action, or proceeding involving the validity  
64 or enforceability of any bond issued under this act or the  
65 security therefor, any bond reciting in substance that it has  
66 been issued by the municipality or county in connection with an  
67 urban renewal project, as herein defined, shall be conclusively  
68 deemed to have been issued for such purpose and the project  
69 shall be conclusively deemed to have been planned, located, and  
70 carried out in accordance with the provisions of this act.

1 Section 12. Bonds as Legal Investments. All banks, trust  
2 companies, bankers, savings banks and institutions, building  
3 and loan associations, savings and loan associations, investment  
4 companies and other persons carrying on a banking or investment  
5 business; all insurance companies, insurance associations, and  
6 other persons carrying on an insurance business; and all execu-  
7 tors, administrators, curators, trustees, and other fiduciaries,  
8 may legally invest any sinking funds, moneys, or other funds

9 belonging to them or within their control in any bonds or other  
10 obligations issued by a municipality or county pursuant to this  
11 act or by any urban renewal agency or housing authority vested  
12 with urban renewal project powers under section 16 of this act;  
13 but the bonds and other obligations shall be secured by an  
14 agreement between the issuer and the federal government in which  
15 the issuer agrees to borrow from the federal government and the  
16 federal government agrees to lend to the issuer, prior to the  
17 maturity of such bonds or other obligations, moneys in any  
18 amount which (together with any other moneys irrevocably com-  
19 mitted to the payment of principal and interest on the bonds or  
20 other obligations) will suffice to pay the principal of the  
21 bonds or other obligations with interest to maturity thereon,  
22 which moneys under the terms of said agreement are required to  
23 be used for the purpose of paying the principal of and the inter-  
24 est on the bonds or other obligations at their maturity. Bonds  
25 and other obligations shall be authorized security for all pub-  
26 lic deposits. It is the purpose of this section to authorize  
27 any persons, political subdivisions and officers, public or  
28 private, to use any funds owned or controlled by them for the  
29 purchase of any bonds or other obligations. Nothing contained  
30 in this section with regard to legal investments shall be con-  
31 strued as relieving any person of any duty of exercising reason-  
32 able care in selecting securities.

1 Section 13. Property Exempt from Taxes and from Levy and  
2 Sale by Virtue of an Execution. (a) All property of a munici-  
3 pality or county, including funds, owned or held by it for the  
4 purpose of this act shall be exempt from levy and sale by virtue  
5 of an execution, and no execution or other judicial process  
6 shall issue against the same nor shall judgment against a mu-  
7 nicipality or county be a charge or lien upon such property;  
8 but the provisions of this section shall not apply to or limit  
9 the right of obligees to pursue any remedies for the enforce-  
10 ment of any pledge or lien given pursuant to this act by a  
11 municipality or county on its rents, fees, grants, or revenues  
12 from urban renewal projects.

13 (b) The property of a municipality or county, acquired or  
14 held for the purposes of this act, is declared to be public  
15 property used for essential public and governmental purposes  
16 and such property shall be exempt from all taxes of the munici-  
17 pality, the county, the state, or any political subdivision  
18 thereof; but such tax exemption shall terminate when the munici-  
19 pality or county sells, leases, or otherwise disposes of the  
20 property in an urban renewal area to a purchaser or lessee which  
21 is not a public body entitled to tax exemption with respect to  
22 the property.

1 Section 14. Cooperation by Public Bodies. (a) For the  
2 purpose of aiding in the planning, undertaking, or carrying out  
3 of an urban renewal project and related activities authorized  
4 by this act, any public body may, upon such terms, with or with-  
5 out consideration, as it may determine:

6 (1) Dedicate, sell, convey, or lease any of its inter-  
7 est in any property or grant easements, licenses, or other  
8 rights or privileges therein to a municipality or county.

9 (2) Incur the entire expense of any public improvements  
10 made by such public body in exercising the powers granted in  
11 this section.

12 (3) Do any and all things necessary to aid or cooper-  
13 ate in the planning or carrying out of an urban renewal plan  
14 and related activities.

15 (4) Lend, grant, or contribute funds to a municipality  
16 or county, and borrow money and apply for and accept advances,  
17 loans, grants, contributions, and any other form of financial  
18 assistance from the federal government, the state, county, or  
19 other public body, or from any other source.

20 (5) Enter into agreements (which may extend over any  
21 period, notwithstanding any provision or rule of law to the  
22 contrary) with the federal government, a municipality, county,  
23 or other public body respecting action to be taken pursuant to  
24 any of the powers granted by this act, including the furnishing  
25 of funds or other assistance in connection with an urban renewal  
26 project and related activities.

27           (6) Cause public buildings and public facilities, in-  
28 cluding parks, playgrounds, recreational, community, educational,  
29 water, sewer or drainage facilities, or any other works which  
30 it is otherwise empowered to undertake to be furnished; furnish,  
31 dedicate, close, vacate, pave, install, grade, regrade, plan,  
32 or replan streets, roads, sidewalks, ways, or other places;  
33 plan or replan, zone or rezone any part of the public body or  
34 make exceptions from building regulations; and cause administra-  
35 tive and other services to be furnished to the municipality or  
36 county.

37 If at any time title to or possession of any urban renewal proj-  
38 ect is held by any public body or governmental agency, other  
39 than the municipality or county which is authorized by law to  
40 engage in the undertaking, carrying out, or administration of  
41 urban renewal projects and related activities (including any  
42 agency or instrumentality of the United States of America), the  
43 provisions of the agreements referred to in this section shall  
44 inure to the benefit of and may be enforced by such public body  
45 or governmental agency. As used in this subsection, the terms  
46 "municipality" and "county" shall also include an urban renewal  
47 agency or a housing authority vested with all of the urban re-  
48 newal powers pursuant to the provisions of section 16.

49       (b) Any sale, conveyance, lease, or agreement provided for  
50 in this section may be made by a public body without appraisal,  
51 public notice, advertisement, or public bidding.

52       (c) For the purpose of aiding in the planning, undertaking,  
53 or carrying out of any urban renewal project and related activi-  
54 ties of an urban renewal agency or a housing authority here-  
55 under, a municipality and county may (in addition to its other  
56 powers and upon such terms, with or without consideration, as  
57 it may determine) do and perform any or all of the actions or  
58 things which, by the provisions of subsection (a) of this sec-  
59 tion, a public body is authorized to do or perform, including  
60 the furnishing of financial and other assistance.

61       (d) For the purposes of this section, or for the purpose of  
62 aiding in the planning, undertaking, or carrying out of an

63 urban renewal project and related activities of a municipality  
64 or county, such municipality may (in addition to any authority  
65 to issue bonds pursuant to section 11) issue and sell its gen-  
66 eral obligation bonds. Any bonds issued by a municipality or  
67 county pursuant to this section shall be issued in the manner  
68 and within the limitations prescribed by the applicable laws of  
69 this state for the issuance and authorization of general obliga-  
70 tion bonds by such municipality or county. Nothing in this sec-  
71 tion shall limit or otherwise adversely affect any other section  
72 of this act.

1       Section 15. Title of Purchaser. Any instrument executed by  
2 a municipality or county and purporting to convey any right,  
3 title, or interest in any property under this act shall be con-  
4 clusively presumed to have been executed in compliance with the  
5 provisions of this act insofar as title or other interest of  
6 any bona fide purchasers, lessees, or transferees of the prop-  
7 erty is concerned.

1       Section 16. Exercise of Powers in Carrying Out Urban Renewal  
2 Project and Related Activities. (a) A municipality or county  
3 may itself exercise its urban renewal powers (as herein defined)  
4 or may, if the local governing body by resolution determines  
5 such action to be in the public interest, elect to have such  
6 powers exercised by the urban renewal agency (created by section  
7 17) or by its housing authority, if one exists or is subsequently  
8 established. In the event the local governing body makes such  
9 determination, the urban renewal agency or the housing authority,  
10 as the case may be, shall be vested with all of the urban re-  
11 newal powers in the same manner as though all such powers were  
12 conferred on such agency or authority instead of the munici-  
13 pality or county. If the local governing body does not elect  
14 to make such determination, the municipality or county in its  
15 discretion may exercise its urban renewal powers through a  
16 board or commission or through such officers as its local gov-  
17 erning body may by resolution determine.

18       (b) As used in this section, the term "urban renewal powers"  
19 shall include the rights, powers, functions, and duties of a

20 municipality or county under this act, except the following:

21 (1) The power to determine an area to be a slum or  
22 blighted area or combination thereof and to designate such area  
23 as appropriate for an urban renewal project and to hold any pub-  
24 lic hearings required with respect thereto.

25 (2) The power to approve:

26 (i) Urban renewal plans and modifications thereof.

27 (ii) General neighborhood renewal plans and com-  
28 munitywide plans or programs for urban renewal.

29 (iii) The acquisition, demolition, removal, or  
30 disposal of property as provided in section 7 paragraph (4).

31 (3) The power to establish a general plan for the  
32 locality as a whole.

33 (4) The power to carry out a program of code enforce-  
34 ment.

35 (5) The power to make the determinations and findings  
36 provided for in section 3, section 4, and section 5(d).

37 (6) The power to issue general obligation bonds under  
38 section 14.

39 (7) The power to assume the responsibility to bear loss  
40 as provided in section 7 paragraph (4).

41 (8) The power to appropriate funds, levy taxes and  
42 assessments, and to exercise other powers provided for in sec-  
43 tion 7(i).

1 Section 17. Urban Renewal Agency. (a) There is hereby  
2 created in each municipality and county a public body corporate  
3 and politic to be known as the "urban renewal agency" of the  
4 municipality or county; but the agency shall not transact any  
5 business or exercise its powers hereunder until or unless the  
6 local governing body has made the finding prescribed in section  
7 4 and has elected to have the urban renewal powers exercised by  
8 an urban renewal agency as provided in section 16.

9 (b) If the urban renewal agency is authorized to transact  
10 business and exercise powers hereunder, the mayor or the county  
11 chairman, as appropriate [by and with the advice and consent of  
12 of the local governing body], shall appoint a board of the urban



13 renewal agency which shall consist of five commissioners.<sup>6</sup> The  
14 term of office of each such commissioner shall be one year.

15 (c) A commissioner shall receive no compensation for his  
16 services but shall be entitled to the necessary expenses, in-  
17 cluding traveling expenses, incurred in the discharge of his  
18 duties. Each commissioner shall hold office until his succes-  
19 sor has been appointed and has qualified. A certificate of the  
20 appointment or reappointment of any commissioner shall be filed  
21 with the clerk of the municipality or county, as the case may  
22 be, and such certificate shall be conclusive evidence of the  
23 due and proper appointment of the commissioner.

24 (d) The powers of an urban renewal agency shall be exer-  
25 cised by the commissioners thereof. A majority of the commis-  
26 sioners shall constitute a quorum for the purpose of conducting  
27 business and exercising the powers of the agency and for all  
28 other purposes. Action may be taken by the agency upon a vote  
29 of a majority of the commissioners present, unless in any case  
30 the bylaws shall require a larger number. Any persons may be  
31 appointed as commissioners if they reside within the area of  
32 operation of the agency (which shall be coterminous with the  
33 area of operation of the municipality or county) and are other-  
34 wise eligible for such appointments under this act.

35 (e) The mayor or county chairman, as appropriate, shall  
36 designate a chairman and vice chairman from among the commis-  
37 sioners.<sup>7</sup> An agency may employ an executive director, techni-  
38 cal experts and such other agents and employees, permanent and  
39 temporary, as it may require, and determine their qualifica-  
40 tions, duties, and compensation. For legal service as it may  
41 require, an agency may employ or retain its own counsel and  
42 legal staff. An agency authorized to transact business and  
43 exercise powers under this act shall file, with the local

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6. Variations in appointive practices among the states may re-  
quire that other language be used to indicate what official or body  
appoints members to the agency board and how officers of the agency  
board are selected. Care should be taken to provide proper proce-  
dures for both municipalities and counties.

7. See footnote 6.

44 governing body, on or before March 31 of each year, a report of  
45 its activities for the preceding calendar year, which report  
46 shall include a complete financial statement setting forth its  
47 assets, liabilities, income, and operating expense as of the  
48 end of the calendar year. At the time of filing the report,  
49 the agency shall publish in a newspaper of general circulation  
50 in the community a notice to the effect that such report has  
51 been filed with the municipality or county and that the report  
52 is available for inspection during business hours in the office  
53 of the municipal or county clerk and in the office of the agency.

54 (f) For inefficiency or neglect of duty or misconduct in  
55 office, a commissioner may be removed only after a hearing and  
56 after he shall have been given a copy of the charges at least  
57 ten days prior to such hearings and have had an opportunity to  
58 be heard in person or by counsel.

1 Section 18. Interested Public Officials, Commissioners, or  
2 Employees. No public official or employee of a municipality or  
3 county board or commission, and no commissioner or employee of  
4 a housing authority or urban renewal agency which has been  
5 vested by a municipality or county with urban renewal powers  
6 under section 16 shall voluntarily acquire any personal interest,  
7 direct or indirect, in any urban renewal project, or in any  
8 property included or planned to be included in any urban renewal  
9 project of the municipality or county project. If any officer,  
10 commissioner, or employee involuntarily acquires any interest,  
11 or voluntarily or involuntarily acquired any interest prior to  
12 appointment or employment as an officer, commissioner, or em-  
13 ployee, he shall immediately disclose his interest in writing to  
14 the public body exercising urban renewal powers, and the dis-  
15 closure shall be entered upon its minutes, and the officer,  
16 commissioner, or employee shall not participate in any action  
17 by the public body relating to the property or contract in which  
18 he has any interest. Any violation of the foregoing provisions  
19 of the section constitutes misconduct in office. This section  
20 shall not be applicable to the acquisition of any interest in  
21 bonds of the municipality, county, or authority issued in

22 connection with any urban renewal project, or to the execution  
23 of agreements by banking institutions for the deposit or handling  
24 of funds in connection with a project or to acting as a trustee  
25 under any trust indenture, or to utility services the rates for  
26 which are fixed or controlled by a government agency.

1     Section 19. State Aid. (a) The [insert name of appropriate  
2 agency of state government] shall provide technical and advisory  
3 assistance, upon request, to municipalities and counties for an  
4 urban renewal project as defined in this act. Such assistance  
5 shall include, but need not be limited to, preparation of work-  
6 able programs, relocation planning, special statistical and  
7 other studies and compilations, technical evaluations and in-  
8 formation, training activities, professional services, surveys,  
9 reports, documents, and any other similar service functions.<sup>8</sup>

10     (b) The [appropriate state agency] may make urban renewal  
11 grants to municipalities and counties for [     ] percent of the  
12 individual net project costs. Advances from capital grants may  
13 be made for relocation planning, pursuant to regulations adopted  
14 by the [appropriate state agency]. Grants shall be made from  
15 funds appropriated by the legislature for these purposes and  
16 shall be exclusive of those costs reimbursed or paid by grants  
17 from the federal government.<sup>9</sup>

1     Section 20. Separability. [Insert separability clause.]

1     Section 21. Effective Date. [Insert effective date.]

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8. States may wish to authorize provision of such technical services to local governments on a reimbursable basis. However, rather than provide authorization within this statute, such states might consider a separate act providing general authorization for all state agencies to provide technical services as proposed in the draft bill, "State Technical Services for Local Governments," page 227 of this publication.

9. The draft bill, "State Financial Assistance and Channelization of Federal Grant Programs for Urban Development," on page 220, gives the states a meaningful and effective role in federal programs of grants-in-aid to local governments for urban development. States may wish to consider the provisions set forth in this bill as guidelines in drafting this subsection or passage of a separate act to encompass several programs in the federally aided field of local activity.

## LOW-RENT HOUSING FOR LOW-INCOME FAMILIES

In most metropolitan areas throughout the country the central city is making strong efforts to strengthen and renew its deteriorating and blighted neighborhoods. In many county and suburban areas, which surround these central cities, the problems are not yet so formidable, although they are likely to become so as the suburbs grow, particularly the older ones whose industry and residential character is becoming more like the central cities they border.

All but two states have legislation authorizing the provision of low-rent housing by municipalities. Forty-two states enable counties to provide low-rent housing for families of low income, but according to the best information available, suburban participation in public housing programs has been limited in spite of the large number of states authorizing such projects.

Notwithstanding the relatively small amount of current county and suburban activity, low-rent housing programs are needed and should be carried out in all parts of most of our metropolitan areas. The Advisory Commission on Intergovernmental Relations has recommended:

That states enact legislation authorizing counties in metropolitan areas to provide urban renewal and public housing services to unincorporated areas and small municipalities; and further provide for financial and technical assistance to the counties as well as municipalities for establishing such services and coordinating their administration, especially in multi-county metropolitan areas.<sup>1</sup>

Increased county responsibility for low-rent housing programs would tend to broaden the area of jurisdiction by including unincorporated areas that do not have programs of their own. Cooperation between counties and city housing agencies, and even joint city-county programs in certain cases, would be mutually advantageous. Such cooperation is fairly common where county programs now exist.

County low-rent housing powers would not exclude continued exercise of similar powers by municipal governments and, to the contrary, might facilitate the programs of small municipalities which could not maintain full professional staffs of their own or provide adequate relocation housing within their own borders. Large municipalities within counties, especially major central cities, will undoubtedly want to continue using their own highly developed staffs, with the counties performing services and sponsoring low-rent housing projects only in unincorporated areas. Where central city housing staff is available, a county might find it advantageous

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1. Advisory Commission on Intergovernmental Relations, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, (Washington: U. S. Government Printing Office, 1965), p. 114.

to contract with it for staff services. The indispensable role of the counties is that of project sponsor and provider of workable program certification in unincorporated areas where there is no other government capable of performing this role.

Many counties, both within and outside metropolitan areas, may have large rural populations that might resist having the county provide low-rent housing services. Residents of a municipality having an active housing program of its own might also resist contributing to a county program out of general county revenues. In such situations, the Commission has recommended that it may be appropriate to create a county subordinate tax area in order to administer and finance a needed service in the selected area. At least 20 states currently utilize the subordinate taxing area device to provide governmental services. Draft legislation establishing county subordinate taxing areas may be found on page 107 of the 1967 State Legislative Program of the Advisory Commission on Intergovernmental Relations.

State programs of technical and financial assistance can do much to encourage needed low-rent housing programs in small suburban jurisdictions and outlying unincorporated areas. Kentucky and Maine, for example, provide localities with staff assistance to prepare local workable programs needed to qualify for Federal urban renewal and low-rent housing grants and to advise local officials on planning and carrying out their programs. The state might also stimulate local programs by matching the local share of costs. Where the establishment of a local housing agency in small municipalities and unincorporated areas is impractical, the state itself might undertake this responsibility.

States already authorizing municipalities and counties to undertake low-rent housing for low-income families may still find it useful to review the following draft bill for two reasons. First, the bill contains clarifying language concerning the eligibility of local activities for federal assistance for programs of low-rent housing in private accommodations under the provisions of the Housing and Urban Development Act of 1965. Existing state low-rent housing laws may require amendatory legislation in order for states and localities to receive the full benefits from the federal program.

Second, the draft legislation places the housing responsibility in the hands of the general-purpose unit of government rather than in a separate authority. This statutory approach differs from most existing state legislation where housing powers are exercised by independent housing authorities. The governing body may exercise its housing powers through a board or a commissioner or through such offices of a municipality or county as it may by resolution determine. Inter-county or county-municipal arrangements may also be utilized to provide low-rent housing. If the local governing body itself does not choose to exercise low-rent housing powers, it may have such powers carried out by an urban renewal agency or by the low-rent housing authority, if one exists or is subsequently established

in the community. The housing authority or agency then is vested with all the housing powers in the same manner as though all powers were vested in the local governing body. The authority or agency, however, is given limited autonomy. It cannot proceed with a housing project without approval of the project by the local governing body.

The bill would permit political subdivisions to enter into interlocal agreements to jointly or cooperatively undertake low-rent housing activities. The initiative in such joint undertakings is left with the localities themselves.

So that states may assume an appropriate role, provision is made for state technical and financial assistance to municipalities and counties in planning and carrying out low-rent housing activities.

In some states it may be desirable to authorize a state agency to exercise the powers given to municipalities and counties under this act. The state could then undertake urban renewal projects in small communities and unincorporated areas where carrying out a program would otherwise be impracticable or impossible. Any state, wishing to follow this course, might add appropriate provision to the suggested act. In this case, a finding should be added to section 1 of the act and a new section drafted specifying appropriate procedures to carry out this function.

#### Suggested Legislation

[Title should conform to state requirements.  
The following is a suggestion: "An act providing for municipalities and counties to undertake low-rent housing for low-income families."]

(Be it enacted, etc.)

1        Section 1. Declaration of Policy and Purpose. It is here-  
2 by declared to be the policy of this state to promote the gen-  
3 eral welfare of its citizens to remedy unsafe and insanitary  
4 housing conditions and the acute shortage of decent, safe, and  
5 sanitary dwellings for families of low income, in urban and  
6 rural areas, that are injurious to the health, safety, and  
7 morals of the residents of the state. It is the policy of the  
8 state to make adequate provision of housing for persons of low  
9 income, for elderly persons of low income, for persons of low  
10 income who are displaced in the rehabilitation, clearance, or  
11 redevelopment of slums and blighted areas or as the result of  
12 other governmental action, and for veterans of low income who

13 are unable to provide themselves with decent housing on the  
14 basis of benefits available to them though certain government  
15 guarantees of loans for purchase of residential property The  
16 provision of safe and sanitary dwelling accommodations at rents  
17 or prices which persons of low income can afford will materially  
18 assist municipalities and counties in developing more desirable  
19 neighborhoods and alleviating poverty in this state. It is  
20 the purposes of this act to enable municipalities and counties  
21 to meet these problems by providing low-rent housing for low-  
22 income persons and to encourage cooperation between political  
23 subdivisions thereby making available low-rent housing facili-  
24 ties in all areas of the state. It is also the purpose of this  
25 act to provide state technical services and financial assist-  
26 ance to municipalities and counties unable to provide low-rent  
27 housing for families of low income.<sup>1</sup>

1 Section 2. Definitions. The following terms, wherever used  
2 or referred to in this act, have the following respective mean-  
3 ings, unless a different meaning clearly appears from the con-  
4 text:

5 (1) "Housing authority" or "authority" means any public  
6 body corporate and politic created by, or pursuant to, this  
7 act.

8 (2) "Municipality" means any [city, village, borough, or  
9 town], but not a county

10 (3) "County" means any county in the state.

11 (4) "Public body" means the state and any municipality or  
12 county; and any commission, district, authority, agency, sub-  
13 division or any department, agency, instrumentality, corporate  
14 or otherwise, of any of the foregoing.

15 (5) "Governing body" means the [council] or [board of com-  
16 missioners] or other legislative body charged with governing  
17 the municipality or county, as the case may be.

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1. If state financial assistance is not to be included in  
this bill, this sentence should be omitted.

18 (6) "Mayor" means the mayor of the municipality or the  
19 officer thereof charged with the duties customarily imposed on  
20 the mayor or executive head of a municipality.

21 (7) "County chairman" means the presiding officer of a  
22 county governing board.

23 (8) "Clerk" means the municipal clerk or the county clerk,  
24 as the case may be, or the officer charged with the duties cus-  
25 tomarily imposed on such clerk.

26 (9) "Federal government" means any department, agency, or  
27 instrumentality, corporate or otherwise, of the United States  
28 of America.

29 (10) "Area of operation" means (i) in the case of a munici-  
30 pality, the area within its boundaries, (ii) in the case of a  
31 county, the area within its boundaries, (iii) in the case of  
32 combined operations of any of the foregoing, the area comprising  
33 the operating area of all the municipalities and counties so  
34 combining, and (iv) in the case of a housing authority, all the  
35 area of operation of the municipality or county, or the com-  
36 bined areas of two or more municipalities and counties, for  
37 which the housing authority is established.

38 (11) "Slum" means any area where dwellings predominate  
39 which by reason of dilapidation, overcrowding, faulty arrange-  
40 ment or design, lack of ventilation, light, or sanitary facili-  
41 ties, or any combination of these factors, are detrimental to  
42 safety, health, and morals.

43 (12) "Housing project" or "project" means any work or under-  
44 taking (on contiguous or non-contiguous sites): (i) to demolish,  
45 clear, or remove buildings from any slum area; or (ii) to pro-  
46 vide, or assist in providing (by any suitable method, including  
47 but not limited to: rental; sale of individual units of single  
48 or multifamily structures under conventional, condominium, or  
49 cooperative sales contract; lease-purchase agreement; loans;  
50 or subsidizing of rentals or charges), decent, safe and sani-  
51 tary urban or rural dwellings, apartments, or other living  
52 accommodations for persons of low income; or (iii) to accomplish



53 a combination of the foregoing. This work or undertaking may  
54 include buildings, land, equipment, facilities, and other real  
55 or personal property for necessary, convenient, or desirable  
56 appurtenances; streets, sewers, water service, utilities, parks,  
57 site preparation and landscaping; and facilities for administra-  
58 tive, community, health, recreational, welfare, or other pur-  
59 poses. The term "housing project" or "project" also may be  
60 applied to the planning of the buildings and other improvements,  
61 the acquisition of property or any interest therein, the demoli-  
62 tion of existing structures, the construction, reconstruction,  
63 rehabilitation, alteration or repair of the improvements and all  
64 other work in connection therewith; and the term includes all  
65 other real and personal property and all tangible or intangible  
66 assets held or used in connection with the housing project.

67 (13) "Persons of low income" means persons or families who  
68 (as determined by the public body undertaking a project) cannot  
69 afford to pay the amounts at which private enterprise unaided  
70 by public subsidy is providing a substantial supply of decent,  
71 safe, and sanitary housing.

72 (14) "Bonds" means any notes, interim certificates, debentures,  
73 or other obligations issued pursuant to this act.

74 (15) "Real property" means all lands, including improve-  
75 ments and fixtures thereon, and property of any nature appurte-  
76 nant thereto, or used in connection therewith, and every estate,  
77 interest and right, legal or equitable, therein, including terms  
78 for years.

79 (16) "Obligee" means any bondholder, agent, or trustee for  
80 any bondholder, or lessor demising property used in connection  
81 with a project, or any assignee or assignees of such lessor's  
82 interest or any part thereof, and the federal government when  
83 it is a party to any contract respecting the project.

84 (17) "Persons engaged in national defense activities" means  
85 persons in the armed forces of the United States, employees of  
86 the Department of Defense of the United States, and workers  
87 engaged or to be engaged in activities connected with national

88 defense. The term also includes the families of the persons,  
89 employees, and workers who reside with them.

90 (18) "Major disaster" means any flood, drought, fire,  
91 hurricane, earthquake, storm, or other catastrophe which, in  
92 the determination of the governing body is of sufficient sev-  
93 erity and magnitude to warrant the use of available resources  
94 of the federal, state, and local governments to alleviate the  
95 damage, hardship, or suffering caused thereby.

96 (19) "Elderly" means a person who meets the age, disability  
97 or other conditions established by regulation of the municipalit  
98 or county.

99 (20) "Handicapped" means a person whose functioning is sub-  
100 stantially impaired, as determined in accordance with regula-  
101 tions established by the municipality or county.

102 (21) "Board" or "Commission" means a board, commission,  
103 department, division, office, body or other unit of the munici-  
104 pality or county or combinations of either or both of the fore-  
105 going, authorized to provide low-rent housing for low-income  
106 families.

1 Section 3. Finding of Necessity by Local Governing Body.

2 No municipality or county shall exercise the authority thereafter  
3 conferred upon municipalities and counties by this act until  
4 after its governing body shall have adopted a resolution find-  
5 ing that (1) insanitary or unsafe inhabited dwelling accommoda-  
6 tions exist in the municipality or county, or (2) there is a  
7 shortage of safe and sanitary dwelling accommodations in the  
8 municipality or county available to persons of low income at  
9 rentals or prices they can afford.

1 Section 4. Powers. Every municipality and county shall  
2 have all the powers necessary or convenient to carry out and  
3 effectuate the purposes and provisions of this act, including  
4 the following powers in addition to others herein granted:

5 (1) To prepare, carry out, and operate projects and to  
6 provide for the acquisition, construction, reconstruction, re-  
7 habilitation, improvement, extension, alteration, or repair of  
8 any project or any part thereof, and to make and execute con-

9 tracts and other instruments necessary or convenient to the  
10 exercise of its powers.

11 (2) To undertake and carry out studies and analyses of  
12 housing needs within its area of operation and ways of meeting  
13 such needs (including data with respect to population and family  
14 groups and the distribution thereof according to income groups,  
15 the amount and quality of available housing and its distribu-  
16 tion according to rentals and sales prices, employment, wages,  
17 and other factors affecting the local housing needs and the  
18 meeting thereof) and to make the results of such studies and  
19 analyses available to the public and the building, housing and  
20 supply industries; to engage in research and disseminate in-  
21 formation on housing and slum clearance; to determine where  
22 slum areas exist or where there is unsafe, insanitary or over-  
23 crowded housing; to make studies and recommendations relating  
24 to the problem of clearing, replanning, and reconstructing of  
25 slum areas and the problem of eliminating unsafe, unsanitary,  
26 or overcrowded housing and providing dwelling accommodations  
27 and maintaining a wholesome living environment for persons of  
28 low income; and to cooperate with any public body in action  
29 taken in connection with such problems.

30 (3) To utilize, contract with, act through, assist, and  
31 cooperate or deal with any person, agency, institution, or  
32 organization, public or private, for the provision of services,  
33 privileges, works, or facilities for, or in connection with,  
34 its projects; and (notwithstanding anything to the contrary  
35 contained in this act or in any other provision of law) to  
36 agree to any conditions attached to federal financial assist-  
37 ance relating to the determination of prevailing salaries or  
38 wages or payment of not less than prevailing salaries or wages  
39 or compliance with labor standards, in the development or  
40 administration of projects, and to include in any contract  
41 awarded or entered into in connection with a project, stipula-  
42 tions requiring that the contractor and all subcontractors com-  
43 ply with requirements as to minimum salaries or wages and  
44 maximum hours of labor, nondiscrimination in employment as to

45 race, religion, color, or national origin, and comply with any  
46 conditions attached to the financial aid of the project.

47 (4) To lease, rent, sell, or lease with option to purchase  
48 any dwellings, accommodations, lands, buildings, structures, or  
49 facilities embraced in any project and (subject to the limita-  
50 tions contained in this act with respect to the rental of or  
51 charges for dwellings in housing projects) to establish and  
52 revise the rents or charges therefor; to own, hold, and improve  
53 real or personal property; to purchase, lease, obtain options  
54 upon, acquire by gift, grant, bequest, devise, or otherwise any  
55 real or personal property or any interest therein, to acquire  
56 by the exercise of the power of eminent domain any real property  
57 or interest therein; to sell, lease, exchange, transfer, assign,  
58 pledge, or dispose of any real or personal property or any  
59 interest therein; to make loans for the provision of housing  
60 for occupancy by persons of low income; to insure or provide  
61 for the insurance, in stock or mutual companies, of any real  
62 or personal property or operations of the municipality or  
63 county against any risks or hazards; to procure or agree to  
64 the procurement of government insurance or guarantees of the  
65 payment of any bonds or parts thereof issued by the municipality  
66 or county, including the power to pay premiums on any such  
67 insurance.

68 (5) To invest any funds held in reserves or sinking funds  
69 or any funds not required for immediate disbursement, in prop-  
70 erty or securities in which savings banks may legally invest  
71 funds subject to their control; to redeem its bonds at the  
72 redemption price established therein or to purchase its bonds  
73 at less than such redemption price, all bonds so redeemed or  
74 purchased to be cancelled.

75 (6) To conduct examinations and investigations and to hear  
76 testimony and take proof under oath at public or private hear-  
77 ings on any matter material for its information; to administer  
78 oaths, issue subpoenas requiring the attendance of witnesses  
79 or the production of books and papers, and to issue commissions  
80 for the examination of witnesses who are outside the state or

81 unable to attend before the municipality or county, or excused  
82 from attendance; to make available to appropriate agencies  
83 (including those charged with the duty of abating or requiring  
84 the correction of nuisances or like conditions or of demolish-  
85 ing unsafe or insanitary structures within its area of operation)  
86 its findings and recommendations with regard to any building  
87 or property if conditions exist which are dangerous to the  
88 public health, morals, safety, or welfare.

89 (7) To prepare plans for and assist in the relocation of  
90 persons (including individuals, families, business concerns,  
91 nonprofit organizations, and others) displaced from a housing  
92 project site, and to make relocation payments to or with re-  
93 spect to these persons for moving and readjustment expenses  
94 and losses of property for which reimbursement of compensation  
95 is not otherwise made, including the making of relocation pay-  
96 ments financed by the federal government.

97 (8) To exercise all or any part or combination of powers  
98 herein granted.

1 Section 5. Application of General Law. No provision of  
2 law with respect to the acquisition, operation or disposition  
3 of property by public bodies shall be applicable to a munici-  
4 pality or county exercising powers hereunder unless the legis-  
5 lature shall specifically so state.

1 Section 6. Area of Operation. (a) The area of operation  
2 of any municipality, county, or housing authority may be in-  
3 creased to include additional contiguous areas upon the request  
4 or consent, by resolution, of the governing body of the munici-  
5 pality or county within which the additional area lies.

6 (b) No county, counties operating jointly, or housing  
7 authority established therefor, shall undertake any housing  
8 project within the boundaries of any municipality unless a  
9 resolution shall have been adopted by the governing body of  
10 the municipality (and by any housing authority which shall  
11 have been theretofore established and authorized to exercise  
12 powers hereunder in the municipality) declaring that there is  
13 need for the county, combined counties, or housing authority,

14 as the case may be, to exercise powers under this act within  
15 that municipality.

1 Section 7. Cooperation Among Municipalities and Counties.<sup>2</sup>

2 (a) Any power or powers, privileges, or authority exercised  
3 or capable of exercise by a municipality or county under this  
4 act may be exercised or enjoyed jointly with any other munici-  
5 pality or county, including but not limited to the financing  
6 (including the issuance of bonds and giving security therefor),  
7 exercise of the power of eminent domain, planning, undertaking,  
8 owning, constructing, operating, or contracting with respect  
9 to a housing project or projects located within the area of  
10 operation of any one or more of the municipalities or counties.

11 (b) For the purpose of taking joint action authorized by  
12 this section, a municipality or county by resolution may author-  
13 ize any other municipality or county so joining or cooperating  
14 with it to act on its behalf with respect to any or all powers,  
15 as its agent or otherwise, in the name of the municipality or  
16 county or combination thereof so joining or cooperating or in  
17 its own name.

18 (c) Municipalities and counties joining or cooperating under  
19 the provisions of this section may elect to create a single  
20 housing authority to exercise their powers under this act, if  
21 each of the governing bodies thereof by resolution determines  
22 such action to be in the public interest. If determination  
23 is made, the housing authority shall be established in accord-  
24 ance with section 9 of this act and shall thereupon be vested  
25 with the same powers of the municipalities and counties so  
26 joining or cooperating as are vested in a housing authority  
27 by a single municipality or county electing to have its powers

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2. Section 5 constitutes one method of authorizing two or more municipalities, counties, or combinations of municipalities and counties, to undertake housing projects. It is possible that states which already have a general interlocal cooperation act would not need this specific authorization. Another method would be a separate regional housing law. Each state must carefully consider its own constitutional and legal requirements in determining which method to use. Additionally, local counsel should be consulted particularly concerning bond issuances and other financing problems.

28 exercised by the housing authority as provided in section 8 of  
29 this act.

1     Section 8. Operation of Housing Not for Profit. No municipi-  
2     pality or county shall construct or operate any housing project  
3     for profit, or as a source of revenue to the municipality or  
4     county. Each municipality and county shall manage and operate  
5     its housing project in an efficient manner so as to enable it  
6     to fix the rentals or payments for dwelling accommodations at  
7     low rates consistent with its providing decent, safe and sani-  
8     tary dwelling accommodations for persons of low income. To  
9     this end a municipality or county shall fix the rentals or pay-  
10    ments for dwellings in its projects at no higher rates than it  
11    finds to be necessary in order to produce revenues which (to-  
12    gether with applicable other available moneys, revenues, income  
13    and receipts of the municipality and county from whatever  
14    sources derived; including federal financial assistance neces-  
15    sary to maintain the low-rent character of the projects) will  
16    be sufficient (1) to pay, as the same become due, the principal  
17    and interest on its bonds; (2) to create and maintain such  
18    reserves as may be required to assure the payment of principal  
19    and interest as may become due on its bonds; (3) to meet the  
20    cost of, and to provide for, maintaining and operating the  
21    projects (including necessary reserves therefor and the cost  
22    of any insurance) and the administrative expenses relating to  
23    its housing projects; and (4) to make such payments in lieu of  
24    taxes and, after payment in full of all obligations for which  
25    federal annual contributions are pledged, to make such repay-  
26    ments of federal and local contributions as it determines are  
27    consistent with the maintenace of the low-rent character of  
28    projects. Rentals or payments for dwellings shall be estab-  
29    lished and the projects administered, insofar as possible,  
30    to assure that any federal financial assistance required shall  
31    be strictly limited to amounts and periods necessary to main-  
32    tain the low-rent character of the projects. Nothing herein  
33    shall be construed to limit the amount which may be charged  
34    for nondwelling facilities. All such income, together with

35 other income and revenue derived through operations under this  
36 act, shall be used in the operation of the projects to aid in  
37 accomplishing the public, governmental, and charitable pur-  
38 poses of this act.

1 Section 9. Tenant Eligibility. A municipality or county  
2 shall issue regulations establishing eligibility requirements,  
3 consistent with the purposes and the objectives of this act,  
4 for admission to and continued occupancy in its projects.

5 Nothing contained in this or the preceding section shall be  
6 construed as limiting the power of a municipality or county  
7 with respect to a housing project, to vest in an obligee the  
8 right, in the event of a default to take possession or cause  
9 the appointment of a receiver thereof, free from all the re-  
10 strictions imposed by this or the preceding section.

1 Section 10. Dwellings Designed Specifically for the Elderly  
2 and the Handicapped. For the purpose of increasing the supply  
3 of low-rent housing and related facilities for the elderly,  
4 and for handicapped persons of low income, a municipality or  
5 county may exercise any of its powers under this act in pro-  
6 jects involving dwelling accommodations designed specifically  
7 for these persons. In respect to dwelling units in any projects  
8 suitable to the needs of elderly or of handicapped persons,  
9 special preference may be extended in admission to those dwell-  
10 ing units to these persons of low income.

1 [Section 11. Dwellings for Disaster Victims and Defense  
2 Workers. Notwithstanding the provisions of this or any other  
3 act relating to rentals of, preferences or eligibility for  
4 admission to, or occupancy of dwellings in housing projects,  
5 during the period the municipality or county, as the case may  
6 be, determines there is acute need for housing to assure the  
7 availability of dwellings for victims of a major disaster, it  
8 may undertake the development and administration of housing  
9 projects for the federal government, and dwellings in any  
10 housing project under its jurisdiction may be made available  
11 to victims of a major disaster. A municipality or county is  
12 authorized to contract with the federal government or a public



13 body for advance payment or reimbursement for the furnishing  
14 of housing to victims of a major disaster, including the furnish-  
15 ing of the housing free of charge to needy disaster victims  
16 during any period covered by a determination of acute needs  
17 as herein provided.]

1 Section 12. Tax Exemption and Payments in Lieu of Taxes.

2 The property of a municipality or county acquired or held  
3 pursuant to this act is declared to be public property used  
4 for essential public, governmental purposes and such property  
5 is exempt from all taxes (including sales and use taxes) and  
6 special assessments of any public body; but this tax exemption  
7 does not apply to any portion of a project used for a profit-  
8 making enterprise, but in taxing such portions appropriate  
9 allowance shall be made for any expenditure by a municipality  
10 or county for utilities or other public services which it pro-  
11 vides to serve the property. In lieu of taxes on property  
12 exempt under this section, a municipality or county may agree  
13 to make such payments to any public body (including itself)  
14 as it finds consistent with the maintenance of the low-rent  
15 character of housing projects and the achievement of the pur-  
16 pose of this act.

1 Section 13. Planning, Zoning and Building Laws. All pro-

2 jects of a municipality or county are subject to the planning,  
3 zoning, sanitary and building laws, ordinances, and regulations  
4 applicable to the locality in which the project is situated.

1 Section 14. Bonds.<sup>3</sup> A municipality or county may issue  
2 bonds from time to time in its discretion for the purpose of  
3 the housing of persons of low-income. It may issue refunding  
4 bonds for the purpose of paying or retiring bonds previously  
5 issued by it. It may issue such types of bonds as it may  
6 determine, including (without limiting the generality of the  
7 foregoing) bonds on which the principal and interest are

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3. In some states, municipalities and counties may already have adequate statutory bonding powers which can be used for low-rent housing purposes. In these cases, these bonding powers could be incorporated by reference in this bill. Local counsel should be consulted concerning the legal acceptability of this method.

8 payable: (1) exclusively from the income and revenues of the  
9 project financed with the proceeds of such bonds; or (2) ex-  
10 clusively from the income and revenues of certain designated  
11 projects whether or not they are financed in whole or in part  
12 with the proceeds of the bonds. Any such bonds may be addition-  
13 ally secured by a pledge of any loan, grant, or contributions,  
14 or parts thereof, from the federal government or other source,  
15 or a pledge of any income or revenues connected with a housing  
16 project.

17 Neither the governing body nor any person executing the bonds  
18 is liable personally on the bonds by reason of the issuance  
19 thereof. The bonds issued under the provisions of this act  
20 (and the bonds shall so state on their face) shall be payable  
21 solely from the sources provided in this section and shall not  
22 constitute an indebtedness of the municipality or county within  
23 the meaning of any constitutional or statutory debt limitation  
24 or restriction and shall not under any circumstances become  
25 general obligations of the municipality or county. Bonds issued  
26 pursuant to this act are declared to be issued for an essential  
27 public and governmental purpose and to be public instrumental-  
28 ities and, together with interest thereon and income therefrom,  
29 are exempt from taxes. The tax exemption provisions of this  
30 act shall be considered part of the contract for the security  
31 of bonds and shall have the force of contract, by virtue of  
32 this act and without the necessity of the same being restated  
33 in the bonds, between the bondholders and each and every one  
34 thereof, including all transferees of the bonds from time to  
35 time on the one hand, and a municipality or county and the  
36 state on the other.

1 Section 15. Form and Sale of Bonds. Bonds issued pursuant  
2 to this act shall be authorized by resolution and may be issued  
3 in one or more series and shall bear such date or dates, mature  
4 at such time or times, bear interest at such rate or rates, not  
5 exceeding six per centum (6%) per annum, be in such denomina-  
6 tion or denominations, be in such form either coupon or regis-  
7 tered, carry such conversion or registration privileges, have

8 such rank or priority, be executed in such manner, be payable  
9 in such medium of payment, at such place or places, and be  
10 subject to such terms of redemption (with or without premium)  
11 as the resolution or its trust indenture may provide.

12 The bonds may be sold at public or private sale at not less  
13 than par.

14 If any of the officers of a municipality or county whose  
15 signatures appear on any bonds or coupons cease to be such  
16 officers before the delivery of the bonds, such signatures  
17 shall nevertheless be valid and sufficient for all purposes,  
18 the same as if the officers had remained in office until the  
19 delivery. Any provision of any law to the contrary notwith-  
20 standing, any bonds issued pursuant to this act shall be fully  
21 negotiable.

22 In any suit, action, or proceeding involving the validity of  
23 enforceability of any bond issued pursuant to this act or the  
24 security therefor, any bond reciting in substance that it has  
25 been issued by the municipality or county to aid in financing  
26 a project shall be conclusively deemed to have been issued for  
27 such purposes and the project shall be conclusively deemed to  
28 have been planned, located, and carried out in accordance with  
29 the purposes and provisions of this act.

1 Section 16. Provisions of Bonds and Trust Indentures. In  
2 connection with the issuance of bonds or the incurring of obliga-  
3 tions under lease and in order to secure the payment of the  
4 bonds, a municipality or county, in addition to its other powers,  
5 has the power:

6 (1) To pledge all or any part of its gross or net rents,  
7 fees, or revenues of a housing project, financed with the pro-  
8 ceeds of the bonds, to which its right then exists.

9 (2) To mortgage all or any part of its real or personal  
10 property, then owned.

11 (3) To covenant against pledging all or any part of its  
12 rents, fees, and revenues, or against mortgaging all or any

13 part of its real or personal property, acquired or held pur-  
14 suant to this act, to which its right or title then exists, or  
15 against permitting or suffering any lien on such revenues or  
16 property; to covenant with respect to limitations on its right  
17 to sell, lease, or otherwise dispose of any housing project  
18 or any part thereof; and to covenant as to what other, or  
19 additional debts or obligations may be incurred by it.

20 (4) To covenant as to the bonds to be issued and as to the  
21 issuance of the bonds in escrow or otherwise, and as to the  
22 use and disposition of the proceeds thereof; to provide for the  
23 replacement of lost, destroyed, or mutilated bonds; to covenant  
24 against extending the time for the payment of its bonds or  
25 interest thereon; and to covenant for the redemption of the  
26 bonds and to provide the terms and conditions thereof.

27 (5) To covenant (subject to the limitations contained in  
28 this act) as to the rents and fees to be charged in the opera-  
29 tion of a housing project or projects, the amount to be raised  
30 each year or other period of time by rents, fees, and other  
31 revenues, and as to the use and disposition to be made thereof;  
32 to create or to authorize the creation of special funds for  
33 moneys held for construction or operating costs, debt service,  
34 reserves, or other purposes, and to covenant as to the use  
35 and disposition of the moneys held in the funds.

36 (6) To prescribe the procedure, if any, by which the terms  
37 of any contract with bondholders may be amended or abrogated,  
38 the proportion of outstanding bonds the holders of which must  
39 consent to such action, and the manner in which such consent  
40 may be given.

41 (7) To covenant as to the use, maintenance, and replacement  
42 of any or all of its real or personal property acquired pur-  
43 suant to this act, the insurance to be carried thereon, and the  
44 use and disposition of insurance moneys.

45 (8) To covenant as to the rights, liabilities, powers, and  
46 duties arising upon the breach by it of any covenant, condi-  
47 tion, or obligation; and to covenant and prescribe as to events

48 of default and terms and conditions upon which any or all of  
49 its bonds or obligations shall become or may be declared due  
50 before maturity, and as to the terms and conditions upon which  
51 such declaration and its consequences may be waived.

52 (9) To vest in any of its obligee or any specified propor-  
53 tion of them the right to enforce the payment of the bonds or  
54 any covenants securing or relating to the bonds; to vest in  
55 such obligee the right in the event of a default by the municipi-  
56 pality or county to take possession of and use, operate, and  
57 manage any project or any part thereof or any funds connected  
58 therewith, and to collect the rents and revenues arising there-  
59 from and to dispose of such moneys in accordance with its  
60 agreement with the obligee; to provide for the powers and  
61 duties of the obligees and to limit the liabilities thereof;  
62 and to provide the terms and conditions upon which the obligees  
63 may enforce any covenant or rights securing or relating to the  
64 bonds.

65 (10) To exercise all or any part or combination of the  
66 powers herein granted; to make such covenants (other than in  
67 addition to the covenants herein expressly authorized) and to  
68 do any and all such acts and things as may be necessary or  
69 convenient or desirable in order to secure its bonds, or, in  
70 the absolute discretion of the municipality or county as will  
71 tend to make the bonds more marketable notwithstanding that  
72 such covenants, acts, or things may not be enumerated herein.

1 Section 17. Construction of Bond Provisions. This act,  
2 without reference to other statute of the state, constitutes  
3 full authority for the authorization and issuance of bonds  
4 hereunder. No other laws with regard to the authorization or  
5 issuance of bonds or the deposit of the proceeds thereof, that  
6 requires a bond election or in any way impedes or restricts  
7 the carrying out of the acts herein authorized to be done  
8 shall be construed as applying to any proceedings taken here-  
9 under or acts done pursuant hereto.

1 Section 18. Remedies of an Obligee. An obligee of a municipi-  
2 pality or county has the right in addition to all other rights

3 which may be conferred on the obligee, subject only to any  
4 contractual restrictions binding upon the obligee:

5 (1) By mandamus, suit, action, or proceeding at law or in  
6 equity to compel a municipality or county and the officers,  
7 agents, or employees thereof to perform each and every term,  
8 provision and covenant contained in any contract of the munici-  
9 pality or county with or for the benefit of the obligee, and  
10 to require the carrying out of any or all such covenants and  
11 agreements of the municipality or county and the fulfillment of  
12 all duties imposed by this act.

13 (2) By suit, action, or proceeding in equity, to enjoin  
14 any acts or things which may be unlawful, or the violation of  
15 any of the rights of obligee of the municipality or county.

1 Section 19. Additional Remedies Conferrable by the Muni-  
2 cipality or County. A municipality or county has power, by  
3 its resolution, trust indenture, mortgage, lease or other  
4 contract, to confer upon any obligee the right (in addition  
5 to all rights that may otherwise be conferred), upon the  
6 happening of an event of default as defined in the resolution  
7 or instrument, by suit, action or proceeding in any court of  
8 competent jurisdiction:

9 (1) To cause possession of any project or any part thereof  
10 to be surrendered to any such obligee.

11 (2) To obtain the appointment of a receiver of any project  
12 of the municipality or county or any part thereof and of the  
13 rents and profits therefrom. If a receiver is appointed, he  
14 may enter and take possession of such project or any part there-  
15 of and operate and maintain same, and collect and receive all  
16 fees, rents, revenues, or other charges thereafter arising  
17 therefrom, and shall keep such moneys in a separate account or  
18 accounts and apply the same in accordance with the obligations  
19 of the municipality or county as the court shall direct.

20 (3) To require the municipality or county and the officers,  
21 agents, and employees thereof to account as if it and they  
22 were the trustees of an express trust.

1       Section 20. Exemption of Property from Execution Sale. All  
2 property, including funds, acquired or held by a municipality  
3 or county pursuant to this act shall be exempt from levy and  
4 sale by virtue of an execution, and no execution or other judi-  
5 cial process shall issue against the property, nor shall any  
6 judgment against the municipality or county be a charge or  
7 lien upon such property, but the provisions of this section  
8 shall not apply to or limit the right of obligees to pursue  
9 any remedies for the enforcement of any pledge or lien given  
10 by the municipality or county on its rents, fees or revenues  
11 or the right of the federal government to pursue any remedies  
12 conferred upon it pursuant to the provisions of this act. A  
13 municipality or county may waive its exemption hereunder with  
14 respect to claims against any profit-making enterprise occupy-  
15 ing any portion of a project, provided that such waiver does  
16 not affect or impair the rights of any obligee of the municipi-  
17 pality or county.

1       Section 21. Aid from Federal Government. In addition to  
2 the powers conferred upon a municipality or county by other  
3 provisions of this act, a municipality or county may borrow  
4 money or accept contributions, grants, or other financial  
5 assistance from the federal government for or in aid of any  
6 project or related activities concerning health, welfare,  
7 economic, educational, environmental, and similar problems of  
8 persons of low income, to take over or lease or manage any  
9 project or undertaking constructed or owned by the federal  
10 government, and to these ends, to comply with such conditions  
11 and enter into such contracts, covenants, mortgages, trust  
12 indentures, leases, or agreements as necessary, convenient,  
13 or desirable. It is the purpose and intent of this act to  
14 authorize any municipality or county to do any and all things  
15 necessary or desirable to secure the financial aid or coopera-  
16 tion of the federal government in the provision of decent,  
17 safe, and sanitary dwellings and maintaining a wholesome liv-  
18 ing environment for persons of low income by the municipality

19 or county. To accomplish this purpose a municipality or  
20 county, notwithstanding the provisions of any other law, may  
21 include in any contract for financial assistance with the  
22 federal government any provisions which the federal government  
23 may require as conditions to its financial aid not inconsistent  
24 with the purposes of this act.

1 Section 22. Transfer of Possession or Title to the Federal  
2 Government. In any contract with the federal government for  
3 annual contributions to a municipality or county the municipi-  
4 pality or county may obligate itself (which obligation shall  
5 be specifically enforceable and shall not constitute a mortgage  
6 notwithstanding any other laws) to convey to the federal govern-  
7 ment possession of or title to the project to which the con-  
8 tract relates, upon the occurrence of a substantial default  
9 (as defined in such contract) with respect to the covenants  
10 and conditions to which the municipality or county is subject;  
11 the contract may further provide that in case of such convey-  
12 ance, the federal government may complete, operate, manage,  
13 lease, convey, or otherwise deal with the project and funds  
14 in accordance with the terms of such contract; but if the  
15 contract requires that, as soon as practicable after the  
16 federal government is satisfied that all defaults with respect  
17 to the project have been cured and that the project will there-  
18 after be operated in accordance with the terms of the contract,  
19 the federal government shall reconvey to the municipality or  
20 county the project as then constituted.

1 Section 23. Eminent Domain. A municipality or county has  
2 the right to acquire by the exercise of the power of eminent  
3 domain any real property or interest therein which it may deem  
4 necessary for its purposes under this act after the adoption  
5 by it of a resolution declaring that the acquisition of the  
6 real property described therein is necessary for such purposes.  
7 A municipality or county may exercise the power of eminent  
8 domain in the manner provided in [insert appropriate statutory  
9 citation], and acts amendatory thereof or supplementary there-  
10 to, or it may exercise the power of eminent domain in the manner



11 now or which may hereafter be provided by any other statutory  
12 provisions for the exercise of the power of eminent domain.

13 Property already devoted to a public use may be acquired  
14 in like manner, provided that no real property belonging to  
15 any public body may be acquired without its consent.

1 Section 24. Cooperation in Undertaking Projects. For the  
2 purpose of aiding and cooperating in the planning, undertaking,  
3 construction, or operation of projects located within its juris-  
4 diction, any public body may upon such terms, with or without  
5 consideration, as it determines:

6 (1) Dedicate, sell, convey, or lease any of its interest  
7 in any property, or grant easements, licenses or any other  
8 rights or privileges therein to a municipality or county, or  
9 to the federal government.

10 (2) Cause parks, playgrounds, recreational, community,  
11 educational, water, sewer, or drainage facilities, or any  
12 other works which it is otherwise empowered to undertake, to  
13 be furnished adjacent to or in connection with such projects.

14 (3) Furnish, dedicate, close, pave, install, grade, regrade,  
15 plan, or replan streets, roads, roadways, alleys, sidewalks, or  
16 other places which it is otherwise empowered to undertake.

17 (4) Plan or replan, zone or rezone any parts of such public  
18 body; make exceptions from building regulations and ordinances;  
19 make changes in its map.

20 (5) Cause services to be furnished to a municipality or  
21 county of the character which such public body is otherwise  
22 empowered to furnish, and provide facilities and services  
23 (including feeding facilities and services for tenants), for or  
24 in connection with housing projects.

25 (6) Enter into agreements with respect to the exercise by  
26 such public body of its powers relating to the repair, improve-  
27 ment, condemnation, closing or demolition of unsafe, insanitary,  
28 or unfit buildings.

29 (7) Do any and all things necessary or convenient to aid  
30 and cooperate in the planning, undertaking, construction, or

31 operation of such projects.

32 (8) Incur the entire expense of any public improvements  
33 made by such public body in exercising the powers granted in  
34 this act.

35 (9) Enter into agreements (which may extend over any period  
36 notwithstanding any provision or rule of law to the contrary),  
37 with a municipality or county respecting action to be taken  
38 by such public body pursuant to any of the powers granted by  
39 this act. If title to or possession of any project is held  
40 by any public body or governmental agency authorized by law to  
41 engage in the development or administration of low-rent housing  
42 or slum clearance projects, including any agency or instrumen-  
43 tality of the United States of America, the provisions of such  
44 agreements shall inure to the benefit of and may be enforced by  
45 such public body or governmental agency.

46 Any sale, conveyance, lease or agreement provided for in  
47 this section may be made by a public body without appraisal,  
48 public notice, advertisement, or public bidding, notwithstand-  
49 ing any other laws to the contrary.

1 Section 25. Agreements as to Payments by a Municipality  
2 or County. In connection with any project of a municipality  
3 or county located wholly or partly within the area in which  
4 any public body is authorized to act, any public body may  
5 agree with the municipality or county with respect to the pay-  
6 ment by the municipality or county of such sums in lieu of  
7 taxes for any year or period of years as are determined by  
8 the municipality or county to be consistent with the mainte-  
9 nance of the low-rent character of housing projects or the  
10 achievement of the purposes of this act.

1 Section 26. Other State and Local Aid. In addition to  
2 other aids provided herein, any public body is empowered to  
3 provide financial aid in connection with a housing project  
4 by loan, donation, grant, contribution, and appropriation of  
5 money; by abatement or remission of taxes, or payments in  
6 lieu of taxes, or other charges; or by any other means.

1        Section 27. Housing Bonds; Legal Investments and Security.

2        The state and all public officers, municipal corporations,  
3        political subdivisions, and public bodies, all banks, bankers,  
4        trust companies, savings banks and institutions, building and  
5        loan associations and savings and loan associations, investment  
6        companies, insurance companies, insurance associations, and  
7        other persons carrying on a banking or insurance business, and  
8        all executors, administrators, guardians, trustees, and other  
9        fiduciaries may legally invest any moneys or funds belonging  
10       to them or within their control in any bonds issued pursuant  
11       to this act or issued by any public housing authority or agency  
12       in the United States, any of its Territories, the District of  
13       Columbia, Puerto Rico, Guam, or the Virgin Islands, when such  
14       bonds are secured by a pledge of annual contributions or other  
15       financial assistance to be paid by the United States govern-  
16       ment or any agency thereof, or when such bonds are secured by  
17       an agreement between the United States government or any agency  
18       thereof and the municipality, county, public housing authority,  
19       or agency in which the United States government or any agency  
20       thereof agrees to lend to the municipality, county, public  
21       housing authority, or agency, prior to the maturity of the  
22       bonds, moneys in an amount which (together with any other  
23       moneys irrevocably committed to the payment of interest on  
24       the bonds) will suffice to pay the principal of the bonds or  
25       other obligations with interest to maturity, which moneys under  
26       the terms of the agreement are required to be used for this  
27       purpose, and such bonds shall be authorized security for all  
28       public deposits and shall be fully negotiable in this state;  
29       it being the purpose of this section to authorize any of the  
30       foregoing to use any funds owned or controlled by them, includ-  
31       ing (but not limited to) sinking, insurance, investment, retire-  
32       ment, compensation, pension and trust funds, and funds held on  
33       deposit, for the purchase of any such bonds or other obligations,  
34       but nothing contained in this section shall be construed as  
35       relieving any person, firm or corporation from any duty of

36 exercising reasonable care in selecting securities. The pro-  
37 visions of this section shall apply notwithstanding any re-  
38 strictions on investments contained in other laws.

1       Section 28. Exercise of Powers. (a) A municipality or  
2 county may itself exercise its housing project powers (as here-  
3 in defined) or may, if its governing body determines such action  
4 to be in the public interest, establish a housing authority  
5 pursuant to section 29 or established heretofore under the pro-  
6 visions of [cite appropriate state act] and elect to have these  
7 powers exercised by it. If the governing body makes such a  
8 determination and establishes a housing authority, it shall be  
9 vested with all of the housing project powers in the same manner  
10 as though all these powers were conferred on the housing author-  
11 ity instead of the municipality or county or if the governing  
12 body does not elect to make the foregoing determination, the  
13 municipality or county in its discretion may exercise its  
14 housing project powers through a board or commission or through  
15 such officers as its governing body may by resolution designate,  
16 except that the following functions must be exercised by the  
17 municipality or county itself: (i) The findings required to  
18 be made as provided in section 4; (ii) the power to approve a  
19 housing project; (iii) the powers relating to cooperation  
20 among municipalities and counties under section 6; (iv) the  
21 powers of municipalities and counties under subsection (a) of  
22 this section; and (v) the power to establish a housing authority  
23 under the provisions of sections 29 and 30.

1       Section 29. Creation of Housing Authorities. (a) Municipal and County Authorities. There may be created in each  
2 municipality and county a public body corporate and politic to  
3 be known as the "housing authority" of a municipality or county.

4       (b) Authorities for Municipalities or Counties, or Combinations thereof, Joining or Cooperating. If the governing body  
5 of each of two or more municipalities or counties, or combina-  
6 tions of municipalities and counties, has made the finding pre-  
7 scribed in section 3, has taken the necessary action to coop-  
8 erate, and has taken the necessary action to coop-  
9 erate,

10 erate with one another as provided in section 7, and has elected  
11 as provided in section 28 to have its housing project powers  
12 exercised by a housing authority created for all the municipal-  
13 ities or counties so joining or cooperating, a public body cor-  
14 porate and politic to be known as a regional housing authority  
15 shall thereupon exist for all these municipalities or counties,  
16 or combinations thereof. Additional municipalities or counties  
17 may elect to have the regional authority exercise their powers  
18 upon taking the foregoing actions, and with the consent by  
19 resolution of all the municipalities and counties theretofore  
20 having elected to have their powers exercised by the regional  
21 authority.

22 (c) Appointment, Qualifications, Tenure and Meetings of  
23 Housing Authority Commissioners. If a housing authority has  
24 been created and authorized to exercise housing project powers,  
25 commissioners of the authority shall be appointed as follows:

26 (1) In the case of a municipal housing authority, the  
27 mayor [with the advice and consent of the governing body] shall  
28 appoint [five] persons as commissioners. In the case of a  
29 county housing authority, the governing body shall appoint  
30 [five] commissioners.<sup>4</sup> Alternative A: Commissioners who are  
31 first appointed to a municipal or county authority shall be  
32 designated to serve for terms of one, two, three, four and  
33 five years, respectively, from the date of their appointment,  
34 but thereafter commissioners shall be appointed as aforesaid  
35 for a term of office of five years and thereafter until their  
36 successor shall be chosen except that all vacancies shall be  
37 filled for the unexpired term. Alternative B: The term of  
38 office of each commissioner shall be [ ] year[s] and there-  
39 after until their successor shall be chosen.

40 (2) In the case of a regional housing authority, the  
41 governing body of each municipality and county participating

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4. Variations in appointive practices among the states may require that other language be used to indicate what official or body appoints members to the authority and how officers of the authority are selected. Care should be taken to provide proper procedures for both municipalities and counties.

42 shall appoint one person as a commissioner of the authority.  
43 In the event only two municipalities or counties or a combina-  
44 tion thereof are participating, the commissioners appointed  
45 by the governing bodies of the participants shall appoint one  
46 additional commissioner. The commissioners of a regional  
47 authority shall be appointed for terms of [five] years, except  
48 that all vacancies shall be filled for the unexpired term.

49 (3) Each commissioner shall qualify by taking the  
50 official oath of office prescribed by general statute.

51 (4) A commissioner shall receive no compensation for  
52 his services but shall be entitled to the necessary expenses,  
53 including traveling expenses, incurred in the discharge of his  
54 duties. Each commissioner shall hold office until his successor  
55 has been appointed and has qualified. A certificate of appoint-  
56 ment or reappointment of any commissioner shall be filed with  
57 the authority, and this certificate shall be conclusive evidence  
58 of the due and proper appointment of the commissioner.

59 (5) The powers of each authority shall be vested in  
60 the commissioners thereof in office from time to time. A  
61 majority of the commissioners of an authority shall constitute  
62 a quorum for the purpose of conducting its business and exer-  
63 cising its powers and for all other purposes, notwithstanding  
64 the existence of any vacancies. Action may be taken by the  
65 authority upon a vote of a majority of the commissioners present,  
66 unless in any case the bylaws of the authority shall require a  
67 larger number. Meetings of the commissioners of an authority  
68 may be held anywhere within the area of operation of the  
69 authority or within any additional area in which the authority  
70 is authorized to undertake a project.

71 (6) The commissioners of an authority shall elect a  
72 chairman and vice-chairman from among the commissioners.<sup>5</sup> An  
73 authority may employ an executive director, legal and technical

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5. See footnote 4.

74 experts and such other officers, agents and employees, per-  
75 manent and temporary, as it may require, and shall determine  
76 their qualifications, duties and compensation.<sup>6</sup> An authority  
77 may delegate to one or more of its agents or employees such  
78 powers or duties as it may deem proper.

79 (d) Contracts of an Authority. In any suit, action, or  
80 proceeding involving the validity or enforcement of or relat-  
81 ing to any contract of the authority, an authority shall be  
82 conclusively deemed to have become established and authorized  
83 to transact business and exercise its powers upon proof of  
84 compliance with the provisions of subsections (a) or (b)  
85 of this section, as the case may be. A copy of the resolutions  
86 required to be adopted by the governing body electing to have  
87 its housing project powers exercised by a housing authority  
88 shall be filed with the clerk. A copy of the resolution duly  
89 certified by the clerk shall be admissible in evidence in any  
90 suit, action, or proceeding.

1 Section 30. Interested Public Officials, Commissioners, or  
2 Employees. No public official or employee of a municipality  
3 or county board or commission exercising housing project powers,  
4 and no commissioner or employee of a housing authority which  
5 has been vested by a municipality or county with housing pro-  
6 ject powers under section 28, shall voluntarily acquire any  
7 interest, direct or indirect, in any project or in any prop-  
8 erty included or planned to be included in any project, or in  
9 any contract or proposed contract relating to any housing  
10 project. If any officer, commissioner, or employee involuntar-  
11 ily acquires any interest, or voluntarily or involuntarily  
12 acquired any interest prior to appointment or employment as  
13 an officer, commissioner or employee, the officer, commissioner,  
14 or employee, shall immediately disclose his interest in writ-  
15 ing to the public body exercising housing project powers, and  
16 the disclosure shall be entered upon its minutes, and the

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6. States may wish to make these positions subject to civil service regulations by inserting appropriate provisions.

17 officer, commissioner or employee shall not participate in any  
18 action by the public body relating to the property or contract  
19 in which he has any interest. Any violation of the foregoing  
20 provisions of this section constitutes misconduct in office.  
21 This section shall not be applicable to the acquisition of any  
22 interest in bonds of the municipality, county, or authority  
23 issued in connection with any housing project, or to the execu-  
24 tion of agreements by banking institutions for the deposit or  
25 handling of funds in connection with a project or to act as  
26 trustee under any trust indenture, or to utility services the  
27 rates for which are fixed or controlled by a governmental agency.

1 Section 31. Removal of Housing Authority Commissioners.

2 For inefficiency, neglect of duty, or misconduct in office, a  
3 commissioner of an authority may be removed by the mayor (or  
4 in the case of an authority for a county or regional authority,  
5 by the body or official which appointed the commissioner), but a  
6 commissioner shall be removed only after a hearing and after  
7 he shall have been given a copy of the charges at least 10 days  
8 prior to the hearing and had an opportunity to be heard in per-  
9 son or by counsel. In the event of the removal of any com-  
10 missioner, a record of the proceedings, together with the  
11 charges and findings thereon, shall be filed in the office of  
12 the clerk.

1 Section 32. Reports. At least once a year an authority  
2 exercising housing project powers shall file with the clerk a  
3 report of its activities for the preceding year and make recom-  
4 mendations with reference to such additional legislation or  
5 other action as it deems necessary in order to carry out the  
6 purposes of this act.

1 Section 33. State Aid. (a) The [insert name of appropri-  
2 ate agency of state government] shall provide technical and  
3 advisory assistance, upon request, to municipalities and  
4 counties for a housing project as defined in this act.  
5 Such assistance shall include, but need not be limited to,  
6 special statistical and other studies and compilations, tech-



7 nical evaluations and information, training activities, pro-  
8 fessional services, surveys, reports, documents, and any other  
9 similar service functions.<sup>7</sup>

10 (b) The [appropriate state agency] may make low-income hous-  
11 ing grants to municipalities and counties for [ ] percent of  
12 the individual net project costs. Such grants shall be made  
13 from funds appropriated by the legislature for these purposes  
14 and shall be exclusive of those costs reimbursed or paid by  
15 grants from the federal government.<sup>8</sup>

1 Section 34. Separability. [Insert separability clause.]

1 Section 35. Effective Date. [Insert effective date.]

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7. States may wish to authorize provision of such technical services to local governments on a reimbursable basis. However, rather than provide authorization within this statute, such states might consider a separate act providing general authorization for all state agencies to provide technical services as proposed in the draft bill, "State Technical Services for Local Government," p. 227 of this volume.

8. The draft bill, "State Financial Assistance and Channelization of Federal Grant Programs for Urban Development," on page 220 of this volume gives the states a meaningful and effective role in federal programs of grants-in-aid to local governments for urban development. States may wish to consider the provisions set forth in this bill as guidelines in drafting this subsection or passage of a separate act to encompass several programs in federally aided fields of local activity.

- Coordination of State and Federal Inheritance, Estate, and Gift Taxes. Report A-1. January 1961. 134 pp., printed.
- Modification of Federal Grants-in-Aid for Public Health Services. Report A-2. January 1961. 46 pp., offset. (Out of print; summary available.)
- Investment of Idle Cash Balances by State and Local Governments. Report A-3. January 1961. 61 pp., printed (out of print; summary available) and a supplement, Investment of Idle Cash Balances by State and Local Governments, January 1965.
- Intergovernmental Responsibilities for Mass Transportation Facilities and Services in Metropolitan Areas. Report A-4. April 1961. 54 pp., offset. (Out of print; summary available.)
- Governmental Structure, Organization, and Planning in Metropolitan Areas. Report A-5. July 1961. 83 pp., U. S. House of Representatives, Committee on Government Operations, Committee Print, 87th Congress, 1st Session.
- State and Local Taxation of Privately Owned Property Located on Federal Areas. Report A-6. June 1961. 34 pp., offset. (Out of print; summary available.)
- Intergovernmental Cooperation in Tax Administration. Report A-7. June 1961. 20 pp., offset.
- Periodic Congressional Reassessment of Federal Grants-in-Aid to State and Local Governments. Report A-8. June 1961. 67 pp., offset. (Out of print; reproduced in the Appendix of hearings on S 2114 before U. S. Senate, Subcommittee on Intergovernmental Relations of the Committee on Government Operations, January 14, 15, and 16, 1964, 88th Congress, 2d Session.
- Local Nonproperty Taxes and the Coordinating Role of the State. Report A-9. September 1961. 68 pp., offset.
- State Constitutional and Statutory Restrictions on Local Government Debt. Report A-10. September 1961. 98 pp., printed.
- Alternative Approaches to Governmental Reorganization in Metropolitan Areas. Report A-11. June 1962. 88 pp., offset.
- State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Government. Report A-12. October 1962. 80 pp., printed.
- Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas. Report A-13. October 1962. 135 pp., offset.
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- Apportionment of State Legislatures. Report A-15. December 1962. 78 pp., offset.
- Transferability of Public Employee Retirement Credits Among Units of Government. Report A-16. March 1963. 93 pp., offset.
- \*The Role of the States in Strengthening the Property Tax. Report A-17. June 1963. Volume I (187 pp.) and Volume II (182 pp.), printed. (\$1.25 each)
- Industrial Development Bond Financing. Report A-18. June 1963. 96 pp., offset. (Out of print; summary available.)
- The Role of Equalization in Federal Grants. Report A-19. January 1964. 258 pp., offset and a supplement, Grant-in-Aid Programs Enacted by the 2nd Session of the 88th Congress. March 1965. 22 pp., offset.
- Impact of Federal Urban Development Programs on Local Government Organization and Planning. Report A-20. January 1964. 198 pp., U. S. Senate, Committee on Government Operations, Committee Print, 88th Congress, 2d Session.
- Statutory and Administrative Controls Associated with Federal Grants for Public Assistance. Report A-21. May 1964. 108 pp., printed.
- The Problem of Special Districts in American Government. Report A-22. May 1964. 112 pp., printed.
- The Intergovernmental Aspects of Documentary Taxes. Report A-23. September 1964. 29 pp., offset.

State-Federal Overlapping in Cigarette Taxes. Report A-24. September 1964. 62 pp., offset.

\*Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs. Report A-25. January 1965. 253 pp., offset. (\$1.25 each)

Relocation: Unequal Treatment of People and Businesses Displaced by Governments. Report A-26. January 1965. 141 pp., offset.

Federal-State Coordination of Personal Income Taxes. Report A-27. October 1965. 204 pp., offset.

Building Codes: A Program for Intergovernmental Reform. Report A-28. January 1966. 103 pp., offset.

Intergovernmental Relations in the Poverty Program. Report A-29. April 1966. 278 pp., offset.

Factors Affecting Voter Reactions to Governmental Reorganization in Metropolitan Areas. Report M-15. May 1962. 80 pp., offset.

\*Measures of State and Local Fiscal Capacity and Tax Effort. Report M-16. October 1962. 150 pp., printed. (\$1.00 each)

The Advisory Commission on Intergovernmental Relations. Report M-17. June 1, 1965. 69 pp., printed.

\*Directory of Federal Statistics for Metropolitan Areas. Report M-18. June 1962. 118 pp., printed. (\$1.00 each) (Copies available only from the Government Printing Office.)

\*Performance of Urban Functions: Local and Areawide. Report M-21. September 1963. 281 pp., offset. (\$1.50 each)

\*Tax Overlapping in the United States, 1964. Report M-23. July 1964. 235 pp., printed. (\$1.50 each)

State Technical Assistance to Local Debt Management. Report M-26. January 1965. 80 pp., offset.

Catalogs and Other Information Sources on Federal and State Aid Programs: A Selected Bibliography. Report M-30. May 1966. 13 pp., mimeographed.

Metropolitan America: Challenge to Federalism. Report M-31. August 1966. 136 pp., U. S. House of Representatives, Committee on Government Operations, Committee Print, 89th Congress, 2d Session.

Metropolitan Councils of Governments. Report M-32. August 1966. 70 pp., offset.

1967 State Legislative Program of the Advisory Commission on Intergovernmental Relations. Report M-33. September 1966. 600 pp., offset.

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1. Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D. C. 20575. Multiple copies of items marked with asterisk (\*) may be purchased from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402.









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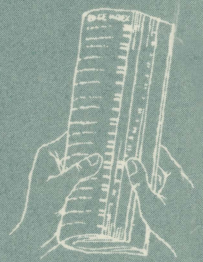
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Bend the book nearly double and hold it in your right hand as shown.

Locate the listing you want in the Edge Index. Match up the 1 or 2 line symbol next to the listing you have selected with the corresponding 1 or 2 dot symbol on the page edge.

### OPEN THERE

The listings in the left-hand column of the Edge Index will be identified by the dot symbols in the first or left-hand row on the page edges. The listings in the middle column by the dot symbols in the middle row. And those in the right-hand column by the dot symbols in the right-hand row.