1966
STATE LEGISLATIVE PROGRAM
of the
ADVISORY COMMISSION
ON INTERGOVERNMENTAL
RELATIONS

Washington, D.C.  20575
October 1965
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The Advisory Commission on Intergovernmental Relations is a permanent, bipartisan body established under Federal legislation enacted in 1959 to give continuing study to the relationships among local, state and National levels of government. The Commission's membership, representing the legislative and executive branches of the three levels of government and the public at large, is shown on the inside of the front cover.

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

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

Most of the Commission's proposals for state legislation have been submitted for consideration to the Committee of State Officials on Suggested State Legislation of the Council of State Governments. The Committee consists of legislative officials and staff, Commissioners on Uniform State Laws, Attorneys General and other administrative officials, and members of Commissions on
Interstate Cooperation. Those legislative proposals of the Advisory Commission that have been approved by the Committee of State Officials on Suggested State Legislation are published and distributed by the Council of State Governments to Governors, legislators, and other state officials. All but 12 of the Advisory Commission's proposals for state legislation are now included in the Council's *Program of Suggested State Legislation*.

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

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

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

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I. TAXATION AND FINANCE

Introductory Statement

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

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

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

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

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

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

More business-like management of financial balances to maximize interest earnings can relieve somewhat the pressure for additional local government revenues. States can facilitate this objective by providing local governments with the necessary authority (where they now lack it) to invest their balances at interest and by enabling state officials to share with local officials their expert knowledge acquired in the management of states' investment funds. In the same way, the states can materially assist local government engaged in borrowing operations, particularly smaller units, in those cases where local officials are not acquainted with the complexities of bond markets.
The use of local industrial development bonds by certain local governments to finance the acquisition of industrial plants for lease to private enterprise in an effort to attract industry, if unregulated, may seriously undermine local credit. The Commission's legislative proposal is designed to safeguard the industrial development bond device from abuse for private gain to the detriment of the states and their communities.

The ability of local governments to tax and to borrow to raise revenue is subject to an extensive and complicated body of law. The Commission believes that this present maze of constitutional and statutory restrictions upon local governments handicaps self-reliance and constitutes a serious impairment to effective local self-government. There is presented a proposed constitutional amendment repealing constitutional restrictions on local debt and taxing powers and lodging this authority with the legislatures. Two other proposals authorize local property tax levies to produce revenues adequate to cover operating costs and debt obligations which are financed from the property tax and to borrow for certain public works without limitation, subject to permissive referendum.
Since the state creates local governments and determines their share of the governing role, it must see to it that they possess the financial resources required to match their responsibilities. The obligation of the state in this regard is inescapable because if the locally raised revenue is inadequate to finance the duties prescribed for local governments, the state must provide it.

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

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

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

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

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION
members for the purpose of making a thorough examination of the property tax and its administration. The Commission shall make a report of its study and examination together with such specific recommendations as it may adopt to the Governor and to the legislature not later than \( \frac{1}{3} \) of each \( \frac{1}{3} \) numbered year.

Section 2. Commission Duties. The Commission shall:

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

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

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

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

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

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

¹To the extent that exemptions can be justified, the tax credit method employed by some states has considerable merit because it completely removes the assessor from dollar determinations of the privilege.
43 determinations of the state tax agency as an equalized measure of local fiscal capacity and tax effort;
44 (8) Evaluate the structure, powers, facilities, and competence of the state tax agency and local property tax offices and on the basis of such evaluation recommend an organizational policy from among the following alternatives:
49 (a) Centralized property tax administration, with each local government determining the amount of its own tax levies, within any applicable limitations, and with the state providing all professional services for the assessment, collection and enforcement of the property tax liability;
54 (b) Centralized property assessment administration, with the valuations certified to local officials as the basis for their billing and collection of taxes;
59 (c) Coordinated joint state-local administration with the state tax agency granted all appropriate supervisory powers and facilities but whose assessment responsibilities would be confined to property of types (i) that customarily lie in more than one district and do not lend themselves to piecemeal local assessment; (ii) that require appraisal specialists beyond the specialized skills of most local district staffs; and, (iii) that can be more readily discovered and valued by a central agency than by a local assessment office; or
64 (d) Some other uniform method of property assessment administration.
(9) Evaluate the present administrative-judicial appeal procedure for assessment review in order to determine whether taxpayers have ready and inexpensive access to effective legal remedies, and make recommendations with respect thereto.

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

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

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

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

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

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

Section 9. Effective Date. Insert effective date.
In 49 of the 50 states (all except Hawaii), property assessment administration is a joint state and local responsibility. Most recent efforts to improve the quality of property assessment have concentrated on making the joint system work better. To knit this two-level system into a well-coordinated, smoothly-functioning organization is difficult but possible of accomplishment.

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

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

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

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

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

1 As an alternative for states in which organization for tax administration is diffused, the agency should be given prominence as a separate department or bureau. It may be desirable to have the career administrator serve under a multi-member commission appointed for overlapping terms.
(c) In addition to any duties, powers or responsibilities otherwise conferred upon the Division, it shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to ad valorem taxation. Whenever the Division assesses or appraises property, or provides services therefor, it shall prescribe the methods and specifications for such assessment or appraisal.

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

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

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Section 3. Collection and Publication of Property Tax Data.  

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

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

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2 Paragraph (a) of this section is similar to Section 3, and paragraph (c) of this section is similar to Section 5 of the act entitled "An act establishing assessment standards and performance measurements; establishing interdistrict and intradistrict tax equalization procedures, and for related purposes.", which appears below. This duplication is necessary because the provisions are desirable in each act standing alone.
based on property tax and assessment ratio data compiled for
other states by the United States Bureau of the Census, or
any agency successor thereto.

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

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

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

Section 6. Tax Maps. The Division shall require each
county assessor to maintain tax maps in accordance with
standards specified by the Division. Whenever necessary to
correct mapping deficiencies, the Division shall install
standard maps or approve mapping plans and supervise map production. The state tax agency shall require the county to reimburse the state for tax maps installed by the Division. The amount or amounts of such reimbursement shall be deposited in the state treasury to the account of the state tax agency.

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

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

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

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3 In place of the last two sentences of Section 6, a state may prefer the following: Costs of map production and installation incurred pursuant to this section shall be county charges.
Section 10. Appraisal of Major Industrial and Commercial Properties. The Division shall provide to each county or multi-county assessment district the services of certified appraisers for the appraisal of major industrial and commercial properties. The properties to be appraised shall be determined by the Division after consultation with county assessors. In making such determinations, the Division shall take into account the ability of the county assessor to perform such appraisals with the resources at his disposal. Provide for such reimbursement or county charge as may be appropriate.

Section 11. Inspections, Investigations and Studies. The Division may make such inspections, investigations and studies as may be necessary for the adequate administration of its responsibilities pursuant to this act. Such inspections, investigations and studies may be made in cooperation
with other state agencies, and, in connection therewith, the
Division may utilize reports and data of other state agencies.

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

Section 13. Enforcement of Assessment and Appraisal
Standards. (a) In order to promote compliance with the
requirements of law, the Division shall issue and, from time
to time, may amend or revise rules and regulations contain-
ing minimum standards of assessment and appraisal performance.
Such standards shall relate to: adequacy of tax maps and
records; types and qualifications of personnel; methods and
specifications for the appraisal or reappraisal of property;
and administration. For failure to meet the standards con-
tained in such rules and regulations the Division may suspend,
in whole or in part, performance of the assessment or ap-
praisal function by a county.
(b) If the Division finds that a county has failed or is failing to meet the standards contained in the rules or regulations in force pursuant to paragraph (a) of this section, it shall notify the county assessor of the fact and nature of the failure. The notice shall be in writing and shall be served upon the county assessor and the county governing board.

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

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

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

Section 14. County Assessor. (a) On and after January 1, 19__ the county assessor shall be appointed by the chief executive officer of the county and shall hold office for an indefinite term for a term of five years.

No person shall be eligible for appointment as county assessor who does not hold an assessor's certificate issued by the Division pursuant to section 2 of this act.

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

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

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

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

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

(b) Such agreement shall provide for;

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

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

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

The possibility of including this paragraph may depend in a particular state on constitutional or statutory considerations.
The agreement may provide for the suspension of the powers and duties of the office of county assessor in any one or more of the parties.

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

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

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

Section 17. State Performance of County Assessment
Function. The governing board of a county may, by reso-
lution, request the state tax agency to assume the county
assessment function and to perform the same in and for the
county. If the Commissioner of the state tax agency finds
that direct state performance of the function is necessary or
desirable to the economic and efficient performance thereof,
he may direct the Division to undertake such performance pur-
suant to the request. Unless otherwise authorized by law,
the Division shall undertake and perform the function only
after the execution of a suitable agreement between the
county and the state tax agency providing for responsibil-
ity for costs. During the continuance of performance of the
county assessment function by the Division, the office and
functions of the county assessor shall be suspended, and the
performance thereof by the Division shall be deemed per-
formance by the county assessor.

Section 18. Discontinuance of Certain Assessors' Offices. On and after \[\text{date}\] assessment of property for pur-
poses of taxation, unless pursuant to agreement as author-
ized in Section 16 of this act, shall be only by the county
and state in accordance with law. However, any assessor in
office on \[\text{date}\] who is serving a fixed term as provided by
statute or local law may continue in office until the expira-
tion of such term, and the jurisdiction of which he is the
assessor shall continue to have the assessment function pre-
viously conferred upon it until the expiration of such term.

Any vacancy in an elective or appointive office permitted to
continue by reason of this section shall be filled only for
the unexpired portion of the term.

Section 19. Effective Date. Insert effective date/
C. PROPERTY TAX ASSESSMENT STANDARDS AND EQUALIZATION

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

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

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

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

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

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

Suggested Legislation

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

(Be it enacted, etc.)

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

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

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

Section 2. Tax Base Determination. All classes of taxable
property shall be assessed at the same percentage of current
market value within each county. No assessment level shall
be lower than _______ percent of current market value as
found by the assessment ratio studies made by the Division
of Property Taxation of the state tax agency. Whenever the
prevailing general assessment level within a county, as shown
in an assessment ratio study, is below the minimum assessment
level in force pursuant to this section and the Division of
Property Taxation of the state tax agency deems it necessary
to the proper administration of the tax laws to order such
uniform percentage adjustments in the assessment base, it may
issue such order. Whenever such prevailing general assessment
level is 10 percent or more below the minimum assessment level
in force pursuant to this section, the county assessor shall
make such uniform percentage adjustment in the assessment base
as is necessary to secure compliance with law. The failure
of the Division of Property Taxation of the state tax agency
to issue an order pursuant to this paragraph shall be of no
evidentiary significance in any proceeding for the abatement
or modification of an assessment.
Section 3. Preparation of Assessment Ratio Studies. The Division of Property Taxation of the state tax agency annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity and overall compliance with assessment requirements for each major class of property in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the Division of Property Taxation of the state tax agency shall compute the average dispersion.

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

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1See note 2, page 15.
(b) Upon demand for hearing filed pursuant to paragraph (a) of this section, the Division of Property Taxation of the state tax agency shall fix a hearing thereon. Such hearing shall be not less than ten days nor more than twenty days from the date when the demand therefor is received, but in no event shall such hearing be less than five days from the date notice is served upon the county assessor and chief county fiscal officer of the county from which a demand has been filed.

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

(d) For the purposes of this section, the assessor for a multi-county assessment district shall be deemed the assessor in and for every county for which he is in fact the assessor by virtue of the agreement made pursuant to the statute authorizing multi-county assessment districts.
Section 5. Publication of Assessment Ratio Information.

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

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

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

Section 7. Effective Date. [Insert effective date]
D. PROPERTY TAX REVIEW AND APPEAL PROCEDURE*

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

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

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

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION
Title should conform to state requirements. The following is a suggestion: "An act establishing a state tax court; providing for protests of assessments, and for related purposes."

(Be it enacted, etc.)

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

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

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

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

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

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

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

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

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

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

Section 4. Tax Court. (a) There is hereby established the
State Tax Court which, for administrative purposes only, shall
be in the [state tax agency], but which shall be an independent
administrative tribunal. The Court shall consist of a chief
judge and [Five] associate judges, appointed by the Governor
with the consent of the state senate [with the consent of the
state legislature]. The term of each judge of the Court shall
be [six] years. The initial appointments shall be as follows:
the chief judge for a term of [six] years; one associate judge
for a term of [two] years; one associate judge for a term of
[three] years; one associate judge for a term of [four] years;
and one associate judge for a term of [five] years. Vacancies
on the Court shall be filled for the unexpired term in the
same manner as appointments to full terms. During his con-
tinuance in office neither the chief judge nor an associate
judge shall have any other employment, but shall devote full
time to his duties as such judge.

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

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

(d) Consistent with this act and site statutes appli-
cable to proceedings of administrative tribunals, the State
Tax Court shall provide by rule for practice before it and the
conduct of its proceedings.

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

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

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

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

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

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

(b) Any protesting taxpayer who, pursuant to the disposition of his protest by the county assessor, local board of property tax review, or commissioner of the state tax agency, would incur a tax liability of less than $1,000.00 by reason of the protested assessment in the first year to which such assessment applies may elect to employ such
procedure to appeal from such disposition, upon payment of
a $2.00 filing fee.

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

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

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

(b) In any proceeding relating to a protested assessment
it shall be a sufficient defense of such assessment that it is
accurate within reasonable limits of practicality: provided
that a proven deviation of ten percent or more from the relevant county assessment ratio shall establish conclusively the invalidity of such defense.

Section 9. Effective Date. [Insert effective date.]
Over the past few years an increasing number of states have authorized local governments to levy non-property taxes as a means of securing additional revenues. Today many cities, counties, and even school districts levy the same kinds of taxes that are levied by the state. In order to levy such taxes, local governments typically have set up tax collection machinery which creates added administrative costs and increases the cost of tax compliance to the tax-paying public, while at the same time the effectiveness of local tax collection is hampered because of the limited local funds available for tax administration.

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

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

**Suggested Legislation**

*Title should conform to state requirements*

(Be it enacted, etc.)

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

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
a fee to be paid by the political subdivision to the
tax department in such amount as may be necessary fully
to cover the cost of collection of the local portion of
the tax by the tax department. Pursuant to the agree-
ment the director shall transmit to such political
subdivisions on or before all taxes so collected on
behalf of such political subdivisions less the agreed
upon collection fee.
The persistent pressure for more and costlier governmental services is hitting hardest at local governments because over one-half of this country's expenditures for civil government (as distinguished from expenditures associated with foreign affairs and defense) actually are made by counties, cities, school districts, and other local units of government. Projections of local governments' future needs clearly point to a continuing revenue pressure for years to come. While local property tax collections and the amount of state and federal aids have each increased faster than anticipated, local needs have risen even faster. In consequence, many local governments are resorting to nonproperty taxes. Others are exploring their possibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Suggested Legislation**

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

(Be it enacted, etc.)

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

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.

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

Section 5. Creation by Petition.

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.
(a) A petition signed by \( \frac{L}{L-\text{percent}} \) percent of the qualified voters within any portion of a county may be submitted to the \( \text{county governing body} \) requesting the establishment of a subordinate county service area to provide any service or services which the county is otherwise authorized by law to provide. The petition shall include the territorial boundaries of the proposed service area and shall specify the types of services to be provided therein.

(b) Upon receipt of the petition, and verification of the signatures thereon by the \( \text{county clerk} \), the \( \text{county governing body} \) shall, within \( \frac{1}{30} \) days following verification, hold a public hearing on the question of whether or not the requested subordinate service area shall be established.

(c) Within \( \frac{1}{30} \) days following the holding of a public hearing, the \( \text{county governing body} \), by resolution, shall approve or disapprove the establishment of the requested subordinate county service area. A resolution approving the creation of the subordinate service area may contain amendments or modifications of the area's boundaries or functions as set forth in the petition.

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

Section 7. Referendum.

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

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

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

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

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

2. This percentage should be the same as that specified in Section 7 (a).
therein, all qualified voters residing in the proposed service area shall be eligible.

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

Section 10. Effective Date. [Insert effective date]
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/7

(Be it enacted, etc.)

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

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
jurisdictions. The agreement may provide for joint ad-
ministration or for administration by one political
subdivision on behalf of one or more political subdivisions
that are parties to such an agreement and shall provide
for the allocation of the cost of such administration among
the parties.
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]

(As 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

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

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
financial condition sometimes are obliged to sell their bonds on less favorable terms because germane information has not been provided.

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

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

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

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

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

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

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

(Be it enacted, etc.)

TITLE I

TECHNICAL AND ADVISORY ASSISTANCE

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

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

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

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

1 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.
(d) "Chief financial officer" means the comptroller, treasurer, director or finance or other local government official charged with managing the fiscal affairs of a local government.

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

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

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

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

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

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

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

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

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

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

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

I

TITLE II

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

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

Section 3. Notice of Sale Advertisement. The notice of sale advertisement shall set forth the purpose of the bond issue, principal amount of the bond issue, designation of type of bond issue according to the authorizing statute, date of issue, the method of bond repayment, showing the denominations and maturities offered for sale, the basis of bidding and award of the bonds, the date, hour, and place that bids will be opened, the name of the chief financial officer who will furnish additional information about the issuing local government or the bond sale, and any other appropriate information, in accordance with the regulations prepared by the [Agency].
Section 4. Prospectus. The prospectus shall: (1) report the past, current, and estimates as to the future finances of the bond-issuing local government; (2) include selected information concerning the financial administration and organization of the bond-issuing local government; (3) contain selected information concerning the economic and social characteristics of the community in which the issuing local government is located, including such data as will permit investors and other interested parties to appraise the ability of the borrowing local government to assume the obligation; and (4) contain any other appropriate information, in accordance with the regulations prepared by the [Agency].

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

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

TITLE III

SEPARABILITY AND EFFECTIVE DATE

Section 1. [Insert separability clause.]

Section 2. [Insert effective date.]
LOCAL INDUSTRIAL DEVELOPMENT BOND FINANCING *

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

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

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

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

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

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

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

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act relating to industrial development bonds."7

(Be it enacted, etc.)

1 Section 1. Purpose. The legislature hereby finds and declares that the issuance of industrial development bonds as herein described must be placed under proper safeguards in order that the fiscal integrity of the state and its political subdivisions be preserved, that the conventional credit facilities of private enterprise not be displaced,
and that local government financing not be abused. It is the intent of this act, therefore:

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

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

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

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

Section 2. Definitions.

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

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

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

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

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

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

Section 4. Statutory limitations imposed upon the borrowing powers of local units of general government shall be construed as not being applicable with respect to the issuance of industrial development bonds. In addition to the limitations on the powers of local units of general government provided in this act, the agency shall limit the aggregate volume of industrial development bonds outstanding at any time on behalf of all local units of general government in the state to an amount not to exceed \( \frac{r}{100} \) percent of the personal income of the population in the state as last determined by the United States Department of Commerce or \( \frac{r}{100} \) percent of total state and local tax collections in the state during the preceding fiscal year. \( \frac{r}{100} \) percent of \( \frac{r}{100} \) dollars. The agency shall determine from time to time the aggregate volume of industrial development bonds which may be issued pursuant to this limitation and in the light of employment needs and industrial development prospects shall allot among all eligible local units of general government the amount of industrial development bonds each may issue.

Section 5. The agency may employ personnel necessary to carry out the provisions of this act. The agency is empowered to issue rules and regulations and to require information necessary for the administration of this act.
Section 6. All departments, divisions, boards, bureaus, commissions or other agencies of the state government shall provide such assistance and information as the agency may require to enable it to carry out its duties under this act. In its deliberations incident to the administration of this act the agency shall consider the advice of the state planning and development agencies and local planning agency regarding resource utilization and developmental plans for the various areas of the state.

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

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

(b) That the lessee of the property is a responsible party;
(c) That the contract for lease of the property provides for:

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

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

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

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

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

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

(g) That financing by banks, other financial institutions
or other parties, of the property required by the lessee is not readily available to the lessee on ordinary commercial terms in adequate amounts either on the local market or on the national market;

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

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

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

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

Section 8. (a) Within 7 days after a local unit of general government files a petition, completed in accordance with the rules and regulations authorized by Section 5, the appropriate state agency shall upon due notice, hold a hearing upon the petition. The appropriate state agency
shall reasonably expedite any such hearing and shall advise
the petitioning local unit of general government of its
decision within \( \frac{L}{7} \) days of the adjournment of a
hearing. If the \( \text{appropriate state agency} \) approves the
petition a certificate of convenience and necessity shall
be issued forthwith. Failure of the agency to advise the
petitioning local unit of general government of its decision
within \( \frac{L}{7} \) days of the conclusion of the hearing shall
constitute approval of such petition, and the local unit
of general government shall be entitled to receive such
certificate. Decisions of the \( \text{appropriate state agency} \)
shall be \( \text{reviewable as provided in the state administrative}
procedure act} \) final as to findings of fact.

(b) A certificate of convenience and necessity issued
as provided in this act shall expire in twelve months from
the date of its issuance provided that, upon written appli-
cation by the local unit of general government to the
\( \text{appropriate state agency} \), supported by a resolution of
such local unit's governing board and such information as
the \( \text{appropriate state agency} \) may require, the \( \text{appropriate}
state agency} \) may in its discretion extend the expiration
date of such certificate for a period not to exceed \( \frac{L}{7} \)
months.\(^2\) If, at any time during the life of such certificate,

\(^2\) 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 referen-
dum procedure.
the authority of the local unit of general government to
proceed thereunder is contested in any judicial proceeding,
the court in which such proceeding is pending or, upon
proper application, to the appropriate state agency, the
appropriate state agency may issue an order extending the
life of such certificate for a period not to exceed the
time from the initiation of such proceeding to final judg-
ment or other termination thereof.

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

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

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

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

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

Section 12. Sections insert any legal citations authorizing other issuance of industrial development bonds are hereby repealed.
Section 13. [Insert separability clause.]

Section 14. [Insert effective date.]
INVESTMENT OF IDLE FUNDS (Amended) *

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

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

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

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

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

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

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

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

Section 1 provides further that the provisions of the act shall not impair the power of a local unit of government to hold funds in deposit accounts with banking institutions as otherwise authorized by law. In other words, the terms of the suggested act are designed to avoid conflict with other statutory provisions governing the placing of funds with banking institutions.
Section 2 of the suggested act authorizes the governing body of the local unit of government concerned to delegate the investing authority provided by Section 1 to the treasurer or other financial officer charged with custody of the funds of the local government.

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

**Suggested Legislation**

*Title should conform to state requirements.*

(Be it enacted, etc.)

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

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

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

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

5 (d) [Blank]

6 (e) [Blank]

7 Provided however that the provisions of this act shall not

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2 Individual states may wish to augment the list of authorized investments set forth in this Section.
impair the power of a municipality, county, school district or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

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

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

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

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

(c) providing technical assistance in investment of idle funds to local governments that request such assistance.
States are urged to take legislative action in establishing programs, or expanding existing programs, of financial and technical assistance to metropolitan areas in such fields as urban planning, building code modernization, and local government organization and finance.

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

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

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

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

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

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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 consti-
tutional 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 borrow-
ing powers and gives the legislatures authority to establish and revise
local tax and debt policy through the normal legislative process.

Suggested Constitutional Amendment

Section 1. The Legislature may pass laws regulating the
taxing and borrowing powers of the political subdivisions of the state.

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

Section 3. Insert appropriate language, consistent with
the referendum requirements for amending the Constitution and with
state election laws, for submission of the proposed amendment 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."

(2) Be it enacted, etc.)

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

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

Section 3. Determination of Taxable Property Value. Annually on or before [Insert date], the [Insert title of assessor] shall transmit to the legislative body of each local government a written statement showing the taxable value of all property within the jurisdiction of the local government. The value shall be ascertained from the [Assessment records] for the year, as equalized and corrected by the [Property tax review agency].

Section 4. Determination of Property Tax Rate. On [Insert date], the local legislative body shall fix the tax rate, designating the number
of \[ \text{} \text{mills} / \text{cents upon each hundred dollars (\$100)} \], using as a basis the value of property as shown in the written statement furnished under section 3.

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

Section 6. Separability. \[ \text{Insert separability clause.} \]

Section 7. Effective Date. \[ \text{Insert effective date.} \]

C. AUTHORIZATION FOR LOCAL GOVERNMENT BORROWING

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

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

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

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1 The National Municipal League has issued a Model Municipal Bond Law (New York: 1962) which covers the basic elements for state legislation on local borrowing powers. It includes the standard kind of debt limitation (as a percentage of assessed valuation), although in the introduction (p. viii) the League expresses reservations concerning this type of debt limitation.
2. Vest authority to incur debt with the governing bodies of local governments, subject only to a permissive referendum if petitioned by the voters and resolved generally by a simple majority vote.

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

**Suggested Legislation**

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

(Be it enacted, etc.)

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

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

3. (2) "Local government" means a county, city, school district, township, special district, or borough.

4. **Section 2. Debt-incurring Power.** Every local government may contract debts for the construction and acquisition of public buildings and facilities and for the acquisition
of land or for \( \int \), issue its bonds,

notes, or other evidence of indebtedness to finance such activities, and provide for the rights of the holders of these obligations and to secure these obligations.

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

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

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the initial resolution so adopted, a petition protesting the issuance
of the bonds signed by at least \( \frac{L}{7} \) percent of the qualified
electors of the jurisdiction shall have been filed with/insert title of
official with whom such petitions are filed\( J \). If the petition shall have
been filed with the \( J \) within \( J \) thirty (30)\( J \) days from the
publication or the posting, as the case may be, of the initial resolution,
no bonds shall be issued under this act without the assent of a majority
of qualified electors who vote upon a proposition for the issuance of
the bonds in the manner provided by Sections 5 and 6 of this act. For
the purpose of this act, a qualified elector shall be any resident or
citizen of the local jurisdiction who was qualified to vote for members
of the state legislature\( J \) at the general election next preceding the
filing of such petition, or who, on the date of the filing of such
petition, is qualified to vote for members of the state legislature\( J \).
No qualified elector shall be permitted to withdraw his signature from
such a petition after signing the petition.

Section 5. Election Resolution. If it is necessary to hold an
election on the proposition to issue the bonds pursuant to Section 4
of this act, such election shall be called by the local legislative
body\( J \) which shall adopt a resolution (herein called the "election
resolution") which shall supersede by its adoption the initial
resolution and shall state in substance (1) the amount or maximum
amount of bonds to be issued; (2) the purpose or purposes stated in general terms for which the bonds are to be issued; (3) the rate or maximum rate of interest which the bonds are to bear; (4) a brief statement of the fact whether the bonds will be payable (i) from all local revenue, from whatever source derived, (ii) from ad valorem taxes levied upon all the taxable property in the local jurisdiction, or (iii) exclusively from the revenues of the facility; and (5) the date on which the election will be held. The election resolution shall be published in full at least once, not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for the election, in a newspaper published in the local jurisdiction or, if there be no such newspaper, the election resolution shall be placed in five (5) conspicuous places within the jurisdiction of the local government, not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for the election, and no other notice thereof need be published or given.

Section 6. Conduct of Election. Except as herein otherwise provided, and as far as may be reasonable, the manner of conducting the election, keeping the poll lists, counting and canvassing the
votes, certifying the returns, declaring the results, and doing
tall acts relating to the election shall conform to the mode or
method of procedure provided by law for the qualification of
voters and the holding of a general election.

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

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

Section 9. Separability. Insert separability clause.

Section 10. Effective Date. Insert effective date.
REAL ESTATE TRANSFER TAX*

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

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

Suggested Legislation

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

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

(3) "Value" means: (1) in the case of any deed not a gift, the amount of the full actual consideration therefor,

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
paid or to be paid, including the amount of any lien or liens thereon; and (ii) in the case of a gift, or any deed with nominal consideration or without state consideration, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

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

Section 3. Collection of Tax.

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

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

Section 4. Declaration of Value.

(a) Each deed evidencing a transfer of title subject to the tax as herein provided shall have appended thereto an
affidavit of the parties to the transaction or their legal representatives declaring the value of the property transferred. If the transfer is not subject to the tax as herein provided, the affidavit shall specify the reasons for the exemption.

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

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

Section 5. Disposition of Proceeds. Insert appropriate language as to disposition of proceeds.

Section 6. Powers and Duties of state tax agency.

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

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

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

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

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

(1) recorded prior to the effective date of this act;
(2) to the United States of America, this state, or any instrumentality, agency, or subdivision thereof;
solely in order to provide or release security for
a debt or obligation;
which confirms or corrects a deed previously recorded;
between husband and wife, or parent and child with
only nominal actual consideration therefor;
on sale for delinquent taxes or assessments;
on partition;
pursuant to mergers of corporations;
by a subsidiary corporation to its parent corporation
for no consideration, nominal consideration, or in sole con-
sideration of the cancellation or surrender of the subsidiary's
stock.

Section 10. Effective Date. [Insert effective date.]
II. URBAN PROBLEMS

Introductory Statement

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

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

In the legislative proposals presented in this section, the Commission sets forth no single "pat" solution for easing the problems of political and structural complexity in metropolitan areas. The Commission is convinced that no single approach can be identified as the most desirable, whether from a National standpoint or within a given state. Neither does the Commission believe it can be a profitable effort for the legislature of any state having within its borders a number of metropolitan areas to endeavor to legislate a single solution; rather the approach recommended by the Commission is one of legislative provision by the state of permissive authority to all of its metropolitan areas to employ whichever of these principal methods are determined by the residents of the areas and their political leaders to be preferable in the light of all attendant circumstances.
In brief, the Commission proposes enactment by state legislatures of a range of permissive powers to be utilized by the residents of the metropolitan areas as they see fit. Additionally, through legislative proposals presented herein, the Commission proposes that states establish within the structure of state government a dual function of oversight and technical assistance to local units of government, thereby asserting a determination to assist continually and to intervene where necessary in ameliorating jurisdictional problems in their metropolitan areas. The Commission also proposes that Federal grants-in-aid to local governments for urban development be channeled through the states in cases where the state provides significant financial and technical assistance. Finally, given the many uncoordinated sources of development activities and the number of local units in metropolitan areas, the Commission urges the use of metropolitan planning and coordinating machinery effectively geared into the political decision-making processes within the entire metropolitan area.

The Commission suggests that, to the extent practicable, existing general units of government be empowered to exercise functions which will minimize the effect of the disparities in services and related costs that result from the multiplicity of separate jurisdictions with varying relationships between demands for services and available resources in metropolitan areas. The emphasis is upon areawide approaches to problems that are best met areawide.
The 1963 Program of Suggested State Legislation contained a policy statement affirming that: "State constitutions and statutes should permit the people residing in metropolitan areas to examine and, if they so desire, to change their local government structure to meet their needs for effective local government." It was further suggested that states enact legislation authorizing the establishment of locally initiated metropolitan area study commissions "to develop proposals for revising and improving local government structure and services in the metropolitan area concerned." The suggested legislation which follows is designed to carry out the 1963 policy statement.

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

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

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

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

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION - 101 -
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 hereby declared to be the public policy of the State of ____ to provide for the residents of the metropolitan areas in the state the means of improving their local governments so that they can provide essential services more effectively and economically. The growth of urban population and the movement of people into suburban areas has created problems

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

quately met by such individual units.

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

ing therein secured.

Section 2. Definitions. As used in this act:

(a) "Central city" means the city having the largest pop-

ulation in the tentative metropolitan area according to the latest Federal decennial census.

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

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

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

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

(f) "Metropolitan area" means an area the boundaries of
which are determined by a metropolitan study commission pur-
suant to sections 9 and 10 of this act.

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

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

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

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 popula-
tion of 25,000 or more and that the limits of the tentative metro-
politan 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 "stand-
ard metropolitan statistical area" employed by the U. S. Bureau
of the Census in the most recent nationwide Census of the Pop-
ulation.
village, township, or borough lying, in whole or in part, within a metropolitan area which is providing one or more governmental services listed in subsection (g).

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

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

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

Upon receipt of such a petition, the (official) shall examine the source and certify to the sufficiency of the signatures thereon. Within 30 days following receipt of such petition, the (official) shall transmit the same to the board
Section 4. Election on Establishing Metropolitan Study Commission. The election on the formation of the metropolitan study commission shall be conducted by the (officials) of the component counties in accordance with the general election laws of the state and the results thereof shall be canvassed by the county canvassing board of the central county, which shall certify the result of the election to the name of governing body of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state. Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election for at least thirty days preceding the date of the election. The ballot proposition shall be substantially in the following form:

Establishment of Metropolitan Study Commission

"Shall a metropolitan study commission be established for

2 Alternatively, establishment of a commission might be authorized by joint or concurrent resolution of governing bodies in the tentative metropolitan area.
the area described in a (joint resolution adopted by the
governing bodies of \( \text{insert names of counties, cities,} \)
other units\( \text{)} \) (petition filed with (official) of \( \text{county on the} \) 
___ day of _________ 19\( _\)\)?

YES ................
NO ..............."

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

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

Section 5. Selection of Metropolitan Study Commission.

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

(1) One member selected by the \( \text{insert name of} \)
governing body\( \text{) of each component county.} \)

(2) One member selected by the mayor and city
council of each component city of at least 2,500 population;
provided that any city having more than \( \text{insert} \) \( \text{population by the last official United States census shall be}
entitled to one more member for each additional \( \text{insert} \) \( \)
of population or fraction thereof.

(3) One member representing all cities under 2,500 population and the name of other types of units of general government to be selected by the name of chief elected official, such as mayor or council president of such cities and the name of other units; provided that if the combined population of such cities and the name of other units exceeds the additional population or fraction thereof.

The members from such cities and the name of other units shall be elected as follows: The name of chief elective official of all such units of government shall meet on the second Tuesday following the establishment of a metropolitan study commission and thereafter on (date) of each even-numbered year at o'clock at the office of the name of governing body of the central county. The chairman of such county governing body shall preside. After nominations are made, ballots shall be taken and the candidate(s) receiving the highest number of votes cast shall be considered elected.

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

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If it is desired that each type of general government unit have separate representation -- for example, villages or townships -- a separate subsection may be provided for each, with same general provisions as in (3).
(b) Each member shall reside at the time of his appoint-
ment in the [Insert name of unit] by which appointed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The boundaries of existing units of local govern-
ment;

(d) Population density, distribution and growth;

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

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

(g) The area within which benefits from metropolitan
services would be received and the costs of services borne;
(h) Maintenance of citizen accessibility to, controllability of, and participation in local government;

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

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

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

(a) Consolidation of any existing [Insert names of units of general government other than county] with any other existing [Repeat insert];

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

(c) Consolidation of two or more counties;

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

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

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

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

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

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

Section 13. Adjustment of Property and Debts. (a) The Commission shall determine the value and amount of all property used in performing any metropolitan service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected
by its comprehensive program for metropolitan services and shall determine and provide in its comprehensive program an equitable adjustment of such property and debts of each unit of local government.

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

Section 14. Public Hearings on Proposed Program. Within two years after the date of its organization, a commission shall complete the preparation of its preliminary determination of boundaries and program for furnishing metropolitan services, and shall provide for adequate publication and explanation of the program. The commission shall fix the dates and places for public hearings on the program. Notice
of hearings shall be published once each week for at least two weeks preceding a hearing, in at least one newspaper of general circulation in each component county. The notice of hearing shall state the time and place for the hearing.

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

4 Alternatively, the states may wish to consider the Oregon example. Under Oregon law, a commission is authorized to submit proposals to the voters in cases when existing law authorizes initiative and referendum on such proposals. On other proposals, a commission may recommend necessary enabling legislation or charter amendments to the appropriate governing body or the Legislative Assembly.
Section 16. Effect of Approval. Any proposal approved pursuant to section 15 shall take effect at the time fixed in the proposal, and all laws and charters, and parts thereof, shall be superseded by any proposals adopted under provisions of this act to the extent that they are inconsistent with the proposals adopted.

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

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

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

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

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

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

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

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

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

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

Section 20. State Matching Funds. In order to encourage
and assist in the establishment and operation of metropolitan
study commissions, the If State has office of local
government, insert its name is authorized to enter into
contracts to make grants to metropolitan study commissions
to help finance their activities. The amount of any such
grant may equal but not exceed the amount of funds appropri-
ated by local units of government pursuant to section 19.

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

Section 22. Separability clause.

Section 23. Effective date.
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 incompletely subdivided subdivisions, and unplanned mixtures of industrial, commercial, and residential property uses. Others are havens for gambling and vice, or represent fire hazards at the city doorstep. Many have deficiencies that are not so readily apparent yet constitute unsatisfactory and dangerous conditions.

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

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

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

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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


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

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

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

Even with provision for fringe area representation on the planning and zoning commission and zoning adjustment board, granting of extraterritorial zoning authority might stimulate a movement toward unsound "defensive" incorporations. This is a risk that seems worth taking in view of the possible advantages to be gained by orderly fringe development. Also, any action directed toward greater control over the unincorporated area,
whether it be giving municipalities greater initiative in annexation proceedings or, as in this case, greater control through extraterritorial zoning, should be accompanied by simultaneous strengthening of the state's regulation of new incorporations, as provided in suggested legislation on control of municipal incorporations (see page 153).

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

Suggested Legislation

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

(Be it enacted, etc.)

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

"Section /____ / Extraterritorial Jurisdiction.

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

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

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

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

"Section [___] Boundary Lines. In the case of
land lying outside a municipality and lying within a distance
of (___) mile(s) of more than one municipality, the juris-
diction of each such municipality shall terminate at a
boundary line equidistant from the respective corporate
limits of such municipalities, or at such line as is agreed
to by the governing bodies of the respective municipalities.

"Section ___ Representation on Boards and
Commissions."

(a) Planning and Zoning. As a prerequisite to the
exercise of such powers, the membership of the planning
board/zoning commission charged with the preparation of
proposed comprehensive planning, zoning, and subdivision
regulations for the (___) mile area outside the corporate
limits shall be increased to include additional members who
shall represent such outside area. The number of additional
members representing such outside area shall be equal in
number to the members of the (planning board) (zoning
commission) appointed by the governing body of the munici-
pality; provided, that if the extraterritorial area includes
parts of two or more counties, the area included from each
county shall have additional members equal in number to the
members of the (planning board) (zoning commission) appointed
by the governing body of the municipality. Such additional
members shall be residents of the (___) mile area outside
the corporate limits and shall be appointed by the board of
county commissioners of the county wherein the unincorporated
area is situated. Such members shall have equal rights,
privileges, and duties with the other members of the planning board in all matters pertaining to the plans and regulations of the area in which they reside, both in preparation of the original plans and regulations and in consideration of any proposed amendments to such plans and regulations.¹

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

¹ In states where the planning board or commission gives final approval in specific cases of subdivision regulation, additional language may be needed to assure that its extraterritorial authority is not limited to the preparation of proposed regulations or amendments but also includes final action on matters when such authority is included in the existing statutory law which this amends.
limits and shall be appointed by the board of county commis-
sioners of the county wherein the unincorporated area is
situated. Such members shall have equal rights, privileges,
and duties with the other members of the board of zoning
adjustment in all matters pertaining to the regulation of
such area. The concurring vote of a majority of the members
of such enlarged board shall be necessary to reverse any
order, requirement, decision, or determination of any adminis-
trative official charged with the enforcement of an ordinance.

"Section 1. Enforcement. Any municipal
governing body exercising the powers granted by this section
may provide for the enforcement of its regulations for the
outside area in the same manner as the regulations for the
area inside the municipality are enforced."

Section 2. Separability. Insert separability
clause

Section 3. Effective Date. Insert effective date
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. 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. While most special districts are located outside city borders, a sizeable number (probably over 500) serve or are included in the metropolitan area central cities.

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

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

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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

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.)

Title I

Purpose of Act, and Definitions

Section 1. It is hereby declared to be the public policy of the state of to provide for the people of the populous metropolitan areas in the state the means of obtaining essential services not adequately provided by existing agencies of local government. The growth of urban population and the movement of people into suburban areas has created problems of sewage and garbage disposal, water supply, public transportation, planning, parks and parkways which extend beyond the boundaries of cities, counties and special districts. For reasons of topography, location and movement of population, and land conditions and development, one or more of these problems cannot be adequately met by the individual cities, counties and districts of metropolitan areas. It is the purpose of this act to enable cities and counties to act jointly to meet these common problems in order that the proper growth and development of the metropolitan areas of the state may be assured and the health and welfare of the people residing therein may be secured.
Section 2. As used herein:

(a) "Metropolitan service corporation" means a municipal service corporation of the state of [7]
created pursuant to this act.

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

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

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

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

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

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

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

(i) "Special district" means any municipal corporation

1 Particular states may find it appropriate and desira-
ble to apply a somewhat different definition from this, tailored
to their particular circumstances. For example, a 1961 enactment
in Colorado (H.B. 221) defines a metropolitan area as "a contiguous
area consisting of one or more counties in their entirety, each of
which has a population density of at least fifteen persons per
square mile."
of the state of other than a city, town, county, school district, or metropolitan service corporation.

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

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

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

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

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

**Title II**

**Area and Functions of a Metropolitan Service Corporation**

Section 1. A metropolitan service corporation may be organized to perform certain metropolitan functions, as provided in this act, for a service area consisting of contiguous territory which comprises all or part of a metropolitan area and includes the entire area or two or more cities, of which at least one has a population of \( \geq 50,000 \) or more; Provided, that if a metropolitan service corporation shall be authorized to perform the function of metropolitan comprehensive planning it shall exercise such power,
to the extent found feasible and appropriate, for the entire metropolitan area rather than only for some smaller service area. No metropolitan service corporation shall have a service area which includes only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of a service area. No territory shall be included within the service area of more than one metropolitan service corporation.

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

(a) Metropolitan comprehensive planning.
(b) Metropolitan sewage disposal.
(c) Metropolitan water supply.
(d) Metropolitan public transportation.
(e) Metropolitan garbage disposal.
(f) Metropolitan parks and parkways.

Section 3. With respect to each function it is authorized to perform, a metropolitan service corporation shall make services available throughout its service area on a uniform basis, or subject only to classifications or distinctions which are applied uniformly throughout the service area.
area and which are reasonably related to such relevant
factors as population density, topography, types of users,
and volume of services used. As among various parts of
the service area, no differentiation shall be made in the
nature of services provided, or in the conditions of their
availability, which is determined by the fact that particu-
lar territory is located within or outside of a component
city.

Section 4. In the event that a component city shall
annex territory which, prior to such annexation, is out-
side the service area of a metropolitan service corpora-
tion, such territory shall by such annexation become a
part of the service area.

Title III

Establishment and Modification of a
Metropolitan Service Corporation

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

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

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

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

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

(b) A petition calling for such an election shall be signed by at least 47 percent of the qualified voters residing within the metropolitan area and shall be filed with the appropriate official of the central county.

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

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

FORMATION OF METROPOLITAN SERVICE CORPORATION

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

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2 In a state where this procedure might face constitutional difficulties, provision would be made, instead, for individual county canvassing, and certification to the central county or the secretary of state.
the \(\underline{\hspace{1cm}}\) \(\underline{\hspace{1cm}}\) day of \(\underline{\hspace{1cm}}\) \(\underline{\hspace{1cm}}\) 19\(\underline{\hspace{1cm}}\) to perform

the metropolitan functions of \(\underline{\hspace{1cm}}\)

of each of the functions to be authorized as set forth

in the petition or initial resolution?\(\underline{\hspace{1cm}}\)

YES\(\underline{\hspace{1cm}}\)

NO\(\underline{\hspace{1cm}}\)

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

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

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

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

(b) The metropolitan council shall hold the public hearing so announced, to receive testimony on the question
of extending the boundaries of the service area, and it
may hold further public hearings on the matter, subject
in each instance to published notice in a newspaper having
general circulation in the area, at least three days in
advance.

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

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

To be sufficient, a petition calling for a popular refer-
endum on the prospective annexation of particular territory
to the service area of a metropolitan service corporation
shall be signed by at least either: (1) \( \frac{4}{4} \) per cent of the qualified voters residing within the entire service area of the corporation as prospectively enlarged; or

(2) \( \frac{20}{20} \) per cent of the qualified voters residing within the territory concerning which a referendum is proposed.

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

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

Organization and Governing Body of a Metropolitan Service Corporation

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

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

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

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

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

4 Numbers of members coming from cities as contrasted to counties, as well as the total size of the metropolitan council should, of course, be adjusted in terms of the general pattern of local government prevalent within the metropolitan areas of the particular state.
shall be taken and the candidate(s) receiving the highest number of votes cast shall be considered selected;

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

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

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

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

Section 5. The chairman of the metropolitan council shall receive such compensation as the other members of the metropolitan council shall provide. Members of the council other than the chairman shall receive compensation for attendance at metropolitan council or committee meetings.
of \( \frac{1}{\sim} \) dollars per diem but not exceeding a total of \( \frac{1}{\sim} \) dollars in any one month, in addition to any compensation which they may receive as officers of component cities or counties: PROVIDED, That officers serving in such capacities on a full time basis shall not receive compensation for attendance at metropolitan council or committee meetings. Members of the council may be reimbursed for expenses actually incurred by them in the conduct of official business for the metropolitan service corporation.

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

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

(a) To establish offices, departments, boards and commissions in addition to those provided by this act which are necessary to carry out the purposes of the metropolitan
service corporation, and to prescribe the functions, powers and duties thereof.

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

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

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

Title V

Duties of a Metropolitan Service Corporation

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

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

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

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

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

(b) To review proposed zoning ordinances and resolutions or comprehensive plans of component cities and counties and make recommendations thereon. Such proposed zoning ordinances and resolutions or comprehensive plans must be submitted to the metropolitan council prior to adoption and may not be adopted until reviewed and returned by the metropolitan council. The metropolitan council shall
cause such ordinances, resolutions and plans to be reviewed by the planning staff of the metropolitan service corporation and return such ordinances, resolutions and plans, together with their findings and recommendations thereon, within ninety days following their submission.

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

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

Title VI
General Powers of a Metropolitan Service Corporation

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

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

Section 3. A metropolitan service corporation shall
have power to adopt, by resolution of its metropolitan
council, such rules and regulations as shall be necessary
or proper to enable it to carry out authorized metropolitan
functions and may provide penalties for the violation thereof.
Actions to impose or enforce such penalties may be brought
in the court of the state of
in and for the central county.
Section 4. A metropolitan service corporation shall have power to acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities requisite to its performance of authorized metropolitan functions, together with all lands, properties, equipment and accessories necessary for such facilities. Facilities which are owned by a city or special district may, with the consent of the legislative body of the city or special districts owning such facilities, be acquired or used by the metropolitan service corporation. Cities and special districts are hereby authorized to convey or lease such facilities to a metropolitan service corporation or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or special district and the metropolitan council, without submitting the matter to the voters of such city or district.

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

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

Section 7. Except as otherwise provided herein, a metropolitan service corporation may sell or otherwise dispose of any real or personal property acquired in connection with any authorized metropolitan function and which is no longer required for the purposes of the metropolitan service corporation in the same manner as provided for cities of the [ ] class. When the metropolitan council determines that a metropolitan facility or any part thereof which has been acquired from a component city or county without compensation is no longer required for metropolitan purposes, but is required as a local facility by the city or county from which it was acquired, the metropolitan council shall by resolution transfer it to such city or county.
Section 8. A metropolitan service corporation may contract with the United States or any agency thereof, any state or agency thereof, any other metropolitan service corporation, any county, city, special district, or other governmental agency for the operation by such entity of any facility or the performance on its behalf of any service which the metropolitan service corporation is authorized to operate or perform, on such terms as may be agreed upon by the contracting parties.

Title VII

Financial Powers of a Metropolitan Service Corporation

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

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

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

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Section 3. The metropolitan service corporation shall have the power to levy special assessments payable over a period of not exceeding 1/2 years on all property within the service area specially benefited by an improvement, on the basis of special benefits conferred, to pay in whole or in part the damages or costs of any such improvement.

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

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

7 Additional provisions concerning borrowing power and procedures will commonly be found desirable, with their nature depending upon other laws and practices of the state. Such state consideration should carefully review the bonding power granted to the service corporation as it relates to general local debt limitations and general local bonding authority.
other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a metropolitan service corporation pursuant to this act. Such bonds and other obligations shall be authorized security for all public deposits in the state of 

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

Title VIII
Separability and Effective Date

Section 1. Insert effective date.
Section 2. Insert separability clause.
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.

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION
In *Suggested State Legislation - Program for 1963*, it was pointed out that:

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

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

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

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

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

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

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

**Suggested Legislation**

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

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

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for the incorporation of territory into municipalities.\footnote{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.}

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

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

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.
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 \( \left\lceil \frac{L}{J} \right\rceil \) qualified voters who are residents of the area to be incorporated.

**Subsection (b). Hearing and Notice.** Upon receipt of a petition, made pursuant to Subsection (a) of this section, the Director shall designate a time and place for a hearing on the petition, such time to be not less than 30 nor more than 60 days from the date the petition was received. The place of the hearing shall be within the county in which the greater proportion of the territory to be incorporated is situated and shall be established for the convenience of the parties concerned. The Director shall cause a copy of the petition together with a notice of the hearing to be sent, at least fourteen days in advance of such hearing, to the Chairman of the county board, the governing body of all other governmental jurisdictions in which all or part of the territory to be incorporated is located, the governing body of any municipality
of \( \int_I \) miles of the proposed incorporation, and any duly constituted municipal or regional planning commission exercising planning authority over all or part of the territory to be incorporated. Any persons so notified may submit briefs, prior to the hearing, for or against the proposed incorporation. Notice shall be posted not less than 20 days before the hearing in three public places in the area described in the petition, with a notice fourteen days prior to the hearing to be published in a newspaper qualified as a medium of official and legal publication of general circulation in the area to be incorporated.

Subsection (c). Director's Order. Pursuant to a hearing on a petition for the incorporation of a municipality under Subsection (a), the Director shall affirm the petition for incorporation if he finds the territory to be incorporated so conditioned as to be properly subjected to municipal government and otherwise in the public interest. As a guide in arriving at a determination, the Director shall consider the following factors among others: (1) population and population density of the area within the boundaries of the proposed incorporation; (2) land area, topography, natural boundaries, and drainage basins of the proposed incorporation; (3) area of platted land relative to unplatted with assessed value of platted land relative to assessed value of unplatted areas; (4) extent of business, commercial, and industrial development; (5) past expansion in terms of population and construction;
likelihood of significant growth in the area, and in adjacent areas, during the next ten years; (7) the present cost and adequacy of governmental services and controls in the area and the probable effect of the proposed action and of alternative courses of action on the cost and adequacy of local governmental services and regulation in the area and in adjacent areas; (8) effect of the proposed action, and of alternative actions, on adjacent areas, and on the local governmental structure of the entire urban community.

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

The petition for incorporation shall be denied if it is determined by the Director that annexation to an adjoining municipality, or some other alternative modification of governmental structure in accord with the laws of the state, would better serve the interest of the area, or that the proposed incorporation would be otherwise contrary to the public interest.
If the proposed corporation is to assume any property and obligations of a unit of government such as county or township having jurisdiction within any part of the proposed incorporation area prior to the incorporation, the Director shall apportion such property and obligations in such manner as shall be just and equitable having in view the value of all such property, if any, located in the area to be incorporated, the assessed value of all the taxable property in each of the jurisdictions concerned, both within and without the area to be incorporated, the indebtedness, the taxes due and the delinquent and other revenue accrued but not paid to such jurisdictions. Subsequent to the apportionment, the area incorporated will not be liable for the remaining debts of such jurisdictions.

The Director shall enter an order affirming or denying the petition. He shall issue the order within a reasonable time after the termination of the hearing. If the petition is denied, no petition for incorporation may be submitted which includes all or a part of the same area, within two years after the date of the Director's order. If the petition is denied in part, no petition for annexation to the newly formed municipality as hereinafter provided, which includes all or a part of the area deleted from the original petition, may be submitted within two years after the date of the denial order.
Subsection (d). Referendum. An order affirming a petition made pursuant to Subsection (a) shall fix a day not less than twenty days nor more than sixty days after the entry of such order when a referendum shall be held at a place or places designated by the Director within the area to be incorporated. He shall cause a copy of the order affirming the petition, as submitted or as amended, including notice of the referendum, to be posted not less than twenty days before the referendum in three public places in the area described in the petition, and shall cause a notice of the referendum, fourteen days in advance, to be published in a newspaper qualified as a medium of official and legal publication, of general circulation in the area to be incorporated. The governing body of the appropriate county or counties shall make appropriate provision for election, officers and personnel, polling hours, and general election practices for the referendum. Only voters residing within the territory described in the order shall be entitled to vote. The ballot shall bear the words, "For Incorporation" and "Against Incorporation".

Subsection (e). Filing of Incorporation Document. Immediately upon the completion of the counting of the ballots, the Board of Elections shall execute a signed and verified certificate declaring the time and place of holding the referendum, that it has canvassed the ballots cast, and the number cast both for and against the proposition, and it shall then file the certificate with the Director of the Office of
Municipal Incorporation Review. The Director shall attach the certificate to the original petition, the original order affirming the petition as submitted or as amended in the order, and the original proofs of the posting of the election notice. If the certificate shows that a majority of the votes cast were "For Incorporation", the Director shall forthwith make and transmit to appropriate state officials and to the governing bodies of all other jurisdictions affected by the incorporation, a certified copy of the documents to be then filed as a public record, at which time the incorporation shall be deemed complete. If the certificate shows that a majority of the votes cast were "Against Incorporation", the provisions of Subsection (c) restricting subsequent incorporation petitions shall be applicable.

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

3 As an alternative to Section 4, if the state has an Administrative Procedure Act providing for judicial review, orders of the Director should be made subject to that act.
serving such notice of appeal shall, within five days after
the service thereof, file the same with proof of service with
the clerk of the Court; thereupon the Court shall have
jurisdiction over the appeal.

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

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

Section 5. Separability. Insert separability clause.

Section 6. Effective Date. Insert effective date.
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.

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

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

The use of real property for permanent open-space land is required to conform to comprehensive planning being actively carried on for the urban area in which the property is located. The term "comprehensive planning" would be defined to include the requirements in the federal law to make a public body eligible for grants. These are (1) preparation of long-range general physical plans for the development of the urban area in which the open-space land is located, (2) programming 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 for use as permanent open-space land."

(Be it enacted, etc.)

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

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

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

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

Section 3. Acquisition and preservation of real property for use as permanent open-space land. To carry out the purposes of this act, any public body may (a) acquire by purchase, gift, devise, bequest, condemnation, grant or
otherwise title to or any interests or rights in real property
that will provide a means for the preservation or provision
of permanent open-space land and (b) designate any real prop-
erty in which it has an interest to be retained and used for
the preservation and provision of permanent open-space land.
The use of the real property for permanent open-space land
shall conform to comprehensive planning being actively carried
on for the urban area in which the property is located.

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

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

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

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

1. to borrow funds and make expenditures necessary to carry out the purposes of this act;
2. to advance or accept advances of public funds;
3. to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and to enter into and carry out contracts or agreements in connection with the assistance, and to include in
any contract for assistance from the federal government such
conditions imposed pursuant to federal laws as the public
body may deem reasonable and appropriate and which are not
inconsistent with the purposes of this act;

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

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

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

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

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

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

1. appropriate funds;
2. levy taxes and assessments;
3. issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and
4. exercise its powers under this act through a board or commission, or through such office or officers as its governing body by resolution determines, or as the Governor determines in the case of the state.

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

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

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2 This section is not necessary if the planning laws of the state provide adequate authority.
public body for the purposes of this act, assessments made on the property for taxation shall reflect any change in the market value of the property which may result from the interest held by the public body. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body.

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

(a) "Public body" means

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

"Public body" can be defined as desired by the proponents of the bill to include any or all of the following: the state, counties, cities, towns, or other municipalities, and any other public bodies they wish to specify, such as park authorities, or other specific authorities or districts. If any specified public body (other than the state or cities, towns or other municipalities) included in the definition has, under another law, taxing powers or other financing powers that could be used for the purposes of open-space land a subsection (c) should be added to section 6 to authorize that public body to use those powers for the purposes of this act.
"Open-space land" means any land in an urban area which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

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

Section 10. Separability; Act Controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.
CONTROL OF URBAN WATER SUPPLY AND SEWERAGE SYSTEMS

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

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

In view of the need for adequate water supply and sewerage system planning and control and the varying requirements of different parts of urban areas, the Advisory Commission on Intergovernmental Relations in its report, Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas, has recommended that "legislation be enacted endowing the appropriate State and local agencies with regulatory authority over individual wells and septic tank installations, with a view to minimizing and limiting their use
to exceptional situations consistent with comprehensive land use goals." Three model State statutes to meet these needs have been developed by the U. S. Public Health Service with the assistance of a special advisory committee that included representatives from the Public Health Service, the Commission, the Housing and Home Finance Agency, the National League of Cities, American Society of Planning Officials, National Association of Counties, National Association of Home Builders, Water Systems Council, Conference of State Sanitary Engineers, and the Septic Tanks Industry. The first statute, "The Urban Water Supply and Sewerage Systems Act," has been endorsed by a number of groups including the State and Territorial Health Officers, the Conference of State Sanitary Engineers, and the Interstate Conference on Water Problems.

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

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

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

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

3. Portions where individual water supply and sewerage systems may be installed and used for an indefinite period, if the State Health Department judges their use to be adequate and safe.
Criteria for determining under which category each of the portions of the urban area shall be classified include: present and future density of population, lot size, land contour, porosity and absorbency of soil, ground water conditions, type of construction of water supply and sewerage systems, and size of the proposed development.

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

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

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

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

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

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

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

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

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

**Suggested Legislation**

A. URBAN WATER SUPPLY AND SEWERAGE SYSTEMS

*(Title should conform to State requirements.)*

(By it enacted, etc.)

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

2. **Section 2. Findings and Policy.** (a) The (State) legislature finds that properly planned and installed individual and

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

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

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

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

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

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

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

Section 3. Definitions. As used in this Act:
(a) "Community plan" means a comprehensive plan and all amendments and revisions thereof for the provision to a municipality or municipalities of both adequate water supply systems and sewerage systems, adopted by a municipality or municipalities having authority to provide or having jurisdiction over the provision of such systems.

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

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

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

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

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

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

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

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

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

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

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

3/ See footnote 1/.
(1) (A) community water supply systems must be provided;
(B) individual water supply systems may be installed and used during an interim period pending the availability of a programmed community water supply system;
(C) individual water supply systems may be installed and used for an indefinite period.

(2) (A) community sewerage systems must be provided;
(B) individual sewerage systems may be installed and used during an interim period pending availability of a programmed community sewerage system;
(C) individual sewerage systems may be installed and used for an indefinite period.

(d) In addition, every required community plan shall--
(1) provide for the orderly expansion and extension of community water supply systems and community sewerage systems in a manner consistent with the needs and plans of the area;
(2) provide for adequate sewage treatment facilities which will prevent the discharge of untreated or
inadequately treated sewage or other waste of a liquid nature into any waters, or otherwise provide for the safe and sanitary treatment of sewage and other liquid waste;

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

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

(5) set forth a time schedule and proposed methods of financing the construction and operation of each programmed community system together with the estimated cost thereof;
(6) be submitted for review to official planning agencies having jurisdiction, including a comprehensive planning agency with areawide jurisdiction if one exists, for consistency with programs of planning for the area, and such reviews shall be transmitted to the Department with the proposed plans; and

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

Section 5. Administration--Department Powers and Functions. (a) The Department shall adopt and from time to time amend rules and regulations which provide for--

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

(2) the procedures in connection with the preparation, submission, revision, review, and approval or disapproval of community plans;

(3) the minimum contents of such plans;

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

(5) such other matters as may be necessary or appropriate to the administration of this Act.
(b) Such regulations in providing criteria for the
delineation in community plans of areas pursuant to Section 4(c)
of this Act, and for the approval of community plans, shall be
formulated so as to implement the policies of this Act as
stated in Section 2, and shall require consideration of the
present and future density of population, size of the lots,
contour of the land, porosity and absorbency of the soil, ground
water conditions and variations therein from time to time and
place to place, including availability of water from unpolluted
aquifers or portions thereof, type of construction of water
supply systems and sewerage systems, size of the proposed
development, and other pertinent factors.

(c) Such regulations shall--

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

(2) permit in areas where community water supply
systems or community sewerage systems are not available
nor required to be installed under Section 5(c)(1) of
this Act, but are programmed to become available within
a reasonable period of time not to exceed ____ years, 4/
individual water supply systems or individual sewerage
systems, or both, provided that: (A) such individual
water supply systems or individual sewerage systems are
adjudged by the Department to be adequate and safe for
use during the period before a community water supply
system or a community sewerage system, as the case may
be, are scheduled to become available, (B) adequate
provisions are made prior to or at the time of the
installation of such individual systems to permit the
discontinuance of their use and the connection of the
premises served thereby to the community water supply
system and the community sewerage system, respectively,
in an economical and convenient way as can be foreseen.
Such provision for any subdivision shall include either
the posting of a bond, with satisfactory surety, to

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

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

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

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

6/ See footnote 5/.
(e) The Department shall designate municipalities which are required to submit community plans, amendments, and revisions thereof in which applicable regulations shall apply as may be necessary to accomplish the purposes of this Act. The designation shall take into consideration such factors as present and future population trends and densities, patterns of urban growth, geographic features and political boundaries, the location and plans for location of utility systems, the distribution of industrial, commercial, residential, governmental, institutional, and other activities, and the existence of any area for which comprehensive planning is being undertaken.

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

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

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

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

(i) The Department may conduct studies, surveys, investigations, research, and analyses to accomplish the purposes of this Act.

(j) Use this Subsection to establish a program of State aid to municipalities for preparing and keeping current community plans required by Section 4 of this Act.

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

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

Section 6. Conformance to Approved Community Plan.

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

(b) Within six months after the submission of a community plan, amendment, or revision thereof, or six months after the time prescribed in Subsection (a) of this Section for the submission of a community plan, amendment, or revision thereof, whichever is earlier, the Department shall approve or disapprove the community plan, amendment, or revision thereof. Any community plan, amendment, or revision thereof which has been submitted in accordance with this Section and which has not been disapproved by the Department within the time required by this Section shall be deemed to be approved.
(c) After nine months following the submission of a community plan, amendment, or revision thereof, or nine months following the time within which a community plan, amendment, or revision thereof is required to be submitted under Subsection (a) of this Section, whichever is earlier, or after such later date as may be established by the Department for good cause shown, no community water supply system or community sewerage system, or individual water supply system or individual sewerage system may be installed in those geographic areas to which such community plan, amendment, or revision thereof relates unless a community plan and any required amendments or revisions have been approved for such areas, and such system and installation are consistent with such community plan including any required amendment and revision thereof and with applicable rules and regulations.

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

9/ See footnote 8/.
transfer of community systems to a municipality may be required by an appropriate State or municipal authority in accordance with applicable provisions of State law as to compensation.

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

(f) Any violation of Subsection (c) of this Section shall be punishable by a fine not to exceed $100. The imposition of any such fine shall not bar any other relief or penalty otherwise applicable.

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

Section 8. Appropriation. There is appropriated $100 to cover necessary expenses of the Department in administering this Act.

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

Section 10. Severability. [Insert severability clause.]

Section 11. Effective Date. [Insert effective date.]
B. WATER WELL CONSTRUCTION AND PUMP INSTALLATION

[Title should conform to State requirements.]

(Left margin justified)

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

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

Section 3. Definitions. As used in this Act:

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

(b) "Construction of water wells" means all acts necessary to obtain ground water by wells, including the
location and excavation of the well, but excluding the installation of pumps and pumping equipment.

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

(d) "Installation of pumps and pumping equipment" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrance to the well and establishing seals, but not including repairs, as defined in this Section, to existing installations.

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

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

(g) "Pump installation contractor" means any person, firm, or corporation engaged in the business of installing or repairing pumps and pumping equipment.
(h) "Repair" means any action which results in a breaking or opening of the well seal or replacement of a pump.

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

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

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

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

1/ Some States may wish to include within the coverage of this definition seismological, geophysical, prospecting, observation, or test wells.
water well, nor shall any person install, repair, or cause to be installed or repaired, any pump or pumping equipment contrary to the provisions of this Act and applicable rules and regulations, provided that this Act shall not apply to any distribution of water beyond the point of discharge from the storage or pressure tank, or beyond the point of discharge from the pump if no tank is employed, nor to wells used or intended to be used as a source of water supply for municipal water supply systems, nor to any well, pump, or other equipment used temporarily for dewatering purposes.

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

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

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.
(b) enforce the provisions of this Act and any rules and regulations adopted pursuant thereto;
(c) delegate, at its discretion, to any municipality any of its authority under this Act in the administration of the rules and regulations adopted hereunder;
(d) establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this Act; and
(e) issue such additional regulations, and take such other actions as may be necessary to carry out the provisions of this Act.

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

(1) The construction of any water well;
(2) The abandonment of any water well; and
(3) The first installation of any pump or pumping equipment in any well,
in any geographical area where the Department determines such permission to be reasonably necessary to protect the public health, taking into consideration other applicable State laws, provided that in any area where undue hardship might arise by reason of such requirement, prior permission will not be required.
(b) Notification--The Department shall be notified of any of the following whenever prior permission is not required:

1. The construction of any water well;
2. The abandonment of any water well;
3. The first installation of any pump or pumping equipment in any well; and
4. Any repair, as defined in this Act, to any water well or pump.

Section 7. Existing Installations. No well or pump installation in existence on the effective date of this Act shall be required to conform to the provisions of Subsection (a) of Section 6 of this Act, or any rules or regulations adopted pursuant thereto; provided, however, that any well now or hereafter abandoned, including any well deemed to have been abandoned, as defined in this Act, shall be brought into compliance with the requirements of this Act and any applicable rules or regulations with respect to abandonment of wells; and further provided, that any well or pump installation supplying water which is determined by the Department to be a health hazard must comply with the provisions of this Act and applicable rules and regulations within a reasonable time after notification of such determination has been given.
Section 8. Inspections. (a) The Department is authorized
to inspect any water well, abandoned water well, or pump installa-
tion for any well. Duly authorized representatives of the
Department may at reasonable times enter upon, and shall be
given access to, any premises for the purpose of such inspection.

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

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

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

(a) The Department may adopt, and from time to time
amend, rules and regulations governing applications for water
well contractor licenses or pump installation contractor licenses,
provided that the Department shall license, as a water well
contractor or pump installation contractor, any person properly
making application therefor, who is not less than twenty-one (21)
years of age, is of good moral character, has knowledge of rules
and regulations adopted under this Act, and has had not less
than two (2) years' experience in the work for which he is
applying for a license; and provided further, that the Department
shall prepare an examination which each such applicant must pass
in order to qualify for such license.

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

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

(d) Any person who was engaged in the business of a
water well contractor or pump installation contractor, or both,
for a period of two (2) years immediately prior to (date of
enactment) shall, upon application made within twelve (12) months
of (date of enactment), accompanied by satisfactory proof that
he was so engaged, and accompanied by payment of the required fees, be licensed as a water well contractor, pump installation contractor, or both, as provided in Subsection (a) of this Section, without fulfilling the requirement that he pass any examination prescribed pursuant thereto.

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

(f) Licenses issued pursuant to this Section are not transferable and shall expire on [insert the name of the county] of each year. A license may be renewed without examination for an ensuing year by making application not later than thirty (30) days after the expiration date and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until a new license is received or the applicant is notified by the Department that it has refused to renew his license. After [insert the name of the county] of each year, a license will be renewed only upon application and payment of the applicable fee plus a penalty of $[insert amount].
Whenever the Department determines that the holder of any license issued pursuant to this Section has violated any provision of this Act, or any rule or regulation adopted pursuant thereto, the Department is authorized to suspend or revoke any such license. Any Order issued pursuant to this Subsection shall be served upon the license holder pursuant to the provisions of Subsection (a) of Section 12 of this Act. Any such Order shall become effective ___ days after service thereof, unless a written petition requesting hearing, under the procedure provided in Section 13, is filed sooner. Any person aggrieved by any Order issued after such hearing may appeal therefrom in any court of competent jurisdiction as provided by the laws of this State.

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

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

(b) Nothing in this Act shall prevent a person who has not obtained a license pursuant to Section 9 of this Act from
constructing a well or installing a pump on his own or leased property intended for use only in a single family house which is his permanent residence, or intended for use only for farming purposes on his farm, and where the waters to be produced are not intended for use by the public or in any residence other than his own. Such person shall comply with all rules and regulations as to construction of wells and installation of pumps and pumping equipment adopted under this Act.

Section 11. Fees. The following fees are required:

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

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

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

(b) Such Notice shall be served in the manner required by law for the service of process upon person in a civil action,
and may be accompanied by an Order of the Department requiring
described remedial action, which if taken within the time
specified in such Order will effect compliance with the
requirements of this Act and regulations issued hereunder. Such
Order shall become final unless a request for hearing as provided
in Section 13 of this Act is made within ____ days from the
date of service of such Order. In lieu of such Order, the
Department may require the person or persons named in such
Notice to appear at a hearing, at a time and place specified in
the Notice.

Section 13. Hearing. /\Unless already prescribed in
State law, this Section should be used to specify procedures
for administrative hearing.\/

Section 14. Juducial Review. /\Unless already prescribed
in State law, this Section should be used to specify procedures
for judicial review.\/

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

Section 16. Conflict with Other Laws. The provisions of
any law, or regulation of any municipality establishing standards
affording greater protection to the public health or safety,

shall prevail within the jurisdiction of such municipality over

the provisions of this Act and regulations adopted hereunder.

Section 17. Severability. [Insert severability clause.]

Section 18. Effective Date. [Insert effective date.]
C. INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

Title should conform to State requirements.

(Be it enacted, etc.)

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

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

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

(2) prevent nuisances;

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

(4) minimize disease transmission potential.

(b) It is, therefore, declared to be the public policy of this State to eliminate and prevent health and safety hazards by regulating the design, construction, installation, operation, and maintenance of individual sewage disposal systems and the proper planning thereof; authorizing the issuance of permits for the construction, alteration, repair or extension of individual
sewage disposal systems; licensing of installers of individual sewage disposal systems; requiring registration of those who clean systems and dispose of wastes therefrom; and, providing penalties for violations.

Section 3. Definitions. As used in this Act:

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

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

(c) "Industrial wastes" means liquid wastes resulting from the processes employed in industrial and commercial establishments.

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

(e) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, or any combination thereof, acting cooperatively or jointly.
(f) "Person" means any institution, public or private corporation, individual, partnership, or other entity.

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

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

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

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

1/ In the absence of available State standards, Public Health Service Drinking Water Standards (PHS Pub. No. 956) should apply.
Section 5. Authority to Adopt Rules, Regulations, and Procedures. The Department shall have general supervision and authority over the design, construction, installation, and operation of individual sewage disposal systems, and shall be responsible for the administration of this act. With respect thereto, it shall--

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

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

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

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

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

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

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

(e) issue permits, licenses, registration, and other documents, including the establishment of procedures and forms for the submission, review, approval, and rejection of applications required under this Act; and

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

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

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

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

(b) It shall be the duty of the holder of a permit issued
pursuant to Section 8 of this Act to notify the municipality
when the installation is ready for inspection and it shall be
the duty of the owner and occupant of the property to give the
municipality free access to the property at reasonable times for
the purpose of making such inspections as are necessary.
(c) In the event an inspection is not made upon notification of the municipality that the installation is completed and ready for inspection, the system shall be deemed approved after ___ days 4/ from date of official notification.

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

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

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

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

5/ The permit issued by the municipality is in addition to the building permit usually required and would be obtained prior to construction, alteration, repair, and extension of the residence or facility to be served.
of a lot on the condition that the said owner or lessee performs all labor in connection with the installation of the individual sewage disposal system on such lot.

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

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

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

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

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

Optional provision.
systems within the State shall obtain from the Department a
license to conduct such business.

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

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

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

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

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

Section 10. Required Registration for Cleaning Systems and Disposal of Wastes. (a) The provisions of this Section shall not apply to any municipality, sanitation district, or sewer maintenance district, or to any agency or institution of the State or Federal Government.

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

(c) All applications for registration under this Section shall be made in writing in a form prescribed by the Department, and shall include such information as the Department deems
necessary to determine the qualification of the applicant, including a knowledge of the regulations.

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

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

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

Section 11. Schedule of Fees. The following fees for permits, licenses, and registration are required:
<table>
<thead>
<tr>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Sewage Disposal System</td>
</tr>
<tr>
<td>Construction (permit)</td>
</tr>
<tr>
<td>Alteration (permit)</td>
</tr>
<tr>
<td>Repair (permit)</td>
</tr>
<tr>
<td>Extension (permit)</td>
</tr>
<tr>
<td>Installers (license)</td>
</tr>
<tr>
<td>Cleaners (registration)</td>
</tr>
</tbody>
</table>

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

(b) Such Notice shall be served in the manner required by law for the service of process upon person in a civil action, and may be accompanied by an Order of the Department requiring remedial action, which if taken within the time specified in such Order will effect compliance with the requirements of this Act and regulations issued hereunder. Such Order shall become final unless a request for hearing as provided in Section 13 of this
Act is made within ____ days from the date of service of such Order. In lieu of such Order, the Department may require the person or persons named in such Notice to appear at a hearing, at a time and place specified in this Notice.

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

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

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

(b) The Department is authorized to require the property owner to take necessary action to correct a malfunctioning individual sewage disposal system within ____ days of being notified, after which each day's failure to take corrective action shall be punishable by a fine of not less than $____ nor more than $_____.

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7/ In accordance with applicable State procedural requirements.
Section 16. Conflict with Other Laws. The provisions of any law or regulation of any municipality establishing standards affording greater protection to the public health or safety shall prevail within the jurisdiction of such municipality over the provisions of this Act and regulations adopted hereunder.

Section 17. Severability. [Insert severability clause.]

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

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
The text of the suggested legislation is based in part on the provisions of Chapter 16, Laws of 1959, State of New York.

**Suggested Legislation**

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

(Be it enacted, etc.)

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

Section 2. General functions and powers. The Director of the Office of Local Government or the head of such other agency of the state government as the Governor may designate,
(hereinafter referred to as the Director), shall have the following functions, powers and duties: (1) to advise and assist the Governor in (a) formulating a mass transportation policy for the state, including coordination of policies and activities among the state departments and agencies, (b) developing policies and proposals designed to help meet and resolve special problems of mass transportation within the state, (c) recommending programs of financial and technical assistance for the comprehensive planning, development, and administration of mass transportation facilities and services; (2) to make such studies of mass transportation problems and to render such technical assistance as may be requested by units of local government; (3) to consult and cooperate with officials and representatives of neighboring states, of the federal government, and of interstate agencies on problems affecting mass transportation in the state and with officials and representatives of carriers and transportation facilities in the state and other persons, organizations and groups utilizing, served by, interested in, or concerned with mass transportation facilities and services; (4) to appear and participate, with the approval of the Governor, in proceedings before any federal, state, or local regulatory agencies involving or affecting mass transportation in the state; (5) to foster experimentation in developing new mass transportation facilities and services; (6) to recommend policies, programs and actions designed to improve utilization of urban
and commuter mass transportation facilities; and (7) to
exercise such other functions, powers and duties in connection
with mass transportation problems as the Governor may require.

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

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

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

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

Section 7. Separability. [Insert separability clause.]

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

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

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

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


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

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

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

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

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

**Suggested Legislation**

> Title should conform to state requirements

(Be it enacted, etc.)

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

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

1. The enumerated programs below are merely suggestions. They may be added to, subtracted from, or modified to suit the needs of individual states.
recreational, conservation, and scenic areas. The appropriate state agency shall administer such grants.2

State grants shall be 50 percent of the non-federal share of the individual project costs.

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

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

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

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

(e) Airport Development. Civilian air transportation of both freight and passengers is an essential element of the
The airport is the nucleus of an adequate air transportation system. The safe and efficient movement of air traffic depends upon the adequacy of each airport and of the airport system. Airport development grants made in accordance with this act shall be for the purposes of planning, constructing, and developing airports important to the continued growth and safety of air commerce within the state. The appropriate state agency shall administer such grants. State grants shall be 50 percent of the non-federal share of the individual project costs.

(f) Hospital and Medical Facility Construction. The health and well-being of the state's citizens depend in large measure upon an adequate supply of hospital and other medical facilities. Hospital and medical facility construction grants made in accordance with this act shall be for the purposes of helping local governments plan for and assist in assuring adequate hospital and other medical facilities. The appropriate state agency shall administer such grants. State grants shall be 50 percent of the non-federal share of the individual project costs.
(g) Waste Treatment Works. Water pollution is becoming an increasing hazard to the public health and welfare of the citizens of this state, and is causing increased burdens on local governments in assuring an adequate supply of water for domestic use, and recreational areas for the use of their citizens. Grants for waste treatment works made in accordance with this act shall be for the purpose of preventing and controlling water pollution by means of planning and providing works for the collection and treatment of sewage. The appropriate state agency shall administer such grants.

State grants shall be 50 percent of the non-federal share of the individual project costs.

Section 2. Relationships with Federal Agencies.

(a) Any application for federal grants for a purpose or program designated in Section 1 shall be submitted to the state agency designated in Section 1 as responsible for the state program in the field concerned. The head of such state agency shall approve or disapprove state grants to be applied to the non-federal share of project costs consistent with the purposes of Section 1. An approval may be conditioned upon subsequent approval of the project by an appropriate federal agency for federal grant funds. Upon
approval of an application, the director of the appropriate state agency shall transmit it to the appropriate federal agency. Any application disapproved by the director of the appropriate state agency shall be returned to the applicant with written notice of the modifications necessary to make the project eligible, in terms of state or federal policy and law.

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

Section 3. Technical Assistance and Administration.

Heads of the state agencies designated in Section 1 shall establish appropriate technical, administrative, coordinative, and other measures relating to project sponsors within the state eligible for federal grants in order to facilitate their participation in the program established by this act. They shall establish, with the approval of the governor, necessary rules and regulations to carry out their responsibilities under this act.
Section 4. Separability. [Insert separability clause.]

Section 5. Effective Date. [Insert effective date.]
The suggested legislation is based on the concept that planning, regardless of the level of government at which it is undertaken, is a staff function which facilitates the policy formulating process. Planning is a necessary tool for many of the technical and administrative judgments, both political and economic, which units of local government in the large metropolitan areas are required to make continually. To be worthwhile and to serve a useful rather than an academic purpose, the respective facets of metropolitan area planning must be closely geared into the practical decision-making process regarding land use, tax levies, public works, transportation, welfare programs, and the like.

The proposed legislation is based on the assumption that while long-range planning must be undertaken for all of a metropolitan area viewed as an entity, the individual authority and responsibilities of local units of government must be respected and reconciled with over-all interests. State legislation should therefore permit local latitude in the agreements whereby metropolitan area planning commissions are established, while at the same time setting minimum standards for the organization and powers of such commissions.

The suggested act below sets a minimum standard for the number of local jurisdictions which must participate in order to ensure a sufficiently wide basis for effective planning and enforcement. Membership on the commission is specified as consisting of elected officials in order to "gear planning into the practical decision-making process," with provision made for appointment of some public members as well.

In designation of a metropolitan planning area, reference is made to the federal definition of a "standard metropolitan statistical area," with a footnote indicating that some states may prefer to substitute a different definition in order to apply the act to areas not currently identified as SMSA's. Whatever definition is used should ensure that the planning area is large enough to include an integrated trading and employment area, as defined by such measures as density of resident population, the pattern of journey-to-work, and retail trading territory. In adapting the proposed legislation to their particular needs, states may wish to define its applicability in any of the following ways: (1) all metropolitan areas of the state, present or future; (2) metropolitan areas listed by name; (3) specified classes of cities and their environs.

The powers and duties section takes into account Congressional enactments designed to strengthen intergovernmental coordination in the use of federal planning and project grants.

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* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
It should be noted that the Congress in the Housing Act of 1961 has granted advance consent to interstate compacts for urban planning functions in interstate metropolitan areas.

Provision is made for the adoption of metropolitan area plans by local units of government, and conversely, for advisory review or approval by the metropolitan area planning commission of local plans and projects. However, the suggested legislation also provides at this point, that if an interlocal agreement authorizes the metropolitan area planning commission to require conformity with its own comprehensive or master plan, such a degree of regulation can be undertaken only with respect to those communities party to the agreement.

In order to encourage local communities to take a proper degree of initiative and to determine for themselves the nature of their cooperative activities, the proposal is that the actual establishment and functioning of metropolitan area planning commissions be accomplished by the drafting and execution of interlocal agreements, pursuant to authorizing state statute. In this connection, it should be pointed out that the Council of State Governments' Program of Suggested State Legislation for 1957 contains an Interlocal Cooperation Act which provides a general authorization for cooperative undertakings of such kinds as the localities themselves may determine within the framework of their existing statutory and constitutional powers. As is the case of the legislation suggested below, the instrument authorized for achieving the cooperative purposes is the interlocal agreement. The Interlocal Cooperation Act deals with a number of matters, such as financing, representation, approval of interlocal agreements by the appropriate state officials, and liability for performance under the agreement which should be incorporated in any authorizing statute.

It is suggested that states could proceed to use the statute suggested below and that in the Program for 1957 in any one of several ways: (1) if a statute similar to the Interlocal Cooperation Act has been enacted, or is to be enacted, the suggested act following this explanatory statement could be used as a guide in drafting some of the provisions of the implementing interlocal agreements; (2) if the interlocal cooperation that a state wishes to authorize is only in the field of planning, the Interlocal Cooperation Act could be adapted to apply only to that subject, and the draft below could be used as a guide in formulating the implementing agreements; or (3) the draft act below could be used as the authorizing statute. In the last named event, the Interlocal Cooperation Act should be consulted to determine which of its provisions should be added to the authorizing statute.
In comparing the suggested act below and the Interlocal Cooperation Act for use in interstate metropolitan areas, it should be noted that a somewhat different approach is contemplated. The concluding portion of Section 6 of the suggested act below presumes that a metropolitan area planning commission must be created for the portion of the metropolitan area lying within the single state, and that such commission would then cooperate with localities on the other side of the state line. In contrast, the Interlocal Cooperation Act provides authorization for the establishing of a metropolitan area commission whose jurisdiction would extend throughout the entire metropolitan area, including the portions in the two or more states affected.

Another approach to organizing for the provision of planning services within a metropolitan area is provided by the "Metropolitan Functional Authorities" proposal in this Program on page 126.

Suggested Legislation

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

(Be it enacted, etc.)

Section 1. Purpose. The legislature recognizes the social and economic interdependence of the people residing within metropolitan areas and the common interest they share in its future development. The legislature further recognizes that plans and decisions made by local governments within metropolitan areas with respect to land use, circulation patterns, capital improvements and the like, affect the welfare of neighboring jurisdictions and therefore should be developed jointly. It is, therefore, the purpose of this act to provide a means for: (1) formulation and execution of objectives and policies necessary for the orderly growth and development of the metropolitan area as a whole; and (2) coordination of the objectives, plans and
Section 2. Creation of a Metropolitan Area Planning Commission. A metropolitan area planning commission may be established pursuant to the following procedures:

(a) Two or more adjacent incorporated municipalities, two or more adjacent counties, or one or more counties and a city or cities within or adjacent to the county or counties may, by agreement among their respective governing bodies, create a metropolitan area planning commission, provided (1) that in the case of municipalities and cities, the largest one within the metropolitan planning area, as defined in Section 3, shall be a party to the agreement; and (2) that the number of counties, cities, other municipalities, townships, school and other special districts or independent governmental bodies party to the agreement shall equal 60 per cent or more of the total number of such counties, cities and other local units of government within the metropolitan area, as defined in Section 3. The agreement shall be effected through the adoption by each governing body concerned, acting individually, of an appropriate resolution.

A copy of such agreement shall be filed with the chief state records officer, state office of local affairs and state

1 Particular states may find it appropriate and desirable to require fewer kinds of local units of government to be initial parties to the agreement, thereby reducing the total number needed for establishment of a commission under this act.
(b) Any city, other municipality or county may, by legislative action of its governing body, transfer or delegate any or all of its planning powers and functions to a metropolitan area planning commission; or a county and one or more municipalities may merge their respective planning powers and functions into a metropolitan area planning commission, in accordance with the provisions of this act.

Any additional county, municipality, town, township, school district or special district within the metropolitan planning area, as defined in Section 3, may become party to the agreement.

Section 3. Designation of a Metropolitan Planning Area.

"Metropolitan area" as used herein is an area designated as a "standard metropolitan statistical area" by the U. S. Bureau of the Census in the most recent nationwide Census of the Population. The specific geographic area in which a metropolitan area planning commission shall have jurisdiction shall be stipulated in the agreement by which it is established.

2 Particular states may find it appropriate and desirable to apply a somewhat different definition from this, tailored to their particular circumstances. For example, a 1961 Enactment in Colorado (H.R. 221) defines a metropolitan area as "a contiguous area consisting of one or more counties in their entirety, each of which has a population density of at least 15 persons per square mile." Other quantitative factors may be used in a metropolitan area definition, such as percentage of county residents employed in the central city.
Section 4. Membership and Organization. Except as provided below, membership of the commission shall consist of representatives from each participating government or stipulated combinations thereof, in number and for a term to be specified in the agreement. Such representatives shall consist of elected officials, except that the Commission may appoint not to exceed members from the general public, such members to have demonstrated outstanding leadership in community affairs. A representative of the state government may be designated by the Governor to attend meetings of the commission. Members of the commission shall serve without compensation, but shall be reimbursed for expenses incurred in pursuit of their duties on the commission. The commission shall elect its own chairman from among its members, and shall establish its own rules and such committees as it deems necessary to carry on its work. Such committees may have as members persons other than members of the commission and other than elected officials. The commission shall meet as often as necessary, but no less than four times a year.

The commission shall adopt an annual budget, to be submitted to the participating governments which shall each contribute to the financing of the commission according to a formula specified in the agreement. Subject to approval of any application therefor by the appropriate state agency, a metropolitan area planning commission established pursuant
to this act may make application for, receive and utilize
grants or other aid from the federal government or any
agency thereof.

Section 5. Director and Staff. The commission shall
appoint a director, who shall be qualified by training and
experience and shall serve at the pleasure of the commission.
The director shall be the chief administrative and planning
officer and regular technical advisor of the commission,
and shall appoint and remove the staff of the commission.
The director may make agreements with local planning agencies
within the jurisdiction of the metropolitan area planning
commission for temporary transfer or joint use of staff em-
ployees, and may contract for professional or consultant
services from other governmental and private agencies.

Section 6. Powers and Duties. The metropolitan area
planning commission shall:

(a) Prepare and from time to time revise, amend, extend
or add to a plan or plans for the development of the metro-
politan area. Such plans shall be based on studies of
physical, social, economic and governmental conditions and
trends, and shall aim at the coordinated development of the
metropolitan area in order to promote the general health,

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3 Consideration should also be given to providing for
state aid either by making such a commission an eligible agency to
apply for and receive state aid or by providing that local
governmental units party to the agreement may apply for such aid
on behalf of the commission.
welfare, convenience and prosperity of its people. The
plans shall embody the policy recommendations of the
metropolitan area planning commission, and shall include,
but not be limited to:

(1) A statement of the objectives, standards and
principles sought to be expressed in the plan.

(2) Recommendations for the most desirable pattern
and intensity of general land use within the metropolitan
area, in the light of the best available information con-
cerning natural environmental factors, the present and
prospective economic and demographic bases of the area, and
the relation of land use within the area to land use in
adjoining areas. The land use pattern shall include pro-
vision for open as well as urban, suburban, and rural
development.

(3) Recommendations for the general circulation
pattern for the area, including land, water and air
transportation and communication facilities, whether used
for movement within the area or to and from adjoining areas.

(4) Recommendations concerning the need for and
proposed general location of public and private works and
facilities, which by reason of their function, size, extent
or for any other cause are of a metropolitan as distinguished
from purely local concern.

(5) Recommendation for the long-range programming and
financing of capital projects and facilities.
(6) Such other recommendations as it may deem
appropriate concerning current and impending problems as
may affect the metropolitan area.

(b) Prepare, and from time to time revise, recommended
zoning and subdivision and platting regulations which
would implement the metropolitan area plan.

(c) Prepare studies of the area's resources, both
natural and human, with respect to existing and emerging
problems of industry, commerce, transportation, population,
housing, agriculture, public service, local governments
and any other matters which are relevant to metropolitan
area planning.

(d) Collect, process and analyze at regular intervals,
the social and economic statistics for the metropolitan
area which are necessary to planning studies, and make the
results of such collection processing and analysis available
to the general public.

(e) Participate with other government agencies, edu-
cational institutions and private organizations in the
coordination of metropolitan research activities defined
under (c) and (d).

(f) Cooperate with, and provide planning assistance to
county, municipal or other local governments, instrumentali-
ties or planning agencies within the metropolitan area and
coordinate metropolitan area planning with the planning
activities of the state and of the counties, municipalities,
special districts or other governmental local units within
the metropolitan area, as well as neighboring metropolitan
areas and the programs of federal departments and agencies.

(g) Provide information to officials of departments,
agencies and instrumentalities of federal, state and local
governments, and to the public at large, in order to
foster public awareness and understanding of the objectives
of the metropolitan area plan and the functions of metro-
opolitan and local planning, and in order to stimulate public
interest and participation in the orderly, integrated
development of the region.

(h) Receive and review for compatibility with metropolitan
area plans all proposed comprehensive land use, circulation,
and public facilities plans and projects, zoning and
subdivision regulations, official maps and building codes
of local governments in the geographic area and all amendments
or revisions of such plans, regulations and maps, and make
recommendations for their modification where deemed necessary
to achieve such compatibility.

(i) Review participating local government applications
for capital project financial assistance from state and
federal governments, and comment upon their consistency with
the metropolitan development plan; and review and comment
upon state plans for highways and public works within the
area to promote coordination of all intergovernmental
activities in the metropolitan area on a continuing basis.
(j) Exercise all other powers necessary and proper for
the discharge of its duties.

The metropolitan planning commission may exercise its
powers jointly or in cooperation with agencies or political
subdivisions of this state or any other state, or with
agencies of the United States, subject to statutory pro-
visions applicable to interjurisdictional agreements.

Section 7. Certification and Implementation of Metro-

copolitan Area Plans. All comprehensive metropolitan area
plans as defined under Section 6(a) as well as zoning,
subdivision and platting regulations, proposed under Section
6(b) shall be adopted by the metropolitan area planning
commission after public hearing, and certified by the
commission to all local governments, governmental districts
and special purpose authorities within the metropolitan
area. The agreement creating the metropolitan area planning
commission shall specify that these plans be implemented in
the following way: The metropolitan area plans and regu-
lations, or parts thereof, may be officially adopted by any
local government, governmental district or special purpose
authority within the metropolitan area, and when so adopted
shall supersede previous local plans and regulations.

Section 8. Cooperation by Local Governments and Planning

Agencies. Any local government, governmental district or
special purpose authority within the metropolitan area may,
and all participating local governments, governmental
districts and special purpose authorities shall, file with
the metropolitan planning commission all current and
proposed plans, zoning ordinances, official maps, building
codes, subdivision regulations, and project plans for
capital facilities and amendments to and revisions of any
of the foregoing, as well as copies of their regular and
special reports dealing with planning matters. Each
governmental unit within the geographic area over which a
metropolitan area planning commission has jurisdiction
shall afford such commission a reasonable opportunity to
comment upon any such proposed plans, zoning, subdivision
and platting ordinances, regulations and capital facilities
projects and shall consider such comments, if any, prior
to adopting any such plan, ordinance, regulation or project.
By appropriate provision of an agreement, the parties
thereof may require that as a condition precedent to their
adoption, any or all proposed plans, zoning, subdivision
and platting ordinances, regulations, and capital facilities
projects of their respective jurisdictions be determined by
the metropolitan area planning commission to be in conformity with the relevant plan of the
commission, but any power so to pass upon proposed plans,
ordinances, regulations or projects shall be exercisable
only with respect to the jurisdictions party to the agreement.
Section 9. Annual Report. The metropolitan area planning commission shall submit an annual report to the chief executive officers, legislative bodies and planning agencies of all local governments within the metropolitan area, and to the Governor.

Section 10. Separability. [Insert separability clause.]

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

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COUNTY POWERS IN RELATION TO LOCAL PLANNING AND ZONING ACTIONS

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

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

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

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# Some states may prefer to use regional agencies for this purpose.
* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.
competition rather than desirable spatial arrangement of uses. This kind of policy is self-defeating, and may result in a reduction of total (metropolitan) economic resources.

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

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

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

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

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

The county may make recommendations to the municipality on a referral proposal. The municipality may not act contrary to the county recommendations unless it adopts a resolution setting forth its reasons for such action and files the resolution with the county planning agency. The county may then review the local resolution and reverse the municipality if, in its judgment, the proposal still does not meet countywide objectives as set forth in the county plan. The draft bill assumes that municipal or county action is subject to judicial review.
The county must adopt specific policies and standards to guide its review of local actions. The language of Section 5 recognizes that while local desires should not obstruct essential needs of the county, neither should local interests be arbitrarily overridden by a higher unit of government if countywide needs can be satisfied in a manner compatible with the interests of the locality.

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

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

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

Few small and newly incorporated municipalities have the technical and financial resources to provide continuing attention to development problems. A larger unit of government, however, is better equipped to provide such needed attention and technical skills. The draft bill, therefore, authorizes counties to exercise their planning and zoning power in all existing municipalities of less than 5,000 population and in all future incorporations until the municipality reaches 30,000 population. The suggested legislation presumes that municipalities of 30,000 or more persons are large enough to apply adequate financial and competent technical resources to development problems. Development decisions, furthermore, are less likely to be arbitrary as the larger community contains a greater diversity of interests more representative of areawide needs.
The draft bill is primarily concerned with a review and approval procedure. Many state legislatures may find it desirable, in addition, to redefine existing statutory powers and duties of county or areawide planning agencies. The legislature should provide clear direction for the planning agency to concern itself with matters of county or areawide significance rather than local concerns that have no areawide repercussions. It may be desirable to amend the general planning enabling statutes, therefore, to reflect this objective. The draft legislation for Metropolitan Area Planning Commissions appearing above, beginning on page 237, may be helpful (see especially Section 6, Powers and Duties).

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act prescribing the planning and zoning powers and duties of counties in metropolitan areas in relation to municipalities of the county." (Be it enacted, etc.)

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

1 Some states may prefer to use regional agencies for this purpose.
instances, of such proposed actions, in order to aid in coor-
dinating planning and zoning actions among municipalities; that
the planning and zoning authority of certain small municipalities
and newly incorporated municipalities be exercised by the county
because of the lack of adequate technical and administrative re-
sources in such municipalities to plan effectively for future
development; and that counties exercise such planning and zoning
authority by applying such pertinent intercommunity and county-
wide considerations as may be set forth within the [adopted,
approved, or filed] county comprehensive plan or development
policy document.

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

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

Section 3. Definitions. As used herein:

(1) "Metropolitan area" is an area designated as a
"standard metropolitan statistical area" by the U. S. Bureau
of the Census.  
(2) "Municipality" shall mean any city, town, village, or borough, but not a county.

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

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

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.
any federal or state highway, parkway, or throughway, or any county road or parkway or federal, state, or county park within the municipality, (3) connecting any new street directly into any federal, state, or county highway, parkway, throughway, or road, (4) connecting any new drainage lines directly into any channel lines as established by the county, or (5) reducing permitted residential density to less than \( \frac{1}{3} \) families per acre. Such notice shall be mailed by the municipality to the county at least 12 days prior to any hearing or other action scheduled in the municipality to consider the proposal.

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

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

(d) Notwithstanding any resolution or action taken pursuant to subsections (b) and (c) hereof, the county within the \( \lceil 30 \rceil \) day period may review the municipal action and reverse such action by resolution of the county governing body, upon specific findings of fact that such municipal action is not in accordance with the material provisions of the adopted, approved, or filed county comprehensive plan or overall development policy document.

The comprehensive plan or development policy shall contain standards as set forth in Section 5 of this act.

Section 5. Standards and Policies for County Review.

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

(1) by municipalities located within the county as a guide to municipal action that may affect development outside its boundaries;
(2) by the courts in reviewing the decisions of government officials and agencies rendered pursuant to this act.

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

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

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

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

(1) necessary to public health or safety; or

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

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

Section 6. Municipal Planning and Zoning Actions to be Submitted to Contiguous Municipalities; Action by Contiguous Municipalities.
(a) Each municipality in the county shall give notice of any action scheduled in said municipality in connection with (1) changing the types of uses permitted of any property located within five hundred feet of any contiguous municipality in the county, (2) a subdivision plat relating to land within five hundred feet of any contiguous municipality in the county, or (3) the proposed adoption or amendment of any official map, relating to any land within five hundred feet of any contiguous municipality in the county, to such municipality. Such notice shall be given at least fifteen days prior to any such action to the clerk of said contiguous municipality affected. Such action shall be deemed sufficient notice under this or any other law requiring notice of any such action.

(b) The municipality to which referral is made and an authorized agent of said municipality may file a memorandum of its position. If said municipality fails to report within such period of fifteen days after receiving notice of the hearing, the municipality having jurisdiction to act may do so without such report. If the contiguous municipality disapproves the proposal, or recommends changes or modifications thereof, the municipal agency having jurisdiction shall not act contrary to such disapproval or recommendation except by a majority vote of all the
members thereof and after the adoption of a resolution fully
setting forth the reasons for its contrary action. Copies of
the resolution shall be filed with the clerk of the contiguous
municipality and with the county.

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

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

(1) All municipalities within the county having a
population of less than $15,000$ as determined by the latest
official census; Provided that, existing plans and planning
and zoning ordinances shall remain in effect until altered
by the county; and

(2) All municipalities hereinafter incorporated
within the county until the population of a municipality
exceeds $30,000$ persons as determined by the latest
official census within its territory; Provided that, county
authority shall continue until such municipality adopts a
resolution/ordinance whereby the municipality assumes
planning and zoning authority and provides for the exercise
thereof in conformance with cite appropriate planning and
zoning enabling legislation.
County authority shall be exercised in accordance with, and in a manner prescribed by, the statute granting authority for counties to exercise planning and zoning authority. (b) If municipalities referred to in subsection (a) hereof are located in more than one county, the county having the larger population shall exercise planning and zoning authority within such municipality.

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

Section 9. Separability. Insert separability clause.

Section 10. Effective Date. Insert effective date.

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.
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.
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.)

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

Section 2. Relocation Payments.

(a) If the state or any unit of local government acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and business concerns as required by this act.
(b) A relocation payment to a displaced person shall be
(1) for actual and reasonable expenses in moving himself, his
family, business, farm operation, or other personal property, and
in the case of a farm operation, for actual and reasonable
expenses in searching for a replacement farm, or (2) a fixed
payment in accordance with a schedule of fixed amounts approved
by the Governor.

(c) Relocation payments shall not exceed $3,000 in the
case of an individual or family, $5,000 in the case of a
business concern or nonprofit organization, and $7,500 in the
case of a farm operation; provided that such amounts may be
exceeded where necessary to secure maximum participation in a
program financed in whole or part by federal funds.

Section 3. Relocation Assistance Programs.

(a) When any state agency or unit of local government
acquires real property for public use, it shall assure that a re-
location assistance program for displaced persons and business
contacts, offering the services herein prescribed, is available
to reduce hardship to those affected, and to reduce delays
in public improvements. If the state agency or local unit of
government determines that other persons, business concerns, or
nonprofit organizations occupying property adjacent to the real
property acquired are caused substantial economic injury because
of the public improvement for which property is acquired, it may provide such persons or business concerns relocation services under such programs.

(b) Each relocation assistance program required by subsection (a) shall include such measures, facilities, or services as may be necessary or appropriate in order (1) to determine the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance; (2) to assist owners of displaced business concerns and farm operations in obtaining and becoming established in suitable business locations or replacement farms; (3) to supply information concerning programs of the Federal Government offering assistance to displaced persons and business concerns; (4) to assist in minimizing hardships to displaced persons in adjusting to relocation; and (5) to secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

Section 4. Assurance of Availability of Standard Housing. If any state agency or unit of local government acquires real
property for public use, it shall provide a feasible method for the temporary relocation of families and individuals displaced from the property acquired, and assurance that there are or are being provided, in areas not generally less desirable in regard to public utilities and public and commercial facilities, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and individuals and reasonably accessible to their places of employment.

Section 5. Authority of the Governor/Insert name of supervising agency/. (a) The Governor/state agency/ shall make such regulations as may be necessary to assure:

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

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

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

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

(b) In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the [Governor/ state agency] may require that any state agency make relocation payments or provide relocation services, or otherwise carry out its functions under this act, by utilizing the facilities, personnel, and services of any other state agency or unit of local government, or by entering into appropriate contracts or agreements with any state agency or unit of local government having an established organization for conducting relocation assistance programs.

(c) The [Governor/ head of state agency] may make other necessary rules and regulations to carry out the purposes of this act.
Section 6. Local Government Programs. Units of local government may make relocation payments, provide relocation services, or otherwise carry out their functions under this act by entering into appropriate contracts or agreements with any state agency or unit of local government having an established organization for conducting relocation assistance programs.

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

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

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

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

Section 11. Definitions. As used in this Act--
(1) the term "state agency" means any department or
agency of the state;

(2) the term "person" means any individual, family, or
owner of a business concern or farm operation;
(3) the term "nonprofit organization" means define for state purposes; might use definition for tax exemption purposes;

(4) the term "business concern" means any firm, partnership, corporation, or nonprofit organization not engaged in the activity of holding property for the production of income;

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

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

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

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Section 12. Severability. [Insert severability clause.]

Section 13. Effective Date. [Insert effective date.]
AREAWIDE VOCATIONAL EDUCATION PROGRAMS
IN METROPOLITAN AREAS*

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

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

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

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

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

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

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

The first three types of areawide arrangement listed above can be undertaken in states authorizing their political subdivisions, including school districts, to enter into interlocal contracts or joint agreements. Such authority is provided in the proposal on "Interlocal Contracting and Joint Enterprises," pp. 398-406, below.
The draft statute that follows authorizes one of the other alternative methods: use of the county as a geographic base for a vocational education system. In some states, particularly in the South, most or all local school districts are county school districts and therefore usually are already authorized to provide countywide vocational education as part of their general responsibility for public education. The draft legislation would authorize a countywide system for vocational education in states where elementary and secondary education is provided by local districts with less than countywide jurisdiction. Some states may wish to establish systems on a regional rather than a county basis. In either case, the draft is applicable only in states with a multiplicity of small school districts.

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

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

The draft statute is adapted from New Jersey Revised Statutes 18:15-30 through 18:15-58.
States interested in using the community junior college as one way of providing vocational education for the post-high school student are referred to the model "Community Junior College Act" in the Council's **Suggested State Legislation--Volume XXIV** (1965), pp. 69-79.

**Suggested Legislation**

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

(Be it enacted, etc.)

1 **Section 1. Establishment of County Vocational School Districts.** (a) The county board shall vote on the question of whether a county vocational school district shall be established in the county when it receives:

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

   (2) a request in writing from local school districts containing not less than percent of the public school enrollment of the county not served by a system of vocational education approved for the purposes of Federal or state allotments of vocational funds by the state commissioner of education under regulations of the state board of education that such a district be established.
If the county board by a majority vote favors the establishment of such a district in the county, such district shall be forthwith established and maintained in the county and shall be known as the "vocational school district of the county of ."

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

"Shall a county vocational school district be established in the county of pursuant to provisions of cite this statute?"

In squares at the right shall be placed the words "Yes" and "No." Any person desiring the establishment of a county vocational school district shall mark an "X" opposite the word "Yes," and any person opposed thereto shall mark an "X" opposite the word "No." 1/

1/ This paragraph should be written to conform with balloting procedures in the state.
If a majority of all the ballots so voted shall favor the establishment of the county vocational school district, the district shall be forthwith established and maintained as provided in this act. The results of such election shall be returned and canvassed in the same manner and at the same time as other election returns are canvassed.

Section 2. County Districts Not to Include Certain Territory of County; Exception; Agreements; Principals, Teachers, and Employees.

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

(b) Notwithstanding the provisions of subsection (a) of this section, any county vocational school district shall include the territory within the boundaries of any local school district referred to in subsection (a) of this section after the date of filing in the office of the state commissioner of education of a certified copy of a resolution adopted by the county board of the county subsequent to the organization of the
county vocational school district and of a resolution adopted by
the board of education of the local\textit{1} district setting forth the
finding that it is in the best interest of the county vocational
school district and of the local\textit{1} district that the county
vocational school district shall include within its boundaries
the territory of the local\textit{1} district.

(c) The board of education of the county vocational
school district and the board of education of each local\textit{1}
district referred to in subsection (b) of this section are each
hereby authorized and empowered to undertake and to enter into
agreements of any nature whatsoever necessary, desirable,
useful, or convenient for and with respect to the assumption,
operation, or administration by the county vocational school
district of any system of vocational education then being main-
tained in the local\textit{1} district, including, but not limited to,
the transfer of principals, teachers, employees, pupils, or
classes; the purchase, grant, transfer, or lease to the county
vocational school district of any lands, schools, buildings,
furnishings, equipment, apparatus, or supplies constituting
part of or used in connection with the local\textit{1} system; and the
making of or provision for payments, costs, or expenses in
connection with any of the aforesaid, and copy of any such agree-
ment shall be filed in the office of the state commissioner of
education\textit{1}.
(d) All principals, teachers, and employees of any district referred to in subsection (b) of this section who are employed in or assigned to the system of vocational education in any such district shall be transferred to and continue their respective employments in the employ of the county vocational school district from and after the date of transfer provided for in any agreement entered into pursuant to subsection (c) of this section, and their rights to tenure, pension, and accumulated leave of absence accorded under the laws of the state shall not be affected by the transfer to the county vocational school district.

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

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

Section 5. School Year. The school year for a county vocational school district shall begin on \( \text{\textit{L}} \) and end on \( \text{\textit{J}} \).
Section 6. Board of Education; Appointment, Terms, and Vacancies. 2/ A county vocational school district established in accordance with this act shall be under the control and management of a board of education consisting of five persons to be appointed by the county board. In making the first appointments to a board, one person shall be appointed to serve for one year, one for two years, one for three years, one for four years, and one for five years. Annually during the month of, a member of the board shall be appointed to serve for a term of five years, and until the appointment and qualification of his successor. 3/

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

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

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

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

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

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

(a) County vocational school districts are subject to the
statutes governing [Local] school districts with respect to
[powers of the board of education; approval of courses of study
by the state commissioner of education; the making of contracts
and payment of bills; advertisement for proposals for supplies or
construction; and rights and privileges of teachers, principals,
and members of the boards of education].
(b) In appropriating money and levying taxes for current expenses, county vocational school districts are subject to the statutes governing appropriating money and levying taxes for other purposes in the county, except that taxes for a county vocational school district shall be levied only within the boundaries of the district as determined under section 2 of this act.

(c) In the issuance of bonds, county vocational school districts are subject to the statutes governing borrowing for other county purposes; provided, that any debt limitation or requirement for down payment therein shall not apply; and provided further, that taxes levied for the payment of principal and interest of such bonds shall be levied only within the boundaries of the county vocational school district as determined under section 2 of this act.

Section 11. Severability. [Insert severability clause.]

Section 12. Effective Date. [Insert effective date.]

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ADOPTION OF MODEL UNIFORM CODES BY REFERENCE*

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

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

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

* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.
and (b) action by local governments to utilize such authority..." to encourage uniformity among municipal codes, increase the coverage, and allow more expert application of reasonable requirements.

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

**Suggested Legislation**

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

(Be it enacted, etc.)

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

* In some states incorporation by reference may be prohibited by the constitution.
following terms shall have the meanings indicated, unless
the context otherwise requires:

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

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

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

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

Section 2. Adoption of Codes by Reference. Any
municipality may adopt or repeal an ordinance or a local law
which incorporates by reference the provisions of any
code or portions of any code, or any amendment thereof,
properly identified as to date and source, without setting
forth the provisions of such code in full. At least
\[ \text{\at least} \]
copies of such code, portion, or amendment which
is incorporated or adopted by reference, shall be filed
in the office of the clerk of the municipality and there
kept available for public use, inspection, and examination.
The filing requirements herein prescribed shall not be
deemed to be complied with unless the required copies
of such codes, portion, or amendment or public record are
filed with the clerk of such municipality for a period of
\[ \text{\at least} \]
days prior to the adoption of the ordinance
local law which incorporates such code, portion, or
amendment by reference. If such a code, portion, or amend-
ment is promulgated by a county, or metropolitan or
regional agency, the adopting unit of local government must
be within the territorial boundaries of such county or
agency.

Section 3. Publication of Adopting Ordinance. Nothing
contained in this Act shall be deemed to relieve any
municipality of the requirement of publishing in full the
4 Ordinance/Local law which adopts such code, portion, or amendment by reference, and all provisions applicable to such publication shall be fully and completely carried out as if no code, portion, 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 shall state the penalty for violating such code, portion, or amendment, or any provision thereof separately, and no part of any such penalty shall be incorporated by reference.

1 Section 5. Effective Date. Insert effective date.
REGIONAL COUNCILS OF PUBLIC OFFICIALS

Among the many devices proposed or used to enable citizens and local government officials of metropolitan areas to cope more effectively with the growing number of areawide problems is the regional or metropolitan council of public officials. These are voluntary associations of public officials, usually elected, from most or all of the governments of a metropolitan area, formed to seek a better understanding among the governments and officials in the area, to develop a consensus regarding metropolitan needs, and to promote coordinated action in solving their problems.

About a dozen regional councils have been established since the first, the Supervisors Inter-County Committee, was organized in 1954 in the Detroit area. Among the well-known councils, besides the Detroit group, are the Metropolitan Regional Council of New York, New Jersey, and Connecticut, in the New York City area; the Association of Bay Area Governments in the San Francisco area; the Mid-Willamette Valley Intergovernmental Cooperation Council (Salem, Oregon); and the Metropolitan Council of Governments in Washington, D.C.

Although councils vary with respect to their manner of establishment and membership, they usually have three characteristics: (1) They cut across or embrace several local jurisdictions, and sometimes do not stop at state lines. (2) They are composed of the chief elected officials of the local governments, and sometimes have representation from the state government. (3) As an association of representatives from individual governments which retain their power to act as they please with reference to the decisions of the regional councils, they function primarily as forums for discussion, research, and recommendation only. None has powers to compel either participation in the first instance or acceptance of recommendations in the end. Such operating functions as they may be given by their participating governments are always legally subject to the right of any individual constituent to withhold its support. Each, therefore, is voluntary in the fullest sense of the word. (4) They are multi-purpose, concerning themselves with many areawide problems. (5) They employ a full-time staff.

There has been a growing interest in regional councils, as reflected in the gradual increase in their number. It is anticipated, moreover, that the number will experience rapid expansion as a consequence of Section 1102(c) of the Federal Housing and Urban Development Act of 1965. This provision makes Federal grants available to "organizations composed of public officials whom (the HHFA Administrator) finds to be representative of the political
jurisdictions within a metropolitan area or urban region for the purpose of assisting such organizations to undertake studies, collect data, develop regional plans and programs, and engage in such other activities as the Administrator finds necessary or desirable for the solution of the metropolitan or regional problems in such areas or regions. Grants may be as much as two-thirds of the estimated cost of the work assisted.

In light of these developments it seems that states would be well advised to grant local officials necessary authority to form regional councils. Two basic methods have been used to provide this authority. The first is passage of special acts by the state legislature creating each council. This is the method followed in the 1957 Michigan Legislature for the Supervisors Intercounty Committee (Michigan Public Acts 1957, No. 21). The alternative, and more common approach, is a general interlocal cooperation enabling act that permits local units of government to undertake jointly any action they are empowered to undertake separately. A model interlocal agreement act of this kind has been previously proposed by the Advisory Commission and is presented on page 398 below. Such general authority has been used to establish the Association of Bay Area Governments in California and the Mid-Willamette Valley (Oregon) Council of Governments.

A third statutory approach is provided in the statute presented below. This is a bill authorizing local governments to join together for the specific purpose of forming and operating a regional council of officials.

Section 1 provides that the governing bodies of any two or more general purpose units of local government, such as cities and counties, may establish a regional council of public officials. It authorizes agreements to be made with governing bodies of similar units in other states in order to permit establishment of a council which would draw membership throughout the entire territory of an interstate metropolitan area. Some states might wish to broaden permissive membership to include representatives from local school districts or from the state government.

Section 2 specifies that each constituent local unit shall be represented by its elected chief executive or if it has no elected chief executive, by a member of its governing body chosen by that body. Reflecting the voluntary nature of the organization, it further provides that any constituent unit may withdraw at will upon giving 60 days' notice.

Two types of powers are authorized by Section 3. The first, which may be exercised by vote of the council, includes the power
to make studies of areawide problems of common interest, promote cooperation among the members, and make recommendations to the members and other public agencies operating in the area. These powers are purely of an advisory, research, encouragement, and recommendation nature. They do not involve carrying out any kind of "line" function normally carried out by the member governments within their individual jurisdictions.

The second category of powers are all other powers that the member governments may exercise individually. Since these would involve direct public services, the application of such powers to each participating government is a matter of basic importance to the governing bodies of those governments. Therefore it is provided that for such powers to be exercised by the council, appropriate action by each constituent government would be required.

The remaining sections authorize the council to adopt by-laws, employ staff and consultants, and receive funds from all sources, including grants from the Federal Government. Governing bodies of the member governments are permitted to appropriate funds for the council.

Suggested Legislation

Title should conform to state requirements.
The following is a suggestion: "An act to authorize regional councils of public officials."

(Being enacted, etc.)

1. **Section 1. Establishment.** The governing bodies of any two or more counties, cities, insert names of other general purpose units of local government by appropriate action, may enter into an agreement with each other, or with the governing bodies of any counties, cities, insert names of other general purpose units as above of any other state to the extent that
laws of such state permit, for establishment of a regional
council of public officials.

Section 2. Membership. Membership of the council shall
consist of one representative from each county, city, /insert
as above/ entering into the agreement. The representative
from each member county, city, /insert as above/ shall be the
elected chief executive of the member county, city, /insert as
above/, or, if such county, city, /insert as above/ does not
have an elected chief executive, a member of its governing
body chosen by such body to be its representative. Any county,
city, /insert as above/ which has become a member of the
council may withdraw upon 60 days notice subsequent to formal
action by its governing body.

Section 3. Powers and Duties. (a) The council shall have
the power to (1) study such area governmental problems common
to two or more members of the council as it deems appropriate,
including but not limited to matters affecting health, safety,
welfare, education, economic conditions, and regional develop-
ment; (2) promote cooperative arrangements and coordinate
action among its members; and (3) make recommendations for
review and action to the members and other public agencies that
perform functions within the region.
(b) The council may, by appropriate action of the governing bodies of the member governments, exercise such other powers as are exercised or capable of exercise by the member governments and necessary or desirable for dealing with problems of mutual concern.

Section 4. By-Laws. The council shall adopt by-laws designating the officers of the council and providing for the conduct of its business.

Section 5. Staff. The council may employ such staff, and consult and retain such experts, as it deems necessary.

Section 6. Finances; Annual Report. (a) The governing bodies of the member governments may appropriate funds to meet the expenses of the council. Services of personnel, use of equipment and office space, and other necessary services may be accepted from members as part of their financial support.

(b) The council may accept funds, grants, gifts, and services from the government of the United States or its agencies, from the state of or its departments, agencies or instrumentalities, or from any governmental unit whether participating in the council or not, and from private and civic sources.

(c) It shall make an annual report of its activities to the member governments.
Section 7. [Insert severability clause.]

Section 8. [Insert effective date.]
URBAN RENEWAL AND PUBLIC HOUSING

All but two States now provide authority for municipalities to undertake urban renewal programs and, similarly, all but two States have legislation authorizing the provision of low rent housing by municipalities. Only 16 States, however, have enabled counties to undertake urban renewal whereas 42 States enable counties to provide low-rent housing for families of low income. According to the best information available, only about 32 counties have urban renewal agencies, with only one-third of these agencies operating in unincorporated areas. Suburban participation in public housing programs is also limited in spite of the large number of States authorizing such projects.

Notwithstanding the relatively small amount of current suburban concern, urban renewal and housing programs are needed and should be carried out in all parts of most of our metropolitan areas. The Advisory Commission on Intergovernmental Relations has recommended:

That States enact legislation authorizing counties in metropolitan areas to provide urban renewal and public housing services to unincorporated areas and small municipalities; and further provide for financial and technical assistance to the counties as well as municipalities for establishing such services and coordinating their administration, especially in multicounty metropolitan areas.*

In most metropolitan areas throughout the country the central city is making strong efforts to strengthen and renew its deteriorating and blighted neighborhoods. In many suburban areas which surround these central cities the problems are not yet so formidable, although they are likely to become so as the suburbs grow, particularly the older ones whose industry and residential character is becoming more like the central cities they border.

Increased county responsibility for urban renewal and public housing programs would tend to broaden the area of jurisdiction by including unincorporated and incorporated areas that do not have programs of their own. In those counties where slum clearance and residential dislocation will be substantial, public housing would probably be necessary.

to enable relocation needs to be met. This has been the case in central cities where the proportion of families with incomes under $4,000 is nearly as large as it is in the suburbs. Cooperation between counties and city renewal and housing agencies, and even joint city-county programs in certain cases, would be mutually advantageous. Such cooperation is fairly common where county programs now exist.

County renewal and public housing powers would not exclude continued exercise of similar powers by municipal governments and, to the contrary, might facilitate the programs of small municipalities which could not maintain full professional staffs of their own or provide adequate relocation housing within their own borders. Examples of this can be found in the Pittsburgh metropolitan area, among others, where county renewal staffs perform, under contract, the technical services needed to carry out renewal projects for which the individual municipality is the actual sponsor. Larger municipalities within counties, especially major central cities, will undoubtedly want to continue using their own highly developed staffs, with the counties performing renewal services and sponsoring projects only in unincorporated areas. Where central city renewal staff is available, a county might find it advantageous to contract with it for staff services. The indispensable role of the counties is that of project sponsor and provider of workable program certification in unincorporated areas where there is no other government capable of performing this role.

Many counties, both within and outside metropolitan areas, may have large rural populations that might resist having the county provide urban-type renewal and public housing services. A municipality with an active renewal and public housing program of its own might also resist contributing to a county program out of general county revenues. In such situations, the Commission has recommended that it may be appropriate to create a county subordinate tax area in order to administer and finance a needed service in the selected area. At least 20 States currently utilize the subordinate taxing area device to provide governmental services. Draft legislation establishing county subordinate taxing areas may be found on page 47 of this publication.

State programs of technical and financial assistance can do much to encourage needed urban renewal and public housing programs in small suburban jurisdictions and outlying unincorporated areas. Kentucky and Maine, for example, provide localities with staff assistance to prepare
local workable programs needed to qualify for Federal urban renewal and public housing grants and to advise local officials on planning and carrying out their programs. The State might also stimulate local programs by matching the local share of costs. Where the establishment of a local renewal agency in small municipalities and unincorporated areas is impractical, the State itself might undertake this responsibility.

The suggested legislation below authorizes municipalities and counties to provide for the rehabilitation, clearance, and redevelopment of slums and blighted areas. The bill contains provisions making local activities eligible for Federal assistance under the provisions of recent amendments of the Federal Housing Act. Existing State urban renewal laws may require new or amendatory legislation in order for States and localities to receive the full benefits from the Federal program.

The following legislation places the urban renewal responsibility in the hands of the general purpose unit of government rather than in a separate authority. The governing body may exercise its urban renewal powers through a board or a commissioner or through such offices of a municipality or county as it may by resolution determine. If the local governing body itself does not choose to exercise urban renewal powers, it may have such powers carried out by an urban renewal agency or by the housing authority, if one exists or is subsequently established in the community. The urban renewal agency or the housing authority then is vested with all the urban renewal powers in the same manner as though all powers were vested in the local governing body. The urban renewal agency, however, is given limited autonomy. As required by Federal law, it cannot proceed with a renewal project without (a) a workable program supported by the local governing body, (b) approval of the project by the local governing body, (c) conformance with the locality's general plan, (d) provision of the local share of funds by the local governing body, and (e) a public hearing.

The bill would permit political subdivisions to enter into interlocal agreements to jointly or cooperatively undertake urban renewal activities. The initiative in such joint undertakings is left with the localities themselves. The suggested act specifies the basic contents of such agreements and requires review by the Attorney General before an agreement goes into effect.
So that the States may assume an appropriate role, provision is made for State technical and financial assistance to municipalities and counties in planning and carrying out urban renewal activities.

In some States it may be desirable to authorize a State agency to exercise the powers given to municipalities and counties under this act. The State could then undertake urban renewal projects in small communities and unincorporated areas where carrying out a program would otherwise be impracticable or impossible. Any State, wishing to follow this course, might add appropriate provisions to the suggested act. In this case, a finding should be added to Section 1 of the act and a new section drafted specifying appropriate procedures to carry out this function.

Draft legislation permitting municipalities and counties to undertake low rent housing for low income families is not available at this time because of the substantial changes of emphasis in the Federal Housing Act of 1965, including a new program of rent subsidies. Such legislation will be included in the 1967 State Legislative Program of the Advisory Commission. Assistance in the preparation of legislation can be obtained in the meantime from the Office of General Counsel, Housing and Home Finance Agency, Washington, D. C., 20410.

Suggested Legislation

Title should conform to state requirements.
The following is a suggestion: "An act providing authorization for municipalities and counties to undertake slum clearance and urban renewal."

(Be it enacted, etc.)

1 Section 1. Findings and Declarations of Necessity. It is hereby found and declared that there exist in municipalities and counties of the state slum and blighted areas (as herein defined) which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of
the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous local government burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of communities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its communities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this Act, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may,
through the means provided in this Act, be susceptible of con-
servation or rehabilitation in such a manner that the conditions
and evils hereinbefore enumerated may be eliminated, remedied
or prevented; and that salvageable slum and blighted areas can
be conserved and rehabilitated through appropriate public action
as herein authorized, and the cooperation and voluntary action
of the owners and tenants of property in such areas.

It is further found and declared that the powers conferred
by this Act on municipalities and counties will enable the
elimination and prevention of slums and blight in a more co-
ordinated, orderly and efficient manner, and the carrying out of
these activities in small communities or unincorporated areas
where their undertaking is impractical without the provisions of
this Act.

It is further found and declared that municipalities and
counties are unable to provide for the rehabilitation, clearance
and redevelopment of such slums and blighted areas without state
technical services and financial assistance and that the
granting of state financial assistance is a public purpose for
which public monies may be expended.¹

¹. If state financial assistance is not to be included in this bill, this paragraph should be omitted.
It is further found and declared that the powers conferred by this Act are for public uses and purposes for which public money may be expended and the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

Section 2. Definitions. The following terms wherever used or referred to in this Act, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) "Agency" or "Urban Renewal Agency" shall mean a public agency created by section 17 of this Act.

(b) "Municipality" shall mean any incorporated city, village, or town in the state.

(c) "County" shall mean any county in the state of

(d) "Public body" shall mean the state or any county, municipality, township, village, board, commission, authority, district, or any other subdivision or public body of the state.

(e) "Local governing body" shall mean the Council, Board of Commissioners, or other legislative body charged with governing the municipality or county.

(f) "Mayor" shall mean the mayor of a municipality or
other officer or body having the duties customarily imposed upon
the executive head of a municipality.

(g) "County Chairman" shall mean the presiding officer of
a county governing board.

(h) "Clerk" shall mean the clerk or other official of the
municipality or county who is the custodian of the official
records of such municipality or county.

(i) "Federal Government" shall include the United States
of America or any agency or instrumentality, corporate or other-
wise, of the United States of America.

(j) "Slum area" shall mean an area in which there is a
predominance of buildings or improvements, whether residential
or nonresidential, which by reason of dilapidation, deterioration,
age or obsolescence, inadequate provision for ventilation,
light, air, sanitation, or open spaces, high density of popula-
tion and overcrowding, or the existence of conditions which
endanger life or property by fire and other causes, or any
combination of such factors is conducive to ill health, trans-
mision of disease, infant mortality, juvenile delinquency, or
crime, and is detrimental to the public health, safety, morals
or welfare.

(k) "Blighted area" shall mean an area which by reason of
the presence of a substantial number of slum, deteriorated or
deteriorating structures, predominance of defective or inadequate
street layout, faulty lot layout in relation to size, adequacy,
accessibility or usefulness, insanitary or unsafe conditions,
deterioration of site or other improvements, diversity of owner-
ship, tax or special assessment delinquency exceeding the fair
value of the land, defective or unusual conditions of title, or
the existence of conditions which endanger life or property by
fire and other causes, or any combination of such factors, sub-
stantially impairs or arrests the sound growth of a municipality
or county, retards the provision of housing accommodations or
constitutes an economic or social liability and is a menace to
the public health, safety, morals, or welfare in its present
condition and use: \textit{Provided that}, if such blighted area consists
of open land the conditions contained in the proviso in section
5 (d) shall apply; And \textit{provided further, that} any disaster area
referred to in subsection 5 (g) shall constitute a "blighted
area."

(1) "Urban Renewal project" may include undertakings and
activities in an urban renewal area for the elimination and for
the prevention of the development or spread of slums and blight,
and may involve slum clearance and redevelopment in an urban
renewal area, or rehabilitation or conservation in an urban renewal area, or a program or code enforcement in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(1) acquisition of a slum area or a blighted area or portion thereof;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this Act in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the municipality or county itself) at its fair value for uses in accordance with the urban renewal plan;

(5) carrying out plans for a program of code enforcement and a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(6) acquisition of real property in the urban renewal area, or a program or code enforcement in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.
area which, under the urban renewal plan, is to be repaired
or rehabilitated for dwelling use or related facilities,
repair or rehabilitation of the structures for guidance
purposes, and resale of the property;

(7) acquisition of any other real property in the
urban renewal area where necessary to eliminate unhealthful,
insanitary or unsafe conditions, lessen density, eliminate
obsolete or other uses detrimental to the public welfare,
or otherwise to remove or prevent the spread of blight or
deterioration, or to provide land for needed public
facilities;

(8) acquisition, without regard to any requirement
that the area be a slum or blighted area, of air rights in
an area consisting principally of land in highways, railway
or subway tracks, bridge or tunnel entrances, or other
similar facilities which have a blighting influence on the
surrounding area and over which air rights sites are to be
developed for the elimination of such blighting influences
and for the provision of housing (and related facilities
and uses) designed specifically for, and limited to,
families and individuals of low or moderate income;

(9) construction of foundations and platforms necessary
for the provision of air rights sites of housing (and
related facilities and uses) designed specifically for, and
limited to, families and individuals of low or moderate
income.

(m) "Urban renewal area" means a slum area or a blighted
area or a combination thereof which the local governing body
designates as appropriate for an urban renewal project.

(n) "Urban renewal plan" means a plan, as it exists from
time to time, for an urban renewal project, which plan (1) shall
conform to the general plan for the municipality or county as a
whole except as provided in subsection 5 (g); and (2) shall be
sufficiently complete to indicate such land acquisition, demo-
lition and removal of structures, redevelopment, improvements,
and rehabilitation as may be proposed to be carried out in the
urban renewal area, zoning and planning changes, if any, land
uses, maximum densities, and building requirements.

(o) "Related activities" shall mean (1) planning work for
the preparation of a general neighborhood renewal plan, or for
the preparation or completion of a communitywide plan or program
pursuant to section 6 of this Act, and (2) the functions related
to the acquisition and disposal of real property pursuant to
section 7 (d) of this Act.
"Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

"Bonds" shall mean any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures or other obligations.

"Obligee" shall include any bondholder, agents or trustees for any bondholders, or lessor demising to the municipality or county property used in connection with urban renewal, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the municipality or county.

"Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

"Area of operation" shall mean the area within the corporate limits of the municipality or the territorial limits of the county; Provided, however, that a county shall not undertake any project or projects within the boundaries of any
municipality without the request or consent, by resolution, of
the local governing body of the municipality and provided further
that a municipality cannot undertake any project or projects
outside its area of operation without the request or consent of
the local governing body of the county.

(u) "Housing Authority" shall mean a housing authority
created by and established pursuant to the Law.

(v) "Board" or "Commission" shall mean a board, commission,
department, division, office, body or other unit of the munici-
pality or county.

(w) "Public officer" shall mean any officer who is in
charge of any department or branch of the government of the
municipality or county relating to health, fire, building regu-
lations, or to other activities concerning dwellings in the
municipality or county.

Section 3. Encouragement of Private Enterprise. A munici-
pality or county, to the greatest extent it determines to be
feasible in carrying out the provision of this Act, shall afford
maximum opportunity, consistent with the sound needs of the
municipality or county as a whole, to the rehabilitation or
redevelopment of the urban renewal area by private enterprise.

A municipality or county shall give consideration to this
objective in exercising its powers under this Act, including the
approval of urban renewal plans, communitywide plans or programs
for urban renewal, and general neighborhood renewal plans, the
exercise of its zoning powers, the enforcement of other laws,
codes and regulations relating to the use of land and the use
and occupancy of buildings and improvements, the disposition of
any property acquired, and the provision of necessary public
improvements.

Section 4. Finding of Necessity by Local Governing Body.
No municipality or county shall exercise the authority hereafter
conferred upon municipalities or counties by this Act until
after the local governing body of the municipality or county
shall have adopted a resolution finding that: (1) one or more
slum or blighted areas exist in such municipality or county; and
(2) the rehabilitation, conservation, redevelopment, or a
combination thereof, of such area or areas is necessary in the
interest of the public health, safety, morals or welfare of the
residents of such municipality or county.

Section 5. Preparation and Approval of Plan for Urban
Renewal Project.
(a) An urban renewal project for an urban renewal area
shall not be planned or initiated unless the governing body has,
by resolution, determined such area to be a slum area or a
blighted area or a combination thereof and designates such area
as appropriate for an urban renewal project.

(b) The municipality or county may itself prepare or
cause to be prepared an urban renewal plan, or any person or
agency, public or private, may submit such a plan to a munici-
pality or county. Prior to its approval of an urban renewal
project, the local governing body shall submit such plan to the
planning commission of the municipality or county, if any, for
review and recommendations as to its conformity with the general
plan for the development of the municipality or county as a
whole. The planning commission shall submit its written recom-
mendations with respect to the proposed urban renewal plan to
the local governing body within thirty days after receipt of the
plan for review. Upon receipt of the recommendations of the
planning commission or, if no recommendations are received within
said 30 days, then without such recommendations, the local
governing body may proceed with the hearing on the proposed
urban renewal project prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing
on an urban renewal project after public notice thereof by
publication in a newspaper having a general circulation in the
area of operation of the municipality or county. The notice
shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project and the plan therefor if it finds that:

(1) A feasible method exists for the location of families who will be displaced from the urban renewal area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families;

(2) The urban renewal plan conforms to the general plan of the municipality or county as a whole;

(3) The urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities that may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the site covered by the plan; and

(4) The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, for the rehabilitation
or redevelopment of the urban renewal area by private enterprise;

Provided that, if the urban renewal area consists of an area of open land to be acquired by the municipality or county, such area shall not be so acquired unless:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe, and sanitary exists in the municipality or county; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas; that the conditions of blight in the area and the shortage of decent, safe, and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality or county; or

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the
community in accordance with sound planning standards and local community objectives, which acquisition may require the exercise of governmental action, as provided in this Act, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, the need for the correlation of the area with other areas of a municipality or county by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

(e) An urban renewal plan may be modified at any time; **Provided that**, if modified after the lease or sale by the municipality or county of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee, or successor in interest as the municipality or county may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

(f) Upon the approval by the local governing body of an urban renewal plan or of any modifications thereof, such plan
or modifications shall be deemed to be in full force and effect
for the respective urban renewal area and the municipality or.
county may then cause such plan or modification to be carried
out in accordance with its terms.

(g) Notwithstanding any other provisions of this Act,
where the local governing body certifies that an area is in need
of redevelopment or rehabilitation as a result of a flood, fire,
hurricane, earthquake, storm, or other catastrophe respecting
which the Governor of the state has certified the need for
disaster assistance under Public Law 875, Eighty-First Congress,
or other Federal law, the local governing body may approve an
urban renewal plan and an urban renewal project with respect to
such area without regard to the provisions of subsection (d) of
this section and the provisions of this section requiring a
general plan for the municipality or county and a public hearing
on the urban renewal project.

Section 6. Neighborhood and Communitywide Plans.

(a) A municipality, county, or any public body authorized
to perform planning work may prepare a general neighborhood
renewal plan for an urban renewal area or areas, together with
any adjoining areas having specially related problems which may
be of such scope that urban renewal activities may have to be
carried out in stages. Such plan may include, but is not
limited to, a preliminary plan which:
(1) Outlines the urban renewal activities proposed for the area or areas involved;

(2) Provides a framework for the preparation of urban renewal plans; and

(3) Indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area or areas contemplated for clearance and redevelopment.

A general neighborhood renewal plan shall, in the determination of the local governing body, conform to the general plan of the locality as a whole.

(b) A municipality, county, or any public body authorized to perform planning work may prepare or complete a communitywide plan or program for urban renewal which shall conform to the general plan for the development of the municipality or county as a whole and may include, but is not limited to, identification of slum or blighted areas, measurement of blight, determination of resources needed and available to renew such areas, identification of potential project areas and types of action contemplated, and scheduling of urban renewal activities.

(c) Authority is hereby vested in every municipality and county to prepare, to adopt, and to revise from time to time a general plan for the physical development of the municipality or
county as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related planning activities, and to make available and to appropriate necessary funds therefor.

Section 7. Powers. Every municipality and county shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects and related activities within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this Act; and to disseminate slum clearance and urban renewal information;

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and

2. This subsection is suggested for inclusion only in states where municipalities and counties lack legislative authorization for the preparation of a general plan.
appropriate attached to Federal financial assistance and imposed pursuant to Federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project and related activities, and to include in any contract let in connection with such a project and related activities, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(c) Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, device, eminent domain, or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality or county against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate
the purpose of this Act; **Provided, however, that** no statutory
provision with respect to the acquisition, clearance, or dispo-
sition of property by public bodies shall restrict a municipality,
county, or other public body exercising powers hereunder, in the
exercise of such functions with respect to an urban renewal
project and related activities, unless the legislature shall
specifically so state;

(d) With the approval of the local governing body:

(1) Prior to approval of an urban renewal plan, or
approval of any modifications of the plan, to acquire real
property in an urban renewal area, demolish and remove
any structures on the property, and pay all costs related
to the acquisition, demolition, or removal, including any
administrative or relocation expenses; and

(2) To assume the responsibility to bear any loss
that may arise as the result of the exercise of authority
under this subsection in the event that the real property
is not made part of the urban renewal project;

(e) To invest any urban renewal funds held in reserve or
sinking funds or any such funds not required for immediate
disbursement, in property or securities in which savings banks
may legally invest funds subject to their control; to redeem
such bonds as have been issued pursuant to section 11 of this
Act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled;

(f) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal Government, the state, county, or other public body, or from any sources, public or private, for the purposes of this Act, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the Federal Government for or with respect to an urban renewal project and related activities such conditions imposed pursuant to Federal laws as the municipality or county may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act.

(g) Within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this Act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans, which plans may include, but are not limited to:

(1) Plans for carrying out a program of voluntary or compulsory repair or rehabilitation of buildings and improvements;
(2) Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(3) Appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities; and to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income and to apply for, accept, and utilize grants of funds from the Federal Government for such purposes;

(h) To prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations and others) displaced from an urban renewal area, and to make relocation payments to or with respect to such persons for moving and readjustment expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the Federal Government;
(i) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this Act, and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or county within its area of operation or make exceptions from building regulations; and to enter into agreements with a housing authority or an urban renewal agency vested with urban renewal powers under section 16 of this Act (which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary), respecting action to be taken by such municipality or county pursuant to any of the powers granted by this Act;

(j) To close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; and to plan or replan any part of the municipality or county;

(k) Within its area of operation, to organize, coordinate, and direct the administration of the provisions of this Act as they apply to such municipality or county in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such municipality or county may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or county or to reorganize existing offices in order to carry out such purpose most effectively; and
(1) To exercise all or any part or combination of powers herein granted.

Section 8. Cooperation Among Municipalities and Counties.

(a) Any power or powers, privileges, or authority exercised or capable of exercise by a municipality or a county under this Act may be exercised and enjoyed jointly with any other municipality or county, including but not limited to the preparation of urban renewal plans, the undertaking and carrying out of urban renewal projects and related activities, the power of eminent domain, and the issuance of bonds.

(b) Any two or more municipalities, two or more counties, or any combination thereof may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this Act. Entry into such agreements shall be authorized by the local governing bodies of the participating municipalities and counties.

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.
Agreements entered into pursuant to this section shall specify the following:

1. The duration of the agreement;
2. The precise organization, composition, and nature of any separate legal administrative entity created thereby together with the powers delegated thereto;
3. The purpose or purposes of the agreement;
4. The manner of financing the joint or cooperative exercise of powers under this Act and of establishing and maintaining a budget therefor;
5. The permissible method or methods of terminating the agreement and for the disposal of property upon termination;
6. Any other necessary or proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items 1, 3, 4, 5, and 6 enumerated in subdivision (c) hereof, contain the following:

1. Provisions for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, municipalities and counties party to the agreement shall be represented;
(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e) Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state. The Attorney General shall approve any agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the local governing bodies of the municipalities and counties concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within sixty days of its submission shall constitute approval thereof.

(f) Financing of joint projects by agreement shall be as provided by law.

(g) Prior to its entry into force, an agreement made pursuant to this Act shall be filed with the municipal or county clerk of the respective municipalities or counties concerned and with the Secretary of State.

(h) Any municipality or county entering into an agreement pursuant to this section may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board
or other legal or administrative entity created to operate the joint or cooperative undertaking by providing personnel or services therefor.

(i) Any one or more municipalities or counties may contract with any one or more other municipalities or counties to perform any governmental service, activity, or undertaking which any entering into the contract are authorized by law to perform; provided that such contract shall be authorized by the local governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

Section 9. Eminent Domain.

(a) A municipality or county shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project and related activities under this Act. A municipality or county may exercise the power of eminent domain in the manner provided in , and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner; provided, that no real property belonging to the United States, the state,
or any political subdivision of the state, may be acquired without its consent.

(b) In any proceeding to fix or assess compensation for damages for the taking or damaging of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages, in addition to evidence or testimony otherwise admissible:

(1) Any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in which such property is located, as being unsafe, substandard, insanitary, or otherwise contrary to the public health, safety, or welfare;

(2) The effect on the value of such property, or any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of
any such use, condition, occupancy, or operation.

(c) The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty or authority so to do has rendered, made or issued any judgment, decree, determination, or order for the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition, or operation.

Section 10. Disposal of Property in Urban Renewal Area.

(a) A municipality or county may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, and may enter into contracts with respect thereto, in an urban renewal area for residential, recreational, commercial, industrial, educational, or other uses or for public use, or may retain such property or interest for public use, in accordance with the urban renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas or to otherwise carry out the
purposes of this Act; Provided, that such sale, lease, other
transfer, or retention, and any agreement relating thereto, may
be made only after the approval of the urban renewal plan by
the local governing body. The purchasers or lessees and their
successors and assigns shall be obligated to devote such real
property only to the uses specified in the urban renewal plan,
and may be obligated to comply with such other requirements as
the municipality or county may determine to be in the public
interest, including the obligation to begin within a reasonable
time any improvements on such real property required by the
urban renewal plan. Such real property or interest shall be
sold, leased, otherwise transferred, or retained at not less
than its fair value for uses in accordance with the urban
renewal plan. In determining the fair value of real property
for uses in accordance with the urban renewal plan, a municipal-
ity and county shall take into account and give consideration
to the uses provided in such plan; the restrictions upon, and
the covenants, conditions, and obligations assumed by the
purchaser or lessee or by the municipality or county retaining
the property; and the objectives of such plan for the prevention
of the recurrence of slum or blighted areas. The municipality
or county in any instrument of conveyance to a private purchaser
or lessee may provide that such purchaser or lessee shall be
without power to sell, lease, or otherwise transfer the real
property without the prior written consent of the municipality or county until he has completed the construction of any or all improvements which he has obligated himself to construct thereon.

Real property acquired by a municipality or county which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer and the urban renewal plan (or such part or parts of such contract or plan as the municipality or county may determine) may be recorded in the land records of the appropriate jurisdiction in such manner as to afford actual or constructive notice thereof.

(b) A municipality and county may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality and county may, by public notice by publication in a newspaper having a general circulation in the community (thirty days prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section), invite proposals from and make available all pertinent information to private redevelopers.
or any persons interested in undertaking to redevelop or
rehabilitate an urban renewal area, or any part thereof. Such
notice shall identify the area, or portion thereof, and shall
state that proposals shall be made by those interested within
30 days after the date of publication of such notice, and that
such further information as is available may be obtained at such
office as shall be designated in said notice. The municipality
or county shall consider all such redevelopment or rehabilita-
tion proposals and the financial and legal ability of the
persons making such proposals to carry them out, and may
negotiate with any persons for proposals for the purchase, lease,
or other transfer of any real property acquired by the municipali-
ity or county in the urban renewal area. The municipality or
county may accept such proposal as it deems to be in the public
interest and in furtherance of the purposes of this Act;
Provided, that a notification of intention to accept such
proposal shall be filed with the governing body not less than
30 days prior to any such acceptance. Thereafter, the municipal-
ity or county may execute such contract in accordance with the
provisions of subsection (a) and deliver deeds, leases, and
other instruments and take all steps necessary to effectuate
such contract.

(c) A municipality and county may temporarily operate and
maintain real property acquired by it in an urban renewal area
for or in connection with an urban renewal project pending the
disposition of the property as authorized in this Act, without
regard to the provisions of subsection (a) above, for such uses
and purposes as may be deemed desirable even though not in
conformity with the urban renewal plan.

(d) Any real property acquired pursuant to section 7(d)
may be disposed of without regard to other provisions of this
section if the local governing body has consented to the disposal.

(e) Notwithstanding any other provisions of this Act,
where the municipality or county is situated in an area design-
nated as a redevelopment area under the Federal Area Redevelopment
Act (Public Law 87-27), or any act supplementary thereto, land
in an urban renewal project area designated under the urban
renewal plan for industrial or commercial uses may be disposed
of to any public body or nonprofit corporation for subsequent
disposition as promptly as practicable by the public body or
corporation for redevelopment in accordance with the urban
renewal plan, and only the purchaser from or lessee of the public
body or corporation, and their assignees, shall be required to
assume the obligation of beginning the building of improvements
within a reasonable time. Any disposition of land to a public
body or corporation under this subsection shall be made at its
fair value for uses in accordance with the urban renewal plan.
Section 11. Issuance of Bonds. 5

(a) A municipality and county shall have power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this Act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality or county derived from or held in connection with its undertaking and carrying out of urban renewal projects under this Act; Provided that, payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the Federal Government or other source, in aid of any urban renewal projects of the municipality or county under this Act, and by a mortgage of any such urban renewal projects, or any part thereof, title to which is in the municipality or county.

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.
(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this Act are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum per annum, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or ordinance, or trust indenture or mortgage issued pursuant thereto.
(d) Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality and county may determine or may be exchanged for other bonds on the basis of par; provided that such bonds may be sold to the Federal Government at private sale at not less than par, and, in the event less than all of the authorized principal amount on such bonds is sold to the Federal Government, the balance may be sold at private sale at not less than par at an interest cost to the municipality or county of not to exceed the interest cost to the municipality or county of the portion of the bonds sold to the Federal Government.

(e) In case any of the public officials of the municipality or county whose signatures appear on any bonds or coupons issued under this Act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this Act or the security therefor, any such bond reciting in substance that
it has been issued by the municipality or county in connection
with an urban renewal project, as herein defined, shall be
conclusively deemed to have been issued for such purpose and
such project shall be conclusively deemed to have been planned,
located, and carried out in accordance with the provisions of
this Act.

Section 12. Bonds as Legal Investments. All banks, trust
companies, bankers, savings banks and institutions, building and
loan associations, savings and loan associations, investment
companies and other persons carrying on a banking or investment
business; all insurance companies, insurance associations, and
other persons carrying on an insurance business; and all executors,
administrators, curators, trustees, and other fiduciaries, may
legally invest any sinking funds, moneys, or other funds belonging
to them or within their control in any bonds or other obligations
issued by a municipality or county pursuant to this Act or by
any urban renewal agency or housing authority vested with urban
renewal project powers under section 16 of this Act; Provided
that, such bonds and other obligations shall be secured by an
agreement between the issuer and the Federal Government in
which the issuer agrees to borrow from the Federal Government
and the Federal Government agrees to lend to the issuer, prior
to the maturity of such bonds or other obligations, moneys in
any amount which (together with any other moneys irrevocably
committed to the payment of principal and interest on such
bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

Section 13. Property Exempt from Taxes and from Levy and Sale by Virtue of an Execution.

(a) All property of a municipality or county, including funds, owned or held by it for the purposes of this Act shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality or county be a charge or lien upon such property; Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this Act by a munici-
palty or county on its rents, fees, grants, or revenues from
urban renewal projects.
(b) The property of a municipality or county, acquired or held for the purposes of this Act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided that such tax exemption shall terminate when the municipality or county sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

Section 14. Cooperation by Public Bodies.

(a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project and related activities authorized by this Act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality or county;

(2) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;
(3) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan and related activities;

(4) Lend, grant, or contribute funds to a municipality or county, and borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal Government, the state, county, or other public body, or from any other source;

(5) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with the Federal Government, a municipality, county, or other public body respecting action to be taken pursuant to any of the powers granted by this Act, including the furnishing of funds or other assistance in connection with an urban renewal project and related activities; and

(6) Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or
rezone any part of the public body or make exceptions from
building regulations; and cause administrative and other
services to be furnished to the municipality or county.

If at any time title to or possession of any urban renewal project
is held by any public body or governmental agency, other than the
municipality or county which is authorized by law to engage in
the undertaking, carrying out, or administration of urban renewal
projects and related activities (including any agency or instru-
mentality of the United States of America), the provisions of the
agreements referred to in this section shall inure to the benefit
of and may be enforced by such public body or governmental agency.
As used in this subsection, the terms "municipality" and "county"
shall also include an urban renewal agency or a housing authority
vested with all of the urban renewal powers pursuant to the
provisions of section 16.

(b) Any sale, conveyance, lease, or agreement provided for
in this section may be made by a public body without appraisal,
public notice, advertisement, or public bidding.

(c) For the purpose of aiding in the planning, undertaking,
or carrying out of any urban renewal project and related activi-
ties of an Urban Renewal Agency or a housing authority hereunder,
a municipality and county may (in addition to its other powers
and upon such terms, with or without consideration, as it may
determine) do and perform any or all of the actions or things which, by the provisions of subsection (a) of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(d) For the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project and related activities of a municipality or county, such municipality may (in addition to any authority to issue bonds pursuant to section 11) issue and sell its general obligation bonds. Any bonds issued by a municipality or county pursuant to this section shall be issued in the manner and within the limitations prescribed by the applicable laws of this state for the issuance and authorization of general obligation bonds by such municipality or county. Nothing in this section shall limit or otherwise adversely affect any other section of this Act.

Section 15. **Title of Purchaser.** Any instrument executed by a municipality or county and purporting to convey any right, title, or interest in any property under this Act shall be conclusively presumed to have been executed in compliance with the provisions of this Act insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

(a) A municipality or county may itself exercise its urban renewal powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the Urban Renewal Agency (created by section 17) or by its housing authority, if one exists or is subsequently established. In the event the local governing body makes such determination, the Urban Renewal Agency or the housing authority, as the case may be, shall be vested with all of the urban renewal powers in the same manner as though all such powers were conferred on such Agency or authority instead of the municipality or county. If the local governing body does not elect to make such determination, the municipality or county in its discretion may exercise its urban renewal powers through a board or commission or through such officers as its local governing body may by resolution determine.

(b) As used in this section, the term "urban renewal powers" shall include the rights, powers, functions, and duties of a municipality or county under this Act, except the following: the power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for
an urban renewal project and to hold any public hearings
required with respect thereto; the power to approve:

(1) Urban renewal plans and modifications thereof;
(2) General neighborhood renewal plans and community-wide plans or programs for urban renewal; and
(3) The acquisition, demolition, removal, or disposal
of property as provided in section 7(d);
the power to establish a general plan for the locality as a
whole; the power to carry out a program of code enforcement;
the power to make the determinations and findings provided for
in section 3, section 4, and section 5(d); the power to issue
general obligation bonds under section 14; the power to assume
the responsibility to bear loss as provided in section 7(d);
and the power to appropriate funds, levy taxes and assessments,
and to exercise other powers provided for in section 7(i).

Section 17. Urban Renewal Agency.

(a) There is hereby created in each municipality and
county a public body corporate and politic to be known as the
"Urban Renewal Agency" of the municipality or county; Provided,
that such Agency shall not transact any business or exercise its
powers hereunder until or unless the local governing body has
made the finding prescribed in section 4 and has elected to have
the urban renewal powers exercised by an Urban Renewal Agency
as provided in section 16.
(b) If the Urban Renewal Agency is authorized to transact business and exercise powers hereunder, the Mayor or the County Chairman, as appropriate, by and with the advice and consent of the local governing body, shall appoint a Board of the Urban Renewal Agency which shall consist of five Commissioners. The term of office of each such commissioner shall be one year.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality or county, as the case may be, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of an Urban Renewal Agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the Agency and for all other

6. Variations in appointive practices among the states may require that other language be used to indicate what official or body appoints members to the Agency Board and how officers of the Agency Board are selected. Care should be taken to provide proper procedures for both municipalities and counties.
purposes. Action may be taken by the Agency upon a vote of a majority of the commissioners present, unless in any case the by-laws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the Agency (which shall be coterminous with the area of operation of the municipality or county) and are otherwise eligible for such appointments under this Act.

The Mayor or County Chairman, as appropriate, shall designate a Chairman and Vice Chairman from among the commissioners. An Agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties, and compensation. For such legal service as it may require, an Agency may employ or retain its own counsel and legal staff. An Agency authorized to transact business and exercise powers under this Act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report,

7. See footnote 6.
the Agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality or county and that the report is available for inspection during business hours in the office of the municipal or county clerk and in the office of the Agency.

(d) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearings and have had an opportunity to be heard in person or by counsel.

Section 18. Interested Public Officials, Commissioners, or Employees. No public official or employee of a municipality or county board or commission, and no commissioner or employee of a Housing Authority or Urban Renewal Agency which has been vested by a municipality or county with urban renewal powers under section 16 shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality or county project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner, or employee
presently owns or controls, or owned and controlled within the
preceding two years, any interest, direct or indirect, in any
property which he knows is included or planned to be included
in an urban renewal project, he shall immediately disclose this
fact in writing to the local governing body, and such disclosure
shall be entered upon the minutes of the governing body, and
any such official, commissioner, or employee shall not partici-
pate in any action by any municipality or county board or
commission, Housing Authority, or Urban Renewal Agency affecting
such property. Any disclosure required to be made by this
section to the local governing body shall concurrently be made
to a Housing Authority or Urban Renewal Agency which has been
vested with urban renewal powers by the municipality or county
pursuant to the provisions of section 16. No commissioner or
other officer of any Housing Authority, Urban Renewal Agency,
board, or commission exercising powers pursuant to this Act
shall hold any other public office under the municipality or
county other than his commissionership or office with respect
to such Housing Authority, Urban Renewal Agency, board, or
commission. Any violation of the provisions of this section
shall constitute misconduct in office.

Section 19. State Aid.

(a) The [insert name of appropriate agency of state
government] is authorized and directed to provide technical and
advisory assistance, upon request, to municipalities and counties for an urban renewal project as defined in this Act. Such assistance shall include, but need not be limited to, special statistical and other studies and compilations, technical evaluations and information, training activities, professional services, surveys, reports, documents, and any other similar service functions.\textsuperscript{8}

(b) The \textit{appropriate state agency} is authorized to make urban renewal grants to municipalities and counties for \textit{75} percent of the individual net project costs. Such grants shall be made from funds appropriated by the legislature for these purposes and shall be exclusive of those costs reimbursed or paid by grants from the Federal Government.\textsuperscript{9}

\begin{flushright}
8. States may wish to authorize provision of such technical services to local governments on a reimbursable basis. However, rather than provide authorization within this statute, such states might consider a separate act providing general authorization for all state agencies to provide technical services as proposed in the draft bill, "State Technical Services for Local Governments," page 466 of this publication.

9. The draft bill, "State Financial Assistance and Channelization of Federal Grant Programs for Urban Development," on page 226, gives the states a meaningful and effective role in federal programs of grants-in-aid to local governments for urban development. States may wish to consider the provisions set forth in this bill as guidelines in drafting this subsection or passage of a separate act to encompass several programs in the federally aided field of local activity.
\end{flushright}
The appropriate state agency is hereby authorized to enter into agreements and contracts with municipalities, counties, or urban renewal agencies and with appropriate private organizations to carry out the purposes of this section.

Section 20. Separability. [Insert separability clause.]

Section 21. Effective Date. [Insert effective date.]
III. OTHER INTERGOVERNMENTAL PROBLEMS

Introductory Statement

The powers available to local government, the way in which such powers are exercised, and the availability of local revenues are, by and large, determined by state constitutional, statutory and administrative requirements. Often these requirements are unduly restrictive in that they (1) inhibit local governments from cooperating with each other or with other levels of government; (2) do not permit exercise of sufficient local discretion commensurate with local responsibility; and (3) place upon local governments, particularly smaller units of local government, responsibilities for resolving complex problems without providing the means for securing and retaining the necessary skilled personnel. Recommendations of the Advisory Commission generally are aimed at reducing or eliminating restrictions that diminish the strength of local government, in order to provide ample authority for the solution of local problems at the local level and to provide for the effective exercise of decision-making on the part of local government.

To a great extent local governments have been subjected to undue legal restrictions which hinder or prevent them from adapting their structure and functions to meet widely varying and changing conditions. Restrictions on organization and functions of county government are particularly troublesome in light of the increasing responsibilities of county government in many areas. Also, with exception of the largest jurisdictions, local governments often cannot afford to employ the technical competence needed in resolving difficult problems. Accordingly, it is essential that the states make available to their local governments technical services which they are unable to provide economically for themselves.

The Commission believes that local governments should have authority broad enough to cope adequately with their problems, thus reducing the tendency to turn to higher levels of government for the solution. A significant but unnecessary restriction upon local action is that local governments often are legally enjoined from working together in resolving problems
that extend beyond their individual territorial boundaries. Such restrictions should be eliminated. Overall considerations of state-local and interlocal relations require a considerable degree of flexibility and the closest degree of cooperation among and between the state and local levels of government.

Special districts have been widely used in some states and in certain functional areas particularly to overcome some of the legal restraints and area limitations on local governments. They can serve a useful and necessary function. However, they further diffuse local government responsibility and blur political responsibility. The use of general units of government to administer programs should be encouraged when feasible, the activities of special districts should be supervised by an appropriate state agency, and steps should be taken to insure that special district activities are related to those of general local government.

The basis for the distribution of seats in state legislatures lies at the core of the democratic process. Although the question of apportionment formulas to be used is now to be determined pursuant to interpretation of the Constitution of the United States, there remains significant scope for state discretion. However, if the task of apportioning legislative seats according to a state constitutional formula is not to be assumed by the courts, state constitutions must contain a detailed and specific procedure to insure proper and timely apportionment.
OFFICE OF LOCAL AFFAIRS*

In its report to the Governors' Conference in 1956 entitled The States and the Metropolitan Problem, the Council of State Governments recommended creation or adaptation of an agency of state government to "aid in determining the present and changing needs of metropolitan and nonmetropolitan areas in the states." Draft legislation for the creation of an Office of Local Affairs was contained in Suggested State Legislation -- Program for 1957 of the Committee on Suggested State Legislation. A somewhat modified version of that bill is presented below.

This suggested legislation has been drawn on the premise that there is an urgent need for systematic, interrelated and continuing consideration of many matters that affect metropolitan and nonmetropolitan areas, through a new or reorganized state agency. The Office of Local Affairs created here, it should be noted, can function as the state-level research and recommendation agency most directly concerned with the activities mentioned above.

Two points regarding the suggested legislation deserve emphasis:

(1) The applicability of the act is not confined to states that have metropolitan areas. A number of its provisions are important to the strengthening of local governments generally, whether or not they are located in metropolitan areas. The act can be used in states that presently do not have metropolitan areas by rewording and deleting part of the language of the proposed legislation.

(2) The enumerated functions should be assigned to a single agency in a state. The legislation is drafted in terms of a new office in the Office of the Governor, but attention is directed to footnote 2 which indicates other possible locations.

Suggested Legislation

[Title should conform to state requirements]

(Be it enacted, etc.)

1 Section 1. Purpose. It is the purpose of this act to

2 provide a continuing means of assisting local governments

3 and citizens in the determination of present and changing

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION

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governmental needs of metropolitan and nonmetropolitan areas by establishing an agency of state government concerned with collecting information and making evaluations about metropolitan and local conditions and relations and aiding in the development of both remedial and preventive programs.  

Section 2. Creation of the Agency. There is hereby created the Office of Local Affairs to be located in the office of the Governor.  

Section 3. Chief and Staff of Agency. The Office of Local Affairs shall be directed by a chief who shall be appointed by the Governor and who shall serve at his pleasure. The staff of the Office shall be appointed by the chief subject to state civil service regulations.  

Section 4. Functions. The Office of Local Affairs shall have the following functions and duties:  
(a) To assist and advise the Governor in coordinating those activities and services of agencies of the state  

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1 This bracketed section concerning purpose may be helpful in some states; in other states it may be unnecessary.  
2 The Office could be located in or the functions assigned to an existing department of administration; department of finance, planning or planning and development agency, or agency responsible for the financial supervision of local governments. Or, the functions that are enumerated in Section 4 of this Act could be assigned to a new permanent commission composed of public officials or private citizens or both, or to an existing or new joint legislative interim committee that operates on a continuing basis.
which involve significant relationships with local governments.

(b) To encourage and, when requested, to assist in efforts of local governments, to develop mutual and cooperative solutions to their common problems.

(c) To study existing legal provisions that affect the structure and financing of local government, and those state activities that involve significant relationships with local government units; and to recommend to the Governor and the legislature such changes in these provisions and activities as may seem necessary to strengthen local government and permit its better adaptation to diverse and changing conditions. Particular attention in such studies and recommendations shall be given to problems of local government for metropolitan areas and other areas where major changes in population or economic activity are taking place.

(d) To serve as a clearinghouse, for the benefit of local governments, of information concerning their common problems and concerning state and federal services available to assist in the solution of those problems.

(e) When requested, to supply information, advice, and assistance to governmental or civic groups which are studying problems of local government structure or financing for particular areas.

(f) To consult and cooperate with other state agencies, with local governments and officials, and with federal
agencies and officials, in carrying out the functions and duties of the office.

Section 5. Other Agencies. Nothing in this Act shall be deemed to detract from the functions, powers, and duties legally assigned to any other agency of the state, nor to interrupt or preclude direct relationships by any such agency with local governments in carrying out its operations.

Section 6. Severability. [Insert severability clause.]

Section 7. Effective Date. [Insert effective date.]
Many organizations of Government officials have recognized the need for authority by local governments, especially in urban areas, to cooperate with each other where the efficient and economical provision of governmental services requires functions to be administered within geographic areas larger than the boundaries of the existing political subdivisions. Such cooperation permits local governments to cope more adequately with areawide problems, finance necessary services on an equitable basis, take advantage of the economies of scale, and avoid creation of special districts. The Committee on Suggested State Legislation included in its 1957 program proposed state legislation authorizing localities to participate in joint undertakings with other localities having common interests. At least 45 states have adopted all or a portion of such general interlocal cooperation authority. Other legislation endorsed in previous years by the Committee has included voluntary transfer of functions between municipalities and counties, and removal of constitutional barriers to intergovernmental cooperation.

However, such legislation by itself does not actively promote joint undertakings nor permit a positive state role. In addition, states should consider the enactment of legislation to actively encourage joint undertakings by local governments having common program objectives affecting the development of urban areas overlapping existing political boundaries. A new Georgia act, enacted in 1963, authorizes state aid where political subdivisions establish joint undertakings. It is an example of how other states might actively encourage joint urban development efforts by two or more of their political subdivisions.

Briefly, the Georgia act authorizes all state departments and agencies, empowered to assist individual political subdivisions in the state, to also assist any two or more such political subdivisions jointly in cases where the political subdivisions are "able and willing to provide for the consolidation, combining, merger, or joint administration of...any...function...by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof."\footnote{1} The Georgia law also provides that the state share of financial assistance can be increased for joint projects.

The new Georgia law is reproduced below and suggested for consideration by other states wishing to furnish or make available services, assistance, funds, property and other incentives to any

\footnote{* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.}
\footnote{1 Section 1, Act No. 303, \textit{Georgia Laws 1963}, p. 354.}
two or more localities in connection with joint undertakings.

The last sentence in Section 1 authorizing the state to assume up to the entire cost of the consolidated program, and Section 3 authorizing state agencies to consolidate their field offices for such consolidated programs are intended to meet Georgia's statutory needs which may not be present elsewhere. Other states considering this legislation may therefore not wish to include these provisions.

Suggested Legislation

[Title should conform to state requirements] /

(Be it enacted, etc.)

1 Section 1. The state and all departments, boards, bureaus, commissions and other agencies thereof are hereby authorized and empowered, within the limitations of the Constitution, to furnish and make available services, assistance, funds, property and other incentives to any two or more counties, municipal corporations, public corporations, and other subdivisions of this state, or any combination thereof, in connection with any program of services, benefits, administration or other undertaking in which the state or any of its above-named agencies participates by furnishing supervision, services, property, administration of funds, where such counties, municipal corporations, public corporations or other subdivisions are thereby able and willing to provide for the consolidation, combining, merger or joint administration of such program or any part or function thereof, by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof. /The incentives hereinbefore referred to
shall also include the assuming by the state or its agencies
of a greater share, or where funds are available and such is
deemed feasible, the entire cost of such participating
program.  

Section 2. The state and all of its aforesaid agencies
are hereby authorized to execute such contracts, plans or
other documents as may be necessary or desirable to effectuate
the purposes hereof.

Section 3. The state and all of its aforesaid agencies
are likewise empowered to establish and maintain area offices
for such combined, consolidated or merged undertakings.  

Section 4. The state and its aforesaid agencies shall be
authorized to prescribe such reasonable rules, regulations and
requirements, and to require the submission of such plans and
reports from the participating units, as may be deemed necessary
or desirable to the proper administration of this act.

Section 5. Insert effective date. 

As indicated in the explanatory statement, this language re-
fects Georgia's statutory needs and may not be appropriate in
other states.
Traditionally, water pollution control, water allocation, water resource development, and other phases of the overall water resource problem have been administered independently by different agencies and independent boards within the state governments, thus providing inadequate attention to long range planning and policy coordination. In addition, the regulation and development of water resources have often been complicated by the fact that political boundaries often have not followed the natural boundaries of watersheds which are the logical water resource planning units. Now, with the rapidly expanding and often competing needs of agriculture, industry, recreation, and urban areas for more clean water, there is an urgent need to assure that these demands are met in a coordinated way.

Recognizing these problems in 1957, the Council of State Governments' report on State Administration of Water Resources, 1957, called for the establishment of comprehensive water resources programs in each of the states. Many of the difficulties and needs set forth in the Council's report have been further documented in a report of the Advisory Commission on Intergovernmental Relations, entitled Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas. In that report the Commission recommended establishment of a unit of state government for overall state water resources planning and policymaking. The following draft legislation would implement that recommendation and would be completely consistent with the earlier recommendation of the Council.

Under this draft legislation, authorization would be provided for the placing of overall water resource planning, policymaking and coordination responsibility in a single unit of state government. This unit of state government would be directed to give consideration to the water resource requirements and problems of all water interests in the state and means by which these interests can be assured of representation on inter-state water agencies to which the state may be a party.

As the level of government with basic responsibility for resource development, the states have an excellent opportunity to establish water resource policies, planning procedures and coordination that is comprehensive enough to balance multiple uses with one another and overcome jurisdictional problems.

Some states already have agencies combining water resources programs as well as coordinating functions in a single water resources agency. This agency may be a separate Department of Water Resources as in North Carolina, or a Division of Water Policy and Supply in the Department of Conservation and Economic

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION
Development as in New Jersey. Other examples of state water resources organizations which combine operating programs as well as policy coordinating activities in a single agency may be found in the states of California and Connecticut.

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

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

The draft legislation would effectively provide the Governor and the legislature with technical assistance in directing the coordinated use, development, and regulation of the water resources of the state and in establishing uniform policies to minimize conflicts between the various operating agencies and water interests of the state. It would (1) vest the planning and coordinating function in a single executive agency responsible to the Governor, (2) allow for participation in the development of recommended water policies by affected or interested state agencies and others, (3) give the Governor authority to adopt comprehensive and coordinated water resource plans and policies in accordance with the provisions of this act as a guide for executive agencies and to propose desirable legislative modifications, and (4) leave the operating programs, such as water pollution control, development of new water supplies, and allocation of water rights, to be administered by the agencies now charged with those responsibilities in accordance with existing legislation.

Suggested Legislation

The 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

Section 2. Declaration of Policy. (a) The legislature recognizes that: (1) the maintenance of the present level of economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority; (2) the proper utilization and control of the water resources of this state can be best achieved through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all coordinated by a single state agency; and (3) the economic and general welfare of the people of this state is impaired by the exercise of uncoordinated single-purpose power or influence over the water resources of this state or portions thereof by diverse public agencies and diverse statutory declarations of water resource policies resulting in friction and duplication of activity among public agencies and confusion as to what is primary and what secondary beneficial use or control of such water resources and in a consequent failure to utilize and control such water resources for multiple purposes for the maximum beneficial use and control possible and necessary.
The legislature, therefore, finds that it is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources be coordinated by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

Section 3. Planning and Coordination Staff. The Director of the Office of State Water Resources or the head of such other agency or unit of the state government as the Governor may designate (hereinafter referred to as the Director) shall have the responsibility for leadership and direction of a program to implement the legislative policy declared by this act, and may employ such additional staff and other resources as may be available to him and necessary to the exercise and performance of duties and responsibilities conferred by this act.

1 The suggested office is a staff organization to aid the Governor rather than an operating agency. Alternatively the office could be placed in an existing department of administration or department of planning already exercising coordinative functions for the Governor, and in any case should have close contact with such departments.
Section 4. Duties and Responsibilities. (a) Assistance to Governor. The Director shall advise and assist the Governor in: (1) formulating and establishing a comprehensive water resources policy for the state; including coordination of policies and activities among the state departments and agencies; (2) developing and establishing policies and proposals designed to help meet and resolve special problems of water resource use and control within or affecting the state, including consideration of the water resource requirements and problems of urban areas; (3) reviewing the actions and policies of state agencies with water resource responsibilities to determine the consistency of such actions and policies with the comprehensive water policy of the state; (4) reviewing any project, plan or program of Federal aid affecting the use or control of any waters within the state; (5) developing policies and recommendations to assure that the interests of its urban and other areas are provided for in the State's representation on interstate water agencies; (6) recommending to the legislature any changes of law required to implement the legislative policy declared in this act; and (7) such other water resources planning, policy formulation and coordinating functions as the Governor may designate.

(b) Studies and Surveys. The Director is authorized to carry out such studies, inquiries, surveys or analyses as may be relevant to his duties in assisting the Governor and in helping to implement the legislative policy declared in this act.
27 act, and in developing recommendations for the legislature. 
28 For these purposes, the Director shall have full access to 
29 the relevant records of other state departments and agencies 
30 and political subdivisions of the state, and may hold public 
31 hearings, and may cooperate with or contract with any public 
32 or private agencies, including educational, civic and research 
33 organizations. Such studies, inquiries, surveys or analyses 
34 shall incorporate and integrate, to the maximum extent feasible, 
35 plans, programs, reports, research and studies of federal, 
36 state, interstate, regional, metropolitan and local units, 
37 agencies and departments of government. 
38 (c) Consultations. In developing recommendations for 
39 the Governor relating to the use and control of the water 
40 resources of the state, the Director shall: (1) consult with 
41 representatives of any federal, state, interstate, or local 
42 units of government which would be affected by such recom- 
43 mendations; and (2) be authorized to appoint such inter- 
44 departmental and public advisory boards as necessary to advise 
45 him in developing policies for recommendation to the Governor. 
46 (d) Local Assistance. The Director shall encourage, 
47 assist and advise regional, metropolitan, and local govern- 
48 mental agencies, officials or bodies responsible for planning 
49 in relation to water aspects of their programs, and shall 
50 assist in coordinating local water resources activities, 
51 programs and plans. 
52 (e) Reports. The Director may publish reports, including
the results of such studies, inquiries, surveys and analyses
as may be of general interest, and shall make an annual
report of his activities under this act to the Governor and
the legislature.

Section 5. Planning Objectives. In exercising his
responsibilities under this act, the Director shall take
into consideration the need for:

(a) Adequate supplies of surface and ground waters of
suitable quality for domestic, municipal, agricultural, and
industrial uses.

(b) Water quality facilities and controls to assure
water of suitable quality for all purposes.

(c) Water navigation facilities.

(d) Hydroelectric power.

(e) Flood damage control or prevention measures, including
flood plain zoning, to protect people, property, and productive
lands from flood losses.

(f) Land stabilization measures.

(g) Drainage measures, including salinity control.

(h) Watershed protection and management measures.

(i) Outdoor recreational and fish and wildlife
opportunities.

(j) Any other means by which development of water and
related land resources can contribute to economic growth and
development, the long-term preservation of water resources,
and the general well-being of all the people of the state.

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

1 Section 7. Effective Date. [Insert effective date.]
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 areas are: (1) Extension of staff retirement coverage to all public employees; (2) Consolidation of many existing public employee retirement systems; and (3) Transferability of retirement credits of state and local government employees.

1. Extending staff retirement coverage to all public employees.

Most states and local governments recognize the importance of establishing and maintaining an adequate personnel system. Likewise, they recognize that a sound and attractive retirement system is a vital element in the personnel system. An adequate retirement system obviously includes a staff retirement system which provides benefits in excess of or in addition to Social Security benefits.

Forty-seven states provide staff retirement coverage for state employees. Forty-three states administer retirement systems in which employees of some local governments such as counties or municipalities are able to participate. Such local participation may be either in the state employee system or in a state administered system for local government employees. Thirty-five states have retirement systems in which all local units of government are able to participate if they desire to do so. There are numerous locally administered public employee retirement systems. Teachers in all 50 states have retirement coverage. Overall, of the more than 6.3 million state and local employees, more than 4 million have staff retirement coverage.

In view of the foregoing, it appears to be incumbent on those governmental jurisdictions that do not now provide staff retirement coverage for their employees to do so. Perhaps the most desirable type of retirement situation is that in Hawaii and Nevada. In these states there is only one public employee retirement system, one which covers all state and local employees, including teachers. Seven other states have single state administered retirement systems in which all state and local employees and teachers may participate. However, in these states there are other public employee retirement systems in operation in addition to the single state system.

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION
Twenty-two states have state administered retirement systems in which state and local employees participate, and in addition a separate retirement system for teachers. In three states there are separate state administered retirement systems for state employees, local employees, and teachers. In North Carolina, state employees and teachers participate in one retirement system, and there is a state administered system for local employees.

Legislative action would be required in 15 states to make all public employees eligible for staff retirement coverage in a state administered system. Action should be taken to establish general public employee retirement systems for state and local employees in the three states having no system. Existing legislation should be amended in 12 states to enable employees of all local units of government to participate in state administered systems. The states should take the lead in assisting local governments in providing retirement coverage for their employees, because it is difficult even for the largest to maintain financially sound retirement systems.

Specific legislation in this regard is not presented because of the numerous actuarial complexities which are peculiar to each state. These include such considerations as whether the system is funded, partially funded, or non-funded; the relative contributions by the employer and the employee; and age and years of service required for benefits.

To summarize, states should strengthen their public employee retirement systems by providing for coverage in one of the three following manners: (1) By providing coverage in one state administered system for all state and local employees including teachers; (2) Providing coverage in two state administered systems, one to include all state and local employees, one for teachers only; or (3) By providing coverage in three state administered retirement systems, one to include state employees only, one to include local employees only, and one to include teachers only.

2. **Consolidation of existing public employee retirement systems.**

There are over 2,200 state and local public employee retirement systems in the nation. More than two-thirds of these systems have a membership of less than 100. It is difficult, if not impossible in the long-run, to operate these small systems on a sound financial basis. Most small systems are operated by municipalities. Some authorities in the public employee retirement field recommend that systems with less than 1,500 members should be merged.

States should provide the necessary leadership for retirement system consolidation by encouraging the merger of economically
precarious small systems, preferably by making it possible for all local units of government to participate in state administered retirement systems. The general guidelines in the preceding section are equally appropriate for legislation to deal with the consolidation problem. Action in this regard is essential or state and local governments risk failure to attract qualified personnel, and employees risk the loss of pension dollars.

3. **Transferability of retirement credits of state and local government employees.**

The principle purposes for which retirement systems were established have undergone considerable reconsideration in the last two decades. Retirement systems for public employees were originally intended, in addition to other things, to serve as an anchor on the employee to keep him employed by the same unit of government. This was accomplished by denying the employee much of his retirement credits if he changed employers. However, since retirement coverage for public employees is becoming so universal, and since the training and development of employees in the administrative, professional, and technical fields are becoming so important to strengthening public administration, it no longer is considered sound personnel policy to maintain such roadblocks to employee mobility as have been maintained in the past. This has come about for a number of reasons. Employees often will not accept public employment that appears to lead to a dead end; one governmental jurisdiction may have an over supply of employees in one technical specialty while another may have a critical shortage in the same category; and it is generally believed that over the long-run a given unit of government will not gain or lose either in talent or pension funds at the expense of other units merely because of liberalized provisions permitting greater mobility of employees.

The use of Social Security coverage for public employees offers a partial solution to the retirement credit transferability problem, since it provides a base retirement coverage through which benefits cannot be lost through job transfers among employers offering this coverage. Staff retirement systems provide the additional supplement needed by retired public employees to maintain a reasonable standard of living.

At the state and local government levels, over 4.1 million of the more than 6.3 million public employees are covered by Social Security. Over 2.9 million state and local employees are covered by both Social Security and a public employee retirement system. At least some public employees in each of the 50 states are covered by Social Security. Those state and local governments that do not now make maximum use of Social Security coverage should re-examine their retirement provisions to determine if further extension of Social Security coverage to their employees would be advantageous.
However, in order to develop more adequate solutions, the retirement credit transfer problem should be viewed in terms of both its interstate and intrastate aspects. While many of the difficulties involved in the interstate transfer of retirement credits are very similar to those involved in intrastate transfer, the remedies are somewhat different. There have been several proposed solutions to the interstate problem, most of which involve transfer of funds between systems and generally have not been found practical or acceptable.

The vesting-deferred benefit approach to the interstate retirement credit transfer problem appears to be the most practical and acceptable solution for public employees generally. Essentially, those retirement systems that have vesting provisions afford the employee who accepts employment elsewhere the opportunity to leave his contributions with the system, after fulfilling a specified number of years service requirement, and receive a deferred benefit at the normal retirement age. Most state administered retirement systems have vesting provisions. However, the service requirement ranges from immediate vesting in the Wisconsin State Teachers' system to a 27 year requirement in the Arkansas State Teachers' system. As the length of the service requirement for vesting is extended, then it becomes of decreasing value as a meaningful solution to the retirement credit transferability problem. The committee feels that a requirement in the range 10 to 15 years for vesting appears to be the most reasonable from the standpoint of both the employer and the employee.1

1 The Advisory Commission on Intergovernmental Relations has strongly recommended 5-year vesting instead of 10 to 15 year vesting. In its recent study in which 60 state administered retirement systems were examined, the Commission found that the vesting requirements in these systems averaged slightly less than 15 years. Since the issuance of the Commission report in March 1963, North Carolina and Tennessee have each reduced vesting requirements in one of their state systems from 20 to 15 years, and Idaho and Oklahoma have established retirement systems for state and local employees with vesting requirements of 10 years. The trend in the number of years service required for vesting is definitely downward and by now has already reached a figure lower than the maximum recommended by the Committee on Suggested State Legislation.

The precedent for 5-year vesting is well established in public employee retirement systems. Eight major statewide systems have 5-year vesting (Arizona, California, Colorado, Hawaii, Nebraska, Ohio(2), Wyoming). Two state systems have immediate vesting (California, Wisconsin). The Federal Civil Service Retirement System has 5-year vesting. Five-year vesting is reasonable for both the employer and the employee. Assuming that the employee received training in the position, this training would be paid off long before the end of the 5-year period. A lengthy vesting requirement should not be used as an anchor on the employee. The Commission is aware that from an actuarial standpoint it would not be feasible for all public employee retirement systems to reduce the vesting requirement to 5 years immediately. However, the Commission believes that 5-year vesting is the desired goal rather than 10 to 15 year vesting.
No legislative amendment is presented to accomplish the suggested vesting proposal because for most retirement systems this may be achieved simply by inserting the desired number of years in lieu of the existing requirement (apart from any actuarial considerations). Retirement systems with vesting requirements that exceed those suggested above, or those with no vesting provision, may wish to reach the new requirement on a graduated basis. There is little information available to indicate how many years the service requirement for vesting may be reduced without increasing the cost to the government and/or to the employee. A recent actuarial study of the Oregon Public Employees Retirement System indicates that it does not appear that there would be any additional cost in reducing the vesting requirement from 10 to 5 years. However, each retirement system will have to be considered on an individual basis in determining how to reduce its vesting requirement.

As indicated above, the problems involved in the interstate and intrastate transfer of retirement credits are very similar. However, the obstacles to solutions are less within states than between them. In Hawaii and Nevada there is no problem because each state has only one retirement system. Twenty-two states have limited provisions for the reciprocal transfer of retirement credit, usually between only two or three systems. Only seven states have provision for general intrastate transfer of retirement credits among most systems. Nineteen states have no provision for such transfer of credit between their different systems.

Of the seven states that have general provisions for intrastate transfer of credits, the reciprocal retirement laws in Illinois, Maryland, Michigan, and New York are particularly good. Maryland and New York provide for the transfer of the contributions of both the employer and the employee when the employee changes positions among the participating reciprocal units or systems. This type of provision would be difficult to square with legal and actuarial provisions in many states. Consequently, legislation similar to that in Illinois and Michigan would appear to be more adaptable in most states because it does not call for lump sum transfers of contributions between systems upon the transfer of employees.

The suggested retirement act presented here is patterned largely after the Illinois Reciprocal Retirement Act. It provides essentially that after the employee has completed at least five years of service in a participating unit of government, the employee may receive retirement credit for such service. The principle of intrastate reciprocity is well established. The Commission has found that 26 states have reciprocal arrangements between at least 2 of their major retirement systems. Most of these arrangements do not have such a lengthy requirement as 5 years service in a system. Since the report was issued, the states of Colorado, Idaho, and New Mexico have adopted some type of reciprocal arrangement bringing the total number of states which have some such provision to 29.

2 The Advisory Commission on Intergovernmental Relations believes that an employee should not be required by an intrastate reciprocity law to spend longer than 2 years in the service of a participating unit of government to receive retirement credit for this service. The principle of intrastate reciprocity is well established. The Commission has found that 26 states have reciprocal arrangements between at least 2 of their major retirement systems. Most of these arrangements do not have such a lengthy requirement as 5 years service in a system. Since the report was issued, the states of Colorado, Idaho, and New Mexico have adopted some type of reciprocal arrangement bringing the total number of states which have some such provision to 29.
years in the employment of a participating reciprocal retirement unit, he may change his employment to another reciprocal unit without loss of credit. When the employee reaches retirement age in the reciprocal unit in which he is employed, he may receive proportional retirement benefits based on his service in each system from all the reciprocal retirement systems in which he has at least five years service, provided: he has not withdrawn any of his contributions; he has enough total years service in all systems to meet the minimum requirement in any system; and he has reached the minimum age required by each system. If he has not reached the minimum age in all systems, he may begin receiving benefits from those systems in which he has reached the required age, and then receive benefits from the other systems when he reaches the required age.

Section 5.1 of the suggested act presents an alternative method for providing benefits which states may or may not wish to include in their legislation. This would give an employee the alternative of paying to the system from which he will retire, prior to his retirement, an amount equal to one percent of his salary for every year he has been employed under other retirement systems within the state, then he may receive benefits as if he had always been employed under the final system. The other reciprocal retirement systems would continue to pay at least their proportional share of the employee's benefits. The final system would incur the additional obligation, which might make section 5.1 problematical in some states.

Suggested Legislation

The Title should conform to state requirements. The following is a suggestion: "An act to establish continuity and preservation of pension credit for employees in Governmental service in the state of _________."

(Be it enacted, etc.)

1 Section 1. There is hereby established a plan for the continuity and preservation of pension credit, in the case of employees transferring employment from one governmental unit to another governmental unit, if such employees shall have acquired such credit in any established retirement system or pension fund maintained by any such governmental unit. The
purpose of this plan is to assure full and continuous pension
credit for all service rendered by a person in public employ-
ment which service is covered by a retirement system or pension
fund authorized by state law.

Section 2. As used in this act:
(a) "Retirement System" means any retirement system or pension
fund, by whatever name called, which has been created or author-
ized by statute and which is financed in whole or in part by
contributions by the state or by any governmental unit of the
state;
(b) "Governmental Unit" means the state or any agency or instu-
mentality thereof, or any political subdivision or municipal
corporation, which maintains a retirement system for the benefit
of its employees;
(c) "Employer" means any governmental unit in the state;
(d) "Employee" means any person in the service of an employer
on or after the effective date, who has pension credit because
of service previous or subsequent to the effective date, who is
an active or inactive member or participant of a retirement system;
(e) "Effective date" means July 1, 196_, or in the case of any
retirement system becoming subject to the provisions of this Act
after such date, the date when such retirement system comes under
the provisions of this Act;
(f) "Pension credit" means credits or equities acquired by an
employee toward a retirement annuity from a public employees'
retirement system in the form of contributions or services defined under the provisions of the act governing each retirement system in which he has such credits of equities, except credits and equities (1) of less than five years in any one system, or (2) which were granted during the periods when the employee was in receipt of a retirement annuity from any of the retirement systems covered by this Act, or (3) which have previously been applied towards a retirement annuity and have not been re-established in accordance with the provisions of the Act governing the retirement system from which the retirement annuity has been received; and

(g) "Retirement annuity" includes any pension, retirement allowance, retirement annuity, disability pension, disability retirement allowance or disability retirement annuity, and shall refer to an annuity payable on account of retirement for age, years of service or total and permanent disability.

Section 3. Any employee who has withdrawn or withdraws from the service of one employer and then or later enters the service of another employer covered by the provisions of this Act, and who has not forfeited his pension credit in the retirement system maintained by the employer from whose service he has withdrawn, shall be entitled to a proportional retirement annuity, computed as stated herein, for the periods of credited service in each retirement system, notwithstanding that the employee may not have fulfilled the minimum service requirement prescribed by any

3 See footnote 2.
retirement system for the receipt of a retirement annuity. If
a retirement system provides no refund of contributions, the
pension credit in the case of any employee who shall have par-
ticipated in such system shall be considered effective for the
purposes of this Act.

Eligibility for a proportional retirement annuity in each
retirement system under the provisions of this Act shall be
determined by taking into account the entire length of service
of the employee for which he has been granted pension credit
under all retirement systems participating under this Act, pro-
vided that in order to qualify for either proportional annuity
from any of such retirement systems the employee must have a
combined pension credit at least equal to the longest minimum
qualifying period prescribed by any of the retirement systems
involved in the combined pension credits.

Interest on pension credit shall continue to accumulate in
accordance with the provisions of the Act governing the retire-
ment system in which the same has been established during the
time an employee is in the service of another employer, on the
assumption such employee, for interest purposes for pension
credit, is continuing in the service covered by such retirement
system.

Section 4. The provisions of this Act shall be applicable
and limited only to a retirement annuity and widow's annuity,
and to the pension credit established for such purposes.
Section 5. Upon retirement in the retirement system to which the employee last made contributions, a proportional retirement annuity shall be computed by each retirement system in which pension credit has been established by the employee on the basis of salary and service credits under each system. Such computations shall be in accordance with the formula or method prescribed by each such system and in effect at the date of the employee's latest withdrawal from the service of the employer maintaining such retirement system, except as modified by this Act.

If, at the date of retirement, the employee shall have attained the age prescribed for the receipt of a minimum retirement annuity under any retirement system subject to the provisions of this Act which prescribes a minimum retirement annuity, in which he has a pension credit, and his combined pension credit in all retirement systems participating under this Act is sufficient to meet the service qualification prescribed in the applicable retirement system for the receipt of a minimum retirement annuity, the employee shall have the option of receiving the proportional retirement annuity based upon the minimum annuity formula applicable in each such system.

If any proportional retirement annuity is calculated upon the basis of the average salary of an employee for a specified number of years of service, and the employee has to his credit in a system fewer years than the prescribed number, the actual number of years of credited service in the retirement system
computing the proportional annuity shall be used as the basis for such calculation.

If (1) a minimum annuity formula available for the completion of a specified minimum period of service under the retirement system provides a definite sum or percentage of average compensation for completion of such minimum service, in addition to a certain percentage of average compensation for each year of service, and (2) the employee has not received credit in the retirement system for the minimum number of years required to qualify for such minimum benefit formula, and (3) the combined pension credits under all systems are equal to or more than the period of service prescribed in the system for the receipt of a minimum annuity, the employee shall be entitled to that portion of the definite sum or percentage of average compensation which his service in such retirement system bears to the minimum service required by that system to qualify for such minimum formula.

Section 5.1. Notwithstanding the provisions of the other sections of this Act, or the acts governing those retirement systems covered by this Act, the alternative formula prescribed in this section for calculation and payment of the retirement annuity, shall be applicable in lieu of the formula prescribed in the other sections of this Act, if the employee pays to the system under which retirement occurs prior to the date his retirement annuity begins, an amount equal to 1 percent of the actual annual full-time rate of salary on the date of separation
from service under each of the other systems, multiplied by the number of years of pension credits in each of these systems which are considered by the system under which retirement occurs in determining the retirement annuity payable under this section and for which contributions were made by the employee.

The system under which retirement occurs shall calculate and pay a retirement annuity based upon the combined pension credits under all systems participating under this section, using the final average salary and formula prescribed by the system under which retirement occurs. Service rendered prior to a break in employment of more than 12 months under governmental units covered by the retirement systems which are subject to this Act, shall not be considered, by the system under which retirement occurs, in determining the retirement annuity payable under this section. If an employee is concurrently employed by governmental units covered by two or more systems participating under this section during a period of service which is used in determining the average salary on which his annuity is based, his earning credits under all of these systems during the period of concurrent employment shall be considered by the system under which retirement occurs in computing his final average salary.

If an employee who becomes entitled to retirement benefits under this section, has elected a deferred annuity under any of the systems participating under this section and in which he has pension credits, the system under which retirement occurs shall
reduce the retirement annuity otherwise payable under this
section, by the actuarial equivalent of the amount required
to provide the deferred annuity. This actuarial equivalent
shall be determined by and in accordance with the actuarial
tables of the system under which the election of the deferred
annuity is made.

Each of the other systems participating under this
section in which the employee has pension credits, shall
assume a portion of the annuity liability by paying at least
annually to the system under which retirement occurs, the
amount of the proportional retirement annuity which would
otherwise have been payable under the other sections of this
Act, and the employee concerned shall, by the acceptance of
the retirement annuity payable under this section, waive and
forfeit the right to receive such proportional retirement
annuity from such other systems. If the minimum age require-
ment of the system under which the retirement occurs is lower
than that of any of the other systems in which the employee
has pension credits, the payment by such other system to the
system under which retirement occurs shall be deferred until
the minimum age requirement of such other system has been met.

For the purpose of this section, the system under which
retirement occurs and to which the employee last contributes
for a period of ten \(^4\) or more years shall be the system to which

\(^4\) The Advisory Commission on Intergovernmental Relations
does not believe that it is sound personnel policy to require
an employee to spend 10 years in the service of the final unit of
government by which he is employed in order to receive the benefits
from all of the other reciprocal units. Most of the same arguments
for the 5-year vesting as opposed to the 10 to 15 years vesting are
applicable to this 10 year requirement. With the complex problems
which confront all levels of government and with the difficulties
involved in attracting capable personnel into the public service at
the present time, the Commission does not see justification for
attempting to anchor an employee into a position for more than 5 years.
this section applies. If the employee contributes concurrently
to two or more of such systems during this period, the system
under which retirement occurs shall be that system under which
he has the greatest earnings credits during the period of con-
current employment, or if he has equal earnings credits under
these systems during this period, the system under which he has
the longest period of pension credits.

The alternative formula prescribed in this section shall
be used only in determining the retirement annuity.

Section 6. If the minimum qualifying age of retirement
in any of the retirement systems is lower than the minimum age
of retirement in any of the other retirement systems which are
to provide a proportional retirement annuity, payments by such
other system shall be deferred until the employee has attained
the minimum age of retirement prescribed for such system;
provided, however, that early retirement under any system
below the normal retirement age shall be subject to reduction
as may be prescribed by each retirement system.

Section 7. If the measure of pension credit in any re-
tirement annuity is apportioned upon the basis of length of
service rendered by an employee, the combined service under
all retirement systems in which the employee has established service
credit shall be effective in establishing such vesting of
pension credit in any retirement system.
Section 8. In the event the combined retirement annuities exceed the highest maximum annuity prescribed by any retirement system in which an employee has established pension credit, the respective retirement annuities payable by the several retirement systems shall be reduced proportionately according to the ratio which the amount of each proportional annuity bears to the aggregate of all such annuities.

Section 9. Any employee who is concurrently employed by employers under two or more of said systems shall be entitled to establish a pension credit in accordance with the provisions of each system, provided that if such concurrent employment results in a duplication of credits, each of the systems involved in such concurrent employment shall reduce the service credit for the period of concurrent employment to its full-time equivalent, using as a basis for such adjustment the earnings credited for each employment.

Section 10. In no event shall pension credit for the same period of service rendered by an employee be accredited more than once in one or more retirement systems.

Section 11. Each retirement system shall submit to the other retirement systems, upon request, a report, properly certified, regarding the length of service rendered for the purpose of establishing the employee's eligibility for retirement and any other pertinent information as may be necessary in the administration of this Act and to effectuate the provisions thereof.
It shall be the duty and responsibility of an employee having pension credit in any retirement system to make available such information or any other required data relating thereto, to the retirement system in which he last finds himself, in order that such pension credit may be applied in the manner herein provided. A retirement system subject to the provisions hereof shall be under no obligation or responsibility to initiate any inquiry or investigation for the purpose of establishing pension credit in the case of any employee, in the absence of a request from the employee, accompanied by sufficient facts bearing upon such credit which the employee may have accumulated.

Two or more retirement systems subject to the provisions hereof may agree, at the time of retirement of an employee, to have the retirement system under which the employee retires to pay currently the combined amounts of the proportional payments on account of the retirement annuity. Such agreement shall be evidenced by a written document between two or more retirement systems in the form agreed upon between them. At the end of each fiscal year of the last retirement system, reimbursement thereto shall be made by the other retirement systems providing proportional annuities of the amount paid on their account by the last retirement system. Such arrangement shall be optional with the several retirement systems. If no such arrangement is made, each retirement system shall pay its own proportional annuities to the beneficiaries entitled thereto.
Section 12. The provisions of this act shall apply only to a retirement system whose governing board by a majority vote has subscribed thereto with the affirmative approval of such action by the legislative body of the governmental unit whose employees are covered by the system. Within 10 days after the date on which coverage under this Act has been approved by the legislative body of such governmental unit, the governing board of the retirement system shall file written certification thereof with the Secretary of State. The Secretary of State shall maintain a list of the retirement systems that have adopted this Act which shall be available to any retirement system requesting a copy.
LOCAL GOVERNMENT RESIDUAL POWERS*

A familiar rule of law with respect to local governmental units is that they may exercise only those powers affirmatively conferred upon them by statute or constitutional provision. Even when legislatures have conferred powers affirmatively, state courts usually have narrowly construed grants of powers to local government. Such narrow construction, despite the best efforts of legislatures and local governments themselves, often have prevented local government from assuming its proper responsibilities.

Experience has shown that where local governments are not adequately empowered to meet their responsibilities, pressure is exerted upon both the state and federal governments to assume responsibility for solving local problems and for providing needed governmental services. Under such circumstances, the flow of responsibility to the state or the federal government often is detrimental not only to the best interests of our society, but is unnecessary. The effectiveness of local government in particular, and the federal system in general, requires that local governments have adequate authority to meet their responsibilities. Consistent with this general philosophy, the following draft of a constitutional amendment is presented for study and consideration by the states. In addition a similar proposal of the National Municipal League, not as comprehensive as the amendment, is also set forth.

The amendment would grant "all residual functional powers" to municipalities and counties, or other selected units, that are not otherwise specifically denied in the state constitution or by general law. In given functional areas, the legislature, rather than pre-empting a whole field of activity from local government could, at its discretion, prescribe limitations on local activity. The amendment is designed to permit the legislature to determine what functions or portions of functions should be undertaken by the state or undertaken by local government. While freeing the bonds of local government the state should, at the same time, exert greater leadership in resolving problems that are inter-local or that affect many localities in the state.

It is important to emphasize that the delegation of residual powers should be preceded by a careful review of affirmative limitations upon the powers of local government within a state. Such delegation should occur simultaneously with the enactment of a local code, by which the state legislature places necessary limitations upon local powers and reserves other powers for the state.

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
It should be noted that while the amendment would permit municipalities and counties and other selected units of local government to exercise the authority granted by the proposed amendment, such authority should be granted only to units of general government whose governing bodies are held directly responsible for their actions by the people at election time. Therefore, states should consider carefully what units of general government should be granted the powers authorized by the amendment.

Residual Powers Constitutional Provision

"Municipalities and counties identified to best suit the conditions in a given state shall have all residual functional powers of government not denied by this constitution or by general law. Denials may be expressed or take the form of legislative pre-emption and may be in whole or in part. Express denials may be limitations of methods or procedure. Pre-empted powers may be exercised directly by the state or delegated by general law to such subdivisions of the state or other units of local government as the legislature may by general law determine." ¹

¹ The constitutional language proposed by the National Municipal League in its "Model State Constitution" is: "Powers of Counties and Cities. A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties and cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony."
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 Federal Advisory Commission on Intergovernmental Relations after being advised that the availability of compensation for service on the Commission (whether he accepted such payment or not) would raise a question under the state constitution as to his continuance in his Senate seat.

As the activities and interests of the federal and state governments become ever more closely intertwined, it is important that state officials be able to serve on such intergovernmental bodies so that they may provide responsible and direct representation for the states in matters of concern to them. Furthermore, such officials, while they are in office, have current and valuable experience coupled with a direct concern for the problems that are likely to call for service on intergovernmental bodies. Private citizens who accept appointment to intergovernmental bodies (however useful and appropriate their service may be on many occasions) cannot serve quite the same function.

The constitutional provisions which have begun to cause difficulty were originally designed to guard against "conflict of interest." They were adopted on the generally sound premise that a man who serves two masters may be in a difficult position dangerous to the public interest. But this premise would seem to be inapplicable and unreasonably confining in those instances where service in one capacity is actually in furtherance of the state's interest and compatible with it.

It is possible that similar problems may arise for local officials whose services are desirable on intergovernmental bodies, although such instances of actual hardship in the recent past are not readily at hand. Indeed, the entire problem is a relatively new one because the use of such intergovernmental bodies as an instrument of federal-state relations is a recent development. Because the technique is so promising and valuable as a means of achieving coordination within the federal system, it is desirable for the states to examine their constitutions to make sure that no obstacles exist.

It should be noted that no constitutional difficulties appear to have been encountered by state officials serving on purely interstate bodies such as those created by interstate compact. However, in order to encourage the maximum degree of flexibility possible and to guard against any limiting implications from adoption of language specifically authorizing one type of intergovernmental service, but silent as to others, the suggested constitutional amendment is written in comprehensive terms. Further, the amendment recognizes that the "conflict of interest" question could be real in some situations. Consequently, it authorizes the state legislature by statute to impose such restrictions as it may find appropriate. Since the bulk of our
"conflict of interest" laws are statutory in any case, such an arrangement would accord with well-known patterns in this field.

Since some of the more recent state constitutions contain general provisions dealing explicitly with intergovernmental relations, it may be that in the future, other states will follow this practice. Accordingly, the suggested amendment proposed here may be considered for adoption either in its entirety or in either of its paragraphs, separately. It is also recognized that because of the stylistic variations in state constitutions, the adoption of such a change may necessitate conforming alterations in other parts of the constitutional document. The draft language suggested below is designed to reduce or avoid such additional changes to the greatest degree possible. However, each state should examine the situation to see how the wording of the amendment would fit into its own constitutional pattern and to determine what adaptations, if any, are desirable.

The theory on which this suggested constitutional amendment has been drafted is that the language should be broadly enabling in character. It is recognized that limitations of some sort may be desirable but these are believed to be more appropriate for statute than for constitutional provision. With reference to those portions of the suggested amendment dealing with interlocal matters, attention is called to an Interlocal Cooperation Act that follows on page 145. Limitations of the type contained therein may be illustrative of the situations in which statutory implementation or restriction of the constitutional authority here granted would be appropriate.

Suggested Constitutional Amendment

/Title, format and procedural practice for constitutional amendment should conform to state practice and requirements./

1 Subject to any provision which the legislature may make
2 by statute, the state, or any one or more of its municipal
3 corporations and other subdivisions, may exercise any of
4 their respective powers, or perform any of their respective
5 functions and may participate in the financing thereof
6 jointly or in cooperation with any one or more other states,
7 or municipal corporations, or other subdivisions of such
8 states, or the United States, including any territory,
possession or other governmental unit thereof, or any one
or more foreign powers, including any governmental unit
thereof.

Any other provision of this constitution to the contrary
notwithstanding, an officer or employee of the state or any
municipal corporation or other subdivision or agency thereof
may serve on or with any governmental body as a representa-
tive of the state or any municipal corporation or other
subdivision or agency thereof, or for the purpose of
participating or assisting in the consideration or perfor-
mance of joint or cooperative undertakings or for the study
of governmental problems, and shall not be required to
relinquish his office or employment by reason of such
service. The legislature by statute may impose such
restrictions, limitations or conditions on such service
as it may deem appropriate.
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.

* Included in Council of State Governments' SUGGESTED STATE LEGISLATION.
The new Michigan constitution (Art. 7, Sec. 2) specifically authorizes counties to adopt home rule charters pursuant to state law. The constitutions of Alaska (Art. 10, Sec. 3), Hawaii (Art. 7, Sec. 1), Kansas (Art. 9, Secs. 1 and 2), and Virginia (Art. 7, Sec. 110) authorize the establishment of counties pursuant to general act of the legislature. The constitutions of California (Art. 11, Sec. 7\(\frac{1}{2}\)) and New York (Art. 9, Sec. 2) contain detailed provisions as to permissible alternative forms of county government that may be adopted by an individual county within the state. In other states, such as Maryland, counties may operate under a county charter that has been approved by a special act of the legislature. The State of Connecticut abolished counties after determining that they served no useful purpose in that state.

The above-listed states have all attempted to resolve the constitutional problem of optional forms of county government in a manner consistent with the needs of the individual state. The significance of their action rests upon the fact that these states felt that the prior law hampered the county in meeting its responsibilities as a viable unit of local government. The variation in approach taken by the states is in itself indicative of the fact that the functions and responsibilities of counties vary greatly from state to state and that the procedure to be taken in an individual state must therefore depend upon its individual situation.

In view of the changing nature and responsibilities of counties in the governmental structure, it is essential that all states review existing constitutional provisions relating to the organization and structure of county government to determine what, if any, changes should be made therein in order to insure more effective and responsible local government within the state.

The legislation submitted herewith is a means of implementing this objective. The suggested act authorizes three basic forms of county government and requires voter approval before a change may be made. It is patterned after a North Carolina statute (N C., Gen. Sts., Ch. 153, Art. 3).
Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to authorize optional forms of county government."

(Be it enacted, etc.)

1 Section 1. Optional Forms of County Government Authorized. Any county in this state may, pursuant to the provisions of this act and any other appropriate provisions of law, adopt any one of the optional forms of county government herein provided.

Section 2. County Commissioners Form. (a) County Commissioners Form Defined. The County Commissioners form of county government shall be that form in which the government is administered by a board of county commissioners.

(b) Modification or Regular Forms. There may be modifications of the County Commissioners form adopted as hereinafter provided as follows: (1) the number of
/commissioners/ may vary in number from /three/ to /five/; and (2) all /commissioners/ may be elected for uniform or overlapping terms not exceeding /four/ years.

Section 3. Manager Form. (a) Manager Appointed or Designated. The /board of county commissioners/ may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all departments of the county government which the /board of county commissioners/ has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the /board/ may impose and confer upon the /chairman of the board of county commissioners/ the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the /board/ may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.
(b) Duties of the Manager. It shall be the duty of the county manager: (1) to see that all the orders, resolutions, and regulations of the Board are faithfully executed; (2) to attend all the meetings of the Board and recommend such measures for adoption as he may deem expedient; (3) to make reports to the Board from time to time upon the affairs of the county, and to keep the Board fully advised as to the financial condition of the county and its future financial needs; (4) to appoint, with the approval of the Board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and (5) to perform such other duties as may be required of him by the Board.

Section 4. Elected County Executive. (a) Elected County Executive Form Defined. The Elected County Executive form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The Board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the
board of county commissioners.  
(b) Duties of the Elected County Executive. It shall be the duty of the elected county executive:
(1) to see that all the orders, resolutions, and regulations of the board are faithfully executed;
(2) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient; (3) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs; (4) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and (5) to perform such other duties as may be required of him by the board.

Section 5. Procedure. The board of county commissioners may, upon its own motion, or shall upon receipt of a petition so requesting, signed by at least percent of qualified voters within the county, submit to referendum vote of all qualified electors within the county the question of whether one of the optional forms of county government shall be established within a county. If a majority of those voting on the question favor the adoption of a new form of county
government, election of county officers for such optional form of county government shall be held at the next general election held within the county. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next two years following the date of such disapproval.

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

*Included in Council of State Governments' SUGGESTED STATE LEGISLATION
and by requiring review by the attorney general and, in some cases, by other state officers before an agreement goes into effect.

It is believed that legislation of this type will be most useful if drawn so as to permit of use for any local function. However, it is recognized that some activities may present special problems and that states may wish to continue the practice of making special statutory provision for such types of interlocal cooperation. It would be quite possible for a state to enact this statute for use with reference to most types of interlocal cooperation and to make provision elsewhere in state law for types of interlocal functions requiring special handling.

Alternative language is offered in Section 4(a) which would provide a broad or narrow use of the joint agreement power. Without the language in parenthesis, the act permits two or more public agencies to exercise a power jointly or cooperatively as long as one of them possesses the power. For example, Community A which has the power to build and maintain a public water supply system and Community B which does not have such a power, could enter into an agreement for the joint or cooperative construction and maintenance of such a facility. Some states may wish to enact a statute of this breadth. However, others may wish to limit the statute to use in situations where all agreeing public agencies can exercise the power separately. Inclusion of the language provided in parenthesis would accomplish this limitation if desired.¹

It should be noted that the suggested act is drafted for use between or among communities whether or not they are located within a single state. Patterns of settlement often make it advantageous for communities at or near state lines to enter into cooperative relationships with neighboring subdivisions on the other side of the state boundary. It is clear that such relationships are possible when cast in the form of interstate compacts. Accordingly, the suggested act specifically gives interlocal agreements across state boundaries the status of compacts. However, the usual interstate compact is an instrument to which states are party. Since the contemplated interlocal agreements should be the primary creation and responsibility of the local communities, the act makes them the real parties in interest for legal purposes and places the state more in the position of guarantor. Since this means that the obligation is enforceable against the state if necessary, the interlocal agreement will have all the necessary attributes of a compact. However, the

¹ The version of this policy statement approved by the Committee of State Officials on Suggested State Legislation of the Council of State Governments refers to the possibility of this alternative language but does not provide it in the draft legislation.
state in turn is protected by the requirement of prior approval of the agreement by state authorities and by the provisions of Section 5 preserving the state's right of recourse against a non-performing locality.

There has been much confusion concerning the need for Congressional consent to interstate compacts. The wording of the Compact Clause of the Constitution has led some to believe that all compacts need Congressional consent. However, this is clearly not the case. The leading case of Virginia v. Tennessee, 148 U.S. 503 (1893) makes it clear that only those compacts which affect the balance of the federal system or affect a power delegated to the national government require Congressional consent. Such pronouncements as have come from state courts also take this position. Bode v. Barrett, 412 Ill. 204, 106 NE 2d 521 (1952); Dixie Wholesale Grocery Inc. v. Morton, 278 Ky. 705, 129 SW 2d 184 (1939), Cert. Den. 308 U.S. 609; Roberts Tobacco Co. v. Michigan Dept. of Revenue, 322 Mich. 519, 34 NW 2d 54 (1948); Russell v. American Ass'n, 139 Tenn. 124, 201 SW 151 (1918). Finally, it should be noted that the Southern Regional Education Compact to which a large number of states are party has been in full force and operation for over seven years even though it does not have the consent of Congress and when challenged, the compact was upheld. McCready v. Byrd, 195 Md. 131, 73 A 2d 8 (1950). Except where very unusual circumstances exist, it seems clear that powers exercised by local governments either individually or in concert, lie squarely within state jurisdiction and so raise no question of the balance of our federal system. Accordingly, in the absence of special circumstances, it is clear that interlocal agreements between or among subdivisions in different states would not need the consent of Congress.

Some of the states have boundaries with Canada or Mexico. Therefore, it may be that some border localities in these states might have occasion to enter into interlocal agreements with communities in these neighboring foreign countries. The suggested act makes no provision for such agreements since it is felt that agreements with foreign governmental units may raise special problems. States having such boundaries might want to consider whether to devise means for extending the benefits of this suggested act to agreements between their subdivisions and local governments across an international boundary. Any state wishing to follow this course, might add appropriate provisions to the suggested act at the time of passage or might amend its statute later after experience with the legislation within the United States has been gained.
Suggested Legislation

Title should conform to state requirements.

(Be it enacted, etc.)

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

Section 2. Short Title. This act may be cited as the Interlocal Cooperation Act.

Section 3. Public Agency Defined. (a) For the purposes of this act, the term "public agency" shall mean any political subdivision of this state; any agency of the state government or of the United States; and any political subdivision of another state. (b) The term "state" shall mean a state of the United States and the District of Columbia.

Section 4. Interlocal Agreements. (a) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state.
(having the power or powers, privilege or authority)\textsuperscript{1}, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

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

(c) Any such agreement shall specify the following:

1. Its duration.

2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

3. Its purpose or purposes.

4. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget

\textsuperscript{1} This parenthetical phrase is not included in suggested legislation approved by the Committee of State Officials on Suggested State Legislation, as noted in the explanatory statement.
5. The permissable method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

6. Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items 1, 3, 4, 5 and 6 enumerated in subdivision (c) hereof, contain the following:

1. Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented.

2. The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

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

(f) Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted
to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 45 days of its submission shall constitute approval thereof.

(g) Financing of joint projects by agreement shall be as provided by law.

Section 5. Filing, Status, and Actions. Prior to its entry into force, an agreement made pursuant to this act shall be filed with the keeper of local public records and with the secretary of state. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by
reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

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

Section 7. Appropriations, Furnishing of Property, Personnel and Service. Any public agency entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing
such personnel or services therefor as may be within its legal power to furnish.

Section 8. Interlocal Contracts. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which (each public agency) (any of the public agencies) entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.¹

Section 9. /Insert severability clause, if desired./

Section 10. /Insert effective date./

¹ This section is not included in suggested legislation approved by the Committee of State Officials on Suggested State Legislation.
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. If desired, the statute could spell out the functions authorized for such voluntary transfer in order to make sure that responsibilities carried on by counties as agents of the state were not transferred to municipal corporations. Within a particular metropolitan area, for example, such a statute would enable the board of county commissioners and the mayors and councils of municipalities to assess collectively the manner in which particular service-type functions were being carried out. By concurrent action, the governing boards might have the county assume functions such as water supply, sewage disposal, etc., throughout the area, relieving the municipalities of their respective fragmented responsibilities in those functional areas. Conversely, they might agree that the county government should cease to carry on certain functions within the boundaries of the municipalities, with the municipalities assuming such responsibility on an exclusive basis.

The suggested legislation which follows is limited in its applicability to metropolitan areas. This bill includes an illustrative enumeration of types of services eligible for transfer between county and city governments by concurrent action of their respective governing bodies, and prescribes the minimum subject matter to be covered in any official transferring action.

**Suggested Legislation**

*/Title should conform to state requirements. The following is a suggestion: "An act to provide for the transfer of functions between cities and counties."

(Be it enacted, etc.)

1 **Section 1.** (a) "Metropolitan area" as used herein is an area designated as a "standard metropolitan statistical* included in Council of State Governments' SUGGESTED STATE LEGISLATION Some states may wish to grant such authority statewide, rather than only for metropolitan areas.
area" by the U.S. Bureau of the Census in the most recent
nationwide census of the population.¹

(b) "Local service function" as used herein is a local
governmental service or group of closely allied local gov-
ernmental services performed by a county or a city for its
inhabitants and for which, under constitutional and statu-
tory provisions, and judicial interpretations, the county or
city, as distinguished from the state, has primary respons-
ibility for provision and financing. Without in any way
limiting the foregoing, the following are examples of such
local service functions: (1) street and sidewalk maintenance;
(2) trash and garbage collection and disposal; (3) sanitary
and health inspection; (4) water supply; (5) sewage disposal;
(6) police protection; (7) fire protection; (8) library serv-
ices; (9) planning and zoning; (10) . . . , etc.²

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

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

Section 3. (a) Responsibility for a local service function, or a distinct activity or portion thereof, previously exercised by a county located within a metropolitan area may be transferred as hereinafter described to a city or cities located within such county.

(b) Responsibility for a county government's performance of a local service function within the municipal boundaries

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3 Insert appropriate language to describe the form that the official action required in Section 2, paragraph (a) would take.

4 States should insure that adequate provisions are made for residents of the area involved being informed at all times of which unit of government is responsible for a particular function. In addition, a state may desire to permit a proposal for the transfer of functions to be initiated through public petition.
of such city or cities may be transferred to such city or
cities by concurrent affirmative action of the governing
boards of such county and of such city or cities.
(c) The expression of official action transferring such
responsibility shall include all of those features specified
in Section 2(b) above.

Section 4. [Insert appropriate separability section.]

Section 5. [Insert effective date.]
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 instance, the failure of both state supervisory agencies and special districts to comply with such requirements of state law.

The suggested act is designed, in a number of instances, to insure that special district activities are related to those of general local government, (i.e., counties, cities, and towns), as well as to insure the availability of appropriate information concerning the activities of districts available to the general public.

Section 3 requires the approval by a municipality and/or county of land acquisitions by special districts located in the county or municipality and, where the activity engaged in by the district affects a state function, by the appropriate state agency. If a local government or a state agency denies approval of the proposed land acquisition, the special district may seek judicial review of the decision.
Section 4 provides for an advisory review by a unit of general local government and, where appropriate, by state agencies of proposed capital improvements by a special district. Such review is merely advisory.

Section 5 requires that notification be given a state official and a county official of activities of existing and newly created special districts.

Section 6 directs a state agency, to the extent feasible, to establish uniform budget and account standards for all special districts and to audit or approve private audits of district accounts.

Section 7 provides a means whereby the taxpayer can be informed of all special district property taxes and assessments he pays at the same time that he is informed of county and municipal taxes and assessments.

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

Finally, Section 9 provides for review and approval or modification, by a state agency, of service charges or tolls assessed by special districts where such services and tolls are not already approved or reviewed by a local government or a state or federal agency.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act to coordinate special district activities with activities of other governments and to insure public availability of information relating to special district activities."/

(Be it enacted, etc.)

1 Section 1. Purpose and Policy. It is the purpose of
2 this act to establish certain minimum procedures to insure
3 that the activities of special districts are properly
coordinated with those of other governmental units within the state. Further, it is essential that special districts, as well as other governmental units, take affirmative action to insure that the public is fully aware of the activities of all governmental entities operating within a particular community.

Section 2. Definitions. As used in this act:

(1) "Special District" means any agency, authority, or political subdivision of the state organized for the purpose of performing governmental or prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, a town, or a school district.

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

Section 3. Land Acquisitions by Special Districts.

(a) Prior to acquisition of title to any land by a special district authorized by law to acquire land, the district shall submit to the city and/or county in which such land is located a statement indicating its intention to acquire the land. If the land is located within the territorial limits of two or more cities and/or counties, the statement shall be submitted to each of them.
(b) The statement shall be in the form of a resolution adopted by the governing body of the district, indicating the intention of the district to acquire the land, and shall contain a brief but appropriate identification of the land to be acquired, an indication of the use to which it will be put, and other information the district deems appropriate.

(c) Within 30 days after receipt of the statement of intention to acquire land, the governing bodies of the city or county or cities or counties shall by resolution indicate their approval or disapproval of the proposed acquisition; a resolution disapproving the proposed acquisition shall state the reasons therefor.

(d) If the special district is performing a function which directly affects a program conducted by the state, upon receiving approval for the acquisition pursuant to subsection (b), it shall transmit a copy of its statement of intention and the approving resolution or resolutions to the office of local affairs or the Secretary of State who shall immediately refer the material to the state agency responsible for the administration of the state program.
involved. The state agency shall, 30 days from receipt of the material, either approve or disapprove the proposed acquisition. The agency shall approve the proposed acquisition of land unless it finds that the acquisition or proposed use would be inconsistent or in conflict with state policy or an approved state plan for providing governmental services. The state agency's action shall be communicated to the governing body of the district by an order signed by the head of the state agency, and if the proposed acquisition is disapproved, the order shall state the reasons therefor.

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

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

Section 4. Capital Improvements by Special Districts.

(a) Any proposal by a special district for the construction of capital improvements shall be submitted, for comment, to the governing bodies of cities and counties within which the proposed improvements would be made, and in the event that the district is performing a function that directly affects a program conducted by the state, to the Office of local affairs or Secretary of State for transmittal to the state agency responsible for the operation of the state program at least 60 days prior to final action of the governing body of the district adopting the proposed capital improvement.
Cities, counties, and/or state agencies receiving proposals for special district capital improvements shall review such proposals and, within \( \frac{60}{\text{days}} \) days after receipt thereof, may submit their comments thereon to the governing body of the special district. Upon receipt of the comments of all jurisdictions or agencies notified pursuant to this section, or \( \frac{60}{\text{days}} \) days after the transmittal of the proposed improvement program to such jurisdictions and agencies, the governing body of the district may adopt the proposed capital improvements, with or without modification, as part of the district program as otherwise authorized by law.

Section 5. Reporting the Creation of Special Districts.

(a) The governing body of any existing special district shall, within \( \frac{30}{\text{days}} \) days after the adoption of this act, notify the Office of local affairs or Secretary of State and the Clerk of the county governing body or bodies in which it is authorized to operate of its existence. The notification shall include a citation to the statute pursuant to which it was created and a brief description of its activities and service area.

(b) The governing body of a newly created special district shall submit, at its first meeting, notification of its
existence as directed in subsection (a), and within one
year of such meeting, a brief description of its activities
and service area.

Section 6. Uniform Special District Accounts.

(a) The insert appropriate state agency shall
establish minimum standards of uniformity for the budget
and accounts of all special districts operating within this
state.

(b) The insert state agency annually shall audit the
accounts of all special districts operating within the state,
may approve annual private audit of the accounts of
special districts performed at the expense of the district.
The reports of private auditors shall be transmitted to the
insert state agency and the reports of private auditors and
audits made by the state agency shall be transmitted to the
county or counties within which the special district is au-
thorized to operate.

1 If there is an agency of state government exercising super-
visory 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.
Section 7. Special District Property Taxes and Special Assessments.

(a) Every special district authorized by law to levy a property tax or a special assessment shall annually inform each county and city within which it operates of the tax and/or special assessment rate levied by the district and the assessed valuation of property against which the tax is levied and the basis for the assessment rate.

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

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

Section 9. Review of Special District Service Charges. The state public service commission shall review and approve, disapprove, or modify proposed service charges or tolls assessed by special districts within the state authorized to
levy such charges or tolls; provided, that the review shall
not extend service charges or tolls levied by special
districts which are otherwise approved or reviewed by the
governing body of a county or a city or a state or federal
agency. If the public service commission finds that the
proposed service charge or toll is unreasonable or is ex-
cessive in relation to the value of the service provided or
to be provided, it may disapprove or modify the proposed
charge or toll. The public service commission is author-
ized to establish necessary rules and procedures to carry
out its responsibilities under this section.

Section 10. Effective Date. Insert effective date.
The 1962 Census of Governments indicated the existence of 18,323 special districts in the United States in 1962. This was an increase of almost 40 percent over the comparable figure for 1952 (considering classification changes). The rapid growth of special districts during this 10-year period and since the end of World War II has been the cause of increasing concern to many state and local governments. As early as 1953 the Council of State Governments in Public Authorities in the States: A Report to the Governors' Conference discussed at length some of the problems created by resort to specialized agencies for undertaking governmental functions. In a subsequent report on metropolitan areas, State Responsibility in Urban Development, the Council indicated the difficulties often encountered in metropolitan areas where special districts exist.

The recent report of the Advisory Commission on Intergovernmental Relations, The Problem of Special Districts in American Government, noted that problems associated with the existence of special districts may occur in rural as well as urban areas. As a matter of fact, over two-thirds of the special districts in the United States in 1962 were not in metropolitan areas. Not only does the continued creation of numerous special districts tend to increase the complexity of government but the continued existence of some special districts may be unnecessary. Often special districts were created because local government did not have the statutory authority to provide a particular service or because of limitations on the borrowing or taxing powers of such governments. Numerous special districts created merely to circumvent such restrictions continue to exist, despite elimination or modification of the earlier restrictions. Their continued existence hinders efforts to secure economical performance of local governmental services.

The following draft bill would provide a procedure under which the creation of new special districts would be carefully reviewed by a local government body to determine whether an existing unit of general government-- basically a county or municipality though in some instances an existing special district-- could provide the service that the proposed district would provide. This procedure is not designed to eliminate the creation of special districts; it would merely restrict their use to those situations where an existing unit of general local government is unwilling...
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."\[1]

(As it enacted, etc.)

Section 1. Definitions. (a) "Special District" means any agency or political subdivision of the state organized for the purpose of performing governmental or prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, a town, or a school district.\[1]

(b) "County Officer" means (1) a chief elected county official or (2) a member of the elected governing body of a county.\[1]

(c) "City Officer" means (1) a mayor or (2) member of a city council or legislative body of a city.\[1]

Section 2. County Special District Commission. (a) There is hereby authorized to be created in each county of the state a County Special District Commission hereafter called Commission consisting of five members selected as follows:

(1) two representing the county, each of whom shall be a county officer appointed by the county governing body;\[1]

(2) two representing the cities in the county, each of

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1 Some states may wish to define special districts by reference to the statutes authorizing their creation.

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whom shall be a city officer appointed by the chief executive officers of the cities within the county at a joint meeting; and (3) one representing the general public, who shall be chairman of the Commission, appointed by the four other members of the Commission.

(b) The term of each member shall be four years and until the appointment and qualification of his successor, except that the term of each county officer and each city officer shall expire upon the termination of his county or city office. Any city or county member may be removed by his appointing authority.

(c) Vacancies on the Commission shall be filled for the unexpired term by the appointing authority which originally appointed the member whose position has become vacant. Commission members who are full-time city or county officers shall serve without compensation but shall be reimbursed the actual amounts for their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. Commission members who are not full-time city or county officers shall receive such compensation as the county governing body may determine.

(d) Prior to establishment of a Commission in a county, any proposals for the creation of a special district, or petition for the merger, consolidation, or dissolution of
an existing special district shall be submitted to the clerk of the county governing body as otherwise provided in the act. Upon receipt of such proposal or petition the clerk shall immediately notify the county governing body and the governing bodies of all cities within the county of such receipt. The county and cities shall then proceed to establish a Commission.

Section 3. Powers and Duties of Commission. The Commission shall have the following powers and duties:

(a) To review and approve or disapprove with or without amendment wholly, partially, or conditionally proposals to create special districts within the county.

(b) To review and approve or disapprove petitions for the dissolution, consolidation, or merger of special districts within the county.

(c) To adopt standards and procedures consistent with the provisions of this act for the evaluation of proposals for the creation, dissolution, consolidation, and merger of special districts.

Section 4. Proposals For Creation of Special Districts.

(a) Any proposal for the creation of a special district shall be submitted to the Commission prior to appropriate reference to legislation authorizing creation of special districts which would minimize cost and expense of creating special districts if a Commission decision
were to be against creation of the proposed district.
For example, where a referendum is required, action of
the Commission should take place prior to the holding
of such referendum by those parties authorized by law
to initiate proceedings for the creation of a special
district.

(b) Upon receiving notice of a proposal to create
a special district the Commission shall direct the
clerk of the county governing body to notify: (1) each
city within miles of the territory of the pro-
posed district; (2) each special district whose boundaries
are adjacent to the proposed boundaries of the proposed
district and is performing the same type of service that
the proposed district would perform; and (3) the county
governing body of the proposal to create a special
district.

(c) At the same time the Commission shall cause to be
published in newspapers of general circulation in
the county an announcement of its receipt of the afore-
mentioned proposal, and notice of intention to hold a
public hearing on a proposal to create the proposed
district, which hearing shall be held not less than days from receipt of the notification
of the proposal to create the special district.
Section 5. Merger, Consolidation, or Dissolution of Special Districts. (a) Any city, county, or special district may, by resolution adopted by its governing body, petition the Commission requesting the merger, dissolution, or consolidation of any special district within the county. Merger or consolidation petitions shall include such information as will permit the Commission to evaluate the degree to which the proposed action will permit more effective and efficient performance of the service provided by the special district.

(b) The residents of any special district may petition the Commission requesting the merger, dissolution, or consolidation of any special district in which they reside. Such petition shall be signed by at least ___ percent of the residents actually residing within the territory of the district.

(c) Upon receipt of a petition for the merger, dissolution, or consolidation of a special district, the Commission shall direct the clerk of the county governing body to notify: (1) each city within ___ miles of the territory of the district specified in the petition; (2) each special district whose boundaries are adjacent to the boundaries of the district specified in the petition and which is performing the same type of service as is the special district; (3) the county governing body; and
(4) the governing body of the district which is the subject of the petition.

(d) At the same time the Commission shall cause to be published in newspapers of general circulation in the county an announcement of its receipt of the aforementioned petition and notice of intention to hold a public hearing on the petition to dissolve, merge, or consolidate said special district, which hearing shall be held not less than nor more than days from receipt of the petition.

Section 6. Hearings. At public hearings held pursuant to this act, the Commission shall hear any interested party having made a written request to be heard, and shall receive a report of the Commission staff on the proposal before it. The Commission shall have the power to make and enforce such rules and regulations as shall provide for orderly and fair hearings on the issues before it.

Section 7. Factors to be Considered. (a) Factors to be considered in the review of a proposal for creation, consolidation, merger, or dissolution of a special district shall include but not be limited to:

(1) Population; population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant
growth in the area, and in adjacent incorporated and unincor-
orated areas, during the next 107 years.

(2) Need for organized community services; the present
cost and adequacy of governmental services and controls in
the area; probable future needs for such services and
controls; probable effect of the proposed formation and of
alternative courses of action on the cost and adequacy of
services and controls in the area and adjacent areas.

(3) The effect of the proposed action, and of alternative
actions, on adjacent areas, on mutual social and economic
interests and on the local governmental structure of the
county.

(b) Any city, county, or special district receiving
notification of hearings to be held by the Commission may:

(1) In the case of a petition for creation of a new
district indicate to the Commission its willingness and
ability to provide the service to be undertaken by the pro-
posed district. Such notification shall include references
to appropriate legal authority empowering such city, county,
or special district to assume responsibility for providing
such service within the territory of the proposed district
and shall include appropriate evidence of its financial
ability to provide same. It may also include reasons why it
rather than the proposed district should provide the service.

(2) In the case of a petition for the dissolution, con-
solidation, or merger of a special district, submit to the
Commission its recommendations concerning such proposals. If the petition for dissolution, consolidation, or merger is based upon a city, county, or special district assuming the function undertaken by the subject special district, the notification shall include references to appropriate legal authority empowering such city, county, or special district to assume responsibility for providing such service within the territory of the subject district and shall include appropriate evidence of its financial ability to provide same. It may also include reasons why it rather than the subject district should provide the service.

Section 8. Multi-County Special Districts. In the event that the territory of any special district lies in two or more counties, proposals to create, or petitions to merge, consolidate or dissolve special districts shall be forwarded to the Commission in each of the counties affected. The Commissions shall within $10^7$ days agree upon a date and place for a joint public hearing and shall proceed jointly as otherwise directed by this Act, except that all time spans shall be measured from the date of such agreement.

Section 9. Decisions of Commission. (a) Upon conclusion of the hearing, the Commission may take the matter under consideration and shall, within $30^7$ days following conclusion of the hearing, present its decision. The Commission may also adjourn a hearing from time to time, but not to
exceed a total of $\sqrt{607}$ days.

(b) If the Commission approves the formation of the proposed district, proceedings for its formation, subject to Section 11 of the Act, may be continued as otherwise provided by law. If the Commission approves the proposed formation with modifications or conditions, further proceedings for its formation may be continued only in compliance with such modifications or conditions. If the Commission disapproves the formation of the proposed special district no further action may be taken to create the special district and notice of intention to create such a district may not be presented to the Commission for at least $\frac{1}{2}$ years after the date of disapproval.

(c) The Commission may order the merger, dissolution, or consolidation of a special district where the factors specified in Section 8 indicate such action is appropriate and finds:

(1) That a petitioning city, county, or existing special district adjacent to the subject district can provide the service to the residents of the subject district more effectively and more economically; or

(2) Where it finds that there is no longer a need for the service provided by a subject district.

(d) Decisions approving proposals for the merger, consolidation, or dissolution of a special district shall provide for the equitable disposition of the assets of the subject
district, for the adequate protection of the legal rights of employees of the district as specified in statutes which afford various civil service and tenure protection to employees of special districts, and for adequate protection of the legal rights of creditors.

Section 10. Administration. (a) The county governing body shall furnish the Commission with quarters, equipment, and supplies necessary to perform its duties, and the usual and necessary operating expenses incurred by the Commission shall be a charge to the county except that counties are authorized to enter into agreements with cities within its borders pursuant to which the expenses of the Commission will be shared by the parties to the agreement.

(b) The Commission may appoint an executive officer who shall conduct and perform day-to-day business of the Commission. If the Commission does not appoint an executive officer, the county administrative officer or clerk shall act as the executive officer of the Commission.

(c) The Commission may appoint and assign staff personnel necessary to the performance of its duties and may employ or contract for professional or consultant services to carry out its responsibilities specified in this act.

Cities, counties, and existing special districts are directed to furnish all reasonable assistance and service to the Commission as it may request in order to fulfill its responsibilities.
Section 11. State Approval of Proposed District. 3/1

Where a Commission approves the creation of a special district undertaking a function or service which affects a state regulatory or operational program, the Commission shall immediately notify the Secretary of State who shall immediately forward the notification to the state agency responsible for the state program of its action. Such notification shall include a complete record of the proceedings before the Commission. The state agency shall, within 30 days of such notification, either give its approval of the creation of proposed special districts or indicate its reasons for initially denying such approval and schedule a public hearing on the question of the creation of the district within the county of the proposed district within 45 days of receipt of notification from the Commission. Within 30 days after the hearing the state agency shall either approve or disapprove creation of the proposed district. Decisions of the state agency shall be based on whether or not the proposed district will further

3 States may wish to specify those functions for which proposals for creation of special districts must receive state agency approval. Functions in this category should be those for which the state has either supervisory or operator responsibilities. For instance, water resource development—water supply, conservation, and irrigation districts; pollution control—sewerage districts.
or hamper the effectiveness of the state regulatory or
operational program.

Section 12. Judicial Review. All final determinations
of a Commission or a state agency shall be reviewable
pursuant to the state administrative procedure act by
a proceeding in the court.

Section 13. Effective Date. Insert effective date.
LEGISLATIVE APPORTIONMENT PROCEDURE

The 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 \( \frac{\text{population}}{\text{Senatorial or Representative}} \) of no \( \frac{\text{Senatorial or Representative}}{\text{district}} \) shall deviate by more than ten (10) percent from the figure obtained by dividing the total \( \frac{\text{population}}{\text{of the State}} \) by the number of \( \frac{\text{Senators or Representatives}}{\text{}} \).

(b) \( \frac{\text{Senatorial and Representative}}{\text{districts}} \) shall be established with appropriate boundaries so as to permit at least forty-five (45) percent of the total \( \frac{\text{population}}{\text{of the State}} \) to elect fifty (50) percent of the State \( \frac{\text{Senators}}{\text{}} \) and fifty (50) percent of the State \( \frac{\text{Representatives}}{\text{}} \).

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

Section 1. Apportionment of Senators and Representatives.

(a) Senators. Insert provisions for the apportionment of State Senators.

(b) Representatives or Assemblymen. Insert provisions for apportionment of House of Representatives or Assembly.

Section 2. Reapportionment Duty. The number of Senators and Representatives shall, not later than July 1st at the first regular session of the legislature next following the decennial census conducted by the United States Government, be reapportioned by the legislature in accordance with Section 1 of this Article.

Section 3. Jurisdiction of State Supreme Court. Original jurisdiction is vested in the State court of last resort, upon the petition of any qualified voter of the state filed with the clerk of the Supreme Court within 30 days after enactment of a reapportionment measure, to review, in whole or part, any measure so enacted. If the Supreme Court determines that the measure complies with Section 1 of this Article, it shall dismiss the petition by written opinion within 30 days after the
petition was filed and the legislation enacted shall become law upon the date of opinion. If the Supreme Court determines that the measure does not comply with Section 1 of this Article the measure shall be null and void and the Court shall direct the named state official the apportionment board to prepare a reapportionment of the legislature in compliance with Section 1 of this Article and return its reapportionment to the Supreme Court within 30 days after referral by the Court. The Supreme Court shall review the reapportionment thus returned and, if it is found to be in compliance with Section 1 of this Article, shall cause it to be filed with the Governor within 30 days after the finding and it shall become law upon the date of filing. If the Supreme Court shall determine that the draft returned to it by the named state official apportionment board does not comply with Section 1 of this Article, the Court shall return it forthwith, accompanied by a written opinion specifying with particulars wherein the draft fails to comply with the requirements of Section 1 of this Article. The opinion shall further direct the named state official apportionment board to correct the draft in these particulars and in no others and to file the corrected reapportionment with the Governor within 30 days after issuance of the order, and it shall become law upon the date of filing.
Section 4. Failure of Legislature to Reapportion Itself.

If the legislature fails to enact any reapportionment measure by July 1st of the year of the first regular session of the legislature next following a decennial census by the United States Government, the named state official shall make a reapportionment of the legislature in accordance to the provisions of Section 1 of this Article. The reapportionment so made shall be filed with the Governor on or before August 1st of such year and shall become law, subject to Supreme Court review, upon date of filing.

Original jurisdiction is vested in the Supreme Court, upon petition of any qualified voter of the state filed with the Clerk of the Supreme Court within 30 days after any reapportionment made by the named state official has been filed with the Governor to review, in whole or part, any such reapportionment. If the Court determines that the reapportionment thus made complies with the provisions of Section 1 of this Article is shall dismiss the petition by written opinion within 30 days after the petition was filed and the reapportionment shall become law upon the date of the opinion. If the Supreme Court determines that the reapportionment does not comply with Section 1 of this Article,
said reapportionment shall be null and void and the Supreme Court shall return it forthwith to the named state official accompanied by a written opinion specifying with particulars wherein the reapportionment fails to comply with Section 1 of this Article. The opinion shall further direct the named state official to correct the reapportionment in those particulars and in no others and file the corrected reapportionment with the Governor within 30 days after issuance of the order and it shall become law upon the date of filing.

Section 5. Apportionment Board. There is hereby created an Apportionment Board consisting of named state officials; do not include members of the judiciary consisting of two members appointed by the Chairman of the political party whose candidate for Governor in the last preceding gubernatorial election received the largest number of votes, two members appointed by the Chairman of the political party whose candidate for Governor received the second largest number of votes at the last preceding gubernatorial election, and one member who shall be Chairman of the Apportionment Board, appointed by the aforementioned members. The Apportionment Board shall convene prior to July 10th of any year in which the legislature has failed to comply with its responsibility under Section 2.
of this Article and reappportion the state legislature in accordance with the provisions of Section 1 of this Article.

In that event the Apportionment Board shall, on or before August 1st of such year, reappportion seats in the state legislature in accordance with the provisions of Section 1 of this Article and file a copy of such reappportionment with the Governor. Such reappportionment shall become law, subject to Supreme Court review, upon date of filing. In the event the Supreme Court shall declare that a reappportionment law enacted by the legislature fails to comply with the provisions of Section 1 of this Article the Apportionment Board shall convene within 10 days after the decision of the Court and the Board shall proceed to reappportion seats in the legislature as if no reappportionment action was taken by the legislature. The Secretary of State shall be secretary of the Board, and in that capacity shall furnish, under its direction, all necessary technical services.

1 Some states may wish to include a provision here similar to that in the Michigan Constitution which reads as follows: "If a majority of the Board cannot agree on a plan, each member of the Board, individually or jointly with other members, may submit a proposed plan to the Supreme Court. The Supreme Court shall determine which plan complies most accurately with the constitutional requirement and shall direct that it be adopted by the Board and published as provided in this article."
GENERAL PUBLIC ASSISTANCE*

General assistance programs in the states provide public assistance to the needy who do not qualify for assistance under one of the federal public assistance categories for which grants-in-aid are available. Included among the recipients of such assistance may be, to cite several examples: needy, unemployed people who have exhausted or who never qualified for unemployment benefits; needy persons who do not have dependent children; needy people with partial or temporary disability; mothers of dependent children over 18; and needy people who fail to meet all federal and state requirements in the federally aided categorical programs. Payments under the general assistance programs in the 50 states amounted to $375 million—which is 8 percent—of total public assistance expenditures of 4.9 billion dollars in the fiscal year ending June 30, 1964. However, general assistance is of greater significance than the percentage figure would indicate since it is the type of assistance which provides for all of those in need who do not qualify under any other program. Furthermore, state-local expenditures for general assistance amounted to 17 percent of total state-local public assistance expenditures and local expenditures were one-third of total local public assistance expenditure.

State and local support for the non-federal portion of categorical public assistance and for general assistance shows considerable variation between the two main types of assistance and among the states. In fiscal 1964, federal grants-in-aid provided 60 percent of the expenditures for categorical public assistance. State support for categorical assistance was almost

* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION. The suggested legislation is intended for consideration only in those states (approximately two-thirds of the total) where the administration of general assistance is a state-local or local responsibility, not where there is strictly state financing and administration.
80 percent of total non-federal expenditures, whereas the states contributed just less than half of total funds for general assistance. The lowest percentage of state participation in the non-federal share of categorical public assistance was 44 percent, while in general assistance, 15 states made no contribution at all. As a result, general assistance programs can be a heavy charge on individual local governments.

There are disparities in the fiscal effects of differences in unemployment, income, and other social conditions of the needy in different jurisdictions. The burden of these disparities on the welfare budgets of individual localities is already considerably modified because of the extent to which federal and state governments finance the categorical public assistance programs. It is difficult to justify the greater burden on localities under the general assistance program. Benefits redounding from maintaining the welfare of individuals and fostering their rehabilitation spread well beyond the limits of localities in which they happen to reside. Indigents tend to migrate to urban centers in search of employment or to join relatives, and some become applicants for public assistance, perhaps because they know of the existence of welfare programs which will assure them a minimum of assistance. In its report, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs, the Advisory Commission on Intergovernmental Relations reviewed this problem and recommended that states finance at least one-half of the cost of general assistance welfare programs and adopt state standards for such programs.

The suggested legislation is designed to provide for at least 50 percent matching of general assistance costs by the states and for the establishment of state standards generally in conformance with those for the other public assistance programs. The act provides a statement of basic public policy regarding the provision of general assistance; enumerates the responsibilities of the state welfare agency in establishing the system of general assistance; establishes state matching procedures; and provides for the use of rehabilitation, vocational training and retraining services, and community work training programs. Finally, it provides an appeal and judicial review procedure.
States wishing to introduce an equalization factor into their matching provisions may wish to consider two approaches presently in use. In New Jersey, graduated state matching is related to the preceding year's general assistance case load and property tax base. For each administering jurisdiction, there is computed the millage tax rate that would be required, when applied to the preceding year's total assessed valuation, to produce revenue amounting to general assistance expenditures for the preceding year. This gives the "preceding year's general assistance millage" and a schedule of graduated matching is related to the millage amounts. For example, if the general assistance millage were not more than 2.4 mills, 50 percent matching could be provided for; if 2.8, the matching could go up to 52 percent; if 3.2, to 54 percent; and so forth. In New York, the additional reimbursement is related only to the number of persons receiving general relief in any jurisdiction. If the number exceeds 1 percent of the total population of the jurisdiction then the locality is reimbursed for the percentage of recipients over 1 percent of the population at 80 percent and for the remainder at 50 percent.*

An increasing emphasis in public assistance programs is the need for social services to assist recipients in meeting special problems and, to the extent possible, becoming self-supporting. These services in combination with financial support are aimed at the prevention and reduction of dependency. The social services can contribute not only to minimizing or eliminating the need for financial support—more importantly, they can assist welfare recipients to become contributing members of the economy. Because of the importance of rehabilitative services to a successful assistance program, special provisions regarding them are included in the suggested act. To encourage their use and development, provision is made for a higher matching percentage by the state for funds expended to assist existing programs and services in meeting the needs of general assistance recipients or, where necessary, to provide the services and programs.

* New Jersey Statutes Annotated, Sections 44:8-128 and 44:8-129; New York Social Welfare Law, Section 154.
Optional sections establishing a hearing board appeal procedure for aggrieved applicants or recipients of general assistance and establishing residence requirements for general assistance are provided. Concern over the legal rights of the poor has led to increasing attention directed toward the protection of those who do not have ready access to private legal counsel and advice. Among the specific issues raised is that of appeal procedures for welfare recipients or applicants. Appeal procedures are provided in the states but they usually consist of hearings by the same agencies which promulgate the basic rules pursuant to law and have general administrative responsibility for the program. The optional section establishes a hearing board administratively located in the welfare department but independent of it for policy purposes. Its organization and procedures are based on standard administrative adjudication agency models using a small claims approach. The specific jurisdiction provided can, of course, be varied. Appeal from rulings by the director of welfare might be allowed only on questions of eligibility for example. Similarly, its findings could be made final or appeal could be allowed to the state supreme court, possibly on issues of law only.

While most states retain residence requirements for public assistance programs, it has been recommended that requirements be shortened or eliminated. In 1959, the Governors' Conference urged Congress to enact a uniform one year ceiling on residence requirements and urged states to ratify an interstate compact waiving residence provisions on a reciprocal basis. At present at least four states provide general assistance without residence requirements and in 10 additional states there are special provisions for making general assistance available to those who don't meet residence requirements. While at least one state has reciprocal agreements with a number of states affecting residence requirements for general assistance, such arrangements are more common in the categorical relief programs with over a dozen states having them. The optional section includes provisions for reciprocal agreements and for granting general assistance in cases of special need to those not meeting residence requirements.

The suggested legislation does not deal with the basic organizational structure for the administration of general assistance...
assistance either at the state or local level. Provision for the administration of general assistance exists in all states.* The emphasis in the suggested legislation is on providing the authority to administer a shared program of general assistance with the state government assuming at least 50 percent of the financial responsibility and exercising supervisory authority to maintain statewide standards. It is intended also to establish as close a correlation as possible with the federally aided categorical public assistance grants so that a reasonably uniform public assistance program including related social services can be administered in the states for all in need.

Suggested Legislation

Title should conform to state requirements. The following is a suggestion: "An act providing for general assistance."

(Be it enacted, etc.)

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

2 (1) "Director" /"Commissioner" means the director of public welfare /the commissioner of public welfare/.

3 (2) "Department" means the department of public welfare.

4 (3) "General assistance" means cash payments to needy persons unable to provide themselves with a decent and healthful standard of living who are not otherwise provided for under the laws of this state and who are willing to

* 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.
work but are unable to secure employment due either to physical disability or inability to find work. As provided for in this act, it may include, in place of or in addition to cash payment, assistance in goods, shelter, fuel, food, clothing, light, necessary household supplies, medical, dental, and nursing care, including drugs and medical supplies, and other necessities of life. It does not include old-age assistance, aid to the blind, aid to the permanently and totally disabled, or aid to families with dependent children.

(4) "State aid" means state aid to local governments for general assistance expenditures as in this act prescribed and provided for.

(5) "Local agency" refers to the local agency or official with responsibility for administering general assistance. ¹

(6) "Hearing Board" refers to the General Assistance Public Assistance Hearing Board.

¹ In those states where categorical public assistance is locally administered, this should be the same agency administering other public assistance.
Section 2. Public Policy Regarding General Assistance.

(a) The objective of this act and other public assistance acts is to provide an integrated public assistance program for all needy persons in the state.

(b) It is hereby declared to be the policy of this state that needy persons, unable to provide for themselves and not otherwise provided for by law, who meet the eligibility requirements of this act and do not refuse suitable employment or training for self-support work as provided for in this act shall, while in this state, be entitled to receive such grants of general assistance and such services as may be necessary to enable them to maintain a decent and healthful standard of living. The furnishing of such assistance and services is a matter of public concern and a necessity in promoting the public health and welfare. Furnishing such assistance and services is a joint responsibility of state and local governments.

(c) A principal objective in providing general assistance and services shall be to aid those persons who can be so helped to become self-supporting or to attain self-care. To achieve this aim, the Department shall establish such standards of assistance and services as will enable applicants
and recipients to maintain a decent and healthful standard of living and will encourage and aid them in developing their self-reliance and realizing their capacities for self-care and self-support. The maintenance of the family shall be a principal consideration in the administration of this act and all general assistance policies shall be formulated and administered so as to further this objective.

Section 3. Responsibility to Provide General Assistance.

(a) Every shall provide general assistance to needy persons residing within its jurisdiction who meet the need and residence requirements of this act. General assistance shall be administered according to law and rules and regulations promulgated by the Department pursuant to the provisions of this act.

(b) State aid shall be available to to reimburse part of general assistance expenditures as provided in Section 9 of this act.

Section 4. Duties of the Department. The Department shall:

(1) Supervise the administration of general assistance by
local agencies as provided in this act.

(2) Promulgate uniform rules and regulations consistent with law for carrying out and enforcing the provisions of this act to the end that general assistance may be administered as uniformly as possible throughout the state having due regard for varying costs of living in different parts of the state. Standards and operating procedures established by the Department pursuant to this act shall to the extent feasible conform to similar standards and procedures for other public assistance programs provided for in sections providing for old-age assistance, aid to the blind, aid to the permanently and totally disabled, and aid to families with dependent children. Rules and regulations shall be furnished immediately to all local agencies. In promulgating rules and regulations, the provisions of the administrative procedures act shall apply.

(3) Establish standards and requirements as to need for assistance and as to its nature and extent.

(4) Establish standards consistent with law for administration by local agencies of community work and training programs for employable general assistance recipients.

(5) Allocate moneys appropriated for general assistance
to identify the appropriate local governments qualifying therefor in the manner hereinafter provided.

Accept and supervise the disbursement of any funds that may be provided by the federal government or from other sources for use in this state for general assistance.

Cooperate with other agencies including any agency of the United States or of another state in all matters concerning the powers and duties of the Department under this act.

Take measures not inconsistent with the purposes of this act to assist in meeting special needs of individuals eligible for assistance to relieve suffering and distress arising from handicaps and infirmities; to promote their rehabilitation; to help them if possible to become self-dependent; to cooperate to the fullest extent with other public agencies empowered by law to provide vocational training, rehabilitation, or similar services; and to provide such supplementary funds, services, and facilities as may be found necessary for this purpose.

Gather and study current information and report at least annually to the Governor on the nature and need of general assistance, the amounts expended under the supervision
of each local agency, and the work of each local agency and publish reports for the information of the public.

(10) Report at least annually to the Governor the cost of living in the various counties, cities, and metropolitan areas as related to standards of assistance and the amounts expended for assistance, and make this information available to the public.

(11) Enter into reciprocal agreements with other states to grant general assistance to persons from such states with less than the required period of residence in this state.

Section 4a. Residence Requirements.

(a) Any person who resides within this state for a period of shall be deemed to meet residence requirements for general assistance. A person may receive and continue to receive general assistance for so long as he is and continues to be a resident of this state.

(b) If an applicant for general assistance has resided in this state for less than the required period and the local agency finds that the applicant will suffer undue hardship unless assistance is provided him, the local agency may, in accordance with rules and regulations of the Department, provide general assistance.
If an applicant for general assistance has resided in this state for less than the required period and if his prior state of residence has entered into a reciprocal agreement with this state for the provision of general assistance he shall be entitled to receive general assistance pursuant to the reciprocal agreement.

Section 5. Amount of Assistance.

(a) The amount of general assistance granted to any persons shall be determined in accordance with local budget standards prepared pursuant to governing Department rules, due regard being given to the requirements and conditions existing in each case and to the income and resources available to such persons from whatever source. Grants shall be sufficient when added to the income and resources determined to be available to provide a reasonable subsistence compatible with health and well-being.

(b) Except as hereinafter otherwise prescribed, general assistance shall be granted in cash; Provided that, in individual cases where the granting of cash may be deemed impracticable, general relief may, in accordance with rules and regulations of the Department, be granted in whole or in part by order. Medical, dental, and nursing care including drugs and medical materials and supplies may be granted.
Section 6. Rehabilitation Services. To aid applicants for or recipients of general assistance in becoming self-supporting or in increasing their capacities for self-care, local agencies shall encourage and assist applicants and recipients to make maximum use of facilities of public or private educational, welfare, or other institutions or agencies providing rehabilitation or vocational treatment, training, or services. Where such services are not available or are insufficient, the local agencies may make funds available to existing agencies for establishing or expanding such programs and services or, if necessary, may establish and provide such services; Provided that, the expenditure of funds therefor shall be subject to the approval and supervision of the Department. Approved expenditures made pursuant to this Section shall be considered as reimbursable general assistance expenditures to be reimbursed as provided in Section 9.

Section 7. Community Work and Training Programs.

(a) General assistance recipients may be required to perform such work and training as may be assigned to them by the local agencies pursuant to rules, regulations, and standards promulgated by the Department. The local agencies
shall assign those general assistance recipients who in
their judgment are able to perform the work indicated and
benefit from the training.

(b) The conditions applicable to work performed by employ-
able recipients of general assistance shall be the same as
those pertaining to recipients of public assistance for
which federal financial participation is available,
except that work required to be performed by recipients
of general assistance may be work for a public or nonprofit
private agency.

Any agency for which work is performed
under the provisions of this section shall reimburse the
person performing the work for any additional expenses
reasonably attributable to the work or shall make provision
for meeting the needs for which the expense would be
incurred. The work shall be of a constructive nature for the
conservation of work skills and development of new skills for
individuals under conditions which are designed to assure
protection of their health and welfare.

(c) Any person who refuses to report for or to perform
work which has been assigned by a local agency shall there-
upon become ineligible for general assistance.

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2 This option should be viewed in light of constitutional
provisions in any given state.
(d) Upon submission by any local agency of a plan for a community work relief and training program to the Department pursuant to this section and in a manner deemed to be consistent with the intent of this section, payments for support to general assistance recipients participating in such programs shall be considered as a reimbursable general assistance expenditure.

Section 8. Confidentiality of Records. Use this section to establish a policy regarding access to general assistance records consistent with that established for access to categorical public assistance records.

Section 9. State Aid.

(a) Expenditures made by the appropriate local government for general assistance and its administration pursuant to provisions of this act shall, if approved by the Department, be subject to reimbursement by the state, in accordance with the rules and regulations promulgated by the Department, as follows:

(1) Fifty percent of the amount expended for general assistance.

(2) Fifty percent of the amount expended for administration of general assistance including expenditures for
salaries of employees of a local agency; operation, maintenance, and service costs; and such other expenditures such as equipment costs, and rental values as may be approved by the Department. It shall not include expenditures for capital additions or improvements nor shall reimbursements be made for the salary of any employee unless his employment is necessary for the administration of general assistance.

(3) Seventy-five percent of special expenditures made pursuant to Section 6.

(b) Money expended for the cost of administration of general assistance by any local agency shall not exceed amounts which have been submitted to and approved by the Department and the compensation rates of all employees or persons paid from general assistance funds shall be subject to review and approval of the Department.

(c) Claims for state reimbursements shall be made in such form and manner and at such times and for such periods as the Department shall determine.

(d) When certified by the Department, state reimbursement shall be paid to identify appropriate local governments from the state treasury upon the audit and warrant of the insert the title of appropriate state official.
out of funds made available therefor.

(e) The Department is authorized in its discretion to make advances to identify the appropriate local governments in anticipation of the state reimbursement provided for in this Section.

Section 10. Non-Compliance with Rules of the Department.

(a) If any local agency administering general assistance is, in the determination of the Department, refusing or failing to comply with the provisions of this act or the rules of the Department, the Department shall notify the local agency and identify the appropriate local government promptly by personal service or by registered or certified mail, citing the provision or rule which is not being observed, and give the local agency an opportunity to appear before it. If five days after receiving such notice the local agency continues to refuse or fails to comply or fails to avail itself of the opportunity offered for a hearing before the Department, or if the local agency refuses or fails to comply following a hearing, the Department shall, within a reasonable period of time, instruct the state treasurer to withhold the payment of any further state aid until the local agency has established compliance. When the Department
finds that the local agency has taken such action as the
Department considers to have established satisfactory
compliance with the act and with its rules, it shall instruct
the state treasurer to resume making payment of state aid.
(b) If the Department finds that withholding of state
aid would result in undue hardship for recipients, the
Department may, pursuant to Department rules and regulations,
provide direct general assistance to recipients, including
the equivalent of the local share, and require reimbursement
from the appropriate local government for its
normal share.

Section 11. Appeals from Decisions and Orders and Appeals
of Rules and Regulations.
(a) Appeal to Department. Any applicant or recipient of
genral assistance aggrieved by any order or determination of
the local agency may appeal from such order or determination to
the Department. An appeal may also be taken if an application
for general assistance is not acted upon by the local agency
within a reasonable period of time. Before making such appeal
to the Department, the applicant or recipient shall give
written notice to the local agency. The local agency shall
within 30 days after receipt of notice reconsider its
decision. The local agency may adhere to the decision made or may modify its decision. The applicant may then, within 30 days after the making of such decision by the local agency, appeal to the Department as herein provided.

The Department shall, upon receipt of an appeal by an applicant or recipient notify the local agency and review the case, giving the applicant or recipient an opportunity for a fair hearing before the Director or his legal representative, in the county in which the application was originally filed and the decision of the Director on such appeal shall be final. All such appeals shall be in accordance with rules and regulations established by the Department. The Director may upon his own motion review any decision made by a local agency. The Director may make such additional investigation as he deems necessary and shall make such decision as to granting of assistance and the amount and nature of assistance to be granted the applicant or recipient as in his opinion is justified and in conformity with the provisions of the act and the rules and regulations promulgated under it. All decisions of the Director shall be binding upon a local agency and the applicant or recipient and complied with by the local agency.
(b) Appeal to General Assistance /Public Assistance/ Hearing Board.³

(1) A general assistance applicant or recipient aggrieved by a decision of the Director may appeal to the hearing board as provided in this Section.

(2) There is hereby established the General Assistance /Public Assistance/ Hearing Board which, for administrative purposes only, shall be in the Department, but which shall be an independent administrative board. The board shall consist of a chairman and four members, appointed by the Governor with the consent of the state senate and with the consent of the state legislature. The term of each member of the Hearing Board shall be five years. The initial appointments shall be as follows: the chairman for a term of five years; one member for a term of two years; one member

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.
for a term of \( \text{three} \) years; one member for a term of \( \text{four} \) years; and one member for a term of \( \text{five} \) years. Vacancies on the Board shall be filled for the unexpired term in the same manner as appointments to full terms.

(3) The Hearing Board shall have jurisdiction to determine all appeals from determinations of the Director relative to orders or determinations of the local agencies regarding individual welfare recipients or applicants. The Hearing Board may affirm, reverse, or modify any determination of the Department when acting on an appeal from orders or determinations of local agencies regarding individual welfare applicants or recipients.

(4) Any applicant or recipient aggrieved by the disposition of his appeal by the Director may appeal therefrom to the Hearing Board by filing with such Board a written notice of appeal and serving on the Department a certified copy of such notice. In order to be valid and effective, any such notice shall be filed and served within \( \text{thirty} \) days of the disposition from which the appeal is to be taken.

(5) Consistent with this act the Hearing Board
shall provide by rule for appearances before it and the
court of its proceedings.

(6) The Hearing Board may hear and determine all
issues of fact and of law but a determination of a local
agency or the Director shall be affirmed unless contrary
to a preponderance of the evidence.

(7) The Hearing Board shall establish by rule a
procedure which, to the greatest extent practicable, shall
be informal. The Board shall take special care to provide
all aggrieved general assistance applicants or recipients,
wherever located within the state, reasonable and
convenient access to the Board and shall sit at such times
and places as may be appropriate to promote such access-
ibility. The majority of the members of the Hearing
Board shall constitute a quorum for the transaction of its
business, except that the Hearing Board may provide by rule
for conducting hearings and taking of evidence by a single
member. A vacancy on the Board shall not impair its powers
nor affect its duties.

(8) During the pending of the appeal, if the
Department has awarded general assistance to a recipient,
the general assistance shall be paid to him pending the
determination of the appeal. If the appeal shall be from
the order of the Director raising or lowering the amount 
paid to a recipient and if the order shall not be sustained 
then the recipient shall receive the amount, if any, there-
tofore assigned by the local agency.

(9) Use this subsection to provide procedure for 
appeal of Hearing Board determinations to state supreme 
court.

(b) Original Proceedings in District Court on Rules 
and Regulations of the Department; Appeal to the Supreme Court.

A local agency may question the validity of any rule or 
regulation of the Department within 90 days of its promulgation 
in the court of original general 
jurisdiction for the district within which the Capitol is 
located district court, which shall have power to determine 
the validity of such rule or regulation by original proceedings 
in the court. Either the Department or the local agency may 
appeal from such decision to the Supreme Court in the same 
manner as other appeals in civil action.

Section 12. Effective Date. Insert effective date.
State agencies are frequently authorized to provide specific types of technical assistance or services to local governments. In some instances the cost of such services is financed by the state; in others, they are jointly financed; and in still others, they are financed solely by the unit of local government requesting the service. In almost all instances such authority is authorized by individual statute adopted by the legislature.

Areas in which such services are often available to local governments include property assessment, public health services, highway planning and construction, and preparation of community development plans. The initiation of new programs at both state and local levels of government in recent years would seem to dictate that, while existing financing patterns remain undisturbed, state agencies should also have broad authority to provide technical services to local government on a reimbursable basis.

While certain services may not directly affect state interests, costs of providing those services would be reduced were state expertise and equipment available for use by the local government (e.g., laboratory, computer and training services). The suggested act provides general authorization for all state agencies to provide special and technical services on a reimbursable basis to local governments.

However, under an optional provision of the draft, such authority could not be utilized to obtain services from the state which could be readily obtained from private business channels.

Section 1 sets forth briefly the purpose of the Act and Section 3 provides the general authority to state agencies to enter into such arrangements. Section 4 indicates that the cost of financing services will not be charged against the appropriation of the state agency and Section 5 requires that the head of a state agency furnishing such services make an annual report to the Governor and the legislature indicating the scope of the services provided.

* Included in Council of State Governments SUGGESTED STATE LEGISLATION.

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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.)

Section 1. Purpose. It is the purpose of this Act to authorize state agencies to provide specialized or technical services to units of local government and to enable units of local government to avoid unnecessary duplication and expense in performing necessary governmental services.

Section 2. Definitions. As used in this act:

1. "Unit of local government" means a county, municipality, city, township, metropolitan regional agency, authority, or a school or other special district.

2. "Specialized or technical services" means special statistical and other studies and compilations, development projects, demonstration projects, technical tests and evaluations, technical information, training activities, professional services, surveys, reports, and any other similar service functions which the administrative head of any agency is authorized by law to perform.

Section 3. Authority to Provide Service. The administrative head of any agency of the state is authorized,
within his discretion and upon written request from a unit of local government, to provide specialized or technical services, upon the payment, by the unit of local government making the request, of the cost of such services.

Provided that, the services shall not include those that can be as reasonably or expeditiously obtained through ordinary business channels. This authority in no way reduces the responsibility of any state agency to provide services otherwise required by law.

Section 4. Reimbursement to Appropriation. All moneys received by any agency of the state in payment for furnishing specialized or technical services authorized under this Act shall be deposited to the credit of the appropriation or appropriations from which the cost of providing the services has been paid or is to be charged.

Section 5. Reports. The administrative head of any agency of the state, providing specialized or technical services under this Act, shall furnish annually to the Governor and the Legislature a report on the scope of the services so provided.

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

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1 This section may require adjustment to comply with state constitutional requirements.
The variation in the use of daylight saving time throughout the country has caused significant problems. These problems are particularly acute for industrial and commercial concerns engaged in transportation and communication but involve many others, particularly when individual communities exercise local option in deciding whether or not to go on daylight saving time. The problem exists because of the variation within the standard time zones both in the decisions by states and their subdivisions to use daylight saving time and in the decisions regarding the time to commence and end daylight saving time.

During 1965 thirty-six states have some provision for the observance of daylight saving time, but in only eighteen does it apply throughout the state. In the other eighteen states, a form of local option or limited authorization by the state legislature provides the means for adoption of daylight saving time. Furthermore, daylight saving time begins and ends at different times in different jurisdictions. Sixteen states, all but one of which are among the eighteen states in which daylight saving time applies throughout the state, have a uniform period for its use which begins the last Sunday of April and ends the last Sunday in October. Daylight saving time in the other twenty states, whether on a statewide or local option basis, begins and ends at various times during the calendar year. In only three areas do contiguous states uniformly observe daylight saving time on a statewide basis. These are: (1) California and Nevada; (2) Illinois and Wisconsin; and (3) a group of ten northeastern states comprised of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Pennsylvania. Variations can become so complex that in one state with local option there were 23 different combinations of starting and stopping dates for daylight saving time in 1964.

It should also be noted that two states currently observe daylight saving time "in reverse", i.e., they are located in the Central Standard Time zone but portions of the two states (North Dakota and Texas) observe Mountain Standard Time.

* Included in the Council of State Governments' SUGGESTED STATE LEGISLATION.
Various solutions to the problem of time confusion in the United States have been proposed. Present federal legislation consists of the Standard Time Act which was enacted in 1918 and has been substantially unchanged since that time. It gives the Interstate Commerce Commission the responsibility of fixing the boundaries between standard time zones in the continental United States but does not refer to daylight saving time. The standard time zones are not mandatory with the states; but the act does declare that in statutes or regulations which specify a time of performance by any federal officer or time within which rights shall accrue, it is intended and understood that the time shall be standard time. Bills have been introduced in Congress to require national time uniformity, including daylight saving time, within nationally established time zones. Such bills have frequently been limited in their mandatory provisions to apply only to interstate travel and federal government business. Bills have also been introduced to require intrastate uniformity, either as to the observance of daylight saving time, its duration, or both.

Another approach, and that which is taken in the suggested legislation, is for the states that wish to observe daylight saving time to require by state legislation its adoption throughout the state, beginning and ending on a uniform basis. The most widely accepted dates for this purpose are the last Sunday of April and the last Sunday of October. If the objective of intrastate uniformity in the observance of daylight saving time and interstate uniformity to the extent that states observe daylight saving time is to be achieved, it is essential that these two dates be specified.

Suggested Legislation

Title should conform to state requirements.

The following is a suggestion: "An act to provide for uniform time."

(Be it enacted, etc.)

1 Section 1. Standard of Time.

2 (a) The standard of time in this state shall be the
3 solar time of the meridian west of Greenwich, commonly known as standard time. Notwithstanding

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the foregoing, the standard of time in this state, between 2 o'clock antemeridian on the last Sunday in April and 2 o'clock antemeridian on the last Sunday in October of each year, commonly known as daylight saving time, shall be one hour in advance of that prescribed above.

(b) All departments of the state government, and all counties, cities, towns, and villages shall use the standard of time prescribed in subsection (a) hereof.

(c) All persons operating or maintaining places of business or engaged in business activity shall use the standard of time prescribed in subsection (a) hereof.

Section 2. Effective Date. Insert effective date.

1. The bracketed language is designed for those states wishing to use daylight saving time. It should be emphasized that if uniformity is to be achieved, it is essential that the two dates shown be specified. States located in more than one time zone would have to revise this section to identify and refer to the two zones.
Equality of educational opportunity is of critical importance in a democratic society dedicated to the proposition that all persons should be afforded an opportunity to develop their potentialities to the fullest. It assumes great urgency in a technological society in which employment opportunities are becoming progressively more limited to persons with professional and technical skills.

The children living in the slums of the central cities and in depressed rural areas stand out as the groups of young people most likely to be handicapped by inadequate educational opportunity. In contrast, children residing in the wealthy school districts usually are the beneficiaries of a superior educational environment both in the home and in the school.

In an effort to equalize educational opportunity, most States have adopted foundation type programs in which the amount of State aid for general school purposes received by a local school district is the difference between a fixed dollar amount per pupil estimated to underwrite the cost of a "basic" educational program and the dollar estimate of a reasonable local contribution toward meeting these requirements. This approach, however, can bring about equality of educational opportunity only to the extent that all districts have roughly the same proportion of children who are relatively "cheap" to educate and of those who are relatively expensive to educate, and only if all school districts can compete in the educational market place on even terms for the services of qualified teachers.

To the extent that these requirements do not prevail, the typical foundation program fails to provide equal educational opportunity because a poor district must incur greater instructional costs in order to raise its student body to the general educational level. It should be noted also that because the typical State foundation grant for education is tied to fixed dollar limits, the amount of State aid provided local school districts often fails to keep pace with steadily rising expenditure requirements. This lag forces local school districts to place increasing reliance on their own tax sources in order to finance that portion of the school budget not covered by foundation aid. In this situation the wealthy district is obviously in a better position to maintain high quality education than the poor district.
Because the typical State foundation program is presumed to cover the basic costs of education, it is often assumed that the amount of money spent by a school district in excess of this general level goes for educational "frills." This assumption is highly questionable. It is more logical to assume that the wealthier school districts use their resources to obtain the services of a large number of superior teachers and to provide them with better than average facilities.

The proliferation of special State and Federal aid programs is also working to the advantage of school districts with untapped tax resources because these programs are usually the straight matching type that do not take into account differences in fiscal capacity or achievement levels. The wealthier States and local districts, for example, have been able to reap most of the benefits bestowed by the National Defense Education Act (in contrast to the 1965 enactment) because they were in the best position to match Federal dollars. From the standpoint of equalizing educational opportunity, the net effect of these special developments is to aggravate a bad situation.

Whereas under most programs the combination of State aid and varying local resources typically produces higher public expenditure in the high income district, equal educational opportunity requires precisely the reverse. This can be realized only if State aid formulas are explicitly designed to include in their measure of need the higher cost of educating students from underprivileged environments. Thus, with respect to both general grants and special educational aids, the States can work in the direction of equal educational opportunity by structuring these programs so as to take into account, in addition to the traditional need and ability factors, the greater costs incurred in educating the economically and socially deprived children.

Draft legislation designed to realize these objectives will be included in subsequent editions.
## Draft Bills Implementing ACIR Recommendations

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<td>13. Areawide Vocational Education Program in Metropolitan Areas</td>
<td>---  ---  ---  X  ---</td>
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<td>14. Adoption of Codes by Reference</td>
<td>---  ---  X  X  ---</td>
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<td>15. Regional Councils of Public Officials</td>
<td>---  ---  ---  ---  ---</td>
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<tr>
<td>16. Urban Renewal and Public Housing</td>
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See explanation of symbols at end of table.
III. Other Intergovernmental Problems

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<tr>
<td></td>
<td>National</td>
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</table>

1. Office of Local Affairs ........ X  X  ---  X  X
2. State Assistance for Intergovernmental Cooperation ........ X  ---  ---  ---  ---
3. State Water Resources Planning and Coordination --- X  X  X  X
4. State and Local Government Retirement Systems ........ X  ---  X  X
5. Local Government Residual Powers ................. X  ---  ---  ---  X
6. Barriers to Intergovernmental Cooperation .......... ---  ---  ---  ---  ---
7. Optional Forms of County Government ............... ---  ---  ---  ---  ---
8. Interlocal Cooperation X  X  X  X  X
9. Voluntary Transfer of Functions between Municipalities and Counties ........ X  X  X  X
10. Supervision of Special District Activities ........ ---  X  X  X

See explanation of symbols at end of table.
### ENDORSEMENT OF STATE LEGISLATIVE AND POLICY RECOMMENDATIONS OF THE ACIR, Continued

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<td>Governors'</td>
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<td></td>
<td>Conference</td>
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</table>

11. Creation and Consolidation or Dissolution of Special Districts

| Procedure | --- | --- | X | X | X |

12. Legislative Apportionment Procedure

| --- | --- | X | X | --- |

13. General Public Assistance

| --- | --- | X | X | --- |

14. State Technical Services for Local Government

| --- | --- | --- | --- | --- |

15. Uniform Time Law

| --- | --- | --- | --- | --- |

16. Fiscal Measures for Equalizing Educational Opportunities for Economically and Socially Deprived Children

| --- | --- | --- | --- | --- |

--- Endorsed.

--- Either not specifically considered or rejected.


1. Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D. C., 20575. Multiple copies of items marked with asterisk (*) may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C., 20402.
<table>
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<td>A-16</td>
<td>Transferability of Public Employee Retirement Credits Among Units of Government.</td>
<td>March 1963</td>
<td>92p.</td>
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<tr>
<td>A-17</td>
<td>The Role of the States in Strengthening the Property Tax.</td>
<td>June 1963</td>
<td>(2 volumes), printed ($1.25 each)</td>
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<tr>
<td>A-19</td>
<td>The Role of Equalization in Federal Grants.</td>
<td>January 1964</td>
<td>238p.</td>
<td>offset and a supplement, Grant-in-Aid Programs Enacted by the 2nd Session of the 88th Congress.</td>
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<tr>
<td>A-23</td>
<td>The Intergovernmental Aspects of Documentary Taxes.</td>
<td>September 1964</td>
<td>29p., offset</td>
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<td>A-27</td>
<td>Factors Affecting Voter Reactions to Governmental Reorganization in Metropolitan Areas.</td>
<td>January 1965</td>
<td>253p., printed ($1.50)</td>
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<tr>
<td>M-15</td>
<td>Measures of State and Local Fiscal Capacity and Tax Effort.</td>
<td>October 1962</td>
<td>150p., printed ($1.00)</td>
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<tr>
<td>M-21</td>
<td>Performance of Urban Functions: Local and Areawide.</td>
<td>September 1963</td>
<td>283p., offset ($1.50)</td>
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