HOUSE . . . . . No. 7 4 3 4

The Commonwealth of Massachusetts

LEGISLATIVE RESEARCH COUNCIL

Report Relative to

COUNTY HOME RULE

FOR SUMMARY, SEE
TEXT IN BOLD FACE TYPE

August 29, 1973
ORDERS AUTHORIZING STUDY

(House, No. 5414 of 1972)

Ordered, That the Legislative Research Council be directed to investigate and study the subject matter of current House document numbered 2639, establishing procedures for the adoption of home rule charters by counties, and to file the results of its statistical research and fact-finding with the clerk of the house of representatives from time to time but not later than the last Wednesday of February, nineteen hundred and seventy-three.

Adopted:

By the House of Representatives, with an amendment, April 6, 1972.

By the Senate, in concurrence, April 10, 1972.

(House, No. 6057 of 1973)

Ordered, That the time be extended to the third Wednesday in June of the current year wherein the Legislative Research Council is required to report on its investigation and study relative to home rule charters for counties (See, House, No. 5414 of 1972).

Adopted:

By the House of Representatives, February 27, 1973

Ordered. That the time be extended to the last Wednesday of August of the current year wherein the Legislative Research Council is required to report on its investigation and study relative to home rule charters for counties of the Commonwealth (See House, No. 5414 of 1972).

Adopted:


By the Senate, in concurrence, June 26, 1973.
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LETTER OF TRANSMITTAL TO THE
SENATE AND HOUSE OF REPRESENTATIVES

To the Honorable Senate and House of Representatives:

LADIES AND GENTLEMEN: — The Legislative Research Council submits herewith a report prepared by the Legislative Research Bureau pursuant to the joint order, House, No. 5414 of 1972 (as amended), relative to establishing procedures for the adoption of home rule charters by counties, as proposed in a petition of former Representative, now Senator, Chester G. Atkins of Middlesex and Representative Paul H. Guzzi of Newton (see House, No. 2639 of 1972). To give more balance to the study, its scope has been expanded to include alternative approaches suggested by other "county home rule" proposals in recent years.

The Legislative Research Bureau is restricted by statute to "statistical research and fact-finding." This report therefore contains factual material only, without recommendations by that Bureau. It does not necessarily reflect the opinions of the undersigned members of the Legislative Research Council.

Respectfully submitted,

MEMBERS OF THE LEGISLATIVE RESEARCH COUNCIL

SEN. ANNA P. BUCKLEY of Plymouth, Chairman
REP. JOHN F. COFFEY of West Springfield, House Chairman
SEN. JOSEPH B. WALSH of Suffolk
SEN. JOHN F. PARKER of Bristol
SEN. WILLIAM L. SALTONSTALL of Essex
REP. JAMES L. GRIMALDI of Springfield
REP. PAUL J. CAVANAUGH of Medford
REP. RUDY CHMURA of Springfield
REP. SIDNEY Q. CURTISS of Sheffield
REP. HARRISON CHADWICK of Winchester
REP. ALAN PAUL DANOVITCH of Norwood
REP. WILLIAM H. RYAN of Haverhill
LETTER OF TRANSMITTAL TO THE LEGISLATIVE RESEARCH COUNCIL

To the Members of the Legislative Research Council:

The joint order, House, No. 5414 of 1972 (as amended) directed the Legislative Research Council to "investigate and study the subject matter of current House document numbered 2639, establishing procedures for the adoption of home rule charters by counties". The Legislative Research Bureau submits such a report herewith. Its scope and content have been determined by the statutory provisions which limit Bureau output to factual reports without recommendations by either the Council or Bureau.

The preparation of this report was the primary responsibility of James H. Powers of the Bureau staff.

Sincere appreciation is extended to the National Association of Counties, to the county commissioners of Massachusetts, and to the legislative research and reference agencies of the other states for their generous assistance in this study.

Respectfully submitted,

DANIEL M. O' Sullivan, Director
Legislative Research Bureau
The report is submitted under a joint order of the 1972 General Court, recommended by the Joint Committee on Counties, which directed the Council to study county home rule measures sponsored by Senator Chester G. Atkins of Acton and Representatives Paul H. Guzzi of Newton and John A. Businger of Brookline (House, Nos. 2639 and 2450 of 1972, refiled in 1973 as Senate, Nos. 268 and 269).

The first of these measures (House, No. 2639 of 1972, refiled as Senate, No. 269 of 1973) proposes a general law which would permit the voters of any county to elect a 15-member charter commission to draft and submit a home rule charter to the county voters at the state election following that at which the members of the commission were elected. A county which adopted a home rule charter would be allowed to amend it later, by voter referendum, on recommendation of its county legislative body or of another elected charter commission. A county which adopted a home rule charter would acquire broad legislative powers relative to its own organization, finances, administration, and functions, similar to the home rule powers granted cities and towns by the Municipal Home Rule Amendment of 1966 (Article 89) to the State Constitution.

In an opinion to the Legislative Research Bureau, the Attorney-General's Department has advised that the General Court now possesses the power to pass a County Home Rule Act under Section 8 of the Municipal Home Rule Amendment, which authorizes the Legislature to grant whatever powers it deems appropriate to "metropolitan and regional entities." Counties are the oldest form of regional government in Massachusetts.

The second measure sponsored by Senator Atkins and Representatives Businger and Guzzi, would provide county home rule by means of an amendment to the State Constitution, modeled on the present Municipal Home Rule Amendment. These proposals would change the face and status of county government in Massachusetts.
radically by permitting counties which adopted charters to determine their own governmental structures within certain limits, and to create their own legislative bodies with authority to adopt their own budgets and to levy taxes.

Legal Status, Functions and Costs

Massachusetts has had county governments since 1643. In Massachusetts, as in other states, counties were created primarily as quasi-municipal corporations for the administration of "state" functions, such as the courts and court-related activities, registries of probate and of deeds, jails and houses of correction, taxation, certain election law activities, certain public works of regional import, and parks and reservations. In the present century, general and special laws have added eleven other activities to the list of county functions, namely:

1. **Agricultural and natural resources**, including agricultural schools (1912), agricultural aid programs (1918), reclamation work (1918), and conservation programs (1967);
2. **Hospitals and clinics**, including tuberculosis sanatoria and clinics (1913), general hospitals (1915), chronic disease hospitals (1961), and homes for the aged (1961);
3. **Other public health services**, such as county health departments (1926), nursing departments (1955), mosquito control (1930), mental health programs (1961), and drug abuse information centers (1968);
4. **Child care assistance**, (1964);
5. **Training schools** for local police officers and county correctional institution officers (1926), and for local firefighters (1958);
6. **Other public safety services**, including police (1938) and fire radio networks (1958), fire fighting equipment loans to towns (1939), fire patrol planes (1949), civil defense (1950), and a bureau of criminal investigation (1950);
7. **County airports** (1945);
8. **A group insurance program** for employees of counties and certain local governments (1955-1956);
9. **A retirement system** for employees of counties (1911) and certain local governments (1945);
10. **Collective purchasing programs**, for joint purchasing by counties and other political subdivisions (1971);
(11) Miscellaneous planning, promotional and developmental activities (1939).

Despite these enlarged responsibilities, Massachusetts counties remain essentially state administrative districts. Massachusetts has made the municipality its fundamental unit of local government, and has looked to regional service districts rather than to counties for the delivery of local government services on a regional basis.

Total authorized county budget expenditures for the calendar year 1972 were about $109.1 million, to which must be added slightly over $8.3 million of quasi-county judicial expenditures included in the annual appropriation act for the state’s judicial branch, for a grand total of about $117.4 million.

County Government Structure

Massachusetts county government has always been based on complex decentralization and diffused political and managerial responsibility. Thus, county activities are directed variously (a) by officers elected by the voters of the county, and (b) by appointed officers.

The chief executive body of county government (except in Suffolk County) is the elected board of county commissioners; however, this board lacks effective day-to-day control over significant county activities. Other elected executive officers include the sheriff, the district attorney, the register of deeds, the register of probate, and the county treasurer.

The “judicial branch” of county government, including elected county clerks of court, gubernatorially-appointed clerks of district courts, and the judiciary appointed by the Governor with the consent of the Executive Council, is a “county” activity in name and a “state” structure in fact.

Massachusetts counties possess no legislative power or legislative body comparable to the town meeting which brings unity of control to the highly decentralized town form of government. Such limited central control as does exist is based wholly on the General Court which annually enacts the budgets of 12 of the 14 counties, authorizes all county capital outlays and regulates the number and type of county agencies and activities. The budgets of the two “city-county” exceptions of Nantucket and Suffolk are provided for the most part by the municipal governments of Nantucket and Boston, respectively.
Character of Present 14 Counties

Generally speaking, one of the 14 counties is entirely urban in character (Suffolk), five are mostly urban and suburban (Bristol, Essex, Middlesex, Norfolk, and Plymouth), four are entirely rural or are non-urban seashore counties (Barnstable, Dukes, Franklin and Nantucket), two are mostly rural (Berkshire and Hampshire), and two include territory nearly equally divided between urban and suburban communities on one hand, and rural communities on the other (Hampden and Worcester). Of the 14 counties, two are "city-counties" without the standard type of board of county commissioners: in the island Town and County of Nantucket, the board of selectmen act as county commissioners; and in Suffolk County, all of whose costs are paid by the City of Boston, the Mayor and City Council of Boston perform the duties of county commissioners in most instances.

Definition and Types of County Home Rule

Definition of Home Rule

For the purposes of this study, county "home rule" is defined as the autonomy of county governments within the sovereign state over all purely county matters, whether established by constitutional or statutory provisions.

Under this definition, "home rule" can be achieved on a positive basis through constitutional or statutory provisions which grant counties the freedom to formulate, adopt and revise their own charters without subsequent legislative approval. Or, "home rule" may be approached on a negative basis, by restricting the power of the state legislature to pass special laws relative to individual counties without either the initial or subsequent agreement of the county concerned.

Under either approach there arises the necessity of differentiating between matters of "local concern" and those of "statewide concern" which remain with the state legislature. In practice, the courts must frequently make this distinction because most home rule provisions are broad and indefinite. Model constitutional provisions proposed by the National Municipal League and the Federal Advisory Commission on Intergovernmental Relations place the burden of this differentiation primarily on the state legislature through positive enactments designating areas of state concern.
Types of Home Rule

Four types of county home rule are recognized, based on (a) the scope of home rule power granted to counties, and (b) the extent of county freedom from reliance upon the state legislature for such powers. These four types of home rule include three “positive” forms which vest charter-making and other legislative powers in counties, namely: (1) self-executing constitutional home rule, (2) permissive constitutional home rule, and (3) legislatively-granted home rule. In addition, a fourth “negative” type of home rule restricts the state legislature without according “positive” powers to counties.

1) Self-Executing Constitutional Home Rule. Self-executing or “mandatory” constitutional home rule is deemed to be the strongest form of home rule. Under it, counties are granted a “right” of self-government in purely county matters which is not wholly dependent upon the will of the state legislature. The home rule principle in the state constitution grants powers of self-government to counties, while limiting the power of the state legislature to act in county matters except by (a) special laws requested by the county concerned, or (b) general laws applicable to all counties or to a class of two or more. The constitution may spell out charter-making procedures in detail, or may require the legislature to pass general laws furnishing home rule to counties.

Self-executing home rule provisions vary greatly from state to state. However, most of them follow one of two divergent approaches in respect to the philosophy and manner of home rule grant, namely: (a) the more common “instrument of grant” approach, reflected in the old Model State Constitution originally proposed by the National Municipal League in 1921; and (b) the “instrument of limitation” approach embodied in the model municipal constitutional proposals of the American Municipal Association (1953), the new Model State Constitution of the National Municipal League (1963), and “residual powers” proposal of the Federal Advisory Commission on Intergovernmental Relations (1963).

The former and older of these two approaches is based upon the “classical” concept of the home rule charter as an “instrument of grant” which must spell out the desired home rule powers, on the basis of a constitutional separation of powers between the county and state governments. The latter “instrument of limitation” form
of home rule, which borrows from British doctrines of prescriptive and corporate rights, emphasizes a sharing of authority and broadly "devolves" upon counties all powers of local self-government except those powers which are specifically denied or restricted by the constitution itself, by the home rule charter of the county, or by general state laws.

Currently, 17 states accord self-executing constitutional home rule powers to their counties or some of them (Alas., Colo., Fla., Ha., Ill., La., Md., Mo., Mont., N.M., N.Y., Ohio, Ore., Pa., S.C., S.D., and Wash.).

(2) Permissive Constitutional Home Rule. State constitutions with "permissive" or "non-self-executing" local home rule provisions merely authorize the state legislature to enact home rule laws delegating powers of self-government to localities, but do not impose an obligation upon the legislature so to act. Thus, home rule is said to be "a matter of legislative grace" and may be less effective from the viewpoint of the local governments than in self-executing states. However, permissive constitutional provisions frequently impose limitations on legislative enactment of special local laws similar to those imposed by self-executing home rules states.

The constitutions of eight states now authorize permissive home rule, for all or some of their counties, either by express provision or by implication in other provisions (Alas., Fla., Mass., Mich., Minn., N.J., N.C., and Tenn.). Of these states, two have constitutions which grant self-executing home rule powers to certain counties, while placing it on a permissive basis for others (Alas. and Fla., listed above). Only four of these permissive constitutional home rule states have enacted enabling legislation (Fla., Mich., N.C., and Tenn., some of them for certain counties only).

(3) Legislative Home Rule. The weakest of home rule forms is that which is extended to localities by statute, rather than by constitutional authorization. Such statutes may be invalidated by the courts on the grounds that the constitution does not permit the legislature to delegate legislative authority to counties; or home rule powers granted by the legislature may be amended or revoked later, or circumvented by special statutes. Two states furnish home rule authority to counties on this basis (Ky. and Tex.).

(4) Negative Constitutional Home Rule. Negative constitutional home rule provisions grant none of the foregoing "positive" powers
Instead, these provisions usually limit the powers of the state legislature by forbidding it to enact special laws applicable to a single community, without its consent. “Positive” constitutional home rule articles often include such “negative” provisions as well; but the effect of the latter is greatly modified by the “positive” context within which they are set.

Overview. Thus, when the above count of states is adjusted to avoid double counting, a total of 25 states are found to have constitutional provisions authorizing home rule for counties, while another two states do so by statute alone. To date, only 63 of the nations’ 3,106 counties and city-counties have adopted home rule charters.

In states affording home rule to their counties, county home rule powers are usually less than the powers granted to home rule municipalities, because of the county’s status as a district for the administration of state functions, such as the courts, registries of deeds and probate, district attorneys, jails, and the like. These “state” functions must usually be organized and administered in a standard way, not subject to alteration by county home rule action except as specifically permitted by statute. However, counties are given broad discretion in relation to their “regional” and “local” functions, and as to the kind of executive and legislative branch organization they desire.

Optional County Charter Systems

In conjunction with, or in lieu of, home rule charter-writing provisions, at least five states offer counties a choice of optional county charters, under statutes resembling the Massachusetts law which contains the Plan A through F schemes of government adoptable by cities (until 1966) (Ill., N.J., Pa., Utah, and Va.).

Thus, the State of New Jersey, which is often compared to Massachusetts, permits county voters a selection among four standard optional charters, including: (1) a “county executive plan,” similar to a strong mayor-council form of city government; (2) a “county supervisor plan,” a weaker version of the county executive plan so far as the powers of the elected chief executive are concerned; (3) a “county manager plan,” comparable to a city
manager government; and (4) a "board president" plan of county commission government with greater powers in the board of county commissioners than are usually found in 13 of the 14 Massachusetts counties and in the 85 to 90% of American counties having county commissioner government. While the New Jersey law provides for the election of a charter commission to recommend to county voters one of the foregoing plans, such commissions are not allowed to tailor-make their own charters.

Views Favoring and Opposing Home Rule for Massachusetts Counties

Municipal Home Rule Analogy

Proponents of county home rule argue that as county government is now providing some municipal-type services, and could be used to provide many more in the future, it is logical to extend to them home rule powers in relation to their own structure and functions, but with suitable restrictions concerning their "state" functions. These proponents cite the Municipal Home Rule Amendment of 1966 as a precedent, and consider "undemocratic" any denial to county voters of the right to adopt a charter if they desire to do so. Opponents consider this municipal home rule analogy incorrect, in that it ignores the fundamental differences between counties and municipalities in Massachusetts; they point out that "state" functions dominate county responsibilities in this state, and that Massachusetts counties do not compare with those outside New England which perform a wide range of "municipal" services in areas outside incorporated municipalities.

Promoting Rebirth of County Government

County home rule partisans predict that it will spark a "rebirth" of county government in Massachusetts, permitting counties to become effective regional governments in urban and rural areas alike. Opponents argue that county government can be revitalized and modernized by less "radical" measures than the granting of home rule charter-writing powers to counties; these more conservative measures might include the enactment of a general law making standard optional county charters available.
County Home Rule as an Alternative to County Abolition

County home rule advocates warn that county government will be abolished in Massachusetts if it is not modernized, preferably under a home rule system. They feel that such abolition would be a mistake, since the state needs the kind of "middle tier" government possible under a good county government system. Some opponents agree in part, but disagree that county home rule is the answer.

Excessive State Legislative Control of County Government

Advocates of county home rule contend that many of the abuses in county government can be traced to (a) the political interplay between the General Court and county officialdom, and (b) the absence of county legislative bodies exercising authority in relation to county affairs, and accountable to their county electorates. Opponents claim that this argument overlooks the shortcomings of county authorities; instead, these critics stress the need for tight state legislative control over counties to protect the public from the possible unwise exercises of power by county officials.

Political Responsiveness of County Government

Proponents of county home rule contend that it would make the county governments more visible and responsive to the county electorates than the present county governments, which are said to be archaic and unresponsive. Opponents deny that county administrations are all that unresponsive, and point to the electoral success of the reform movement in Middlesex County in turning "unresponsive" officials out of county office to make way for more acceptable candidates.

Regional Governmental Role of Counties

Supporters of county home rule hold that county government, bolstered by the grant of home rule powers, should be made the vehicle for regional government in the Commonwealth; they predict that such counties will prove economical and effective regional entities. Advocates of this view deplore the present tendency in Massachusetts to overlay different regional units on top of one another with overlapping boundaries; this is seen as resulting in a chaotic, irrational, costly structure of regional government which the General Court finds increasingly unmanageable.
Opponents believe that new, more flexible units of metropolitan and regional government, coterminous with the areas where their services are to be provided, should be relied upon to meet metropolitan and regional problems. They assert that the concept of a single unit of government with general powers and fixed boundaries is inadequate under modern conditions.
The Commonwealth of Massachusetts

COUNTY HOME RULE

CHAPTER I
LEGISLATIVE BACKGROUND

Origin of Study

Study Directive of 1972

This report relative to county home rule is submitted in conformity with the joint order, House, No. 5414 of 1972, reprinted on page two hereof, which required the Legislative Research Council to study the subject matter of House, No. 2639 of that year entitled “An Act Establishing Procedures for the Adoption of Home Rule Charters by Counties”. That proposed law, set forth in full in Appendix A of this Council report, was introduced jointly by Representatives Chester G. Atkins of Acton and Paul H. Guzzi of Newton. Subsequently, Representative Atkins was elected Senator from the Fifth Middlesex Senatorial District in 1972.

Proposed County Home Rule Statute. Modeled after the Municipal Home Rule Procedures Act (G.L. c. 43B), the new General Laws Chapter 38A proposed in House, No. 2639 of 1972 would authorize the election in any county of an unpaid nonpartisan 15-member charter commission to propose a new or revised home rule charter for that county. The valid signatures of at least 15 percent of the county voters, as counted at the preceding state election, would be necessary to any petition for the election of such a commission; and no new or revised county home rule charter would be effective unless ratified subsequently by the county electorate at a state biennial election. Similarly, with certain exceptions, amendments to an existing county charter could be proposed to the county electorate by concurrent action of the county “executive” and “legislative” bodies (or by the county governing body combining those functions). In addition, House, No. 2639 would allow counties which adopted home rule charters to exercise “residual” legislative powers, that is, any power or function which the General Court may lawfully confer under
the State Constitution. The power of counties to reorganize themselves, and to exercise such residual legislative authority, would be restricted by various requirements of the proposed "County Charter Procedures Act". In general, the home rule powers proposed for counties in House, No. 2639 of 1972 would be less sweeping than those currently available to municipalities of Massachusetts.

Companion Proposal for Constitutional Amendment. Accompanying House, No. 2639 was a companion measure, also introduced by Representative Atkins, proposing a legislative amendment to the Constitution authorizing any county to adopt a charter (House, No. 2450 of 1972). That proposal, patterned after the Municipal Home Rule Amendment added to the Constitution in 1966, would grant counties charter-writing and residual home rule powers essentially identical to those outlined above, but as a matter of constitutional right rather than as an exercise of state legislative grace only. House, No. 2450, which is reprinted in Appendix B of this report, proposed also to curb the power of the General Court to enact "special bills" applicable to but one county, and to restrict tenure in certain county offices.

Legislative Action. Both of the foregoing county home rule proposals were referred to the Joint Committee on Counties, which held a public hearing on them on January 31, 1972.

At that hearing, proponents of these two measures, including Representatives Atkins and Guzzi, and spokesmen for the Citizens for Middlesex County, urged such home rule for counties in order to make their governments more visible and more responsive to the will of county electorates, and more economical and effective structurally and functionally as regional governmental entities. Proponents criticized present-day county governments as "archaic" and "unresponsive" to their electorates, and predicted that county government would be abolished in Massachusetts if it is not reformed. Some county home rule proponents expressed the view that the proposed constitutional amendment in House, No. 2450 was "premature", and that it would suffice at this time for the General Court to pass only the statutory home rule measure,

House, No. 2639; in their opinion, the General Court possesses adequate constitutional authority now to write such a county home rule law without need of further constitutional amendments.

Opponents of House, Nos. 2450 and 2639 of 1972 denied that county officials are unresponsive to their electorates, and argued that it would be unwise for the General Court to diminish its present degree of control over county government by yielding to "home rule" pleas. Critics questioned whether the factors cited as grounds for conferring home rule powers on municipalities are valid as applied to counties, given the role of counties as vehicles for administering the courts and other "state" functions. At least one opponent denounced home rule in any form as a "fraud" and forecast that its application to counties would be a "sham". Less extreme critics felt that the ills of county government could be corrected by steps short of an outright home rule grant.

Subsequently, on April 5, 1972, the Joint Committee on Counties recommended adoption of the joint order, House, No. 5414, directing the Legislative Research Council to study the subject-matter of House, No. 2639 proposing statutory home rule for the 14 counties of Massachusetts. With a minor amendment changing the reporting date of the study, the joint order was adopted by the House of Representatives on April 6, 1972 and by the Senate, in concurrence, on April 10, 1972. Later joint orders adopted by the two branches, reprinted on page two of this report, extended the aforesaid reporting date to accommodate the workload of the Legislative Research Bureau (House, Nos. 6057 and 7063 of 1973).

On recommendation of the Joint Committee on Counties, the "constitutional" county home rule proposal, House, No. 2450 of 1972, was referred by the two branches to the House Committee on Counties on July 9, 1972, where it died without a report from the latter committee.

*Legislative Developments in 1973*

Both of the 1972 county home rule measures were reintroduced into the 1973 General Court by Senator Chester G. Atkins of Middlesex and Representatives Paul H. Guzzi of Newton and John A. Businger of Brookline, acting as co-sponsors, and were referred to the Joint Committee on Counties for a hearing which was held on February 13, 1973.
Thereafter, on April 26, 1973, that committee recommended that the proposed statutory county home rule measure, reprinted as Senate, No. 269 of 1973, ought not to pass; and it gave a like negative report on April 30, 1973, relative to the constitutional county home rule proposal, which had been reprinted as Senate, No. 268 of 1973. These reports were accepted by the Senate on that latter date.

**Study Scope and Procedure**

**Scope of Study**

To give a more balanced presentation of the county home rule issue, the scope of this report has been extended beyond the confines of the single proposal for statutory county home rule in House, No. 2639 of 1972 (reprinted as Senate, No. 269 of 1973), to include an examination of the various forms of constitutional home rule currently available to counties in other states and proposed for Massachusetts counties in recent years. Such an expansion of the coverage by this study is appropriate in the light of the "companion" measure to the foregoing, which sought to incorporate county home rule into the State Constitution (House, No. 2450 of 1972, reintroduced as Senate, No. 268 of 1973).

Accordingly, this report discusses county home rule in the three following chapters concerned, respectively, with: (a) the historical, organizational, functional and cost aspects of county government in Massachusetts; (b) county government and home rule practices elsewhere, including the types of county home rule systems in effect, and optional charters made available to counties; and (c) the content, technical aspects and pros and cons of proposals to grant home rule powers to Massachusetts counties to write their own charters or, at least, to adopt optional charters made available by the Legislature.

In the preparation of this report, recourse was had to past studies of county government published by the Legislative Research Council, including those relative to (a) the Organization and Apportionment of Expenses of Suffolk County (House, No. 3030 of 1958, 48 pp.), (b) County Government in Massachusetts (House, No. 3131 of 1963, 167 pp.), and (c) Regional Government (House, No. 4988 of 1970, 136 pp.). The limited time afforded for the writing of the following text precluded a comparably exhaustive treatment herein of some aspects of county government, for which
a more summary presentation appears sufficient for the purposes of this document. In examining the philosophy, technical features, and pros and cons of home rule, this report draws on two earlier relevant studies of the Legislative Research Council, — *Municipal Home Rule* (Senate, No. 950 of 1965, 135 pp.), and *Revising the Municipal Home Rule Amendment* (Senate, No. 1455 of 1972, 217 pp.).

**Study Procedure**

To obtain Massachusetts background information for this study, the Legislative Research Bureau staff conferred or corresponded with: (a) Mr. Lawrence P. Smith, Research Coordinator to the Joint Committee on Counties; (b) Senator Chester G. Atkins of Middlesex, and Representatives Paul H. Guzzi of Newton and John A. Businger of Brookline, legislative sponsors of the county home rule measures immediately involved in the study directive to the Legislative Research Council; (c) Attorney Alvin Levin of Lincoln, and of the Citizens for Middlesex County, who drafted those measures; (d) state agencies having a jurisdictional or other interest in county government in the Commonwealth, including the Departments of the Attorney General, State Secretary, Community Affairs, and Corporations and Taxation; (e) the boards of county commissioners of the several counties; and (f) interested civic organizations and individuals in Massachusetts. In this connection, the Attorney General responded to a request of the Legislative Research Bureau for his opinion as to the constitutionality of the proposal in House, No. 2639 of 1972.

Factual confirmation and views as to county home rule practices in the other states and territories were supplied by the legislative research and reference agencies, or by other appropriate departments of those jurisdictions, in response to questionnaires and letters of the Massachusetts Legislative Research Bureau. Extensive materials on this score were also provided by the National Association of Counties and by the Federal Advisory Commission on Intergovernmental Relations, and other information was furnished by the Council of State Governments, at the request of that Bureau.

To the foregoing officials, agencies, organizations and individuals who cooperated so generously in this survey, the Legislative Research Bureau expresses its appreciation.
CHAPTER II
MASSACHUSETTS COUNTY GOVERNMENT

Origin and Formation of Massachusetts Counties

English Background

County government originated in Great Britain in Anglo-Saxon times when counties or shires were established for purposes of military defence, local law enforcement and land law administration. Subsequently, the activities of English counties also included judicial administration, the assessment and collection of taxes, highway construction and maintenance, forest administration, and representation in the House of Commons in Parliament. In their formative phase, these counties experienced little central supervision by the Crown. However, this “home rule” phase was replaced by strong central control under the Norman Kings, and then by the present control of Parliament. 2

By 1620, the English county had evolved as an instrumentality for local administration of (a) specific central government functions, and (b) key local government functions in areas outside chartered cities, boroughs and towns. There had also existed, for over two centuries, chartered county-boroughs which combined county functions and responsibilities with the powers, rights and duties of chartered municipal corporations, and were precursors of the American city-county. From this English experience the settlers in the 13 American colonies developed their own county government systems.

Early Formation of Counties 3

The commercially oriented charter granted to the Massachusetts Bay Company in 1628 vested judicial as well as legislative responsi-

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1 This chapter reprints, in revised and updated form, Chapter II of the Legislative Research Council report entitled County Government in Massachusetts, House, No. 3131 of 1963, 167 pp.; at pp. 20-32. That report is now out of print.
In the General Court. As the Massachusetts Bay Colony expanded, the General Court found these judicial duties intruding increasingly upon its legislative work. Accordingly, it enacted statutes in 1635-1639 delegating many of those judicial responsibilities to magistrates appointed to preside over (a) "inferior" or "quarter sessions" courts located in Boston, Cambridge, Ipswich and Salem, with both civil and criminal jurisdiction, and (b) intermediate courts of higher jurisdiction from which appeal lay directly to the General Court itself. Each quarter session court was authorized to appoint its own clerk, sheriff and other officers.

In 1643 the General Court organized the 30 towns of Massachusetts Bay into four counties based on the English model, with the administration of justice and other county business being made the responsibility of judicial officers. These counties were (1) Essex, (2) Middlesex, (3) Suffolk, and (4) the "Old" Norfolk county of the Merrimack River area (which was partitioned in 1679-80 between Essex County, Massachusetts, and the new Province of New Hampshire). By 1820, Massachusetts had been divided into the two States of Massachusetts and Maine, and 24 counties had been created by the General Court, including "Old" Norfolk (see Table 1 below).

_Evolution of County Government Functions_  
From 1643 to 1800, the county governments were concerned primarily with the administration of the courts and with such court-related responsibilities as the maintenance of jails, the recording of deeds and other legal instruments, and the probate of wills and bequests. Shortly after their creation, the counties also acquired some law enforcement functions, which were later diminished or taken away. They became responsible for laying out trans-county highways and bridges, and supervising maintenance of these facilities by the towns. Counties were given authority over the preparation of tax lists; and a 1785 law established procedures for appeals by property owners to the county court for property tax abatements. The licensing of ferries and certain other commercial activities was placed in the hands of county authorities after 1694. And minor election law functions were assigned to county sheriffs by the Constitution of 1780. For a century, counties also constituted militia districts for defence against the Indians, the Dutch and the French.
TABLE 1. 24 Counties Incorporated by the General Court, 1643-1816

<table>
<thead>
<tr>
<th>Name of County</th>
<th>Year of Incorporation</th>
<th>Name of County</th>
<th>Year of Incorporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Essex</td>
<td>1643</td>
<td>13. Cumberland²</td>
<td>1760</td>
</tr>
<tr>
<td>2. Middlesex</td>
<td>1643</td>
<td>14. Lincoln²</td>
<td>1760</td>
</tr>
<tr>
<td>3. &quot;Old&quot; Norfolk¹</td>
<td>1643</td>
<td>15. Berkshire</td>
<td>1761</td>
</tr>
<tr>
<td>4. Suffolk</td>
<td>1643</td>
<td>16. Hancock²</td>
<td>1789</td>
</tr>
<tr>
<td>5. York²</td>
<td>1658</td>
<td>17. Washington²</td>
<td>1789</td>
</tr>
<tr>
<td>6. Hampshire</td>
<td>1662</td>
<td>18. Norfolk</td>
<td>1793</td>
</tr>
<tr>
<td>10. Dukes⁴</td>
<td>1695</td>
<td>22. Franklin</td>
<td>1811</td>
</tr>
<tr>
<td>11. Nantucket⁴</td>
<td>1695</td>
<td>23. Hampden</td>
<td>1812</td>
</tr>
</tbody>
</table>

¹Partitioned between Province of New Hampshire (1679) and Essex County (1680).
²Area annexed by Massachusetts in 1658-1691 as York County, and subsequently divided into a total of nine counties by 1816. Separated from Massachusetts in 1820, as State of Maine.
³Incorporated as counties in 1685 by General Court of Plymouth Colony (1620-1692). Continued as counties when that colony was annexed by Massachusetts Bay Colony in 1692.
⁴Part of the Province of New York from 1664 until its annexation by Massachusetts Bay Colony in 1692.

In the Nineteenth Century, county authorities were empowered to appoint enginemen in communities which refused to do so (1824); to act on dog damage complaints (1864); to resolve complaints that municipal agencies had failed to suppress health nuisances (1866); and to construct and operate county training schools for truant children (1873-81). Probation law duties were transferred from municipal to county authorities (1891). And the first of many special laws was adopted creating a state park to be supported jointly by state and county government, and providing for county operation of park and recreational reservations (1898).
With the turn of the present century, general and special laws have added eleven further activities to the list of county functions namely:

1. *Agricultural and natural resources*, including agricultural schools (1912), agricultural aid programs (1918), reclamation work (1918), and conservation programs (1967);

2. *Hospitals and clinics*, including tuberculosis sanatoria and clinics (1913), general hospitals (1915), chronic disease hospitals (1961), and homes for the aged (1961);

3. *Other public health services*, such as county health departments (1926), nursing departments (1955), mosquito control (1930), mental health programs (1961), and drug abuse information centers (1968);

4. *Child care assistance* (1964);

5. *Training schools* for local police officers and county correctional institution officers (1926), and for local fire fighters (1958);

6. *Other public safety services*, including police (1938) and fire radio networks (1958), fire fighting equipment loans to towns (1939), fire patrol planes (1949), civil defense (1950), and a bureau of criminal investigation (1950);

7. *County airports* (1945);

8. *A group insurance program* for employees of counties and certain local governments (1955-1956);

9. *A retirement system* for employees of counties (1911) and certain local governments (1945);

10. *Collective purchasing programs*, for joint purchasing by counties and other political subdivisions (1971);


Despite these enlarged responsibilities, the counties of Massachusetts remain essentially state administrative districts. Their few purely local government functions are largely staff services provided to the cities, towns and service districts. Massachusetts has made the municipality its fundamental unit of local government, expanding the responsibilities and authority of its cities and towns in a manner which makes the evolution of county functions seem insignificant by comparison. Furthermore, Massachusetts cities and towns have tended for many reasons to look to the regional service districts, rather than to the counties, for desired local government services on a regional basis.
Total authorized county budget expenditures for the calendar year 1972 were about $109.1 million, to which must be added slightly over $8.3 million of quasi-county judicial expenditures included in the annual appropriation act for the state's judicial branch, for a grand total of about $117.4 million.

Today, the old activities of counties with regard to the courts, registries of deeds and probate, highways and maintenance of county buildings account for about five-eights of all county expenditures. Of smaller scope financially are the operation of hospitals, agricultural schools, police and fire-training schools, and other health, educational and agricultural programs which in the aggregate reflect another two-eights of all county expenditures; leaving only one-eighth of such total expenditures for debt service, parks and other miscellaneous purposes.

Currently, the administration of these county activities is entrusted to 157 elected officials (excluding county employee representatives on retirement boards and group insurance advisory committees), and an estimated 7,800 appointed officers and employees of county or quasi-county state agencies. The latter figure must be estimated because there is no single central registry of all county personnel; moreover, difficulties arise in determining whether certain personnel paid by the State are really “state” or “county” employees.

**County Government Structure**

Massachusetts county government has always been based on complex decentralization and diffused political and managerial responsibility. Thus, county activities are directed variously (a) by officers elected by the county voters, and (b) by appointed officers.

The counties possess no legislative power or legislative body comparable to the town meeting which brings unity of control to the highly decentralized town form of government. Such limited central control as does exist is based wholly on the General Court which annually enacts the budgets of 12 of the 14 counties, authorizes all county capital outlays and regulates the number and type of county agencies and activities. The budgets of the two “city county” exceptions of Nantucket and Suffolk are provided
for the most part by the municipal governments of Nantucket and Boston, respectively.

Thus, the structure of Massachusetts county government reflects the presence of only the latter two of the three traditional branches of American government—legislative, judicial and executive.

Judicial Branch of County Government
The “judicial branch” of county government in Massachusetts is difficult to delineate precisely, because all courts of the Commonwealth are technically “state courts”, although they function on a county basis, are partly staffed by county employees, and in most cases are financed in whole or in part by county funds. In brief, the state judicial system by law includes: (a) seven Supreme Court justices, 46 Superior Court justices, six State Court of Appeals justices, 26 Probate Court judges, three Land Court judges, and 183 district, municipal, housing and juvenile court judges,—all of whom are appointed for life by the Governor, with Executive Council consent; (b) one Clerk of the Supreme Judicial Court for Suffolk County, and 15 county clerks of court (two in Suffolk County),—all popularly elected for six-year terms; (c) one Land Court recorder and 79 clerks of district, municipal, housing and juvenile courts, who are named for life by the Governor, with Executive Council approval; (d) one Clerk of the Supreme Judicial Court for the Commonwealth and 34 assistant county clerks of court, chosen by the Supreme Judicial Court for terms of five and three years, respectively; (e) a Reporter of Decisions, named by the Supreme Judicial Court to serve during its pleasure; and (f) miscellaneous lesser officers and employees appointed by the foregoing.

Executive Branch of County Government
The “executive branch” of county government includes administrative officers with court-related functions, as well as officials not directly or importantly concerned with judicial matters.

The most important of the county “executive” agencies is the board of county commissioners, first created in 1668, which prepares a county budget for submission to the General Court, and has charge of certain county activities and departments. In 12 of the 14 counties, this board consists of three county commissioners elected for four-year terms by the county voters. In the thirteenth
county of Nantucket, which is also a town, the five town selectmen act as the county commissioners. In the fourteenth county, Suffolk, the duties of the county commissioners fall mainly on the mayor and city council of Boston; however, some responsibility is borne by the city councils of Chelsea and Revere, and by the board of selectmen of the town of Winthrop. As to their duties, a report of the Legislative Research Council in 1958 noted that —

The county commissioners have three distinguishable responsibilities. The first is quasi-judicial and involves such duties as receiving petitions, conducting hearings, entering formal orders in regard to land takings for highways, and authorizing alterations to bridges and railroad crossings. The second responsibility is that of serving as trustees of . . . (certain) . . . county . . . institutions. The third responsibility is administrative, involving action on county payments, and custody of county properties.¹

It is difficult to indicate the varied nature of activities throughout the counties as a whole. Although authorizing legislation to conduct given functions may be in effect across the board, those functions are not necessarily developed in the same degree in all counties. Thus, a county health or nursing department may be of importance in a county consisting of towns which lack adequate resources to maintain such departments on their own. In an adjacent county, however, no such functional county activity has been required or developed.

This variability is indicated in the following summary which lists similar types of county functions in sequence.

The county commissioners of 12 counties, when serving as county commissioners or in their institutional or reservation trustee capacity, have supervision and control of: (1) a county engineering department (six counties); (2) a board of trustees for county aid to agriculture (ten counties); (3) a county agricultural school (three counties); (4) various state parks and reservations (six counties); (5) a county beach commission (one county); (6) a county conservation program (one county); (7) a county industrial farm (one county); (8) hospitals, including a general hospital or hospitals for chronic diseases, tuberculosis or the aged (eight counties); (9) a

health or nursing department (two counties); (10) mental health participation programs (three counties); (11) programs of aid to certain dependent children (two counties); (12) a training school for firemen (one county); (13) various special fire fighting programs (eight counties); (14) training schools for municipal police officers and for officers of county correctional institutions (three counties); (15) police radio systems (four counties); (16) county promotional programs (eight counties); and (17) county planning and development programs (six counties).

To conduct these activities, the county commissioners appoint the principal officers, and in most instances the staff as well. They also have partial approval power over staff recruitment by the elected county treasurer and the elected register of deeds, although neither of them is under their control. The county commissioners in counties other than Suffolk make regulations for the management of the county jails and houses of correction by the sheriff, and must inspect these institutions twice yearly; but in other respects, the sheriff is free of their control. Hence, the county commissioners resemble somewhat town boards of selectmen in that they control some—though not all—of the important county departments.

Independent of such supervisory control by the county commissioners are another 11 types of county officers and agencies, as follows:

1. **The Sheriff.** This official, first authorized on an appointive basis in 1643, is now elected by county voters for a six-year term. Since 1699, he has been jailer and master of county penal institutions other than county industrial farms, but has no law enforcement functions. He serves as the ministerial agent of the Supreme Judicial Court and of the Superior Court when these bodies sit in his county, and he is responsible for enforcing the orders and serving civil notices of these and other courts in his county. He also performs certain minor routine election law duties.

2. **The District Attorney.** Currently, this legal officer is elected for a four-year term by the voters in each of nine districts embracing the fourteen counties of the State; in 1974, the number of district attorneys, and their districts, will increase to ten when the present Southern District is divided into two districts. One of
the present nine districts includes four counties,¹ two other districts embrace two counties each, and the remaining six districts each consist of a single county. The district attorney, whose office dates from 1807, is responsible for representing the State in the Supreme Judicial and Superior Courts in certain criminal and civil cases, and for assisting the Attorney General of the Commonwealth.

(3) County Medical Examiners. Each county medical examiner is appointed by the Governor, with Executive Council consent, for seven-year terms. He must investigate all deaths which occur in his respective district from violence, accident, occupational injury or infection, or unknown causes. The number of medical examiners and associate medical examiners districts per county ranges from three (Nantucket County) to as many as 22 in Worcester County. Most counties (10) contain from three to five such districts. The county medical examiner system was instituted in 1882, to replace a county coroner system which had proven unsatisfactory.

(4) Register of Deeds. This office was first authorized in 1715. Prior to that time, its functions formed part of the duties of an officer known as the county recorder (1639-1714). The register of deeds is now popularly elected for a six-year term in each of 21 districts within the 14 counties, to administer a registry of deeds and to act as assistant recorder of the Land Court in that district.

(5) Register of Probate. One register of probate is elected by the voters of each county for a six-year term to administer the county registry of probate and to serve as clerk of the county probate court. This office dates from 1692.

(6) County Treasurer. A county treasurer is elected for a six-year term in each of 12 counties, to be custodian of county funds, and to act as county disbursing officer and paymaster, collector of sums due, and treasurer of the county retirement system. In the two counties of Nantucket and Suffolk, the duties of county treasurer are vested in the Town Treasurer of Nantucket and the Boston City Treasurer, respectively. The first county treasurers were authorized in 1654, to serve both as the apportioners and

¹The Southern District, consisting of Bristol, Barnstable, Dukes and Nantucket Counties. Effective in 1974, this district will be partitioned into one district consisting of Bristol County alone, and a second district composed of the latter three counties.
collectors of county taxes; the former tax apportionment duty was later transferred to the county commissioners (1781).

(7) Two State Reservation Commissions. Each of these two commissions is composed of three members appointed by the Governor with the consent of the Executive Council for six-year terms, to manage state parks located in Berkshire and Worcester Counties which are supported in whole or in part by the county tax.

(8) Bristol County Chronic Disease Hospital. This institution, established in 1945, is managed by a board of three trustees who are named for three-year terms by the Governor, with the approval of the Executive Council.

(9) Board of Election Examiners. This body is responsible for examining election records and for correcting any errors it discovers therein. The judge of probate, register of probate, and county clerk of court serve as members; if one man holds two of these three offices, the sheriff serves as the third member.

(10) County Contributory Retirement Board. The management of the contributory retirement system of each county is vested in a contributory retirement board consisting of the county treasurer, an employee-representative elected for a term of not more than three years (as the county commissioners determine), and a third member chosen for a three-year term by the other two.

(11) Employees Group Insurance Advisory Committee. This committee of five members chosen by the county employees in each county advises the county commissioners in regard to the county contract for the contributory group life, health and accident insurance program for county personnel.

Constitutional Status of Counties

Governmental Structure and Functions

The Massachusetts State Constitution, adopted in 1780, accepted the system of county government then existing and implicitly requires some form of county government to be maintained under the laws of the Commonwealth.

It specifically provides that sheriffs, district attorneys, registers of probate, and clerks of courts having county-wide jurisdiction, be elected by the voters of each county for such terms of office as the General Court may determine by law. Apparently the General Court is not obliged to create or to continue these offices – other
than the office of sheriff – if it deems them unnecessary. ¹ Thus, the constitutional provision that county coroners be appointed by the Governor with the consent of the Executive Council has not been construed judicially to invalidate the action of the General Court in abolishing that office 85 years ago, since it imposes no specific duties on coroners. ²

The constitution does enumerate certain duties for the two following categories of county officials, and thus the abolition of these officers may not be possible without amendment of the state constitution, viz: (1) sheriffs, relative to the election of State Senators, the Governor, members of the Executive Council, and the Lieutenant Governor; ³ and (2) judges of probate. ⁴

Certain plural officeholding by sheriffs, district attorneys, registers of deeds, judges and registers of probate, and clerks of courts with county-wide jurisdiction is expressly forbidden. ⁵

The equal right of women to hold county office is also guaranteed by another constitutional article. ⁶

**State Legislative Control of County Government**

Finally, the constitution vests in the Legislature general power to enact laws relative to the organization, powers and duties of political subdivisions and their officers. ⁷ These laws may permit counties to lay out, widen or relocate roads, and in connection therewith to take land by eminent domain, including excess condemnation. ⁸ Apart from a brief reference to Dukes and Nantucket counties in respect to legislative reapportionment matters, the constitution establishes no named counties, county boundaries, or number of counties. ⁹ Such questions, together with the deter-


⁵ Mass. Const., Part II, c. VI, Art. II (1780); Amend. Art. VIII (1821).


mination of county functions not outlined in the constitution, the disposition of county property, and changes in county government organization, all fall within the province of the General Court. Accordingly, a report in 1958 by the Legislative Research Council on Suffolk County government observed:

Counties cannot be called municipal corporations since they are not called into being by direct participation of their inhabitants. They are "quasi-corporations" created by the General Court. Hence the Legislature can act upon counties and some county functions without any restriction upon special legislation . . . No constitutional or statutory provisions exist which permit change in county organization save with legislative sanction. There is no home rule amendment, no series of optional forms of county government, no authorization of consolidation of counties or of city county consolidation, and no statutory provision permitting consolidation of offices or functions upon the initiative of local officers. This lack of power to legislate limits the county as an independent unit of government, and defines its nature more closely as an administrative subdivision of the Commonwealth.\(^1\)

Present Fourteen Counties

The area, population, property valuation and county seats of the 14 counties now existing in Massachusetts are given in accompanying Table 2.

Generally speaking, one of the 14 counties is entirely urban in character (Suffolk), five are mostly urban and suburban (Bristol, Essex, Middlesex, Norfolk and Plymouth), four are entirely rural or are non-urban seashore counties (Barnstable, Dukes, Franklin and Nantucket), two are mostly rural (Berkshire and Hampshire), and two include territory nearly equally divided between urban and suburban communities on one hand, and rural communities on the other (Hampden and Worcester).

"Equalized" property valuations for 1973 as compiled by the State Tax Commission fixed the total property valuation of the 14 counties at $35,051,300,000.\(^2\) Of this valuation $20,874,000,000

(59.5%) represents property in the four principal counties of the Greater Boston area (Suffolk, Essex, Middlesex and Norfolk).

Each county has one “county seat” or principal “shire town”, as indicated in Table 2. However, four counties possess additional, supplementary “shire towns” shown parenthetically, mostly for regular court sittings, namely, (1) Bristol County (City of New Bedford), (2) Essex County (Cities of Lawrence and Newburyport), (3) Middlesex (City of Lowell), and (4) Worcester (City of Fitchburg).

### TABLE 2. Areas, Population and Property Valuations of the 14 Massachusetts Counties in 1973

<table>
<thead>
<tr>
<th>Name of County</th>
<th>Area (Sq. Mi.)</th>
<th>1971 Population</th>
<th>1973 Property Value (Millions)²</th>
<th>County Seat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barnstable</td>
<td>399</td>
<td>96,363</td>
<td>$1,776.0</td>
<td>Barnstable</td>
</tr>
<tr>
<td>Berkshire</td>
<td>942</td>
<td>146,735</td>
<td>964.2</td>
<td>Pittsfield</td>
</tr>
<tr>
<td>Bristol</td>
<td>556</td>
<td>436,815</td>
<td>2,190.0</td>
<td>Taunton</td>
</tr>
<tr>
<td>Dukes</td>
<td>106</td>
<td>6,157</td>
<td>180.0</td>
<td>Edgartown</td>
</tr>
<tr>
<td>Essex</td>
<td>500</td>
<td>621,236</td>
<td>4,118.5</td>
<td>Salem</td>
</tr>
<tr>
<td>Franklin</td>
<td>707</td>
<td>59,310</td>
<td>385.9</td>
<td>Greenfield</td>
</tr>
<tr>
<td>Hampden</td>
<td>621</td>
<td>460,848</td>
<td>2,440.5</td>
<td>Springfield</td>
</tr>
<tr>
<td>Hampshire</td>
<td>528</td>
<td>105,298</td>
<td>692.6</td>
<td>Northampton</td>
</tr>
<tr>
<td>Middlesex</td>
<td>829</td>
<td>1,344,474</td>
<td>9,495.0</td>
<td>Cambridge</td>
</tr>
<tr>
<td>Nantucket</td>
<td>46</td>
<td>4,235</td>
<td>90.0</td>
<td>Nantucket</td>
</tr>
<tr>
<td>Norfolk</td>
<td>398</td>
<td>605,418</td>
<td>4,759.5</td>
<td>Dedham</td>
</tr>
<tr>
<td>Plymouth</td>
<td>664</td>
<td>327,486</td>
<td>2,118.0</td>
<td>Plymouth</td>
</tr>
<tr>
<td>Suffolk</td>
<td>55</td>
<td>712,506</td>
<td>2,501.0</td>
<td>Boston</td>
</tr>
<tr>
<td>Worcester</td>
<td>1,516</td>
<td>612,860</td>
<td>3,339.1</td>
<td>Worcester</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7,867</strong></td>
<td><strong>5,539,741</strong></td>
<td><strong>$35,051.3</strong></td>
<td></td>
</tr>
</tbody>
</table>


The boundaries of the counties are sketched on the accompanying map. The governmental setup of the 14 counties by number and types of municipalities is briefly indicated in Table 3. Only Suffolk County contains more cities than towns, the ratio being three cities to one town. In all other counties, towns predominate as the favored form of municipal government. In all, there are 309 towns in Massachusetts. More than half (24) of the 42 cities of Massachusetts are located in the four counties of the Greater Boston area – Suffolk, Essex, Middlesex and Norfolk.

<table>
<thead>
<tr>
<th>County</th>
<th>Total No. of Municipalities</th>
<th>No. of Municipalities by Types</th>
<th>Number of Municipalities By Population</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Cities</td>
<td>Towns</td>
</tr>
<tr>
<td>Barnstable</td>
<td>15</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>Berkshire</td>
<td>32</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>Bristol</td>
<td>20</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>Dukes</td>
<td>7</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Essex</td>
<td>34</td>
<td>9</td>
<td>25</td>
</tr>
<tr>
<td>Franklin</td>
<td>26</td>
<td>0</td>
<td>26</td>
</tr>
<tr>
<td>Hampden</td>
<td>23</td>
<td>5</td>
<td>18</td>
</tr>
<tr>
<td>Hampshire</td>
<td>20</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>Middlesex</td>
<td>54</td>
<td>11</td>
<td>43</td>
</tr>
<tr>
<td>Nantucket</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Norfolk</td>
<td>28</td>
<td>1</td>
<td>27</td>
</tr>
<tr>
<td>Plymouth</td>
<td>27</td>
<td>1</td>
<td>26</td>
</tr>
<tr>
<td>Suffolk</td>
<td>4</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Worcester</td>
<td>60</td>
<td>5</td>
<td>55</td>
</tr>
<tr>
<td>Total</td>
<td>351</td>
<td>42</td>
<td>309</td>
</tr>
</tbody>
</table>

1 Including three “town council” towns (Agawam, Methuen and Southbridge).
Map of Counties in Massachusetts, 1973
CHAPTER III
COUNTY GOVERNMENT AND HOME RULE ELSEWHERE

Quasi-Municipal Legal Status of Counties

In general, counties are political and civil subdivisions and agents of their respective state governments, created by statute to aid, first and foremost, in the administration of certain state functions. This essentially "state" orientation of counties is not altered by the fact that they often perform functions thought of as "municipal" in those parts of their territory not included in municipalities. In comparing municipalities and counties, the Illinois Supreme Court has said that—

Municipal corporations ... are those called into existence either at the direct request or by consent of the persons composing them. Quasi-municipal corporations, such as counties ... are at most but local organizations which are created by ... law, without the consent of the inhabitants thereof, for the purpose of the civil and political administration of government, and they are invested with but few characteristics of corporate existence. They are, in other words, local subdivisions of the state created by the sovereign power of the state of its own will, without regard to the wishes of the people inhabiting them. A municipal corporation is created principally for the advantage and convenience of the people of the locality. County ... organizations are created in this state with a view to carrying out the policy of the state at large for the administration of matters of political government, finance, education, taxing, care of the poor, military organization, means of travel and the administration of justice ...\(^2\)

Hence, a county is generally vested with a limited corporate capacity, but it is a corporation in only a restricted sense unless otherwise provided by the constitution and laws of its state. Although a county is a municipal corporation in a sense, by reason of "municipal" functions delegated to it under various state laws, the courts have held that a county is nevertheless distinguishable from, and is not, a municipal corporation. The county is said to lack the municipality's double governmental and private character. Accordingly, the judiciary have tended to interpret county powers

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\(^{1}\)Sources: "Counties", Corpus Juris Secundum, 1940, XX, ss. 1-3, at pp. 753-759; McDonald, Austin F., American State Government and Administration, 3rd ed., New York, N.Y., Thomas Y. Crowell Co., 1946, 655pp., at pp. 254-255.

\(^{2}\)Cook County v. Chicago, 142 N.E. 512 (1924).
less liberally than those exercised by municipalities.

Of course, this neat, traditional legal view of counties has its exceptions. There have been instances of new counties being created by the state legislature within the territory of an existing county, on the petition of outlying residents who desired their own county government. And counties, or counties of given population or other classes, have been classified as municipal corporations in at least eight states by constitutional provision, statute, or judicial ruling.1 Such “municipal” classification enlarges the powers of those counties in regard to purely local services provided by them without diminishing their quasi-municipal status in relation to their “state” functions such as court administration.

**Organization and Functions of County Government**

**NACO Study of 1973**

This section of Chapter III, relating to the organization and functions of counties of the nation, summarizes information published earlier this year by the New County U.S.A. Center of the National Association of Counties (NACO) under the title *From America’s Counties Today – 1973.* 2 That excellent NACO study, hereinafter called the “NACO Report”, deals with county government in four chapters relating to (a) the history, population and finances of counties, (b) the structure of county government, (c) county programs and personnel, and (d) the “New County Concept” of modernized county government, embracing such aspects as county home rule, innovations in county departmental organization, and improved bases for intergovernmental relations. The NACO Report availed itself of county data published previously by the United States Census Bureau and the Federal Advisory Commission on Intergovernmental Relations.

The foregoing NACO Report enumerated 3,106 “county units” in the United States in 1973, including (a) 3,044 “unquestionable” counties, within the definition used by the United States Census

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1 *Alaska*, AS.29.78.010 (8); *Ind.*, case of *Vigo Tp. v. Know County*, 111 Ind. 170; *Mo.*, case of *State ex rel. Kinder v. Little River Drainage District*, 291 Mo. 267; *Neb.*, case of *Frickel v. Lancaster County*, 115 Neb. 506; *N.M.*, Const., Art. X, s. 3; *N.Y.*, Const., Art. IX, s. 2; *Pa.*, Const. Art. IX, s.14, and Act No. 62 of 1972; *Texas*, case of *City of Abilene v. State*, 113 S.W. 2d. 631.

Bureau, (b) 20 city-county consolidations, and (c) 42 “independent cities”, mostly in Virginia, which are not parts of any county, but which perform county-like functions within their respective territories. This NACO count includes, as counties, the “boroughs” of Alaska and the “parishes” of Louisiana, as well as the District of Columbia (regarded by NACO as an “independent city” with county functions).

In general, the NACO Report found counties to be “hamstrung by antiquated state statutes and constitutional provisions that prohibit effective action” instead of assuring more responsive county government. Accordingly, the report urged constitutional and statutory changes designed to grant counties: (a) flexibility of form, which would permit them to devise their own internal structure either under charters or general laws; (b) flexibility of function, including the means to determine the scope and extent of governmental services each county may render, subject to the recognized need for some uniformity in the standard of service delivery; and (c) flexibility of finance, carrying with it the ability to employ means of financing county government other than by the traditional and often inadequate property tax. These principles, according to advocates of the “New County Concept”, are the foundation of the county home rule movement and the right of local self-determination.¹

According to the 1970 federal decennial census, about half (1,583) of the 3,106 counties had populations of between 10,000 and 50,000, within a pattern of counties ranging from as few as 164 inhabitants (Loving, Tex.) to as many as 7,032,075 inhabitants (Los Angeles, Calif.). The NACO Report noted that over the past decade there has been a trend toward greater urbanization of counties, as rural residents drift to urban areas and as suburban communities absorb more migrants from both the rural areas and the inner cities. In territorial size, the 3,106 counties vary from as few as 45 square miles for the densely-populated County of San Francisco in California to a maximum of 88,281 square miles in the vast North Slope Borough of arctic Alaska; most counties have areas within the 300-1,000 square mile range.

¹Ibid., pp. 51-52.
County Governmental Organization

In its analysis, synopsized below, the NACO Report distinguishes three categories of county governments, namely: (a) the “plural executive” or “commission” form; (b) the “commission-administrator” or “council-administrator” form; and (c) the “council-elected executive” form. Within each such category there are many variations from county to county, even in the same state.

(a) Plural Executive Form. — The plural executive form of government prevails in 85 percent to 90 percent of the nation’s counties. It reassembles the historic form of New England town government, in that governmental powers and functions are decentralized to a number of independent elected officers and boards forming a galaxy around a central governing body. The latter county body is designated as the “board of county commissioners”1 or “board of county supervisors”2 in most (36) states, while it is known under other titles elsewhere.3 The plural executive-form of government is described by the NACO Report in these terms:

The commission county is structured along lines reminiscent of Jacksonian democracy with its large number of directly elected officers and a lack of clear focus of executive leadership.

The plural executive or commission form is the traditional form of county government. It is characterized by a number of independently elected county officials who share the policy and administrative responsibilities with the elected county board. Generally, these elected officials include: the sheriff, treasurer, attorney or solicitor, assessor, auditor, recorder or clerk, coroner, county judicial officials, and the county commissioners ... The board members of the plural executive or commission form serve as both the legislative and executive heads of government in varying degrees depending upon the number of independently elected officials sharing the executive role. There is no recognized

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2 Eight states, including some of the foregoing: Ariz., Calif., Ill., Iowa, Mich., N.Y., Va. and Wis.

3 Thirteen states, including some of the foregoing: county court (Ark., Mo., Ore., Tenn., and W. Va.); county council (Ha. and Tenn.); borough assembly (Alas.); board of freeholders (N.J.); board of revenue (Ala.); commissioners court (Tex.); commission council, parish council, and police jury (La.); fiscal court (Ky.); levy court (Del.); and quorum court (Ark.). Two more states have no county governments (Conn. and R.I.).
single administrator in this form of county government. The board’s functions are predominantly administrative as defined by state legislation, constitutional provisions, or a charter. However, county board members generally have powers to appoint certain other boards and commissions, adopt a county budget, pass resolutions, and enact ordinances and regulations as permitted under state laws. In some instances, the commission operates on a committee basis with each board member heading a committee responsible for a specific set of functions required of the county by the state constitution or by state legislation.

The majority of governing bodies of the plural executive or commission form consist of from three to five members ... who are most frequently known as Board of Commissioners.

Traditionally, the board of commissioners makes policy for the county and administers the county government as a whole. The independently elected officers each carry out the policies of the board within their own functional area.¹

Advantages of the plural executive form, cited by the NACO Report, are (1) its merger of legislative and executive functions in the county governing body eliminates the conflict inherent between separate legislative and executive branches and (2) the opportunity afforded to the county electorate to connect a specific county service with a particular elected officer directly responsible therefor. On the negative side of the ledger, the NACO Report found the plural executive form disadvantageous by reason of (1) the cumbersome long ballot occasioned by having many independent elected county officers, and (2) the obstacles posed to the development of cohesive county policies when governmental powers and responsibilities are diffused extensively under a scheme of “headless government”.

(b) Commission-Administrator Form. — Comparable to the council-manager form of city government, the commission-administrator or council-administrator form of county government features an “administrator”, “chief administrative officer”, “manager”, “controller”, “executive secretary” or “appointed county executive” who is appointed by the county governing body to oversee most aspects of county administration. The administrator usually serves at the pleasure of the county governing body, although in a few instances he is named for a fixed term.

The NACO Report has observed that –

Variations exist as to how much authority each of these administrations has and the qualifications required for the position...

Under the stronger form of the appointed county administrator plan, the governing body reserves policy making powers for itself, but appoints a professional giving him the responsibility for day-to-day county administration. The governing body, in this case, acts as a legislative body rather than taking on the traditional functions of supervising specific areas of county government. These traditional functions are performed by departments whose heads are appointed by the administrator...

The administrator generally has the authority to hire, fire, or suspend administrative personnel as well as forecast trends and recommend policies to the governing body. He also prepares county budgets for board approval and has the power to command compliance after approval.

The weaker form of the appointed county administrator type of government is found in those counties that have full-time professional administrators who are appointed to assist the governing body in its administrative functions. In contrast to the stronger form, this administrator usually does not have the full executive and appointive powers assigned to his stronger counterpart nor does he have overall responsibility for the direction of the county...

Proponents of the commission-administrator form emphasize the professional managerial focus it provides while retaining strong powers in the elected governing body which can replace the administrator if necessary. Advocates stress that the commission-administrator plan facilitates a separation of legislative and administrative functions, thus allowing the governing body to operate as a single legislative body with over-all county policy perspectives. Finally, proponents argue that the recruitment of highly professional leadership is facilitated, since the administrator need not be a resident of the county at the time of his appointment.

Critics reply that an administrator cannot provide policy leadership on important issues, crystallize public opinion, and be an effective advocate, especially if the county governing body is split politically. They point out that an administrator hired from among nonresidents of the county will require time to become familiar with county conditions. Not mentioned in the NACO Report is an

\[Ibid., \text{pp.15-16.}\]
additional major argument of opponents of "manager government", who challenge the assumption of proponents that the administrator is likely to be fully subordinate to the county governing body in fact as well as in theory. These opponents hold that such administrators in reality develop great political influence and are capable of managing the county governing body, while not having to face the electorate directly.

Currently, commission-administrator systems of government are in effect in about 300 counties across the nation.

(c) Council-Elected Executive Form. — According to the NACO Report, 46 counties of the nation utilize this form of government which resembles mayor-council plans of city government, with separate distinctive executive and legislative branches. The council-elected executive form of county government has gained in popularity since 1960, when 64 percent of the county executive positions have been created.

The essential characteristics of the council-elected executive form of county government have been summarized as follows by the NACO Report:

The amount of power an executive has is dependent on the legal basis of his position and the political climate of the county. In one or two cases, the executive is elected at-large, as an executive, but actually serves mostly as a figurehead for the county government. In these rare cases, the county administrative officer or the board itself has responsibility for carrying out board policies...

The executive branch of the government is headed by a single individual elected at-large for a specific term by the people. The executive includes among his major responsibilities: preparation of programs for approval by the legislative branch, implementing the policies approved, responsibility for day-to-day county administration including budget and personnel control, and submission of the county's operating and capital budget. He is both an administrator and a leader in the true executive sense of the word and thus plays an influential role in the county...

The legislative branch, frequently called council, also is elected, often with a mix of district and at-large representation. With principal responsibility for adopting laws, ordinances, resolutions, approving the budget and establishing the tax rate, the legislative branch is a full partner in the county governmental process.

Most elected county executive plans feature the strong executive approach. This is demonstrated by providing the county executive with the power of veto over policy matters and line item veto for budget
matters; the power to appoint and remove county department heads and other key administrative officials and latitude in the allocation and use of legislative body approved funds. More and more this strong executive form has working under the elected county executive an appointed chief administrative officer who is a professional manager.

Under this plan, the legislative body has responsibility for policy making, ratifying the actions of the county executive veto, and generally serving as a watchdog over the activities of the executive branch.¹

On behalf of this form of county government it has been claimed that it assures strong and responsive political leadership in the person of a popularly-elected chief executive who is visible to the public and the press, and in whom the responsibility for leadership can be pinpointed. Proponents note that an elected executive has greater prestige than an appointed one in representing the county before state and federal bodies, and is less likely to be hired away or to resign in a crisis. Proponents feel that a county executive elected at-large by the people is in a stronger position than an appointed executive to cope effectively with the multi-interest-group county council or commission. The separation of the executive and legislative powers, together with the vesting of veto powers in the former which may be overridden by a two-thirds vote of the latter, is said to conform to the traditional American system of checks and balances to safeguard the public interest.

Opponent arguments, cited by the NACO study, reflect fears that such a concentration of political power in one man at the county level may foster undesirable political consequences, either through the election of an individual who is well-known and popular but who has little capacity or experience in the supervision of government on a day-to-day basis, or through the election of a “boss” intent on perpetuating his own tenure by any means. Such opponents contend that an elected county executive is likely to compromise on what is in the public interest, in order to assure his reelection. Critics also warn that the importance of the county legislative body is reduced when the powers of the elected chief executive grow, and, on the other hand, that a strong chief executive and a strong county legislative body can become deadlocked. These opponents regard county government as unique, and

¹Ibid., pp. 19, 22.
hold that the separation of powers is not as important at the local level as in the state and national governments.

*County Government Functions*

Traditionally, state constitutional and statutory provisions have vested counties with responsibilities relative to (a) judicial administration, (b) law enforcement, (c) jails and detention centers, (d) tax administration, (e) election administration, (f) public records, (g) health and welfare services, (h) highways, (i) agricultural services, and (j) licensing. In most counties, independently elected county officers still administer many of these functions, although more of them have been delegated to appointed county officials in recent years. All counties do not provide all services, but most of them remain responsible for judicial administration, jails, welfare, the recording of deeds, and the administration of elections. The NACO Report has found that these traditional functions are being supplemented by more urban types of services which, in the past, have been considered functions of municipal government, as increases in population densities in urban and suburban areas have generated new needs.

The NACO Report indicates varying functional patterns for "metropolitan" counties (counties with 100,000 or more inhabitants) on the one hand, and the less populous "non-metropolitan" counties, in decreasing rank order of the ten services most frequently provided by them as follows:

**Metropolitan Counties**

1. Jails and detention facilities.
2. Coroner's service.
3. Courts.
4. Tax assessment.
5. Public health.
6. Prosecution.
7. Probation and parole.
8. Police protection.
9. Roads and highways.
10. General assistance (public welfare).

**Non-Metropolitan Counties**

1. Tax assessment.
2. Jails and detention facilities.
3. Police Protection.
4. General assistance (public welfare).
5. Coroner's service.
6. Roads and highways.
7. Agricultural extension services.
10. Medical assistance.
Table 4 below lists 58 functions performed by 1,026 county governments which responded to a survey conducted jointly in 1971 by the Federal Advisory Commission on Intergovernmental Relations, the National Association of Counties, and the International City Managers Association. This survey found that:

1. The traditional types of services — particularly law enforcement, the administration of justice, and the coroner’s office — occur in 80 percent or more of the counties. The next most frequently occurring functions among all categories are health and social services, parks and recreation, planning and housekeeping functions.

2. Urban activities such as planning, zoning, subdivision control, parks, recreation and libraries occur in more than half of the “metropolitan” counties. The planning function in particular has been growing, so that 76 percent of the “metropolitan” and 48 percent of the “non-metropolitan” counties surveyed reported some form of county planning.

3. A majority of “metropolitan” counties provide services in 21 categories, whereas a majority of “non-metropolitan” counties function in only 16 categories.

4. Functions provided by at least 75 percent of the “metropolitan” counties (12 functions) include police protection, coroner’s service, jails and detention facilities, general assistance (public welfare), public health, tax assessment, courts, prosecution, planning, agricultural extension services, roads and highways, and probation and parole.

5. Functions provided by at least 75 percent of the “non-metropolitan” counties (6 functions) include police protection, coroner’s service, jails and detention facilities, general assistance (public welfare), tax assessment, and roads and highways.

In general, counties provide all basic local government services in unincorporated areas of their territory, whereas most such services are furnished in incorporated areas by municipalities. Special service districts administered by the county or by independent boards may exist here and there within a county to manage and finance selected utilities or services such as water supply, power, sewage disposal, solid waste disposal, and fire protection.
TABLE 4. Functions Performed by 1026 County Governments in 1971

<table>
<thead>
<tr>
<th>Function</th>
<th>All Counties</th>
<th>Metro</th>
<th>Non-Metro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total, all counties responding to questionnaire</td>
<td>1,026 100</td>
<td>150 100</td>
<td>876 100</td>
</tr>
<tr>
<td>Jails &amp; Detention Homes</td>
<td>874 85</td>
<td>145 97</td>
<td>729 83</td>
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<tr>
<td>Tax Assessment &amp; Collection</td>
<td>853 83</td>
<td>125 83</td>
<td>728 83</td>
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<tr>
<td>Police Protection</td>
<td>836 82</td>
<td>117 78</td>
<td>719 82</td>
</tr>
<tr>
<td>Coroner’s Office</td>
<td>816 80</td>
<td>130 87</td>
<td>686 78</td>
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<tr>
<td>General Assistance</td>
<td></td>
<td></td>
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<tr>
<td>Public Welfare</td>
<td>805 79</td>
<td>114 76</td>
<td>691 79</td>
</tr>
<tr>
<td>Roads &amp; Highways</td>
<td>780 76</td>
<td>117 78</td>
<td>663 76</td>
</tr>
<tr>
<td>Courts</td>
<td>775 76</td>
<td>130 87</td>
<td>645 74</td>
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<tr>
<td>Agricultural Extension</td>
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<td></td>
<td></td>
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<tr>
<td>Services</td>
<td>764 75</td>
<td>112 75</td>
<td>652 74</td>
</tr>
<tr>
<td>Public Health</td>
<td>772 75</td>
<td>120 80</td>
<td>652 74</td>
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<td>Medical Assistance</td>
<td>693 68</td>
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<td>588 67</td>
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<td>Prosecution</td>
<td>672 66</td>
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<td>Mental Health</td>
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<td>511 58</td>
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<tr>
<td>Probation &amp; Parole Service</td>
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<td>119 79</td>
<td>488 56</td>
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<td>Elementary Schools</td>
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<td>527 60</td>
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<tr>
<td>Libraries</td>
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<td>86 57</td>
<td>489 56</td>
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<td>Secondary Schools</td>
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<td>Crippled Children</td>
<td>507 49</td>
<td>78 52</td>
<td>429 49</td>
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(Table 4. Cont.)

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<td>No. of Total</td>
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Traditional Restrictive Interpretation of County Powers

Dillon's Rule re Powers of Municipalities

In numerous decisions which are deeply rooted in English and American legal history, the federal and state courts have held repeatedly that municipalities are subordinate instrumentalities of the state and that they exist wholly by sufferance and at the convenience of the parent state government. Before the turn of the century, Judge John F. Dillon of Iowa, an outstanding authority on municipal law, summarized this judicial theory in these words, which have come to be known as “Dillon’s Rule”:

Subject to (state) constitutional limitations ... The power of the (state) legislature over such (municipal) corporations is supreme and transcendent; it may, where there is no constitutional inhibition, erect, change, divide and even abolish them, at pleasure, as it deems the public good to require ... ²

It is a general and undisputed proposition of law that a municipal corporation possess and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation — not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied ... ³

The same legal concept is reflected in at least four significant rulings of the United States Supreme Court relative to the status of municipalities in the American federal system.

The Court held in the Pawlet Case of 1815 that the states and their legislatures succeeded to all the rights of the British Crown, as a consequence of the American Revolution. ⁴ Under British law, counties were created by royal action as a convenience to the king and their officers were accountable to him for the enforcement of domestic order, the administration of justice, defense and public works, and the collection of taxes, as provided by law. Municipalities, chartered by the Crown, were empowered to exercise certain

¹This text reprints, with modifications, portions of Chapter II of the Legislative Research Council report entitled Municipal Home Rule, Senate, No. 950 of 1965, 135pp., at pp. 36-39.
³Ibid., 5th ed., 1911, c. I, s. 237
⁴Town of Pawlet Vt., v. Clark, 13 U.S. 291 (1815).
property rights, to issue particular licenses and to choose their own officials; but otherwise they were allowed to exercise governmental powers only as narrowly defined by acts of Parliament.

In the two cases of *New Orleans v. New Orleans Waterworks Company*¹ and *City of Covington v. Kentucky*² which were decided in the 1890's the Court emphasized that a city charter was not a "contract" protected by the Contract Clause of the Federal Constitution.³ The latter Covington decision, and the 1923 opinion of the Court in the Trenton Case,⁴ incorporated Dillon's Rule into federal constitutional jurisprudence. The latter opinion emphasized that—

In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self government which is beyond the legislative control of the State. A municipality is merely a department of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the State exercising and holding powers and privileges subject to the sovereign will . . .

The power of the State, unrestrained by the contract clause or the Fourteenth Amendment . . . (relative to due process of law) . . . over the rights and property of cities held and used for "governmental purposes" cannot be questioned.

Thus home rule powers for local governments become a matter of "right" only when those powers, however defined, are granted specifically by the state constitution. And such powers are interpreted narrowly by the courts unless a liberal interpretation is clearly mandated by that constitution itself or by state statutes.

*Application of Dillon's Rule to Counties*⁵

From the outset, Dillon's Rule has been applied judicially to the counties, in even more rigorous degree, because of their responsibil-

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¹ 142 U.S. 79 (1891).
² 173 U.S. 232 (1899).
³ U.S. Const., Art. I, s. 10, clause 1.
⁵ Source: "Counties", *Corpus Juris Secundum*, 1940, XX, s. 49, at pp. 801-804.
ity for administering certain state (rather than regional or local) functions.

The courts have stressed that counties are quasi-municipal corporations devoid of any independent sovereignty, and that in the construction of statutes defining the powers of counties the rule of liberal construction does not apply. Thus, powers not conferred on counties are just as plainly prohibited as though expressly forbidden; and when a power is conferred to be exercised in a particular manner, there is an implied restriction upon the exercise of that power in excess of the grant or in a manner different from that permitted. The courts have ruled that counties have only those implied powers necessary to the exercise of their expressed powers or to the accomplishment of the objects for which they are created. In the absence of clearly expressed terms, it may not be inferred that the state legislature has delegated to a county a power to do that which would supersede state general laws or make then unnecessary.

In keeping with the foregoing narrow view of county authority, the courts have declared that the governmental functions of counties are those conferred or imposed on the county as a local agency of limited and prescribed jurisdiction, to be employed in the administration of the affairs of the state and in promoting the public welfare. A county has no authority to divest itself of authority or a function conferred by state general laws, unless so permitted specifically by given state constitutional or statutory provisions.

However, the courts have held that when state constitutional provisions authorize counties to adopt charters, these provisions must be construed as having, as their general purpose, a grant of powers of local self-government or home rule to counties adopting such charters. Such constitutional provisions contemplate the exercise of legislative power by those counties, subject to such standards as the state legislature may prescribe. The courts have declared that the power of the state legislature to regulate the exercise of local home rule authority must be construed liberally in favor of the state, so long as such state laws do not curtail or burden unreasonably any right granted to localities by the home rule article of the state constitution.
Definition and Types of County Home Rule

Definition of "Home Rule"1

Need for Definition. An outstanding authority has observed that "home rule" is a most elusive phrase which requires definition before intelligent discussion may occur.2 Few terms of state-local relations are so frequently used with passion, and so seldom analyzed, by their champions. The phrase has varying connotations for the jurist, the political philosopher, and the political leader.

The earliest prominent use of the "home rule" label occurred in the British Isles in 1870, when the Irish nationalist leader Isaac Butt demanded a separate parliament for Ireland with autonomy in purely Irish matters. Somewhat comparable to the Irish concept is the "home rule" sought by the residents of the District of Columbia, and by the leaders of certain American insular possessions, who advocate federal legislation granting their areas powers of local self-government under locally-elected officers and legislative bodies.

Similarly, within our 50 states, "home rule" advocates demand freedom for local units of government to govern themselves in purely local matters, under constitutional or statutory provisions which vest the state and municipal legislative bodies with similar powers within their respective areas of jurisdiction. "Home Rule" is deemed by many of these persons to be a matter of convenience rather than of right.3

In certain respects, the term "home rule" possesses vague qualities characteristic of phrases identifying many political concepts, thus making its definition even more difficult. To many citizens of Massachusetts it is an ethical "right" identified with the doctrines of the American Revolution and with the concept of checks and balances designed to protect individuals from an over-bearing central government. Opponents of "home rule" view it

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1 This text reprints, with modifications, portions of Chapter II of the Legislative Research Council report entitled Municipal Home Rule, Senate, No. 950 of 1965, 135pp., at pp. 31-35.


not as a manifestation of the spirit of liberty, but as a hobgoblin conjured up by selfish local interests to confound the orderly process of state government, and to obstruct attainment of necessary political, social and economic objectives.

_Definitions of Home Rule by Academic and Legal Authorities._

Academic, legal and other specialists in the field of state-local relations and the law generally favor definitions of “home rule” which avoid ethical and revolutionary implications and which emphasize legalistic, mechanical, and charter-making aspects. These interpreters are more concerned with constitutional and community convenience, and with evolution. This approach entails fewer problems than arise from the assertion of home rule as an ethical right warranted by (a) moral approval, (b) ideals of moral propriety, and (c) considerations of Natural Law which are rooted in the classical liberal doctrines of Locke, DeMontesquieu and Jefferson. For when “home rule” is stated as an article of revolutionary faith, it becomes indefinable and even beyond debate.

Thus, a legalistic definition of “home rule” follows which is representative of those utilized in textbooks and by members of the National Municipal League and the American Municipal Association:

> The words “home rule” are used to describe the right of a community to govern its internal affairs. There is no precise definition of the term. In states which are recognized as home rule states, home rule consists of the authority granted by the state constitution which permits the people of a city or town to adopt a charter for their own government. The extent of home rule varies from one state to another and is dependent as much upon judicial interpretation as upon the language of the constitution.

However, the community “right” referred to above is contingent upon express constitutional provisions and does not exist as a philosophical absolute which may be asserted against the state in the absence of such provisions.

_Suggested Definition of Home Rule._ Generally, the above legalistic definitions of “home rule” emphasize charter-making and charter-revision, thereby raising some difficulties in applying these

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definitions to the Massachusetts county scene.

In the Bay State, the term “county charter” must be used in a loose, plural sense to embrace many general and special statutes applicable to each county. No county has a single “charter” document which wraps all aspects of county organization up neatly in one properly codified package.

This report will use a somewhat broader adaptation of the legalistic definition of “home rule” in the effort to encompass both positive and negative concepts of that doctrine. That adaptation will deliberately avoid the use of the word “right” in characterizing home rule, because doing so raises philosophical implications and overtones which motivate a wide range of interpretations.

For the purposes of this study, “home rule” is defined as autonomy of local government in the sovereign state over all purely local matters, whether established by constitutional or statutory provisions.

Under this definition home rule can be achieved in positive fashion through constitutional or statutory provisions which grant self-determination to counties so that they are free to formulate, adopt and revise their charters without any requirement of legislative approval. Or, home rule may be achieved on the negative basis of restricting or denying the power of the legislature to pass special local laws without either the initial or subsequent agreement of the county concerned.

Under either approach there remains the necessity of differentiating matters of “local” concern from those of “state-wide” concern. In practice, constitutional and statutory “home rule” provisions relative to the above differentiation are so broad and indefinite that the major responsibility for interpreting them is thrust upon the courts. However, model constitutional home rule provisions proposed by both the American Municipal Association and the National Municipal League placed this burden largely upon the state legislature, which must pass laws designating the areas of state concern and state control.
Types of County Home Rule

County home rule practices are usually classified in terms of the scope of home rule power granted to the counties and the extent of local freedom from state legislative control. Using this approach, three main “positive” types of home rule are in effect, as follows: (1) “self-executing” or “mandatory” constitutional home rule, which is the strongest form; (2) “permissive” or “non-self-executing” constitutional home rule, which is somewhat less potent; and (3) “legislatively-granted” home rule, made available by statute or legislative procedural rules alone, and deemed the weakest type of home rule. In addition, there is a borderline type of home rule—often called “negative” constitutional home rule—which grants no charter-making or other “positive” powers to counties, but gives them instead only certain veto powers.

In conjunction with this four-way classification, home rule provisions may also be distinguished according to their relative emphasis upon the separation as against the sharing of governmental functions between state and local levels.

(1) Self-Executing Constitutional Home Rule. A state is said to have “self-executing” or “mandatory” constitutional home rule when the state constitution embodies the home rule principle and grants powers of self-government to counties, while limiting the power of the state legislature to act on local questions. In respect to this approach, a distinguished authority has noted that—

...The most conspicuous classification factor is self-execution. Home rule provisions may be self-executing as to both the devolution of substantive powers and charter-making, as to one or the other of these or as to neither.... Full-fledged constitutional home rule is self-executing in both respects and puts some matters considered local in character beyond legislative control.¹

Constitutional self-executing home rule provisions may follow one of four different approaches. First, they may spell out detailed

¹This text reprints, with modifications, portions of Chapter II of the Legislative Research Council report entitled Municipal Home Rule, Senate, No. 950 of 1965, 135pp., at pp. 42-45.

procedures whereby counties may adopt, amend or revise their charters, without necessity for supplementary state legislation. Secondly, such provisions may spell out some charter-making procedures or certain procedural principles, while requiring the legislature to provide by general law for other aspects. Thirdly, the constitution may not prescribe particular charter-writing procedures, but may instead require the legislature to enact general laws which (a) grant home rule powers to counties, (b) provide a charter-making process for county use, or (c) both. Fourthly, the constitution may be silent on the subject of charters and may simply grant home rule powers to counties with respect to their local affairs and government; these powers may be few in number and broadly stated, or may be enumerated in specific detail.

Frequently, the benefits of self-executing home rule are restricted to those county governments which adopt a home rule charter. Most self-executing home rule provisions either prohibit enactments of special local laws by the legislature altogether, or permit such laws only upon request or subject to approval by the county concerned.

(2) Permissive Constitutional Home Rule. "Permissive" or "non-self-executing" constitutional home rule provisions authorize the state legislature to enact home rule laws which delegate charter-making and other legislative powers to counties, but do not require the legislature to do so. Home rule for the counties is thus optional with the legislature. Ordinarily, the insertion of permissive home rule provisions in state constitutions has been prompted by three conflicting pressures: (a) judicial opinions holding that the state legislature lacked constitutional authority to delegate legislative powers to county legislative bodies and voters, (b) local agitation for home rule, and (c) legislative opposition to self-executing home rule proposals. Thus, permissive home rule emerges as a compromise measure, less forceful than self-executing home rule, but better than nothing so far as county officials are concerned.

(3) Legislative Home Rule. The weakest of all forms of home rule is "legislative home rule," granted to counties and municipalities by statute or by procedural requirements in the rules of the legislature, without benefit of any constitutional principle or provision. In regard to this type of home rule, an important authority has observed that—
... Most authorities are in agreement that "legislative" home rule is at best a slender reed for municipal charter-making and local self-government. Often the state supreme courts have struck down legislative home rule as an unconstitutional delegation of state legislative power .... Even if legislative home rule survives judicial review, the system may be destroyed by legislative action in repealing the statute . . . 

(4) "Negative" Constitutional Home Rule. "Negative" constitutional home rule takes one or both of two forms. First, such "negative" constitutional provisions may stipulate that no special statute enacted by the state legislature with reference to a single county shall take effect unless approved by either the electorate or the legislative body of that county. Or, secondly, such provisions may require submission to the voters or legislative body of the county concerned, of any general or special statute which would increase county government costs financed from local taxes.

In either case, the county is given "negative" (veto) over such state laws, without at the same time being granted "positive" powers of county charter-making or charter revision. Hence, the designation of "negative constitutional home rule." Similar "negative" provisions may also appear as a subordinate part of "positive" self-executing and permissive constitutional home rule articles; but their impact is greatly modified by the "positive" context within which they are incorporated.

Separated vs. Shared Powers in Home Rule. Constitutional home rule provisions may also be classified on the basis of their approach to the allocation of functions and powers to the county governments and the state government.

The home rule provision may emphasize separation of powers, in that it attempts to reserve "county affairs, property and government" to county jurisdiction, with or without an enumeration of those specific activities which are to be "county" responsibilities. Matters of "state-wide concern" are then left within the jurisdiction of the central state government, the courts being charged with the unenviable task of separating questions of "county" and "state" concern. The longer the list of local functions specified by the constitution, the more rigid the separation of powers becomes. Hence, if economic and social changes suggest the wisdom of

reassigning functions from one governmental level to another, a constitutional amendment becomes necessary.

An alternative approach is that based upon a sharing of powers, rather than a separation of powers, between the state and county administrations. Under this "residual powers" or "devolution of powers" approach, the constitution may vest the particular powers simultaneously in both the state and county governments, or may require the state legislature to enact general legislation distributing functions among governmental levels. Functions can be shifted flexibly without invoking constitutional amendment procedures, and the classification of "state" and "county" matters becomes more a state legislative responsibility than a judicial one.

Both of these types of constitutional home rule provisions authorize the state legislature to regulate county government activity by means of general statutes. This permits the establishment of statewide standards of government with which counties must comply within the context of the home rule principle and the general supervisory responsibility of the state for its political subdivisions.

### County Home Rule Movement and Model Provisions

#### Background of County Home Rule Movement

Agitation for the grant of home rule powers to counties developed as an offshoot of the municipal home rule movement of which the principal national advocates have been the National Municipal League (founded in 1894) and the National League of Cities (established in 1924 as the American Municipal Association).

The first type of home rule to appear was legislative home rule, in the form of an Iowa statute of 1851 which empowered municipalities to elect charter commissions to frame charters for such localities which would be effective if ratified by their local electorates. The first constitutional provision affording municipal home rule was adopted by Missouri voters in 1875; it granted self-executing home rule to the City of Saint Louis, and authorized the consolidation of the Saint Louis county government with the government of the City of Saint Louis under the charter of the latter. Today, 42 states have some form of municipal home rule

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1. Iowa Code of 1851, c. 42.
2. Mo. Const. of 1875, Art. IX, ss. 21-26; Const. of 1945, Art. VI, ss. 30-33.
provisions in their constitutions, and another two grant home rule powers to their municipalities by statute only. Urban discontent with unsympathetic rurally-dominated state legislatures, and local resentment of certain types of state legislative intervention in the affairs of individual municipalities have been the principal spurs to the municipal home rule movement.

Although the concept of county home rule was embraced in the grants of home rule to the City-County of Saint Louis in 1875 and to the City-County of Denver in 1902, it gained acceptance much more slowly than did municipal home rule, until recent times. In part, this has been due to the fact that counties have experienced a larger degree of state legislative control than have municipalities, due to the role of counties as administrative districts for the performance of state functions. In addition, electorates feeling more distant from their county governments than from their municipal governments, and distrustful of the county courthouse political climate, have been reluctant to increase county government authority through home rule grants, unless a strong measure of state legislative oversight is retained. In 1911, California became the first state to grant constitutional home rule to counties as a group; and in 1912, Los Angeles County adopted the first county home rule charter under that constitutional provision. Currently, county home rule is provided for specifically or implicitly in the constitutions of 25 states, while another two states accord home rule powers to their counties by statute alone. To date, home rule charters reportedly have been adopted in only 63 of the 3,106 counties of the nation; in four states such counties embrace more than half of the total state population (Calif., Ha., Md. and N.Y.).

Principles of the County Home Rule Movement

NACO Statement. The principal spokesman for the county home rule movement today is the National Association of Counties

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1 Colo. Const., Art. XX, s. 1 (1902).
2 Calif. Const., Art. XI, s. 7½ (Counties of over 3,500 inhabitants); recodified in 1970 as Art. XI, ss. 3-4.
3 Alas., Calif., Colo., Fla., Ga., Ha., Ill., La., Md., Mass., Mich., Minn., Mo., Mont., N.J., N.M., N.Y., N.C., Ohio, Ore., Pa., S.C., S.D., Tenn. and Wash. In a few of these states, the necessary enabling statutes have not been enacted (Mass, Minn. and N.J. for example).
4 Ky., and Tenn.
(NACO), founded in 1935 as the National Association of County Officials. Its *American County Platform*, as revised in 1972, declares that—

We in county government believe that Home Rule, or the right of local self determination, is a keystone of our American Democracy. More and more state legislatures have recognized this and have delegated increased authority to local officials to solve local problems.

In some states, counties remain hamstrung by antiquated state statutes and constitutional provisions that make it extremely difficult for county officials to act effectively in response to citizens petitions for problem solving.

We advance the following principles as the basis for an effective home rule movement and urge that every county official support these principles before his state legislature:

A. *State law on county government.* State constitutions and statutes should provide for flexibility of form, function and finance. In this manner, the authority of the county government will be based on implied powers and thus allow them to function in all areas except those expressly prohibited.

1. *Flexibility of Form.* Counties should be free to devise their own internal organizational structure either under a charter or under general law.

2. *Flexibility of Function.* Counties should be free to determine the scope and extent of the governmental service each will render, subject to the recognized need for some uniformity in the standard of delivery of services of national or state-wide import.

3. *Flexibility of Finance.* Counties should have the ability to employ means of financing county government other than the traditional and inadequate property tax.

B. *Statewide standards.* Statewide standards and state supervision are justified where counties act as agents of the state and do so with substantial state financing.

C. *Operation policies.* Counties should be free to devise their own operating policies in all governmental programs not financed wholly or substantially by federal or state funds, subject to a requirement that such policies be definitely set forth in writing.

D. *Counties devise purchasing, capital outlay, employment policies.* Counties should be free to devise their own operating policies in such fields as purchasing, capital outlay and employment conditions. In this connection, counties should be free to establish rates of compensation and procedures for employment of all employees who are not responsi-
ble for programs or activities which the county is undertaking as an agent of the state.¹

National Municipal League Position. A similar approach, favoring constitutional flexibility, has been enunciated by the National Municipal League:

The elaborate treatment of county government in many constitutions demands special attention... (The)... early state constitutions included reference to some of the traditional county officers, guaranteeing their election directly by the people. As long as the activities of county government were limited in scope, the constitutional specifications were not particularly harmful. With the spread of urbanization from the incorporated cities and villages out into the surrounding areas, however, the county government has been increasingly regarded as an appropriate agent to provide municipal-type services throughout an entire region. In order properly to carry out such new responsibilities, counties would need to be reorganized into more potent administrative units. It is at this point that state constitutions become unduly restrictive and impede modernization. Some states have sought to evade these binds through detailed amendments designed to meet an immediate situation. This type of amendment invariably breeds additional amendments required for different needs. In this way a local government article can become a lengthy legal tangle.

The issue here is a simple one. If a state wishes to use the county in solving problems of regionalism, it should be sure that its constitution is free from obstacles that will bar or unduly delay the creation of effectively reorganized county government. In other words, the ideal constitution would be silent on the subject of county organization, officers and methods of reorganization, leaving the legislature, the localities and the people of any given area free to adjust county government, and all other forms of government, to the changing requirements of a changing age.

Headway has been made in some states by providing constitutionally for a system of optional charters to be defined by the legislature. Such a system permits a county, with the approval of its people, to adopt a legislatively “packaged” charter providing for a modern governmental organization. Specific constitutional authority for the legislature to create optional forms should not be necessary but the abundance of constitutional detail on local government often requires the granting of

specific authority in order to overcome the various constitutional obstacles to the reorganization of local government.

A related issue is whether a modern constitutional local government article can provide for an optional county charter system or an optional charter system applicable to all forms of local government along with a provision for home rule through which localities may develop a structure of government of their own choosing. There is no apparent incompatibility between the two systems and a state would do well to provide both plans. Optional charter arrangements may exist by themselves..., but the existence of home rule charter powers serves as a protection to the localities against any undesirable amendment of the optional charter statute by the legislature.¹

Like NACO, the National Municipal League recognizes the necessity for state general laws standardizing the administration and delivery by counties of their “state” services, such as the administration of justice.

Model Constitutional Provision of National Municipal League

Background. In its Model State Constitution, first published in 1921, the National Municipal League was the first to propose model constitutional provisions authorizing county home rule.

These model provisions, as revised several times prior to 1963, (a) authorized county legislative bodies on their own initiative, and required them on petition of 10% of the county voters, to propose the election of a charter commission; (b) authorized such commissions to propose charters which became effective if ratified by the county electorate; (c) permitted counties to amend their charters on recommendation of the county legislative body or of a charter commission, subject to voter ratification; (d) authorized the state legislature to make optional charters available for county voter adoption under general law; and (e) specified that counties should have “such powers as shall be provided by general or optional law”. A county adopting home rule charters was given broad constitutional authority to determine “the form of government of the county and... which of its officers shall be elected and the manner of their election.” Thus, counties were to have structural but not functional home rule as a matter of constitutional right.

In 1963, the *Model State Constitution*'s Article VIII, relative to local government, was rewritten extensively to grant both cities and counties "devolved" or "residual" home rule powers, as advocated for municipalities alone by the Committee on Home Rule of the American Municipal Association (now the National League of Cities) in 1953.

The municipal home rule provisions of the *Model State Constitution*, had emphasized, previously, a separation of governmental powers between the state and municipalities, by means of a detailed enumeration of the subjects reserved to local determination. Thus, these former provisions reflected the "classical" theory of home rule under which a home rule charter was considered an *instrument of grant*, spelling out desired home rule powers and functions rather decisively. Applying Dillon's Rule to their interpretation of such charters, the courts of states having "classical" home rule provisions in their constitutions held, in most instances, that municipalities possessed home rule authority only as to those functions specified as "municipal" in the constitution.

The proposed *Model Constitutional Provisions for Municipal Home Rule*, published in 1953 by the American Municipal Association, sought to reverse this approach by following the traditional English theory of the city charter as an *instrument of limitation*. It provides that municipalities having home rule charters shall automatically possess all local government powers which the state legislature has authority to delegate under the state constitution, save those powers which are limited or denied (a) by the municipality's own home rule charter, or (b) by general laws enacted by the state legislature. Thus, a sharing of state legislative power, rather than a separation of powers between state and local levels, is provided for in this model article for municipal home rule. State legislative powers are said to "devolve upon" the home rule cities, or are described as "residual in" such cities.¹

*Provisions.* The sixth edition of the National Municipal League's *Model State Constitution* incorporated substantially the *instrument of limitation* doctrine of the above American Municipal Association Model, while retaining, as "alternative" provisions, the earlier

instrument of grant provisions with some modifications. As revised, the Model State Constitution provides that—

The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions:

1. For such classification of civil divisions as may be necessary, on the basis of population or on any other reasonable basis related to the purpose of the classification;

2. For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

3. For the adoption or amendment of charters by any county or city for its own government, by a majority vote of the qualified voters of the city or county voting thereon, for methods and procedures for the selection of charter commissions, and for framing, publishing, disseminating and adopting such charters or charter amendments and for meeting the expenses connected herewith. (Art. VIII, Sec. 8.01).

An alternative paragraph (3), proposed in the model, would grant self-executing home rule powers by providing that such state general laws must make provision “For the adoption or amendment of charters by any county or city, in accordance with the provisions of Section 8.02 . . . (below) . . . concerning home rule for local units”. That section grants substantive “residual” home rule powers to both counties and cities, as follows:

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 or 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. (Art. VIII, sec. 8.02).

Alternative self-executing home rule provisions, treating counties less liberally, are offered by the Model State Constitution, as follows:

Section 8.02. Home Rule for Local Units. (a) Any county or city may adopt or amend a charter for its own government, subject to such regulations as are provided in this constitution and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five, seven or nine charter commissioners and for framing, publishing and adopting a charter or charter amendments.

(b) Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of 10% of the qualified voters, the officer or agency responsible for certifying public questions shall submit to the people at the next regular election not less than 60 days thereafter, or at a special election if authorized by law, the question “Shall a commission be chosen to frame a charter or charter amendments for the county (or city) of...?” An affirmative vote of a majority of the qualified voters on the question shall authorize the creation of the commission.

(c) A petition to have a charter commission may include the names of 5, 7 or 9 commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

(d) Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next regular or special election not less than 30 days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

(e) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local legislative authority.

Section 8.03. Powers of Local Units. Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers and may revoke the transfer of any such function or power, under regulations provided by general law; and any county
may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers and may revoke the transfer of any such function or power.

Section 8.04. County Government. Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than twenty-five percent of the total population of the county, and (3) in the county outside of such city or cities.

Section 8.05. City Government. Except as provided in sections 8.03 and 8.04, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.¹

Presumably, consolidated “city-counties” would possess both city and county home rule powers, as indicated for each by the foregoing text, but their county home rule powers would be subject to statutory definition.

Model Constitutional Provision of ACIR

Another model constitutional approach, borrowing in part the “residual powers” philosophy of the American Municipal Association and National Municipal League models, is suggested in a 1963 report by the Federal Advisory Commission on Intergovern-

¹Ibid., pp. 16-18.
mental Relations (ACIR) which was created by an act of Congress in 1959.\(^1\)

Strictly speaking, the following very brief constitutional provision advocated by the ACIR is not full self-executing constitutional home rule, since it neither prescribes procedures of charter adoption and revision, nor requires the state legislature to do so:

Municipalities and counties\(^2\) 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 preemption and may be in whole or in part. Express denials may be limitations of methods or procedure. Preempted 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.

As in the instance of the American Municipal Association, and National Municipal League models, powers "devolve" upon municipalities and counties unless denied by state general laws; and the state legislature is given flexible authority to determine what functions or portion of functions shall be "state" as opposed to "municipal" and "county" responsibilities, or whether some of them shall be shared. In recommending this measure, the ACIR also urges states (a) to review carefully their affirmative limitations on county and municipal government powers, and (b) to enact an implementing local government code.

The proposal of the ACIR has been endorsed by the Council of State Governments.\(^3\)

Currently, "residual powers" are granted specifically to counties by the 'constitutions and laws of 10 states (Alas., Calif., Fla., Ill., Ky., Mont., N.Y., Ore., Pa., and S.D.), while such powers are provided to counties by statute only in the single state of Ohio.

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\(^2\) At this point, the commission suggests that states also include other selected units of local government suitable to conditions in such states.

States With Self-Executing Constitutional Home Rule for Counties

State Practices Generally

Self-executing constitutional home rule is considered the strongest type of home rule, inasmuch as counties acquire a "right" of self-government not wholly dependent on state legislative grace. The home rule principle which is incorporated into the state constitution grants powers of self-government to counties, while also restricting the power of the state legislature to act in county matters by means of special bills.

The constitution may spell out charter-making procedures in detail, thereby making supplementary enabling laws unnecessary. Or, the state legislature may be required to enact general laws furnishing home rule to counties on the basis of certain broad constitutional principles. Under either approach, the state legislature retains full authority to regulate county government by means of general laws, subject to special requirements in individual state constitutions.

Self-executing provisions for county home rule exist currently in the constitutions of 17 states (Alas., Colo., Ha., Ill., La., Md., Mo., Mont., N.M., N.Y., Ohio, Ore., Pa., S.C., S.D., and Wash.; and Fla., in relation to Dade County only). Of these 17 states, six confer "residual" legislative powers on counties, in lieu of the "classical" enumeration of many specific powers on specific subjects (Alas., Fla., Ill., Mont., Pa., and S.D.); and a seventh state does so by statute (Ohio). In general, these states make full home rule powers available only to counties which adopt home rule charters. At least five of the 17 states permit counties to adopt home rule charters only if they conform with certain minimum population and other standards (Alas., Ill., Mo., N.M., and N.Y.); and two of these jurisdictions limit self-executing home rule authority to city-counties (Fla. and S.C.).

Not included in the above count of 17 states with self-executing constitutional home rule for their counties are two states whose practices are difficult to classify, because they are on the "borderline" between the "self-executing" and "permissive" constitutional home rule categories. One of these states, California, provides a direct grant by constitutional authority to county governing bodies, or charter commissions elected by the county voters, to propose charters or charter amendments to their county elector-
ates; however, such charters or charter amendments, once approved by the voters, do not become effective unless ratified by the state legislature (which may not change them). The constitution of the second state, Georgia, makes no provision for the election of charter commissions, but allows counties to adopt home rule ordinances affecting their county government structure, within certain limits defined by the constitution and state law.

State authorities responding to Legislative Research Bureau inquiries replied that self-executing constitutional home rule has proven an effective instrument for improved county government in five of the foregoing 19 states (Alas., Calif., Fla., Ha., and N.Y.). Officials of three states indicated only a limited effectiveness of their state constitutional provisions on this score (La., Md., and Wash.). The responses of another five of the 19 states did not evaluate the results of their home rule systems, since they were instituted too recently for a fair appraisal (Ill., Mont., Pa., S.C., and S.D.). Authorities in another two states of this group consider their county home rule provisions ineffective (N.M., and Ohio). And agencies of the remaining four states offered no comment on the value of the county home rule provisions of their state constitutions (Colo., Ga., Mo., and Ore.).

County Home Rule in Alaska

Residual Powers Approach. The constitution adopted by the new state of Alaska in 1959 includes a self-executing home rule provision based on shared “residual” powers rather than on the enumeration in the constitution of areas of local home rule (Art. X). This article supplies a simple, flexible local government system designed to avoid immortal local government units, and follows the federal practice of allowing state legislation within given areas of federal jurisdiction until Congress preempts these areas with controlling federal legislation. In 1972, the Alaska Legislature supplemented its constitutional home rule provisions with a new Municipal Government Code establishing certain standards for home rule and non-home-rule cities and boroughs (counties), modifying other standards, and overhauling and modernizing massively the state laws relative to local government.¹

The Alaska Constitution specifies that a home rule charter may

¹Codified as Alaska Stats., Title 29, ss. 29.03.010-29.18.460 (1972).
be adopted, amended, or repealed by the voters of (1) any first class city, (2) any first class borough (county), or (3) other cities and boroughs designated by law, the procedures for adopting local home rule charters must be established by general laws.¹

**Borough Classification and Home Rule Authority.** The 1972 Municipal Government Code, establishing such procedures, does not define what a “first class borough” is, other than to emphasize its right to adopt a home rule charter.² The Mandatory Borough Act of 1963, establishing eight boroughs and defining their boundaries, required voter referenda in each to determine whether it would be organized as a first class borough qualifying for home rule powers, or a second class borough whose governmental structure and powers are established by general law.³ The 1972 Municipal Government Code prescribes procedures whereby, through voter referendum, general law second and third class organized boroughs may adopt status as first class boroughs.⁴ An unincorporated area may incorporate as an organized borough only (a) if the State Local Affairs Agency approves the plan conforming with general law standards, and (b) if voters of the area agree to such incorporation in a referendum.⁵ Persons aggrieved by a refusal of the state agency to approve the proposed borough may appeal to the courts under the State Administrative Procedure Act.⁶ The Municipal Government Code authorizes borough incorporation:

1. If the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;
2. If the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for the full development of local services;
3. If the economy of the area includes the human and financial resources capable of providing local services; evaluation of the area’s economy includes land use, property valuations, the total economic base, the total personal income, resource and commercial

¹ Alas. Const., Art. X, ss. 3,6,7,9-10.
² A.S. s. 29.08.010.
³ Alas. Session Laws of 1963, c. 52.
⁴ A.S. s. 29.08.040(g).
⁵ A.S. ss. 29.18.050-19.18.130.
⁶ A.S. s. 29.18.090; A.S. 44.62.
development, anticipated functions, expenses, and income of the proposed borough; and

(4) If the land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.1

The constitutional specifies that a home rule charter city or borough shall exercise all legislative powers not prohibited by general law or by its charter, while non-home-rule cities and boroughs possess only those powers conferred by general law;2 thus, Dillon's rule controls the interpretation of the powers of the latter. The constitution vests "all local government powers" in cities and boroughs, and directs that such powers be construed liberally by the courts.3 However, the power to classify, reclassify, merge, consolidate and dissolve municipalities and boroughs is reserved to the state legislature.4 The constitution prohibits the state legislature from passing special local laws where general laws can be made to apply, and requires that any special law imposing a financial burden on a municipality or borough be subject to approval by the local electorate concerned.5

Areawide Authority of Boroughs. Alaskan boroughs are given areawide authority, both inside and outside municipalities within their boundaries, over (a) the assessment and collection of taxes, (b) education, (c) planning, (d) zoning, and (e) subdivision control.6 A first class borough may exercise any general law municipal power in its territory outside cities, simply by passing an ordinance; and it may exercise "additional" municipal powers, if this is approved by the voters in an areawide election.7 A second class borough can exercise (a) those general law municipal powers conferred on it in its instrument of incorporation or by general law, and (b) additional general or other municipal powers approved by voter referendum.8 The 1972 Municipal Code establishes pro-

1 A.S. s. 29.18.030.
2 Alas. Const., Art X, ss. 7 and 11.
3 Ibid., ss. 1-2.
4 Ibid., ss. 3 and 7.
5 Alas. Const., Art II, s. 19.
6 A.S. s. 29.33.010.
7 A.S. ss. 29.33.250-29.33.290, 29.38.010-29.38.050, 29.48.020, and 29.48.033a.
8 Ibid.
cedures whereby cities may transfer their general or other municipal powers to a first or second class borough; when a municipal power of either type is vested in such a borough, it may not be exercised by a city. Thus, consolidated city-borough governments may be formed.

In general, borough adopting home rule charters have broad residual authority to legislate on borough affairs. However, the state legislature has denied boroughs the authority to assess and collect taxes, or to legislate in relation to school board organization and functions or in relation to planning, zoning, and subdivision control except as permitted by general law.

*County Home Rule in New York*

*Constitutional Provisions.* On recommendation of the State Office for Local Government and Governor Nelson A. Rockefeller, the voters of New York ratified, in 1963, a constitutional amendment which repealed earlier local government provisions of the state constitution, substituting therefor a new Article IX designated as "the Bill of Rights for Local Governments." That article, which provides self-executing constitutional home rule indirectly, does not spell out local charter-making procedures in detail, but requires that they be established by general laws to be enacted by the state legislature. This lengthy new Article IX is summarized as follows:

*Secs. 1 and 2.* Effective local self-government and intergovernmental cooperation are declared to be purposes of the people of the State of New York. To this end basic "rights, powers, privileges and immunities" are granted to local governments by the constitution, which the state legislature is commanded to secure to them.

Local governments (other than counties which are included wholly within a city) are empowered to "adopt and amend local laws" not inconsistent with the constitution or state general laws, relative to their "property, affairs or government" and to ten enumerated subjects.

Counties (other than those included wholly within a city) shall be empowered by general law, or by special laws enacted in conformity with the constitution, "to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own." Any such "form of government" (charter) may: (a) reallocate functions between the county and localities contained wholly within the county; (b) transfer county or local functions to the state, as authorized by the state legislature; (c) abolish one or more offices, departments, agencies or units of government, subject to certain conditions; and (d) otherwise establish the struc-
ture of the county government. No optional standard or "homegrown" county "form of government" or amendment thereto shall be effective until ratified by the county electorate. Likewise any state general or special law which would alter such a "form" of county government in a county, once that "form" has been adopted by the county voters, shall be subject to referendum in that county.

Cities and villages are authorized to adopt, amend or repeal "local laws," not inconsistent with the constitution and state general laws, establishing their forms of government and providing for the administration of their functions under the constitution and laws of New York.

The state legislature is required to enact a general statute of local government which may grant additional powers to such governments; but these latter powers may be "repealed, diminished, impaired or suspended" only by laws enacted by the legislature "at its regular session in one calendar year" and reenacted the following year, subject to gubernatorial approval in each instance. In addition, that general statute of local government: (a) must establish procedures for the adoption and revision of local charters and laws; (b) may provide optional charters for counties; (c) must regulate the use of eminent domain power by localities; and (d) must also regulate such matters as the apportionment of costs of certain local government services, and inter-governmental cooperative arrangements.

Special laws (which apply to only one or to a few local governments) may be enacted by the state legislature only: (a) if requested by two-thirds vote of the local legislative body concerned, or if requested by the local chief executive officer with the endorsement of a simple majority vote of the local legislative body; or (b) if recommended by the governor and passed by a two-thirds vote in each branch of the state legislature. This limitation is modified in certain ways where the component boroughs (counties) of New York City are concerned.

Finally, local governments may annex neighboring territory, subject to: (a) approval by the voters of the territory, in a referendum; (b) approval by the governing body of each local government involved; and (c) appeal to the Supreme Court on the issue as to whether the annexation is "in the overall public interest."

Sec. 3. This section excludes the following from local home rule control, except as otherwise provided by the state legislature: (a) the public school system; (b) the courts; and (c) "matters other than the property, affairs or government of a local government." Existing special state laws re individual local governments, and existing local ordinance, etc. are to remain in effect until changed under Sections 1-2 above.

Various terms are defined, including: (a) "local government," namely, any "county, city, town or village"; and (b) "general law," namely, any
law applicable to (1) all counties exclusive of those wholly included in a city, (2) all cities, (3) all towns, or (4) all villages.

Importantly, this section directs the judiciary to construe liberally the "rights, powers, privileges and immunities" granted to local governments by this article.

Other constitutional changes made by this 1963 amendment: (a) require the state legislature to regulate local finance, borrowing, and taxation,¹ and (b) empower the state legislature to regulate the compensation and working conditions of employees of the state or any one of its subdivisions, or of employees of contractors performing work for that state or any such subdivisions.²

Statutory Implementation. To implement the Constitutional "Bill of Rights for Local Governments," the 1963 New York Legislature enacted the Municipal Home Rule Law, covering municipalities and counties, which replaced earlier county home rule statutes of 1959-60, and revised the laws on county and municipal government to reflect the new constitutional philosophy described above.³

This statute permits the board of supervisors of any county (not wholly included within a city) to propose to their county electorate a charter or charter amendment, or the repeal of the then existing county charter. That proposal becomes effective if approved by county voters at a subsequent county election.

The charter must set forth the structure of the county government and indicate the manner in which it is to function. It may provide for the appointment of any county officers or their election by any method of nomination and election. However, the charter must provide for an elected board of supervisors who exercise the legislative power of the county, determine county policies, and exercise such other functions as may be assigned to them. The charter is required to assure the performance of all functions, powers and duties of county government under state law and under the charter itself. As phrased, the Municipal Home Rule Law allows counties, through the adoption and amendment of a charter, to institute as they desire (a) the traditional county supervisors (commission) form of government, (b) a board of

¹ N.Y. Const., Art. VIII, s. 12.
² N.Y. Const., Art. XIII, s. 14.
³ Laws of N.Y. 1963, c. 843.
supervisors-county manager form of government, or (c) an elected executive-board of supervisors form of government resembling mayor-council city government. Counties may abolish, consolidate, and create county offices in a manner not inconsistent with the state constitution and laws, and may provide in their charters for the reallocation of functions between the county and its component localities. The Municipal Home Rule Law of 1963 provided no optional standard county charters for county adoption to replace an earlier optional county charter law which was repealed.

At least 15 counties of New York now have charters adopted under authority of the foregoing general law or earlier special laws. Of these 15 counties, 11 have charters establishing an elected executive-board of supervisors form of government; three utilize a board of supervisors-appointed administrator system of government; and one county home rule charter retains the traditional board of supervisors form of government.

**States With Permissive Constitutional Home Rule for Counties**

At least six states without self-executing constitutional home rule for their counties have constitutional articles which, expressly or by clear implication, allow but do not require the state legislature to enact laws authorizing counties to frame, adopt, amend, and repeal their own charters and to exercise other home rule powers (Mass., Mich., Minn., N.J., N.C., and Tenn.). However, enabling laws have been reported enacted in only three of these six jurisdictions (Mich., for counties generally; N.C., for certain counties by special law; Tenn., for city-counties organized as metropolitan governments).

In addition, the legislatures of two states with self-executing constitutional home rule for particular classes of counties possess specific constitutional authority to enact, at their discretion, home rule statutes for other classes of counties (Alas. and Fla.); of these two states, one has done so, also granting residual powers to its counties (Fla.). The county home rule statutes of Florida and Tennessee are considered effective by state authorities responding to Legislative Research Bureau inquiries, while no information on this point was received in relation to the Michigan and North Carolina laws.

The Florida statute provides for the appointment of a county charter commission, either pursuant to a resolution of the board of
States With Statutory Home Rule Only For Counties

Two states having no constitutional provisions relative to county home rule extend such powers to some or all of their counties by statute alone (Ky. and Tex.).

1 Fla. Laws of 1969, c. 6945.
The Kentucky County Home Rule Act of 1972 has empowered county fiscal courts (boards of county commissioners) on a residual powers basis—

...to exercise all the rights, powers, franchises, and privileges including the power to levy all taxes not in conflict with the constitution and statutes of this state now or hereafter enacted, which the fiscal court shall deem requisite for the health, education, safety, welfare, and convenience of the inhabitants of the county and for the effective administration of the county government to the same extent as if the General Assembly had expressly granted and delegated to the fiscal court all the authority that is within the power of the General Assembly to grant to the fiscal court of said counties.¹

That statute further provides that—

The powers granted to counties by this Act shall be in addition to all other powers granted to counties by other provisions of law. A permissive procedure authorized by this Act shall not be deemed exclusive or to prohibit the exercise of other existing laws and laws which may hereafter be enacted but shall be an alternative thereto.²

Finally the Kentucky law authorized the county judge (chairman of the fiscal court in a county) “to exercise all of the executive powers” of the county, pursuant to the foregoing provisions.³ The Kentucky statutes contain no provisions authorizing counties to elect charter commissions or to frame, adopt, amend or repeal home rule charters. However, the County Home Rule Act of 1972 confers limited authority on county fiscal courts to enact laws relative to the structure of the county government, consistent with other state statutory requirements. The state constitution itself regulates the election and membership of county fiscal courts.

Until 1969, Texas had a constitutional provision which (a) granted self-executing home rule to counties with 62,000 or more inhabitants, and (b) permitted the state legislature, by a two-thirds majority vote of each of its branches, to enact laws granting home rule to less populous counties.⁴ A county home rule law, enacted earlier under the provisions of that constitutional article, and

⁴ Tex. Const., Art. IX, s. 3.
conforming to its detailed standards, provided procedures whereunder local voters could petition the county court (board of county commissioners) for the calling of a convention to select a charter commission to frame a charter for the county which would be effective if ratified subsequently by the county electorate in a referendum. This county home rule statute was not repealed following the repeal of the county home rule article of the state constitution, and hence the statute remains on the books. However, these constitutional and statutory provisions do not appear to have been effective, as no county acquired a home rule charter or other home rule powers thereunder.

Optional County Charter Laws

State Practices Generally

At the present time, the constitutions of at least ten states specifically authorize their state legislatures to enact laws—usually general laws only—establishing one or more optional standard charters for counties, which may be adopted in such counties by voter referendum (La., Minn., Mont., N.Y., N.D., Ohio, Ore., Pa., S.C., and Utah). Such state legislative power is implied, but not specifically spelled out, in the constitutional provisions of no fewer than 16 more states (Alas., Ariz., Calif., Ga., Ill., Iowa, Md., Mass., Miss., Nev., N.J., N.C., S.D., Tenn., Va., and Wash.).

However, to date, optional county charter laws have been reported enacted in only eight of these 26 jurisdictions (Alas., Ill., N.J., N.C., Ohio, Pa., Utah, and Va.). In general, a state may follow one of two approaches in its general law offering such charters to counties. Firstly, each such optional charter may be spelled out in detail, to be adopted “as is” by county voters, much in the manner of the optional Plans A through F of city government incorporated in Chapter 43 of the Massachusetts General Laws. Secondly, an alternative approach incorporated in some state laws involves the election or appointment of a charter commission to frame, for county voter acceptance, an “optional charter,” the main framework of which is specified in the statute, but in which the charter commission may make such alterations and elaborations

consistent with the optional charter law as the commission deems appropriate. Many variations in these two basic approaches are possible.

**New Jersey Optional County Law**

*Background of Law.* This New Jersey law,¹ a synopsis of which appears in Appendix C of this report, was enacted in 1972, on the basis of recommendations filed by the New Jersey County and Municipal Study Commission.

In its report the Commission had found that New Jersey lacked a middle level of government capable of (a) meeting problems which individual municipalities or groups of municipalities could not meet unaided, (b) performing areawide and interlocal functions, (c) coordinating state and federal programs affecting local government, or (d) serving as a rallying point for local leadership. The Commission concluded that the county was the best alternative as the basic "middle tier" unit because of its strong political, administrative and functional roots in the state. However, substantial legal, fiscal, structural and administrative changes were necessary to overcome serious inadequacies in the then existing county system, if effective and efficient areawide units of government were to result. Since, under the New Jersey Constitution, individualized county charters may be granted only by special laws enacted according to a cumbersome procedure, the Commission favored use of an optional charter system under the general laws of the state as the vehicle for achieving its objectives.²

*Types of Optional Charters Made Available.*³ The New Jersey law provides for four alternative plans of county government, whose common features include: (a) establishment of professional central administration accountable to elected leadership; (b) greater legislative authority in the board of freeholders (county commissioners), including the power to reorganize and consolidate county agencies for the sake of efficiency and economy, and (c) power to

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¹ N.J. Stats., Title 40, c. 41A, added by Laws of 1972, c. 154.
enter into voluntary service agreements with municipalities whereby the county would provide municipal services on a cost basis. The powers accorded to the counties by the state, and the powers inherent in the municipalities, remain unchanged vis-a-vis each other. The four basic optional plans provided in the act differ from one another in the degree of authority given to the chief executive, the professional administrator, and the board of freeholders. The four plans are so designed that at least one would be suitable for every county in the state. These plans are:

1. **The County Executive Plan:** This plan provides for a popularly-elected county executive with strong policy and administrative powers, comparable to most of those of a mayor in a city. The county executive is given organizational powers such as control over all county personnel, the county budget, and all county agencies and departments. He has a veto power over actions of the board of freeholders, which that board may override by a two-thirds majority vote. The legislative powers of the county are vested in the board of freeholders, which is given the power to advise and consent to nominations, to override the county executive’s removal actions, and to approve and modify the county budget.

2. **The County Manager Plan:** Under this optional charter, overall political responsibility is vested in the board of freeholders, which is also the legislative branch of the county government. The plan follows the general outline of prevailing practices with respect to council-manager systems of city government, in relation to the qualification, duties, powers, and responsibilities of the county manager. He is appointed, and may be removed, by the board of freeholders and serves under its general supervision. He appoints, and may remove subject to certain procedures, a deputy manager, all department heads, and other county personnel (with certain exceptions).

3. **The County Supervisor Plan:** This optional charter stands part way between the elected county executive and the strong manager plans. It calls for an independently elected supervisor who plays a leadership role, but who does not have all the powers held by the elected county executive. He is chairman of the board of freeholders (unlike the elected county executive), and as such he presides at its meetings and may vote to break ties; he may veto
board action, but that veto may be overridden by a two-thirds vote of the board. He has the power to appoint certain county officers and employees, with the approval of the board of freeholders; but that board appoints, and may remove, a “chief administrator” who prepares the county budget for the board, and is principal administrative lieutenant to the county supervisor, exercising many manager-like powers.

(4) The Board President Plan: This plan constitutes a variation of the traditional “commission” type of county government. Under it, the board of freeholders elects one of its members to be board president. He exercises executive power, but does not have the extensive powers conferred upon elected county executives. He can exercise some policy leadership, but he serves primarily as the presiding officer, representative and spokesman for the board of freeholders, in which the county legislative and executive powers are concentrated. That board appoints, and may remove, an “administrator” who is responsible to it for the direction of all county personnel and departments, the preparation of the county budget, and other activities.

Procedure for Adopting Optional Charter. Whenever authorized by a resolution of the board of freeholders of the county, or by petition of 10% of the voters of the county, the question of electing a nine-member county charter study commission must be placed on the ballot at the regular county general election; the names of candidates for election to the commission appear on that same ballot, with the nine contenders receiving the largest votes being declared elected if the voters answer affirmatively the question on electing such a commission. Once activated, the commission is required—

... to study the form of government of the county, to compare it with other forms available under ...(state law)... to determine whether or not in its judgment the government of the county could be strengthened, made more clearly responsive or accountable to the people or whether its operation could be more economical or efficient under a changed form of government.¹

Provision is made in the law for a broadly-representative

¹N.J. Stats., Title 40, c. 41A, s. 7.
advisory board to work with the commission in that effort, and for state technical assistance to the commission.

If the commission recommends adoption of an optional charter, its proposal must be submitted to the voters at the next regular county general election or at a special election. The commission must include in its proposal specifications as to (a) the number of members to comprise the board of freeholders, (b) the concurrency or non-concurrency of terms of county officers, and (c) whether the members of the board of freeholders are to be elected all at-large, or all from districts, or on some combined basis. If the optional charter is ratified, these proposals are incorporated in it automatically by reference.

**Powers of Counties Adopting Optional Charters.** In a county adopting one of these charters, the board of freeholders acquires the power to determine the entire administrative structure of the county government. Such counties do not acquire independence of state legislative control, and the legislature remains free to mandate new duties and to change the shape of county government as it sees fit. However, an optional charter county has the authority to perform any legislatively-mandated duty or service through any agency the county determines unless the legislature clearly gives exclusive jurisdiction to a particular county agency. In relation to municipalities and other local government units, optional charter counties have no original powers and may preempt no municipal function as their own; the county may act only as the voluntary contractual agent of the municipality or other unit.

**Utah Optional Charter Law**

A constitutional amendment of 1972 empowers the Utah Legislature to prescribe by general law—

...optional forms of county government and...(to)...allow each county to select, subject to referendum in the manner provided by law, the prescribed optional form which best serves its needs, and...(to)...provide...(by general laws)...for precinct and township organizations.¹

In 1973, Utah's Legislature enacted an optional county charter law, reprinted in Appendix D of this report,² which allows county charter commissions to frame and submit, for county voter ratifica-

¹Utah Const., Art. IX, s. 4.
tion, "optional charters" formulated in conformity with basic require-
ments for each type of charter as set forth in that statute. Thus, the law furnishes the "skeletons" for each form of optional
county government, the "flesh" of which must be filled in the
charter commission proposal.

These "optional plans" include: (1) a "general county (modi-
fied) form of county government," using a commission system; (2)
an "urban county form," involving a commission form of county
government with additional urban powers; (3) a "community
council" form of county government, for a consolidated city-
county; (4) an elected county executive, appointed chief adminis-
trative officer, council form, in which the county executive is not
a member of the council; (5) an elected county executive-council
form, representing a variation upon the form (4); and (6) a coun-
cil-manager form.

The adoption of one of the foregoing "optional plans" may be
initiated (a) by a resolution of the county governing body, or (b)
by petition of at least 15% of the county's voters. The latter
petition may request either (1) that a charter commission be
appointed according to a statutory formula by the governor, cer-
tain other state officials, the county governing body, and other
specified authorities, or (2) that a charter commission be elected
by the voters. Where the county governing body initiates the
action, the former method for an appointed commission controls.
The report of the charter commission, however constituted, must
be submitted to the county governing body, which must then
cause the recommended optional charter to be placed on the ballot
for voter consideration.

Limitations on County Reorganization Powers Generally

In states allowing counties to adopt and amend their own home
rule charters, or to adopt optional charters, or to exercise residual
legislative powers, such counties do not usually possess unrestricted
authority to alter all parts of their organizational structure by
charter provision or ordinance.

Most frequently excluded specifically from the scope of such
county authority is the power to alter (a) the structure or powers
of the judicial branch of county government (for example, in the
seven states of Fla., Ga., N.Y., Ore., S.C., Tex., and Wash.), (b) the
method of choosing county constitutional officers (as in the seven
states of Ky., La., Mich., Mo., N.Y., N.D., and Pa.), and (c) the structure or powers of the public school system (prohibited in the six states of Alas., Ga., Mo., N.Y., Tex., and Wash.). A perusal of state constitutional and statutory provisions, selected at random, indicated other forbidden areas, such as: (a) the pay of county officers or certain of them (Ga., Ky., and Pa.), (b) tax administration (Ohio, Tex., and Wash.), (c) the number and election of county commissioners (Ky. and Pa.), (d) the regulation of municipal government (Md. and N.J.), (e) the status of county elected offices (Ga.), (f) election law (S.C.), (g) governmental services administered through counties which are a state responsibility (S.C.), (h) county borrowing (S.C.), (i) highway administration (Tex.), (j) police administration (Tex.), (k) public health (Tex.), (l) civil rights (S.C.), and (m) initiative and referendum procedures (Ore.).

Often, states with municipal home rule provide that county home rule ordinances may not be operative in municipalities which have adopted home rule charters, or may be operative in such communities only to the extent that they do not involve the exercise of a “municipal” function or, if they do relate to such a function, they do not conflict with municipal charter provisions and ordinances. County authority may be curbed in a similar manner in cities which have adopted optional charters. The practices of Alaska, a major exception to this pattern, have been described previously. Ordinarily, where counties are allowed to exercise municipal powers and functions within cities, this is conditional upon a voluntary intergovernmental agreement between the county and such a city or cities, as in New Jersey.

Ordinarily, county functional home rule powers are restricted, and made subject to Dillon’s Rule, in relation to such matters as taxation, county borrowing, and the definition and prescription of punishments for crimes. Other functional areas often excluded from the scope of county residual powers, and held within the coverage of Dillon’s Rule, include civil service regulation, private civil law, the exercise of eminent domain (condemnation), the regulation of public utilities, and certain categories of licensing.

As a rule, the courts tend to interpret the constitution and laws of their state narrowly in relation to those state functions which are administered through counties, allowing very little home rule latitude to those counties in relation to such functions above and
beyond that clearly authorized by statute. A more liberal judicial approach frequently applies in county home rule states (including optional county charter states) in relation to the "non-state," regional and "municipal" functions of counties.

CHAPTER IV
GRANTING HOME RULE TO MASSACHUSETTS COUNTIES

Constitutional Powers of General Court re County Government

Constitutional Provisions

As has been noted earlier in this report, the Massachusetts Constitution of 1780 accepted the system of county government then existing and required implicitly some form of county government to be maintained under the laws of the Commonwealth. A constitutional provision of 1780 vests in the General Court a broad general power to enact laws relative to the organization, powers and duties of political subdivisions and their officers.¹

Unlike counties in most other states, Massachusetts counties (with the exception of Nantucket and Suffolk Counties) have been granted no legislative powers of their own, and have functioned more as state judicial and administrative districts wholly dependent on the General Court for their annual appropriations and other powers. However, nothing in the Constitution prohibits the General Court from vesting legislative powers in counties if it deems this desirable. Indeed, the Municipal Home Rule Amendment to the Constitution, adopted in 1966, reserves to the General Court its traditional authority to enact general or special laws to—

...erect and constitute metropolitan or regional entities, embracing any two or more cities or towns or cities and towns, or established with other than existing city or town boundaries, for any general or special public purpose or purposes, and to grant to these entities such powers, privileges and immunities as the general court shall deem necessary or expedient for the regulation of the government thereof...²

By implication, counties are "regional entities" under this constitutional provision. From Colonial times, counties have been uti-

lized to provide certain regional services on a general or special law basis. The Supreme Judicial Court has recognized counties as "municipal" corporations with different and somewhat more limited powers than cities and towns, bounded and organized territorially by the General Court for the convenient administration of some parts of government.\(^1\)

Apart from a brief reference to Dukes and Nantucket Counties in respect to state legislative redistricting matters,\(^2\) the Constitution establishes no named counties, county boundaries, or number of counties, and contains no requirement that statutes creating or abolishing counties or changing their boundaries be subject to referendum. Such questions, together with the determination of county functions not outlined in the Constitution, the disposition of county property, and changes in county government organization, all fall within the province of the General Court.

While particular counties are not established by the Constitution, specific county officials are provided for and are given certain duties.

The Constitution stipulates that sheriffs, district attorneys, registers of probate and clerks of courts having countywide jurisdiction are to be elected by the voters of each county for such terms of office as the General Court may determine by law.\(^3\) As has been noted, the General Court is not obliged to create or to continue these offices, other than the office of sheriff, if it deems them unnecessary.\(^4\) Thus, the constitutional provision that county coroners be appointed by the Governor with the approval of the Executive Council has not been construed to disallow a statute abolishing the office of coroner, since the Constitution prescribes no specific duties for coroners.\(^5\) On the other hand, the Constitution does enumerate certain duties of sheriffs and judges of probate,\(^6\) and hence some observers hold that the abolition of these

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\(^1\)Essex County v. Salem, 153 Mass. 141 (1891); Middlesex County v. City of Waltham, 278 Mass. 514 (1932).


\(^3\)Mass. Const., Amend. Art. XIX (1855) and Ament. Art. XXXVI (1894).

\(^4\)Commonwealth v. Mather, 121 Mass. 65 (1876); Opinion of the Justices, 240 Mass. 611 (1922).


offices may not be possible without an enabling amendment to the Constitution.

The Constitution also forbids certain plural officeholding by sheriffs, district attorneys, registers of deeds, judges and registers of probate, and clerks of courts with countywide jurisdiction. Hence, in particular instances, severe restrictions control the consolidation of other county offices with these offices.

Attorney-General's Opinion of 1973

With the above constitutional background in mind, the Legislative Research Bureau, on June 28, 1972, solicited the advisory opinion of the Honorable Robert H. Quinn, Attorney-General of the Commonwealth, as to the constitutional capacity of the General Court to confer home rule powers on counties, and to authorize county adoptions of optional standard county charters, without the need for further constitutional amendments. Four questions were posed as follows, with reference to House, No. 2639 of 1972, the petition of then-Representative, now Senator, Chester G. Atkins for passage of an act empowering counties to frame, adopt, revise, amend and repeal their own home rule charters:

(1) Does the General Court have sufficient power under Part II, Chapter I, Section I, Article IV of the Constitution, and under Section 8 of the Home Rule Amendment, so called, to enact laws permitting counties, with county voter approval, to adopt, revise or amend their own county charters, subject to such standards as the General Court may prescribe?

(2) Are the powers of the General Court under the aforesaid constitutional provisions broad enough to permit the General Court to provide county voters with a choice among various optional plans of county government and organization ("model" county charters)?

(3) If your answer to (1) or (2) above is in the affirmative, may the General Court, by statute, confer residual legislative powers upon counties, as proposed in House, No. 2639

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2 Letter by Daniel M. O'Sullivan, Director, Legislative Research Bureau, June 28, 1972, 4pp.
(Section 13 of the contemplated G.L. c. 38A), without a further amendment to the Constitution?

(4) Would House, No. 2639, as phrased, infringe upon the judicial branch unconstitutionally in any manner?

Without elaboration or discussion, the Department of the Attorney-General replied on January 11, 1973, answering the first two questions with a “yes” and the latter two questions negatively. Thus, barring a different view on the part of the Supreme Judicial Court, the General Court appears to have authority to create a legislative home rule system for counties or to establish optional charters for county use, or both.

Two County Home Rule Proposals by Senator Atkins and Others in 1972-73

Political Background

This chapter is concerned with the two “companion” county home rule proposals which were introduced in 1972, and subsequently reintroduced in 1973, by former Representative, now Senator, Chester G. Atkins of Acton and others, and which were drafted originally by Attorney Alvin Levin, Esq. of Lincoln for the Citizens for Middlesex County (CMC), a civic organization. These two measures are:

(a) House, No. 2450 of 1972, refiled as Senate, No. 268 of 1973, entitled “Proposal for a Legislative Amendment to the Constitution Authorizing a County to Adopt a Charter”. This bill was filed in 1972 by Representative Chester G. Atkins of Acton. It was reintroduced in 1973 by Senator Atkins and Representatives Paul H. Guzzi of Newton and John A. Businger of Brookline.

(b) House, No. 2639 of 1972, refiled as Senate, No. 269 of 1973, entitled “An Act Establishing Procedures for the Adoption of Home Rule Charters by Counties”. This bill, which would incorporate such procedures in a new Chapter 38A to be inserted in the General Laws, was filed in 1972 by Representatives Chester G. Atkins of Acton and Paul H. Guzzi of Newton. It was reintroduced in 1973 by Senator Atkins and Representatives Guzzi of Newton and Businger of Brookline.

These bills arose from popular discontent in Middlesex County

with the performance of the board of county commissioners and other county officials which had led to the formation of the liberally-oriented Citizens for Middlesex County (CMC) to direct a reform drive. This discontent was fanned by controversies over the increasing costs of a new county courthouse and over problems in county institutions.

In addressing itself to county problems, the CMC considered two basic alternative approaches: (1) outright abolition of county government, and (2) county government reform.

The "abolition" approach was rejected, because the CMC concluded that there is a need for a good intermediate level of government in Massachusetts between the basic municipal level and the parent state level. It was feared that if counties were abolished, problems would arise as to where functions now handled by counties should be assigned. Furthermore, the CMC felt that the great difficulties attending the state assumption of public welfare functions from the cities and towns in 1967\(^1\) proved that there is no "cure-all" in the passing of functions from the municipal or regional levels to the state.

Also unattractive to the CMC was the alternative of vesting county and other regional functions in "public authorities" managed by state-appointed boards. Too many of these authorities, in the opinion of some critics, have become petty baronies insulated from and unaccountable to the people, and are prone to ride roughshod over the ordinary citizen.

A further alternative of assigning county functions to special districts with locally-elected governing bodies was ruled out by the CMC, inasmuch as this would multiply the numbers of overlapping special districts chaotically, to the detriment of orderly, accountable, responsive regional government.

Finally, the policy of delegating county functions to individual municipalities was considered impractical, given the regional character of those functions.

The net result was that the CMC decided to rely on county reform based on a home rule approach, with a view to developing county governmental systems which are visible and accountable to the electorates they serve. The CMC desired to free counties from the "excessive tutelage" of the General Court, by giving counties

\(^1\) Acts of 1967, c. 658.
their own elected legislative bodies and by ending the present practice whereby the appropriations required to operate 12 of the 14 counties must be made each year by the General Court. Furthermore, the CMC wished to transform counties from regional governments run largely by the state into regional governments controlled by their electorates. To this end, the CMC envisaged county charter-writing powers as a vehicle whereby county electorates might determine which functions should—or should not—be regionalized, and how.

At the time when its proposals were introduced into the 1972 and 1973 General Courts, the CMC had not considered the possible role of optional standard county charters in conjunction with, or in lieu of, county-designed individual home rule charters.

Provisions of Proposed Constitutional Amendment

This measure, reprinted in full in Appendix B of this report, and referred to in this discussion by its current legislative document number—Senate, No. 268 of 1973—was introduced because the CMC believes that a purely statutory form of county home rule would be subject to “sabotage” by the General Court. Hence, its authors felt that adoption of this suggested constitutional amendment, or any other constitutional provision granting self-executing home rule to counties, would give stability and permanence to the contemplated county home rule system. With these objectives in mind, Senate, No. 268 was modelled in part upon the self-executing Municipal Home Rule Amendment to the Constitution, adopted in 1966.¹

Senate, No. 268 opens by declaring that—

It is the intention of this article to reaffirm and to extend the customary and traditional liberties of the people with respect to the conduct of their own affairs and to grant and confirm to the people of every county the right of self-government in county matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article. (Sec.1).

This provision rests upon the assumption that the concept of the right of local self-government is endemic in the Anglo-American political tradition, and that it embraces counties because they are

¹Amend. Art. LXXXIX, revising Amend. Art. II.
recognized across the nation as a form of "local" government, just as are cities and towns. Recognizing that Massachusetts counties, lacking their own legislative powers and bodies, do not now have "real" powers of local self-government, the authors of Senate, No. 268 contended that they ought to have such powers, and hence they sought to give reality to what ought to be (as they see it).

Senate, No. 268 would empower any county to adopt, revise or amend a charter through the procedures detailed in the proposed constitutional amendment. The provisions of any such charter or charter amendment could not be "inconsistent" with the Constitution or state laws (Sec. 2). The process of adopting or revising a county charter could be initiated on petition of 15% or less of the voters of a county, as the General Court specified by law; and an amendment of an existing county charter could be initiated (a) by the governing body of a county on its own motion or (b) on petition of 1,000 or less of the voters of that county as provided by state law (Sec. 3). Senate, No. 268 specifies that the procedures for the adoption, revision and amendment of a county charter shall be "substantially the same" as those prescribed by the Municipal Home Rule Amendment for the adoption, revision and amendment of city and town charters (Sec. 3).

Section 4 of the Municipal Home Rule Amendment, the policy of which is so incorporated by reference into the proposed County Home Rule Amendment, applies these restrictions to the amendment of a municipal charter other than amendment made by special laws under Section 8 of the former Amendment:

Every city and town shall have the power to amend its charter in the following manner: The legislative body of a city or town may, by a two-thirds vote, propose amendments to the charter of the city or town; provided, that (1) amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and (2) any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager or the board of selectmen or town manager shall be made only by the procedure of charter revision set forth in section three... (i.e., on recommendation of a charter commission elected by the voters of the city or town).

All proposed charter amendments shall be published and submitted for approval in the same manner as provided for adoption or revision of a charter.
Section 3 of the Municipal Home Rule Amendment requires proposed municipal home rule charters and revised charters to be submitted to the voters of the city or town for approval; this voter referendum requirement would thus apply comparably to charters and revised charters proposed by county charter commissions. It is not clear from the language of Senate, No. 268, whether a county charter commission must consist of nine members elected all at-large on a nonpartisan basis, as is the requirement re municipal charter commissions, or how much of a deviation from that pattern, as applied to county charter commissions, would be accepted judicially as “insubstantial”.

Under Senate, No. 268, a county charter could provide for the “structure and form of government” of the county in a manner “consistent” with the federal and state constitutions, and state laws enacted by the General Court in accordance with the proposed County Home Rule Amendment. However, no county elected office could have a term of more than four years. And if the county charter were to provide for the appointment of a “principal administrative officer”, his term could not exceed three years either directly, as by an appointment for a greater period, or indirectly as through the acquisition of tenured status. (Sec. 5).

Residual home rule powers would be extended to counties by Senate, No. 268 on the following basis:

Except as provided below, any county, by a charter adopted under any law enacted by the general court effectuating this article, may assume any power or function which the general court may lawfully confer on a county, and any county entering into any agreement provided for in this section may assume any power reasonably necessary

1Note on intent: In discussing Senate, No. 268 with the Legislative Research Bureau staff, Mr. Levin, its author, stated that there is no intent in the proposal to allow counties to abolish, consolidate, or alter the methods of selecting sheriffs and county clerks of court. He reported that the status of sheriffs and county clerks of court was intended to be left to determination by the General Court in connection with penal and court reform when these “county” officers and their functions might possibly be transferred to the state.

Aside from those two categories of county officers, it is the intent of Senate, No. 268 (according to Mr. Levin) to allow county offices to be changed, consolidated or abolished by county home rule charter provision whether or not these offices are mentioned in the Constitution. On the other hand, counties could not abolish the functions of such an office if the General Laws require counties to perform those functions; and the function would have to be assigned specifically by the charter to some county officer or agency. More particularly, Senate, No. 268 is intended to grant full freedom to the counties to replace their traditional boards of county commissioners with other types of executives in tandem with a county legislative body.
to carry out the terms thereof. Nothing in this section however, shall be
deemed to grant to any county the power to (1) regulate elections in
any manner inconsistent with the laws enacted by the general court for
the regulation of state elections; (2) levy, assess and collect taxes other
than taxes which could be levied, assessed and collected by the
commonwealth or by the cities and towns therein under enactments of
the general court; (3) borrow money or pledge the credit of the county
except by procedures which are substantially similar to those permitted
to cities and towns and which have been specifically authorized by the
general court; (4) dispose of park land; (5) enact private or civil law
governing civil relationships except as an incident to an exercise of an
independent county power; or (6) define and provide for the punish­
ment of a felony or impose imprisonment as a punishment for any
violation of law; provided, however, that the foregoing excluded powers
may be granted by the general court in conformity with the constitution
and with the powers reserved to the general court by section seven. This
article shall not be deemed to diminish the powers of the judicial
department of the commonwealth. (Sec. 6).

The courts would be required to take judicial notice of county
charters and their amendments, copies of which would have to be
filed with the State Secretary (Sec. 4).

The General Court would be required to enact legislation to
“carry out and effectuate” the purposes and provisions of Senate,
No. 268 at the first legislative session following voter ratifIcation
of the proposed County Home Rule Amendment (Sec. 8). The
General Court would retain the power to act
in relation to

only by general laws which apply alike to all counties or by special
acts (1) which apply to a class of not fewer than two counties; or (2)
by a two-thirds vote of each branch of the general court following a
recommendation by the governor; or (3) on petition approved by the
voters of the counties concerned, to erect and constitute separate and
distinct metropolitan or regional entities, composed of part or all of one
or more counties, granting to such entities the rights and powers
pertaining to counties under this article and under any General Law
enacted pursuant to this article. (Sec. 7).

The above provision in Senate, No. 268 differs from the Munici­
pal Home Rule Amendment in its definition of a “general law”,
described in the latter constitutional article as a law applying to
two or more municipalities.\textsuperscript{1} Furthermore, the Municipal Home Rule Amendment provides that the General Court may enact special laws by simple majority vote establishing "metropolitan" or "regional" entities, without the prior or subsequent approval of individual municipalities or their voters;\textsuperscript{2} this policy would apparently be modified in a major way by Senate, No. 268, to the extent that such a voter referendum would be required unless the special law were recommended by the Governor and passed by two-thirds majorities in each branch of the General Court.

Also, whereas the Municipal Home Rule Amendment allows a special law relative to one city or town to be enacted by a simple majority vote of each branch of the General Court if the petition for that law has the prior approval of the mayor and city council of the city concerned, or of the town meeting of the town concerned, Senate, No. 268 contains no similar authorization.\textsuperscript{3}

\textit{Provisions of Proposed County Home Rule Statute}

Modelled after the Municipal Home Rule Procedures Act (G.L. c. 43B), this bill, reprinted in full in Appendix A hereof, and referred to briefly by its current document number - Senate, No. 269 of 1973 - follows the basic philosophy of the constitutional proposal discussed above. It could be utilized to provide a legislative form of home rule for counties, in the absence of voter acceptance of a constitutional provision; or, it could supplement Senate, No. 268 or a comparable alternative article added to the Constitution in the future. Senate, No. 269 would insert a new Chapter 38A into the General Laws, entitled "County Charter Procedures" (Sec. 1). That chapter is synopsized below as follows:

\textit{Section 1, Definitions.} This act may be cited as the "County Charter Procedures Act". Various words and phrases are defined.

\textit{Section 2. Charter-writing Powers.} Counties are empowered to adopt and amend charters as provided in this chapter.

\textit{Section 3. Citizen Petitions.} The adoption of a county charter may be initiated on petition of 15\% of the voters of the county, such petition to be filed with State Secretary after the signatures have been

\textsuperscript{1}Mass. Const., Amend. Ar. II, s. 8, as appearing in Amend. Art. LXXXIX (1966).
\textsuperscript{2}Ibid.
\textsuperscript{3}Ibid.
verified by the city or town boards of registrars of voters. Detailed requirements on this score are spelled out.

Section 4. Notices of Impending Ballot Action. If a sufficient number of valid signatures are found upon such a petition, the State Secretary must notify the governing bodies of all municipalities in the county that the question of electing a charter commission, and the election of charter commission, will be upon the ballot at the next state biennial election.

Section 5. Nominations of Candidates for Election to Charter Commission. A candidate must obtain not less than 500 signatures on his nomination papers. Detailed provisions govern this aspect.

Section 6. Charter Commission Election. A charter commission shall consist of 15 voters of the county elected by official ballot, without party or political designation, at an election held in accordance with this chapter. Each charter commission member shall be elected from a separate district of the county, established by the State Secretary in accordance with the standards governing the establishment of congressional districts. The State Secretary shall determine the boundaries of the county districts and shall notify the clerks of the cities and towns in the county thereof not more than 30 days following the filing of said petition with him. The names of the candidates from each district shall be placed on such ballot in alphabetical order, preceded by an instruction to the effect that a voter may vote for not more than one person as a charter commission member whether or not he favors the election of a charter commission. If the county has not previously adopted a charter pursuant to this Act, the question submitted to the voters shall be: "Shall a commission be elected to frame a charter for (name of county)?" If the county has previously adopted a charter pursuant to this Act, the question submitted to the voters shall be: "Shall a commission be elected to revise the charter of (name of county)?" The provisions of the State Election Law re votes on amendments to the constitution shall govern the canvassing and counting of votes.

Section 7. Organization and Life of Charter Commission. The commission shall elect a chairman, vice chairman, treasurer and clerk at its organization meeting. Vacancies occurring in the membership of the commission are to be filled by vote of the remaining members. The life of a charter commission shall continue 30 days following the election at which its proposals are voted upon by the county electorate.

Section 8. Financing of Charter Commission. (a) A charter commission may adopt its own rules of procedure, and expend funds received from any source, public or private.

(b) Each county must provide its charter commission with office space and an appropriation to be raised from the annual county tax
levy. Detailed aspects of commission financing are regulated.

(a) Within three months after its election, the charter commission must hold at least one public hearing in each district of the county (in hearing facilities to be provided free of charge by the city or town of situs).

(b) Within ten months after its election, the charter commission must publish a preliminary report containing the text of its contemplated county home rule charter and an explanation thereof. A public hearing on the charter must be held by the commission within four to eight weeks after the report is issued. Two copies of the commission's preliminary report must be furnished to the Attorney General, who must advise the commission of any conflict he finds between provisions of the charter and the State Constitution and laws.

(c) The final report of the commission, containing its final charter text and explanation, must be submitted to the State Secretary within 14 months following the election of the commission.

(d) Various aspects of commission public hearings are regulated.

Section 10. Charter Amendments. (a) Amendments to a charter previously adopted or revised by be proposed by the executive body of the county government, with the concurrence by a two-thirds vote of the legislative body of the county; or by a two-thirds vote of the legislative body of the county with the concurrence of the executive body of the county. However, only an elected charter commission may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the executive body, or the principal administrative officer of the county, or any change in a charter relating to the assumption or relinquishment of any of the powers which counties may assume under this chapter; and provided further that no suggested amendment shall become effective unless approved by the voters of the county.

(b) In addition to any amendment which may be proposed under subsection (a) the legislative body of the county shall consider and vote upon any suggested charter amendment which it could have the power to propose under subsection (a), and which is not substantially the same as an amendment already considered and voted upon by it within the last 12 months, and which is suggested to it by a petition in substantially the form set forth in Section 15. That petition must be signed and completed by at least as many registered voters of the county as would be required to nominate a charter commission member under Section 5. The county executive body, or a committee appointed by it, must hold public hearings on the proposed amendments, and report its recommendations thereon to the county legislative body.
(c) Whenever a suggested charter amendment has been approved for submission to the voters, a copy thereof must be sent to the Attorney General, who must advise the county authorities of any conflict between the proposed charter amendment and the State Constitution and laws. The county legislative body, after receiving such advice, and making any necessary corrections in the proposed charter amendment, may then clear it for submission to the voters.

(d) Additional words and phrases are defined.

Section 11. Submission of Charters and Charter Amendments to the County Voters. Detailed requirements are set out in this section relative to (a) the submission to the county electorate of a proposed charter, revised charter, or charter amendment, (b) the form of the ballot question, and (c) the distribution to the county voters, by the State Secretary, of the charter commission report or charter amendment report, prior to the election at which a proposed charter or charter amendment is to be voted upon.

If two or more conflicting proposals are submitted to the county voters, but not as alternatives, the proposal receiving the highest number of affirmative votes shall prevail.

Section 12. Duplicate Certificates; Decennial Publication of Charter. The filing of copies of the charter with various state and county offices of record is regulated. At intervals of not more than ten years the county executive body must arrange for the republication of the county charter, for public distribution.

Section 13. County Home Rule Powers. (a) A charter adopted under this act, and any revision thereof proposed under Section 9, may make such provision for the structure and form of the government of the county adopting the same as shall be consistent with the laws and Constitution of the commonwealth and of the United States. However, no term of office greater than four years in duration shall be provided for; and if the principal administrative officer of a county is to be appointed, rather than elected, no provision shall be made which secures to any such appointee a term in excess of three years either directly, as by an appointment for a greater period, or indirectly, as by the acquisition of tenured status after a specified period of service.

(b) Except as provided below, any county, by a charter adopted under this act, may assume any power or function which the general court may lawfully confer on a county, and any county entering into any agreement provided for in this section may assume any power reasonably necessary to carry out the terms thereof. Any county may enter into an agreement with any city or town within its boundaries for the performance of any function then being performed by such city or town, and any county may enter into like agreements with any
department or agency of the commonwealth for the performance of functions then being performed by such department or agency for the county. Any county may take appropriate legislative, executive or administrative action to exercise any power to perform any function which it may assume under the provisions of this chapter.

Section 14. Judicial Review. The Superior Court shall have jurisdiction in equity to enforce the provisions of this chapter, upon petition of either (a) ten registered voters or (b) the Attorney General. Detailed requirements relative to such judicial review are spelled out.

Section 15. Form of Petitions for the Adoption for Revision of a Charter. This is governed by detailed requirements set forth in this section.

Section 16. Filings of Papers. The same is regulated herein.

Section 17. Application of State Election Law. The provisions of this chapter shall supersede conflicting provisions of the State Election Law, as to actions under this chapter.

Finally, Senate, No. 269 also amended the Conflict of Interest Law,¹ to exclude county charter commission members from its restrictions.

State Secretary's Comments re Procedural Aspects of Two County Home Rule Proposals

In a statement filed with the Legislative Research Bureau, in which he took no position advocating or opposing home rule for counties, the Honorable John F. X. Davoren, Secretary of the Commonwealth, has called attention to procedural features of Senate, Nos. 268 and 269 of 1973 which he believes should be revised in the interest of a smooth and orderly administration of elections under those two measures if they are to be approved by the General Court:

Senate Number 268 . . . (proposing a County Home Rule Amendment to the State Constitution) . . . does not appear to be too clear as to the method of adopting a county charter. In section 3 appears the provision that “The procedures for adoption, revision and amendment of county charters shall be substantially the same as those provided in Article 89 of the amendments to the constitution. . . .” Much clearer language, and much clearer deadlines for filing, together with precise information as to various filing duties would appear necessary.

¹Senate, No. 269 of 1973, s. 2, amending G. L. c. 268A, s. 1 (d).
Senate Number 269. . . (proposing a County Charter Procedures Law as G.L. c. 38A and) . . . which is much more comprehensive provides in section 3 . . . (of the proposed G.L. c. 38A) . . . for the filing of a petition with the state secretary signed by at least 15% of the number of registered voters residing in the county at the preceding state election. This figure is readily available. But in lines 19 through 21 appears the provision that no signature placed on the petition more than six months prior to the date on which the petition is filed with the state secretary is to be counted. This could provide this office with an administrative headache beyond the scope of the small elections staff, since the certificate of the registrars on each petition could not be accepted at face value. Each signature, under later requirements in the bill, would have to be checked by the office, to find whether the certificate could be accepted in toto. It would be better to provide that no such signature should be certified locally, which in turn would require that the petitioners designate a date of filing long ahead of time, so that local boards of registrars would know which signatures they were able to certify.

The provision that the state secretary furnish forms will of course require a budgetary item, but this is not an objection. The final provision in the section concerning objections would appear to involve General Laws chapter 53 section 12, which would provide for the referral of objections, within three days after the date of filing, to the state ballot law commission, which would then have only two weeks within which to consider the objections and issue a decision (General Laws, chapter 6 section 32).

Section 4 . . . (of the contemplated G.L. c. 38A) . . . merely appears to provide that this office notify each board of selectmen and city council that the question of a county home rule charter will appear upon the ballot at the next state election. This, too, is an added duty, since it would require an additional notice besides the list of candidates and questions which we are now required to transmit to all cities and towns prior to the election, as a model for the warrant or call for a state election.

Section 5 . . . (of the proposed G.L. c. 38A) . . . has the final filing date for nomination papers for charter commission members the tenth Tuesday prior to the election. There is no provision here for objections or withdrawals, nor for consideration of the objections by the state ballot law commission. This filing date is three Tuesdays prior to the state primaries, incidentally.

Section 6 . . . (of the new G.L. c. 38A) . . . requires this office to subdivide a county into districts, for the election of charter commission members, rather than having then elected countywide. Presumably,
therefore, this office would be required to district all counties ahead of time, although the section provides that it not be done until after the filing of a home rule petition. The small staff of the division of elections would be taxed in doing this. It would be better to have the redistricting done by a legislative body, or a commission created by the legislature, after each federal census. Then the exact outlines of the districts would be known ahead of time, and the nominating process could be a less hasty one. Further, this office does not possess any expertise in the drawing of districts “in accordance with the standards governing the establishment of congressional districts”, nor sufficient staff. The ballot instructions contained in the section are no problem, although it must be kept in mind that the actual production of the ballot, under normal circumstances, begins with the questions, which are known on the sixtieth day before the election, and the plating of the questions, for the newspaper lists, for the ballot, and for the election warrant, are actually in operation before the winners of the primary are known, and in fact before the primary itself is held.

Section 8 . . . (of the proposed G.L. c. 38A) . . . requires the filing with this office of a complete account of receipts and expenditures of a county charter commission, within 30 days after submission of its final report. This should provide no problem.

Section 10 . . . (of the suggested G.L. c. 38A) . . . apparently gives the county, if it elects a full charter commission, the right to change the “mode of election or appointment or terms of the legislative body, executive body, or principal administrative officer.” “Mode of election” could well include election by proportional representation, which could mean, if the election were left in the hands of the state secretary, that at a state election held in November, plurality voting would be used for all offices except county offices (and then only in one particular county) where P. R. voting, with ballot rotation, would apply to the county which had decreed it. This would be nearly impossible under present election administration procedures and printing schedules.

Subsection (c) of section 10 . . . (of the proposed G.L. c. 38A) . . . provides that a proposed amendment shall not be submitted to voters until conflicts pointed out by the attorney general have been eliminated. It does not provide a mechanism for eliminating them, and could thus provide this office with a question as to whether to place an amendment on the ballot or not.

Section 11 . . . (of that County Charter Procedures Act) . . . provides for a copy of ballot question and summary on any charter adoption, revision or amendment to be filed with this office 45 days prior to the election, and provides for a summary of the provisions of the proposed change. This is uncomfortably close to the election. Further, the state secretary
is required to cause the final report of the commission to be printed and
distributed to each residence of one or more registered voters in the
county. This would require the printing of the report, addressing the
printed booklet from voter lists, and mailing, all within a span of time
when the division of elections is completely submerged in the primary
and the preparation of the election ballot.

Section 13 . . . (of the contemplated G.L. c. 38A) . . . provides that no
county officer may hold a term longer than four years. Several now
have six year terms. Provision should be made for those in office when
the new charter takes over. Are they automatically removed? The act
should say so.

I am unable anywhere in the proposal to find a deadline for the filing
of a home rule charter commission petition with this office. This is
necessary.

Also section 12 . . . (of the suggested general law) . . . provides that
duplicate certificates be prepared setting forth an adopted or revised
charter or charter amendments, but does not provide what agency is to
prepare them.¹

The Department of the State Secretary is currently the principal
office of record for the filing of home rule charters and charter
amendments adopted by cities and towns.²

*Views Favoring and Opposing County Home Rule*
*in Massachusetts*

*Aspects in Controversy*

Proponents and opponents of the county home rule concept, as
embodied in Senate, Nos. 268 and 269 of 1973, argue its merits in
relation to (a) the applicability of the municipal home rule
analogy, (b) its promotion of a "rebirth" of county government,
(c) county home rule as an alternative to county abolition, (d)
excessive state legislative control of county government, (e) the
political responsiveness of county government, (f) the regional
governmental role of counties, (g) constitutional vs. legislative home
rule for counties, and (h) the election of county charter commis-
soners on an at-large vs. a "district" basis.

¹Letter to Daniel M. O'Sullivan, Director of the Legislative Reserach Bureau, August 6,
43B, s. 12.
**Municipal Home Rule Analogy**

*Proponent Views.* Advocates of home rule in Massachusetts counties cite the grant of self-executing constitutional home rule powers to cities and towns of this state in 1966 as a precedent warranting the assignment of like powers to counties by constitutional or statutory provisions or both. In their opinion, the voters of the 14 counties should at least be allowed the right to choose or not to choose to have their county government under a locally-formulated charter; anything less is seen as a violation of democratic principles which are said to apply alike to county and municipal government.

Thus, the analogy to municipal home rule was made by the Plymouth County Commissioners in these terms:

... It has been for some time the opinion of the entire Board here that there should be basic changes in the nature of County Government in Massachusetts to ensure greater local self-determination, and to empower Counties to deal with the significant regional governmental service problems facing Massachusetts' diverse regions.

The system under which the County budgets are determined by the General Court has in effect deprived those who pay the cost of County operations, the taxpayers of that County, of the ballot-box control over their taxes. There should be some locally, directly-elected County board having the legislative budget appropriation power for each County. This would enable the electorate to register its approval or disapproval of County spending policies.

The services which Counties should be empowered to perform should be greatly broadened and to a large extent should be optional at the will of locally elected County officials. Such services as disposal of sewage and solid waste, public health, regional planning, firefighting, public safety and police protection, and many other services can be performed better on a County basis than any other.

Much has been said about the lack of logic inherent in County boundaries for regional government. The same could be said of the geographical alignment of the New England states, but no one seriously sees any justifying advantage in eliminating, for instance, Rhode Island as a separate state. The same reasons can be applied, albeit less sensationally, to the thought of wiping out such historic alignments as the boundaries of Plymouth, Barnstable or Bristol Counties.

Massachusetts has undergone a 10 year experiment with Regional Planning Agencies such as MAPC, SRPEDD, and Old Colony Planning Council. These alignments were forced on the state by the Federal Government and its categorical grants funneled through only the Stan-
standard Metropolitan Statistical Areas. Compared with the cost of the RPA's and the amount of federal money that has been funneled through them, the results have been negligible.

If regional planning and federal grants were instead done under the aegis of counties headed by locally elected officials in command of their own budgets, a new era of effective regional government would replace our present ill-conceived and federally-dictated version of regional planning.

Insofar as any proposal being studied under H.5414 might help to bring these objectives into being they have the support of the Plymouth County Commissioners.

We feel that enactment by the Legislature of such measures would be a continuation of the progress made recently with the establishment of municipal home rule...1

Proponents of county home rule argue that counties now provide some “municipal” services, and should be permitted to provide many more of them in the future as vehicles for regionalizing such services. Hence, it is contended, counties should be allowed to have municipal-like governmental structures under a system of county home rule paralleling and supplementing municipal home rule, but with suitable restrictions as to the “state” functions of such counties. In this connection, proponents cite a plank in the 1972 Democratic Party State Platform which called for “changes in the structure and functions of county government, so that it may better serve as a true intermediate level of government with a focus on regional problems” and greater accountability to communities of the county. Accordingly, home rule is championed as a means to that end by proponents.

Opponent Views. Critics reply that the county home rule argument ignores the fundamental differences between counties and municipalities, and hence applies the municipal home rule analogy incorrectly. In the opinion of opponents, counties are not “natural” units of government created by voluntary action of their inhabitants or by economic forces, but are first and foremost state administrative districts created by the General Court to administer the courts and other “state” functions which must be standardized.

Opponents stress that in Massachusetts the “non-state” functions of counties are fewer in number than those of counties outside

New England which administer a wide range of "municipal" services in areas of the county not included in incorporated municipalities. Furthermore, Massachusetts has no unincorporated areas, and has relied traditionally on municipalities to provide the bulk of local services individually or via regional districts and intermunicipal agreements. County home rule opponents emphasize that, as a consequence, municipal governments are very close to their electorates and have a long history of the exercise of their own local legislative powers. In contrast, Massachusetts counties are more "remote" from their voters and lack the experience upon which a county home rule system could be founded successfully.

Critics warn that unless it is preceded by a "drastic" change in the "atmosphere," functions and orientation of county government generally, the granting of any substantial home rule authority to the counties of Massachusetts would only enlarge the area of possible political abuses in county government, such as those which triggered the reform movement in Middlesex County. Thus, county home rule could prove a "fraud" and a "sham", in the opinion of its opponents who regard counties as "inappropriate" home rule entities in this Commonwealth.

Promoting a Rebirth of County Government

Proponent Views. County home rule partisans predict that it would spark a "rebirth" of county government in Massachusetts, permitting it to become the basis for effective regional government in both urban and rural areas alike. Proponents cite the encouraging developments in municipal government which have followed in the wake of the ratification of the Municipal Home Rule Amendment in 1966. Since that development more than 27 cities and towns have adopted home rule charters, a number of which have introduced significant innovations in municipal organization and procedures.

Proponents urge that the establishment of county home rule be not delayed until county boundaries have been revised and county functions redelineated. They point out that municipal home rule was not postponed pending (a) the consolidation of "inviable" small towns and truncated cities or (b) the reevaluation of functions assigned to cities and towns. Municipal home rule was granted to stimulate a "rebirth" of municipal government, under conditions permitting the General Court to follow up the home
rule grant with other remedial general laws in aid of municipal
government modernization. County home rule supporters advocate
a similar approach in the instance of county government.

Opponent Views. Those opposing county home rule contend
that the granting of charter-writing powers to counties is not
necessary to bring about a revitalization and modernization of
county government in Massachusetts. In their judgment, it would
be a very serious mistake to grant such powers to counties until
the General Court and the people have a better understanding as to
where the state is headed, whether there is to be a middle tier of
government, what it should do, what its boundaries should be, and
what its relationship should be to the municipalities and to a
reorganized state government.

Indeed, these critics say, county home rule may be outdated
already, since most metropolitan areas around the nation are
composed of more than one county. They fear that county home
rule may result in abrupt, disruptive changes detrimental to good
government, and may postpone and prevent the day when state
legislatures come to grips with their responsibility to effectuate,
orderly and responsive urban government.

Critics charge that to grant Massachusetts counties home rule
while they have their present “irrational” boundaries which impair
their use as regional government, and while county government is
in its present “archaic” form, will have the opposite effect from
producing a “rebirth” of county government. Instead, it could
“freeze” the 14 counties as they now exist territorially and
politically, thus erecting formidable barriers to the state’s revision
of county boundaries according to rational standards. Accordingly,
some of these opponents urge that if any form of home rule is to
be granted, it be delayed until the Legislature has had an opportu­
nity to redivide the state into more logical county areas and to
reallocate governmental functions among the state, county and
municipal levels.

In the view of other opponents, a far wiser approach to the
“rebirth” of county government would be for the General Court to
follow the “less radical” course of overhauling the general statutes
controlling the form, functions and powers of counties. Some of
these critics suggest that the enactment of an optional county
charter law, patterned after the New Jersey statute, would be
preferable to the passage of Senate, No. 269 of 1973, and could
afford counties a choice of carefully drawn standard plans adaptable to the needs and preferences of different areas and populations of the state.

Still other opponents assert that there is no guarantee that counties will be better organized and administered, under county home rule, than under a non-home-rule system with or without an optional charter law. These opponents see home rule as a "two-edged sword" which, properly used, can bring beneficial results, but which is capable of misuse to further county courthouse politics and parochialism at the expense of the county taxpayer.

County Home Rule as an Alternative to County Abolition

Proponent Views. It is argued that county government will be abolished in Massachusetts if county government is not modernized and made more truly responsive to the county electorates through the adoption of a county home rule system. Proponents of this view hold that there is a need for a "middle tier" of government in Massachusetts, and that county government is capable of filling that need if restructured properly.

Opponent Views. Opponents, who agree that county government must modernize or perish, do not concur that county home rule is necessary to prevent the disappearance of county government in Massachusetts. They reply that county government can be revitalized via general law changes, such as those described above.

Excessive State Legislative Control of Counties

Proponent Views. County home rule advocates assert that the present "total dependence" of Massachusetts counties on the General Court for annual appropriations, capital improvement legislation, and legislation relative to other matters of county concern, and the absence of independent county legislative bodies, has a stifling effect on county government and is a major contributing factor to "voter alienation" from county government. These home rule supporters regard as "anomalous" the present situation in which county officials, who have an intimate firsthand knowledge of county conditions and to whom county voters naturally turn for appropriate action, lack the authority to utilize their knowledge to fulfill that expectation.

Other county home rule proponents blame the General Court for the ills of county government. They attribute many of the
abuses in county government to the political interplay between the General Court and county officials under the present county government system. Hence, it is said that counties must be freed from the allegedly "excessive" and "politically oriented" domination by the Legislature, and their governments made accountable to their own county electorates who must pay the costs of county government now without an effective voice in county expenditure decisions.

Opponent Views. On the other hand, opponents of county home rule reply that it is grossly unfair to indict the Legislature on this score, as though county officialdom was free of "political sin" and as though the General Court were composed of primeval political types lacking any sense of responsibility to the electorate.

These opponents contend that tight state legislative control over the counties is necessary to protect the public from the consequences of unwise, politically-motivated actions of county officials, where such actions occur. Opponents feel that when the record of the Legislature's treatment of county government is considered as a whole, over the long run, the net results have been beneficial to the public interest. In their view, the existing laws afford county officials a substantial role in the formulation of county budgets; and the state legislative process, with its tradition of public hearings on bills affecting counties generally and individually, focuses public attention on county government and affords county voters an opportunity to express their views and present their information.

Opponents argue that the fact that so many states have county home rule systems, while so few of their counties have availed themselves of charter-writing powers, suggests that county voters are less distrustful of the state legislature than of their county officialdom. These critics assert that there is little substantial agitation for county home rule in Massachusetts, outside of Middlesex and Essex counties, and that most Massachusetts voters appear willing to continue with the present pattern of state legislative supervision of county government.

Political Responsiveness of County Government

Proponent Views. Home rule advocates assert that a grant of home rule, with legislative powers, to counties will make their
governments more visible and responsive to the county population. They ask that county government be "given back to the people" and that the voters of the Massachusetts counties be accorded home rule discretion in relation to their own county affairs. These proponents see no reason why the electorates of counties of this Commonwealth should be considered less competent to have their own elected county legislative bodies and home rule authority than county electorates of other states. They argue that the case for having the General Court handle all the legislative business of counties is "specious", and no better or worse than the case for stripping municipalities of their legislative bodies and charters and processing all local municipal business through the General Court.

Proponents of county home rule complain that the present "undemocratic" county government system, with its archaic structure and dependence on the Legislature, is not responsive to the will of county voters. Under it, county officials and activities are said to be "obscure", and county officials are alleged to look too much to the General Court and not enough to their own voters in county matters.

Opponent Views. In reply, opponents deem "exaggerated" the above claim that county officials are "unresponsive" to their electorates. They note that in Middlesex County, organized voter support for a "reform slate" of candidates for county commissioner resulted in substantial success for the reform movement in that county. Home rule critics stress that county officials, desirous of reelection, must recognize significant demands among their electorates, as do municipal elected officials and state legislators. In the opinion of opponents, much of the complaint about "unresponsive county government" comes from people who are unable to persuade a majority of county voters to share their views on county matters, or who have not made the requisite electoral effort.

Regional Governmental Role of Counties

Proponent Views. Advocates of county home rule believe that county government should be developed as the vehicle for regional government in the Commonwealth as the founders of the Massachusetts Bay Colony intended. They contend that the state should be looking to modernized county government to solve urban and
rural problems, rather than to "metropolitan governments", special authorities and other "superstructures" whose jurisdictional boundaries violate county boundaries. In their opinion, home rule counties will prove more economical and effective as regional governmental entities.

Proponents complain that in the absence of county governments which can be used as regional governments, there is a deplorable tendency in Massachusetts to multiply regional districts of one sort or another, placing then one on top of another, and on top of counties, with dissimilar territories. Each such district then develops its own political and administrative bureaucracies and resists efforts by the Legislature to abolish it or to consolidate it with other entities. The result — proponents complain — is a chaotic irrational, costly structure of regional government in the state which the General Court finds increasingly difficult to supervise, control and coordinate.

Opponent Views. Some opponents of county home rule feel that the concept of a simple unit of government with general powers and fixed boundaries is inadequate in a dynamic state, and hence that the "regional government" argument for county home rule is overstated. In their opinion, what is required are new flexible units of metropolitan and regional government, coterminous with the areas where their services are to be furnished.

Particularly bothersome to authorities holding this view are the provisions of Senate, No. 268 of 1973 (the proposed county home rule constitutional amendment) which appear to allow the General Court to enact regional governmental laws, as special bills, only on recommendation of the Governor, and by two-thirds majority votes in each branch, unless the proposal is based "as a petition approved by the voters of the counties concerned". In the view of critics, that requirement would introduce an undesirable degree of rigidity into the processes for obtaining metropolitan and regional regulation, and would afford undue play to "parochial" county interests which desired to obstruct needed laws on this score.

Accordingly, those opponents feel that no provision should be added to the Massachusetts Constitution which diminishes the present powers of the General Court, under the Municipal Home Rule Amendment, to enact metropolitan and regional laws free of local veto.
Constitutional vs. Legislative Home Rule

Views Favoring Constitutional Amendment. Champions of a constitutional amendment granting home rule to counties directly believe that county home rule will not materialize unless it is based on such a self-executing approach. They fear that, allowed the choice of granting or not granting home rule to counties by statute under a “permissive” county home rule constitutional provision, or under existing state constitutional provisions deemed a sufficient basis for such a statute, the General Court will opt to do nothing or very little.

Views Favoring a Home Rule Statute Only. Another school of thought favoring county home rule argues that it would be premature to give counties home rule as a matter of constitutional right. They hold that such home rule as may be granted should be provided by statute alone, in the exercise of the General Court’s existing adequate powers under the Constitution. These home rule advocates feel that counties should have an extended experience with standard optional charters, or legislative home rule, or both, before consideration is given to a constitutional amendment.

At-Large v. District Election of County Charter Commissioners

The legislative home rule proposal, Senate, No. 269, requires that the members of the 15-member county charter commission be elected individually from 15 districts into which the county must be divided for such purposes by the State Secretary, on a “one man, one vote” basis. The intent of the proposed procedure is to assure a residential distribution of charter commission members, and a broadly-representative commission membership. Authors of the provision oppose the election of all county charter commissioners at-large, because they fear that such a procedure would allow a few large communities in a county to dominate the election and membership of the commission.

Critics of Senate, No. 269 complain that its requirement that all county charter commissions be chosen in that manner, on the basis of 15 districts, is wholly unrealistic, as it fails to take into consideration the widely-differing population sizes of counties. For example, they ask, how would one go about dividing each of the two small island counties (Dukes and Nantucket) into 15 districts? Extreme difficulties could arise in trying to divide into 15 districts more populous counties which are composed of many
towns of fewer than 6,000 inhabitants which have not divided themselves into precincts. In such instances, compliance with the "one man, one vote" requirements of the Federal and state constitutions could be all but impossible, unless the authority forming the 15 districts were empowered to divide precinctless towns into precincts, a time-consuming process.

Such critics suggest that it would be more practical (a) to provide for the election of all charter commissioners at-large in counties of fewer than 25,000, 50,000 or 100,000 inhabitants, and (b) to provide for the election of charter commissioners from a "more realistic" number of districts in more populous counties.
APPENDIX A

PROPOSAL BY SENATOR ATKINS AND OTHERS FOR COUNTY HOME RULE CHARTER PROCEDURES ACT

(House, No. 2639 of 1972, Reprinted as Senate, No. 269 of 1973)

The first draft of this proposal, in House, No. 2639 of 1972, was introduced by Representative Chester G. Atkins of Acton (now Senator from Middlesex) on the petition of himself and Representative Paul H. Guzzi of Newton. Reprinted as Senate, No. 269 of 1973, it was reintroduced by Senator Atkins of Middlesex, together with Representatives John A. Businger of Brookline and Paul H. Guzzi of Newton as cosponsors, for consideration by the current General Court.

AN ACT ESTABLISHING PROCEDURES FOR THE ADOPTION OF HOME RULE CHARTERS BY COUNTIES

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 38 the following new chapter:—

CHAPTER THIRTY-EIGHT A
COUNTY CHARTER PROCEDURES

Section 1. This chapter may be cited as the “County Charter Procedures Act.” As used in this chapter, the terms “board of registrars of voters”, “city council”, and “board of selectmen” shall include any local authority of different designation performing like duties.
Section 2. Every county shall have the power to adopt a charter or to amend an existing charter in accordance with procedures prescribed by this chapter.

Section 3. The adoption of a charter for any county under this act shall (and the revision of any charter so adopted may) be initiated by filing with the state secretary a petition signed by at least fifteen per cent of the number of registered voters residing in said county at the preceding state election, but in determining the number of signatures contained in said petition, no signature placed on such petition more than six months prior to the date on which said petition is filed with the state secretary shall be counted. Such petition may consist of a number of separate sheets, but each sheet shall be in substantially the form prescribed therefor in section fifteen and shall be signed and completed in accordance with the instructions contained therein. The state secretary shall furnish forms for such petition to any registered voter of the county requesting the same. The signatures contained on said petition shall be certified by the board of registrars of voters of the cities and towns in the county prior to the filing of said petition with the state secretary. Such certification shall be performed in the manner prescribed for the certification of signatures on nominating petitions, under section seven of chapter fifty-three of the General Laws. Any petition or separate sheet of a petition submitted for certification shall be processed and returned to the person who submitted it within ten days after the submission. Objections to the sufficiency and validity of the signatures on any such petition as certified by the board of registrars of voters shall be made in the same manner as provided by law for objections to nominations for county offices.

Section 4. Upon the filing with the state secretary of a petition under section three of this chapter, the state secretary shall furnish a receipt for the same to the person or persons filing the petition, and within thirty days after the filing of any such petition which contains the necessary number of certified signatures, the state secretary shall notify the city council of each city in the county and the board of selectmen of each town in the county that the question of the adoption or revision of a charter under this chapter is to be submitted to the voters of the county, and that members of a charter
50 commission shall be elected, in accordance with this chapter, at
51 the next regular biennial state election. The ballots to be used
52 in said county at said election shall be prepared and furnished
53 by the state secretary in accordance with the requirements of
54 this chapter and of chapter fifty-four.

55 Section 5. The signatures of not less than five hundred
56 registered voters residing in the county shall be required to
57 nominate charter commission members. Nominating papers con­
58 taining the required number of signatures shall be filed with
59 the state secretary not later than the tenth Tuesday prior to
60 the election in which charter commission members are to be
61 chosen. Nominations for charter commission members shall be
62 governed by the provisions of chapter fifty-three which are
63 applicable to nominations for state office, except that no party
64 or political designations shall be used and that the eight word
65 statements provided for in section forty-five of chapter fifty­
66 three shall not be used. The clerk of each city and town in the
67 county shall furnish to each candidate for charter commission
68 upon request one copy of the list of registered voters of such
69 city or town and one copy of the list of residents provided for
70 in section six of chapter fifty-one.

71 Section 6. A charter commission shall consist of fifteen
72 registered voters of the county elected by official ballot, with­
73 out party or political designation, at an election held in accor­
74 dance with this chapter. Each charter commission member shall
75 be elected from a separate district of the county, established
76 by the state secretary in accordance with the standards govern­
77 ing the establishment of congressional districts. The state secre­
78 tary shall determine the boundaries of the county districts and
79 shall notify the clerks of the cities and towns in the county
80 thereof not more than thirty days following the filing of said
81 petition with the state secretary. The names of the candidates
82 from each district nominated in accordance with section five
83 shall be placed on such ballot in alphabetical order, preceded
84 by an instruction to the effect that a voter may vote for not
85 more than one person as a charter commission member whether
86 or not he favors the election of a charter commission. If the
87 county has not previously adopted a charter pursuant to this
88 Act, the question submitted to the voters shall be: "Shall a
89 commission be elected to frame a charter for (name of
90 county)?" If the county has previously adopted a charter pursuant to this Act, the question submitted to the voters shall be: "Shall a commission be elected to revise the charter of (name of county)?" The provisions of chapter fifty-four regarding votes on amendments to the constitution shall govern the canvassing and counting of votes on the question and the custody and disposition of ballots and related records.

Section 7. A charter commission shall promptly organize by the election from among its members of a chairman, a vice chairman, a treasurer and a clerk and shall file a notice of such organization with the state secretary. If no notice of organization is received by the state secretary within ten days after the election of the commission members, he shall immediately call a meeting of the commission for the purpose. A charter commission shall continue to exist until thirty days after the election at which its charter adoption or revision proposal, if any, is required to be submitted to the voters under this chapter or until thirty days after submission to the state secretary of a final report recommending no new charter or revision. If any member dies, resigns or ceases to be a registered voter of the district of the county from which such member was elected, a vacancy shall result which shall be filed by the election of any registered voter of the same district of the county by vote of a majority of the remaining members. The commission may continue to act notwithstanding the existence of any vacancy. Members shall serve without compensation but shall be reimbursed from the commission’s account for expenses lawfully incurred by them in the performance of their duties.

Section 8. (a) A charter commission may adopt rules governing the conduct of its meetings and proceedings and may employ such legal, research, clerical or other employees, who shall not be subject to the provisions of chapter thirty-one, or consultants as its account may permit. In addition to funds made available by a county the charter commission account may receive funds from any other source, public or private, provided, however, that no contribution of more than five dollars shall be accepted from any source other than the county unless the name and address of the person or agency making the contribution, the amount of the contribution and
the conditions or stipulations as to its receipt or use, if any, are disclosed in a writing filed with the state secretary. The consent of a charter commission to any such condition or stipulation shall not be binding upon the county. Within thirty days after submission of its final report the charter commission shall file with the state secretary a complete account of all its receipts and expenditures for public inspection. Any balance remaining in its account shall be credited to the county’s surplus revenue account.

(b) Each county shall provide its charter commission, free of charge, with suitable office space, and each city and town within the county, shall provide the county charter commission, free of charge, with reasonable access to facilities for holding public hearings. Each county shall, upon request of its charter commission, contribute reasonable clerical and other assistance to such commission, to supplement the resources of the commission provided for in this chapter, and each county, and each city and town within the county, shall permit the charter commission to consult with and obtain advice and information from county, city, or town officers and employees during ordinary working hours. Within twenty days after the election of a charter commission, the county treasurer shall credit to the account of the charter commission, with or without appropriation, the sum of thirty-five thousand dollars. In any county which has already adopted a charter assuming the power to levy taxes, such sum shall be provided by taxation in the manner set forth in the charter, but if payment is to be made after the annual tax levy by the county, it shall be provided by transfer from available funds, or by the exercise of emergency borrowing powers without, however, any reference of the question to the registered voters of the county. In any other county, such sum shall be levied against the cities and towns in the county in proportion to their respective borrowing limits, as determined under the provisions of chapter forty-four. Such levies shall be met in the manner provided in section eight (b) of chapter forty-three B. A county may appropriate additional funds for its charter commission provided the aggregate contribution to the charter commission does not exceed ten times the initial contribution required under this section.
Section 9. (a) Within three months after its election the charter commission shall hold at least one public hearing in each district of the county and shall take testimony and receive other evidence regarding the proposed charter or charter revision.

(b) Within ten months after its election, the charter commission shall prepare a preliminary report including the text of the charter or charter revision which the commission intends shall be submitted to the voters and any explanatory information the commission deems desirable, shall cause such report to be published in each district, in a newspaper having general circulation in the district, shall provide sufficient copies of the preliminary report to the clerk of each city and town in the county to permit the distribution of the preliminary report to each registered voter requesting the same, and shall furnish two copies to the attorney general. Not less than four weeks nor more than eight weeks after such publication, the commission shall hold a public hearing upon the report in each district of the county. Within four weeks after receipt of the report, the attorney general shall furnish the commission with a written opinion setting forth any conflict between the proposed charter or charter revision and the constitution and laws of the commonwealth.

(c) Within fourteen months after its election, the charter commission shall submit to the state secretary and to the executive body of the existing county government the commission's final report, which shall include the full text and an explanation of the proposed new charter or charter revision, such comments as the commission deems desirable, an indication of the major differences between the proposed charter and the present charter or, if no charter has previously been adopted by the county, the major differences between the government of the county under the proposed charter and the existing system of county government. The final report of the commission shall also contain one or more statements, not more than one thousand five hundred words in length, prepared by any dissenting minority of the commission, provided such statement or statements are filed with the chairman of the commission within ten days after the commission's vote approving the final report.
(d) Each required public hearing before a charter commission shall be held within one of the districts of the county at such time and place as may be specified in a notice published at least ten days prior to the hearing in a newspaper having general circulation in the district where the hearing is to be held, but hearings may be adjourned from time to time without further published notice. Any public hearing held by a charter commission in addition to those required under this chapter shall also be advertised in not less than two additional newspapers having general circulation in the county, and such additional advertising shall comply with the requirements of this subsection.

Section 10. (a) Amendments to a charter previously adopted or revised under this chapter may be proposed by the executive body of the county government, with the concurrence by a two-thirds vote of the legislative body of the county; or by a two-thirds vote of the legislative body of the county with the concurrence of the executive body of the county; provided that only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the executive body, or the principal administrative officer of the county, or any change in a charter relating to the assumption or relinquishment of any of the powers which counties may assume under this chapter; and provided further than no suggested amendment shall become effective unless approved by the voters of the county in accordance with the provisions of this act.

(b) In addition to any amendment which may be proposed under subsection (a) the legislative body of the county shall consider and vote upon any suggested charter amendment which it would have the power to propose under subsection (a), and which is not substantially the same as an amendment already considered and voted upon by it within the last twelve months, and which is suggested to it by a petition in substantially the form set forth in section fifteen, signed and completed in accordance with the instructions contained therein by at least as many registered voters of the county as would be required to nominate a charter commission member under
section five, which petition shall be filed with the executive body of the county.

At the earliest convenient time not later than three months after the date any suggested amendment is filed under subsection (b), the county executive body shall hold a public hearing thereon, before it or before a committee selected or established by it for the purpose, in each district of the county, provided that any number of suggested amendments may be considered at the same hearing. Such hearings shall be held not later than six months after the filing date of any suggested amendment to be considered, and each such hearing shall be publicized in the manner provided in section nine (d) of this act. The body or committee holding the public hearings shall report its recommendations to the legislative body of the county which shall take final action, either rejecting the proposed amendment or ordering that the proposed amendment be submitted to the voters of the county, not later than eight months after such proposed amendment was first filed.

(c) Whenever a suggested charter amendment has been approved for submission to the voters a copy of the proposed amendment shall be immediately filed with the attorney general and such suggested amendment shall not be submitted until receipt of the opinion of the attorney general, which shall be furnished within four weeks, setting forth any conflict between the proposed amendment and the constitution and laws of the commonwealth. If the attorney general reports that the proposed amendment conflicts with the constitution or laws of the commonwealth, the proposed amendment shall not be submitted to the voters until such conflicts have been eliminated, by appropriate changes in the suggested amendment or otherwise, nor, if the suggested amendment is revised, until further proceedings with respect to the suggested amendment under the provisions of subsection (a) or subsection (b) of this section. If the attorney general reports no such conflicts, the suggested amendment shall be filed with the state secretary and with the executive body of the county.

(d) For the purposes of this act the term “legislative body of the county” and the term “executive body of the county” shall be deemed interchangeable with each other in the case of any county whose governing body has not been divided into
289 separate executive and legislative branches.

290 Section 11. Following the filing of a final report of a charter
291 commission recommending the adoption or revision of a char-
292 ter, or the filing of a suggested amendment of a charter which
293 is to be submitted to the voters under section ten, with the
294 state secretary, he shall so notify the clerks of the cities and
295 towns in the county and shall cause the question of the
296 adoption of such charter, revision, or amendment to be sub-
297 mitted to the voters at the first state election held at least two
298 months after such filing, or at the first county election held at
299 least two months after such filing, if separate county elections
300 are held in that county. The question of adopting a charter or
301 revising a charter as recommended by a charter commission
302 shall be submitted to the voters as a single question unless the
303 report of the charter commission provides for the separate
304 submission of proposed revisions. Unrelated charter amend-
305 ments proposed under section ten shall be submitted to the
306 voters as separate questions.

307 The question of approving the adoption of or any revision of.
308 or amendment to a charter shall be placed on a printed ballot,
309 which ballot, including ballot labels where voting machines are
310 used, shall be prepared by the state secretary at public expense.
311 A copy of the ballot question and summary prepared in ac-
312 cordance with the following instructions shall be filed with the
313 state secretary no later than forty-five days before the election,
314 and the form of the question shall be substantially as follows:
315 “Shall this county approve the [insert ‘new charter recom-
316 mended by the charter commission’ or ‘charter revision recom-
317 mended by the charter commission’ or ‘charter amendment
318 proposed by the (county legislative body) (county executive
319 body) (petition of voters of the county)’, as appropriate] sum-
320 marized below?”

321 Yes

322 No

323 [Where a new charter or single charter revision is being
324 submitted at an election, set forth here a brief summary of its
325 basic provisions (composition and mode of selection of the
326 legislative and executive bodies or of the principal administra-
tive officer or the tenure of any of them, or the assumption or relinquishment of powers which may be assumed by a county under this act or, if none of these is involved, the most significant changes in the structure or functions of the existing county government which would be effected by the proposed charter, revision, or amendment). Where separate revisions or any amendments are being so submitted, set forth here the substance thereof in a manner also sufficient to distinguish each from any other amendments or revisions to be considered at the same election.] The charter commission shall prepare the summaries of its own proposals and the executive body of the county government shall prepare the description of proposed amendments.

The state secretary shall cause the final report of a charter commission, or a charter amendment proposed under section ten, to be printed and a copy to be distributed to each residence of one or more registered voters in the county. Such distribution shall occur not later than two weeks before the election at which the question of adopting, revising or amending the charter is to be submitted to the voters. Additional copies of such final report or proposed amendment shall be filed with the clerks of the cities and towns in the county for distribution to registered voters requesting the same, and one such copy shall be posted in the office of each such clerk. The provisions of chapter fifty-four which govern the canvassing and counting of votes and the custody and disposition of ballots and related records relative to amendments to the constitution shall be applicable to questions submitted to the voters under this chapter.

A new charter or charter revision approved by a majority of the voters of the county voting thereon shall take effect on the day specified in such charter or revision, and any proposed amendment so approved shall take effect upon the date specified therein. If two or more charter adoption, revision or amendment proposals are submitted to the voters in the alternative and are approved, only the alternative proposal receiving the highest number of affirmative votes shall take effect. If two or more charter adoption, revision or amendment proposals

1In Senate, No. 269 of 1973, this word is “distribution”.
containing conflicting provisions are submitted to the voters, but not as alternatives, and are approved, all such proposals shall take effect, but the proposal receiving the highest number of affirmative votes shall be construed to prevent all conflicting provisions contained in other proposals from taking effect.

Section 12. Duplicate certificates shall be prepared setting forth any charter that has been adopted or revised and any charter amendments approved, and shall be signed by the state secretary. One such certificate shall be deposited in the office of the state secretary and the other shall be recorded in the records of the county and deposited among its archives. All courts may take judicial notice of charters and charter amendments of counties.

The executive body of each county shall, at intervals of not greater than ten years, cause the charter of said county as revised or amended to be reprinted for distribution to such registered voters of said county as may apply therefor at the office of the executive body of the county. Acts of the general court which are included in such charter may be referred to by appropriate subject headings and statutory citations instead of being set forth at length. Copies of said document may be sold at a price not to exceed the cost of paper, printing and binding thereof, plus mailing charges if any, as determined by the county executive body.

Section 13. (a) A charter adopted under this act, and any revision thereof proposed under section nine, may make such provision for the structure and form of the government of the county adopting the same as shall be consistent with the laws and constitution of the commonwealth and of the United States, except that no term of office greater than four years in duration shall be provided for, and except that if the principal administrative officer of a county is to be appointed, rather than elected, no provision shall be made which secures to any such appointee a term in excess of three years either directly, as by an appointment for a greater period, or indirectly, as by the acquisition of tenured status after a specified period of service.

(b) Except as provided below, any county, by a charter adopted under this act, may assume any power or function which the general court may lawfully confer on a county, and
any county entering into any agreement provided for in this section may assume any power reasonably necessary to carry out the terms thereof. Nothing in this section shall be deemed to grant to any county any power excluded from the general grant of powers set forth in Section 6 of Article of the Articles of Amendment of the Constitution of the Commonwealth. Any county may enter into an agreement with any city or town within its boundaries for the performance of any function then being performed by such city or town, and any county may enter into like agreements with any department or agency of the commonwealth for the performance of functions then being performed by such department or agency for the county. Any county may take appropriate legislative, executive or administrative action to exercise any power or to perform any function which it may assume under the provisions of this... 1

Section 14. (1) The superior court shall, upon petition of ten or more registered voters or of the attorney general, have jurisdiction in equity to enforce the provisions of this chapter. (2) The provisions of chapter two hundred and thirty-one A applicable to municipal by-laws or ordinances shall apply to charters, charter revisions and charter amendments adopted under this chapter. In addition, a petition for declaratory relief under chapter two hundred and thirty-one A may be brought on behalf of the public by the attorney-general or, by leave of the court, by ten or more registered voters of the county. In the case of a petition brought by ten registered voters, the attorney general shall be served with notice of the preliminary petition for leave, and may intervene as a party at any stage of the proceedings; and the petitioners shall be liable for, but may in the court’s discretion also be awarded, costs, which may include reasonable counsel fees. (3) Judicial review to determine the validity of the procedures whereby any charter is adopted, revised or amended may be had by petition of ten or more registered voters of the county brought within thirty days after the election at which such charter, revision or amendment is approved. If no such petition is filed within such period, compliance with all the... 1

1Words are omitted in printed bill text at this point.
procedures required by this act and the validity of the manner in which such charter, revision or amendment was approved shall be conclusively presumed. No charter adoption, revision or amendment shall be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption, revision or amendment.

Section 15. (a) A petition for the adoption or revision of a charter shall conform with the requirements of subsection (c) and shall have a sentence in substantially the following form at the top of each page:

Each of the undersigned requests that the county of......revise its present charter or adopt a new charter, and each of the undersigned certifies that he is a registered voter of said county whose residence addresses at the times set forth below were as shown below, and that he has not signed this petition more than once.

(b) A petition suggesting a charter amendment under section ten shall conform with the requirements of subsection (c) and shall have a sentence in substantially the following form at the top of each page:

Each of the undersigned requests that the (county executive body) propose the charter amendment (s) attached hereto to the voters of the county of ........., and each of the undersigned certifies that he is a registered voter of said county whose residence addresses at the times set forth below were as shown below, and that he has not signed this petition more than once.

(c) All petitions shall require the following information to be furnished by each signer in accordance with the following instructions which shall be printed on each page:

| Date* | Name** | Present Address (Street & Number) | Registered Address (Street & Number January 1, 19..***)
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INSTRUCTIONS:

*Each voter in his own handwriting, the date on which he signs the petition, except as indicated below.
**Written signature of voter to be supplied; provided that a registered voter prevented from writing by physical disability may authorize another person to write his signature and address and insert the date of signing.

***If a voter was registered later than this date, the registered address on such later date shall be used.

If a petition is expected to be filed on or after July 15 of any year, the registered address on the preceding January 1 shall be used. If a petition is expected to be filed before July 15 of any year, the registered address on the second preceding January 1 shall be used.

No petition shall contain or be accompanied by any indication of party or political designation.

Section 16. Any paper or document which is required by this chapter to be filed with or submitted to any official or board of a city, town, county, or the commonwealth shall be deemed to be so filed or submitted when it is delivered to such official, or to his office, or to the office of such board.

Section 17. The provisions of chapters fifty to fifty-seven, inclusive, applicable to state elections shall apply to the proceedings governed by this chapter so far as apt, but the provisions of this chapter shall prevail where they are in conflict with any applicable provisions of said chapters fifty to fifty-seven, inclusive.

1 SECTION 2. Section 1 of chapter 268A of the General Laws is hereby amended by striking out paragraph (d) and by inserting in place thereof the following paragraph:—

(d) “County employee,” a person performing services for or holding an office, position, employment or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding members of a charter commission established under chapter thirty-eight A.
PROPOSAL BY SENATOR ATKINS AND OTHERS
FOR A LEGISLATIVE CONSTITUTIONAL AMENDMENT
AUTHORIZING A COUNTY TO ADOPT A CHARTER

(House, No. 2450 of 1972, Reprinted as Senate, No. 268 of 1973)

The first draft of this proposal, in House, No. 2450 of 1972, was introduced by Representative Chester G. Atkins of Acton (now Senator from Middlesex) on his own petition. Reprinted as Senate, No. 268 of 1973, it was reintroduced by Senator Atkins of Middlesex, together with Representatives John A. Businger of Brookline and Paul H. Guzzi of Newton, for consideration by the current General Court.

ARTICLE OF AMENDMENT

Section 1. It is the intention of this article to reaffirm and to extend the customary and traditional liberties of the people with respect to the conduct of their own affairs and to grant and confirm to the people of every county the right of self-government in county matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article.

Section 2. Any county shall have the power to adopt or revise a charter or to amend its existing charter through procedures set forth in section three of this article. The provisions of any adopted or revised charter or any charter amendment shall not be inconsistent with the constitution or any laws enacted by the general court in conformity with the provisions of this article.

Section 3. The process of adopting or revising a county charter may be initiated by the petition of fifteen percent or less of the registered voters of the county, as the general court may provide by law, and an amendment of an existing county charter may be initiated by the governing body of the county acting on its own
initiative or on the petition of one thousand or less of the registered voters of the county, as the general court may provide by law. The procedures for adoption, revision and amendment of county charters shall be substantially the same as those provided in article LXXXIX of the Articles of Amendment to the Constitution of the Commonwealth for the adoption, revision and amendment of charters of cities and towns.

Section 4. Charters and charter amendments shall be official documents of which all courts may take judicial notice, and appropriate copies of each county charter and each amendment shall be filed with the archives of the county and with the office of the secretary of the commonwealth.

Section 5. Any charter adopted under this article, and any revision thereof, may make such provision for the structure and form of the government of the county adopting the same as shall be consistent with the constitution of the United States and of the commonwealth and with laws established in accordance with the provisions of this article, but no term of office greater than four years in duration shall be provided for any elected official, and, if any such charter provides for the appointment of the principal administrative officer of a county, no provision shall be made which secures to any such appointee a term in excess of three years, either directly, as by an appointment for a greater period, or indirectly, as by the acquisition of tenured status after a specified period of service.

Section 6. Except as provided below, any county, by a charter adopted under any law enacted by the general court effectuating this article, may assume any power or function which the general court may lawfully confer on a county, and any county entering into any agreement provided for in this section may assume any power reasonably necessary to carry out the terms thereof. Nothing in this section, however, shall be deemed to grant to any county the power to (1) regulate elections in any manner inconsistent with the laws enacted by the general court for the regulation of state elections; (2) levy, assess and collect taxes other than taxes which could be levied, assessed and collected by the commonwealth or by the cities and towns therein under enactments of the general court; (3) borrow money or pledge the credit of the county except by procedures which are substantially similar to those permitted to cities and towns and which have been specifi-
cally authorized by the general court; (4) dispose of park land; (5) enact private or civil law governing civil relationships except as an incident to an exercise of an independent county power; or (6) define and provide for the punishment of a felony or impose imprisonment as a punishment for any violation of law; provided, however, that the foregoing excluded powers may be granted by the general court in conformity with the constitution and with the powers reserved to the general court by section seven. This article shall not be deemed to diminish the powers of the judicial department of the commonwealth.

Section 7. The general court shall have the power to act in relation to counties, but only by general laws which apply alike to all counties or by special acts (1) which apply to a class of not fewer than two counties; or (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; or (3) on petition approved by the voters of the counties concerned, to erect and constitute separate and distinct metropolitan or regional entities, composed of part or all of one or more counties, granting to such entities the rights and powers pertaining to counties under this article and under any General Law enacted pursuant to this article.

Section 8. At its first session following the approval and ratification of this article by the people of the commonwealth, the general court shall enact legislation to carry out and effectuate the purposes and provisions hereof.
SYNOPSIS OF NEW JERSEY OPTIONAL COUNTY CHARTER LAW

(Title 40, c. 41A, Inserted by Laws of 1972, c. 154)

ARTICLE I. PROCEDURES FOR ADOPTION FOR OPTIONAL COUNTY CHARTER PLANS

A. BY ELECTION OF A CHARTER STUDY COMMISSION AND REFERENDUM

Sec. 1. Submission of Charter Study Question. Whenever authorized by resolution of the board of freeholders or on petition of the voters of any county, an election shall be held in the county upon the question, "Shall a charter study commission be elected to study the present governmental structure of . . . . . . . . county, to consider and make findings concerning the form of county government and to make recommendations thereon?" Such a petition shall bear the signatures of a number of persons registered to vote in the county equal to or exceeding in number 10% of the persons registered to vote in the county on the 40th day preceding the most recent previous primary or general election. Whenever such resolution or petition is filed with him, the county clerk shall provide for submission of the question at the next general election occurring not less than 60 days after the date of such filing.

When a resolution or petition for the election of a charter study commission has been filed with the county clerk, no other such resolution or petition for the adoption of any other charter or form of government available to the county may be filed unless the voters have decided the aforesaid question in the negative or until the charter study commission elected by the voters has been discharged.

Sec. 2. Election of Study Commission. At the same election at which the public question is submitted, a charter study com-
mission of nine members shall be elected. There shall be placed on the ballot the names of charter study commission candidates who shall be listed without party or other designation or slogan. The voter may vote for nine members of a charter study commission who shall serve if the question is determined in the affirmative.

Sec. 3. Nominating Petitions. Candidates for the charter study commission shall be persons who were registered voters of the county as of the date of the most recent preceding general election. They may be nominated by petition signed by at least 200 registered voters. Said petition shall be filed not less than 40 days before the date of the election.

Sec. 4. Canvass of Returns. The result of the votes cast for and against the charter study question shall be returned by election officers, and a canvass of such election had, as is provided by law in the case of other public questions put to the voters of a county. The votes cast for members of the charter study commission shall be counted, and the nine candidates receiving the greatest number of votes shall be elected and shall constitute the charter study commission. If a majority of those voting on the public question shall vote against the election of a charter study commission, none of the candidates shall be elected.

If two or more candidates shall receive the same number of votes, and such number of votes shall qualify both election to the ninth and last remaining vacancy on the commission, they shall draw lots to determine which one shall be elected.

Sec. 5. Organization Meeting of Commission. The county clerk shall convene the first meeting of the charter study commission no later than 15 days after its election. At that meeting the commission shall organize itself and elect one of its members chairman, and another vice-chairman, fix its hours and place or places of meeting, and adopt rules for the conduct of its business. A majority of commission members shall constitute a quorum for the transaction of business but no recommendation of said commission shall have any legal effect unless adopted by a majority of the whole number of the members of the commission.

Sec. 6. Vacancies. Any vacancy occurring in the charter commission shall be filled by the unsuccessful candidate who received the greatest number of votes in the charter study commission election. If the vacancy cannot be filled in this manner, the remaining members of the commission shall fill the vacancy.
Sec. 7. Duties of Commission. The charter study commission shall study the form of government of the county; compare it with other forms available under the laws of this state; determine whether the government of the county could be strengthened, made more clearly responsive or accountable to the people, or more economical or efficient, under a changed form of government.

Sec. 8. Advisors to the Charter Study Commission. In any county in which a charter study commission has been established, there shall also be established an advisory body whose members shall have the right to participate in the deliberations of the charter study commission, but without the right to vote on commission recommendations or to endorse or dissent from any report of the commission by virtue of their official advisory role. The advisory board shall consist of the director of the county board of freeholders, the county chairmen of the two major political parties in the county, the mayor of the most populous municipality in the county and the mayor of the municipality having the smallest population of over 250 in the county, one senator and one member of the General Assembly, both of whom shall be members of the county's delegation in the Legislature. The senator and member of the General Assembly shall be elected to the advisory body by a majority vote of the county's board of freeholders.

Nothing in this act shall prohibit the board of freeholders from electing as legislative members of the advisory body any persons who are not at the time of their election to the advisory body incumbent legislators but who will be legislators on the second Tuesday of January following the election of the charter study commission. If there be no such resident legislators or legislators-elect, the board of freeholders shall elect two mayors of municipalities within the county in their place.

Sec. 9. State Participation in Charter Studies. The Commissioner of the New Jersey Department of Community Affairs or his designee shall serve ex officio as a nonvoting advisor to all charter study commissions established under this act.

Sec. 10. Expenses and Compensation of the Commission. Members of the charter study commission shall serve without compensation but shall be reimbursed for their necessary expenses.

Upon submission of a budget by the charter study commission, the board of freeholders shall appropriate a sum adequate to
support a full study of the county's government as well as the publication of its reports, findings and recommendations as set forth in section 12 of this act. Within the limits of such appropriations and privately contributed funds and services as shall be made available to it, the charter study commission may hire such personnel as it may determine.

Sec. 11. Dissemination of Information. The charter study commission shall hold hearings, sponsor public forums and otherwise provide for the widest possible dissemination of information and the stimulation of public discussion respecting the purposes and progress of its work.

Sec. 12. Report and Publication of Findings. The charter study commission shall report its findings and recommendations of the citizens of the county on or before the end of the 9th calendar month next following the date of its election in the form of a final report which it shall file with the county clerk for distribution to county officials and the public.

Sec. 13. Recommendations. The charter study commission may report and recommend:

a. That a public referendum be held in the county on the question of adopting one of the optional forms of government set forth in this act; or

b. That the board of freeholders shall petition the Legislature for the enactment of a special charter; or

c. That the form of government of the county shall remain unchanged.

The commission may also submit to the freeholders recommendations for the efficient administration of the county, which may include a model administrative code. Such recommendations may be adopted by the freeholders in whole or in part, whether or not a new charter proposal is recommended by the commission or approved by the voters.

Sec. 14. Additional Recommendations. If the charter study commission votes to recommend adoption of one of the optional forms set forth in this act, it shall also consider and make findings with respect to each of the three subjects set forth in subsections a, b, and c of this section and determine which plan would provide the best representation of the people of the county. The final report shall set forth said findings and determinations in detail.
Based upon said findings and determinations, the commission shall designate, as an integral part of its recommended plan, its choice of alternatives as follows:

a. **Board size and term:** The commission shall recommend that the board of freeholders be composed of five, seven or nine members, each of whom shall hold office for a term of 3 years.

b. **Concurrent terms:** The commission shall recommend either a continuation of the present system of nonconcurrent terms or the adoption of a new system of concurrent terms.

c. **Constituencies:** The commission shall recommend that all board members be elected at large, or that they be elected by districts, or that they be elected both at large and by districts. Nothing in this paragraph shall apply to those officials whose constituency, term or method of election is defined in subsequent sections of this act.

**Sec. 15. Date of Charter Referendum.** If the charter study commission shall have recommended the adoption of one of the optional forms of government authorized by this act, the county clerk shall cause a referendum question conforming with the requirements of section 16 to be placed upon the ballot at such time and in such form as the commission shall in its report specify.

**Sec. 16. Form of the Referendum Question.** If the charter study commission shall have recommended that the voters approve one of the optional forms contained in this act, the following question shall be submitted to the voters:

"Shall the (designating the caption of article 3, 4, 5 or 6) of the Optional County Charter Law be adopted for............. county, with provision for a board of freeholders of (designating 5, 7 or 9) members elected for (concurrent or nonconcurrent, as the case may be) terms and elected (all at large, or all from 5, 7 or 9 districts) (or with a combination of 2 at large, 3 by districts, or 3 at large, 4 by districts or 4 at large, 5 by districts, as the case may be)"

**Sec. 17. Petition for Special Charter.** If the charter study commission shall have proposed a special charter, it shall be the duty of the board of freeholders to petition the Legislature forthwith for a special law or laws, pursuant to the state constitution, to carry out the recommendations of the charter study commission.

**Sec. 18. Discharge of Commission.** If the commission recommends no change in the form of the county's government the
commission shall be discharged as of the date of the filing of its report.

If the commission recommends that one of the optional plans set forth in this act be adopted, it shall be discharged when the plan is approved or rejected by the electorate.

If the commission recommends that the Legislature be petitioned for a special charter, the commission shall be discharged when the board of freeholders have taken all necessary steps to present the bill to the Legislature.

B. BY DIRECT PETITION AND REFERENDUM

Sec. 19. Adoption of Optional Plan. The voters of any county may, without a charter study commission, adopt any of the optional plans provided in this act upon petition and referendum, as hereinafter provided.

Sec. 20. Petition. Upon the filing with the county clerk of such petition of the voters of any county, an election shall be held in the county upon the question of adopting any of the optional plans of government provided in this act. The petition calling for such election shall be signed by a number of voters not less than 15% of the number of persons registered to vote in the county as of 40 days before the primary or general election next preceding the date of filing of such petition.

The petition shall designate the plan to be voted upon and the question to be placed upon the ballot shall be in the same form as is required by section 16.

Sec. 21. Election. The county clerk shall cause the question to be submitted at the general election occurring not less than 60 days next following the filing of the petition, or, if there be no general election within 120 days next following the filing of the petition, then at a special election occurring not less than 60 days and not more than 120 days next following the filing of such petition.

Sec. 22. Moratorium. When a petition for a referendum pursuant to section 19 shall have been duly filed with the county clerk, no other such petition, and no resolution or other proceedings for the adoption of any other charter or form of government available to the county may be filed unless and until the voters shall decide said referendum question in the negative.
C. PROVISIONS APPLICABLE TO ALL REFERENDA
ON CHARTER CHANGES

Sec. 23. After Adoption, No Vote on Change for 5 Years. Whenever the voters of any county have adopted an optional form of government pursuant to this act, no subsequent referendum question for another form of government shall be submitted to the voters until 5 years shall have elapsed.

ARTICLE 2. INCORPORATION AND POWERS

Sec. 24. Incorporation. The inhabitants of any county shall within the boundaries of that county be and remain a body corporate and politic, with perpetual succession.

Sec. 25. Government of County After Adoption of Optional Plans. Upon adoption by the voters of a county of any optional form of government set forth in this act, the county shall thereafter be governed by the plan adopted, by the provisions of this law applicable to all optional plans, and by all general laws.

Sec. 26. General Law. A “general law” shall be deemed to be such law or part thereof, heretofore or hereafter enacted, that:

a. Is not inconsistent with this act;

b. Is by its terms applicable to or available to all counties, or;

c. Additional laws or provisions of law whether applicable to all counties or to any category or class of counties relative to: the administration of the judicial system, education, elections, health, county public authorities, taxation, and finance, and welfare.

Nothing in this act shall prevent counties from abolishing or consolidating agencies the existence of which has heretofore been mandated by state statute, so long as such abolition or consolidation does not alter the obligation of the county to continue providing the services previously furnished.

The intent of this act is to enable a county that has adopted a charter pursuant to this act to cause any duty that has been mandated to it by the Legislature to be performed in the most efficient and expeditious manner, and, absent a clear legislative declaration to the contrary, without regard to organizational, structural or personnel provisions contained in the legislation mandating such duty.
Sec. 27. County Powers Generally. Any county that has adopted a charter pursuant to this act may, subject to the provisions of such charter, general law and the state constitution:

a. Organize and regulate its internal affairs; create, alter and abolish offices, positions and employments and define the functions, powers and duties thereof; establish qualifications for persons holding offices, positions and employments; and provide for the manner of their appointment and removal and for their term, tenure and compensation.

b. Adopt, amend, enforce, and repeal ordinances and resolutions as defined in section 100.

c. Construct, acquire, operate or maintain public improvements, projects or enterprises for any public purpose.

d. Exercise powers of eminent domain, borrowing and taxation only as provided by general state law.

e. Exercise all powers of county government in such manner as its board of freeholders may determine.

f. Sue and be sued; have a corporate seal; contract and be contracted with; buy, sell, lease, hold and dispose of real and personal property; appropriate and expend moneys for county purposes.

g. Enter into contractual agreements with any other governmental body or group of bodies within or without the borders of the county.

Sec. 28. Municipal Powers. Nothing in this act shall impair or diminish or infringe on the powers and duties of the municipalities and other units of government under the general law of this state. It is the intent of this act only to permit municipalities and other units of government to employ services and facilities of the county for more effective, efficient, and adequate provision of services.

Sec. 29. Municipal Advisory Councils and Regional Advisory Councils. The board of freeholders may establish a municipal advisory council consisting of the mayors of all municipalities in the county. Similarly, the board may establish regional advisory councils consisting of the mayors of neighboring municipalities or municipalities that have common interests or problems.

The board of freeholders shall meet periodically with the advisory councils to discuss county and municipal problems.

Sec. 30. General Powers. The grant of powers under this act is intended to be as broad as is consistent with the Constitution of New Jersey and with general law relating to local government. The
grant of powers shall be construed as liberally as possible in regard to the county’s right to reorganize its own form of government, to reorganize its structure and to alter or abolish its agencies, subject to the general mandate of performing services, whether they be performed by the agency previously established or by a new agency or another department of county government. This act shall be construed to give the county power to establish innovative programs and to perform such regional services as any unit that has the legal right to perform such service for itself may determine, in its own best interest, to have the county perform on a contractual basis.

ARTICLE 3. COUNTY EXECUTIVE PLAN

A. FORM OF GOVERNMENT

Sec. 31. Form; Designation. The form of government provided in this article shall be known as the “county executive plan.”

Sec. 32. Elected Officers. Each county operating under this article shall be governed by an elected board of freeholders and an elected county executive and by such other officers and employees as may be duly appointed pursuant to this act, general law, or ordinance.

B. COUNTY EXECUTIVE

Sec. 33. Qualifications, Election, Term. The county executive shall be a qualified voter of the county residing in the county. He shall be elected from the county at large for a term of 4 years.

Sec 34. Salary. The salary of the county executive shall be fixed by ordinance of the board of freeholders.

Sec. 35. Vacancies. The office of county executive shall be vacant if the incumbent moves his residence from the county or he is by death, physical or mental illness or other casualty unable to continue to serve as county executive. Any vacancy in his office shall be filled in the manner prescribed by law for the election of county officers at the next general election occurring not less than 60 days after the occurrence of the vacancy. The board of freeholders may appoint one of their number or the chief administrator to serve as acting county executive until a successor had been elected.
Sec. 36. Duties. The executive power of the county shall be exercised by the county executive. He shall:

a. Report annually to the board of freeholders and to the people on the state of the county, and the work of the previous year; he shall also recommend to the board whatever action or programs he deems necessary for the improvement of the county and the welfare of its residents.

b. Prepare and submit to the board an annual operating budget, a capital budget and a capital program, establish the procedures to be followed by all county agencies in connection therewith, and supervise all phases of the budgetary process.

c. Enforce the county charter, the county's laws and all general laws applicable thereto.

d. Supervise the care and custody of all county property, institutions and agencies.

e. Supervise the collection of revenues, and he shall audit and control all disbursements and expenditures.

f. Sign all contracts, bonds or other instruments requiring the consent of the county.

g. Review, analyze and forecast trends of county services and finances and programs.

h. Develop and maintain centralized budgeting, personnel and purchasing procedures.

i. Negotiate contracts for the county subject to board approval; recommend the nature and location of county improvements and execute improvements determined by the board.

j. Assure that all contractual and statutory terms and conditions, imposed in favor of the county are faithfully kept and performed.

k. Serve as an ex officio nonvoting member of all appointive county bodies.

Sec. 37. Powers. The county executive:

a. Shall supervise, and control all county administrative departments.

b. With the advice and consent of the board, he shall appoint the chief administrator and the heads of all county agencies.

c. May remove or suspend any official in the unclassified service of the county over whose office he has power of appointment.

d. May delegate to department heads powers of appointment and removal, subject to civil service provisions of their departmental employees.
e. May require reports and examine the accounts, records and operations of any county agency.

f. May order any agency under his jurisdiction to undertake any task for any other agency on a temporary basis.

g. Shall approve each ordinance of the board by signing it, or may veto any ordinance by returning it to the clerk of the board within 10 days of passage with a written statement of his objections to the ordinance.

C. FREEHOLDER BOARD

Sec. 38. Legislative Power. The legislative power of the county shall be vested in the board of freeholders,

Sec. 39. Organization. At its organizational meeting each January the board shall select one of its members to serve as chairman and one as vice-chairman.

Sec. 40. Attendance by County Executive. The county executive may be present and participate in discussions at all board meetings.

Sec. 41. Board Powers. The board of freeholders:

a. Shall advise and consent to all appointments by the executive for which board confirmation is specified under this article;

b. Shall pass whatever ordinances and resolutions it deems necessary and proper.

c. May appoint a clerk to the board.

d. May appoint the county counsel.

e. May pass a resolution of disapproval or dismissal.

f. May override a veto of the county executive by a two-thirds vote.

g. Shall approve the annual operating and capital budgets. The board may, by a majority vote reduce any item in the budget presented by the executive but may increase an item over the amount proposed by the executive only by a two-thirds vote.

D. CHIEF ADMINISTRATOR

Sec. 42. Appointment. The county executive shall appoint a chief administrator who shall serve at his pleasure. The board shall advise and consent to this nomination but shall not prevent his suspension or dismissal.

Sec. 43. Qualifications. The chief administrator shall be qualified by education, experience and ability to perform his duties.
Sec. 44. Duties. The chief administrator shall be responsible only to the executive. He shall, under the direction and supervision of the executive, perform whatever supervisory or administrative duties the executive deems necessary.

ARTICLE 4. COUNTY MANAGER PLAN

Sec. 45. Form; Designation. The form of government provided in this article shall be known as the “county manager plan.”

Sec. 46. Officers. Each county operating under this article shall be governed by an elected board of freeholders and an appointed county manager and by such other officers and employees as may be duly appointed pursuant to this article, general law, or ordinance.

B. COUNTY MANAGER

Sec. 47. Qualifications, Appointment, Term. The county manager shall be qualified by administrative and executive experience and ability to serve as the chief executive of the county. He shall be appointed by a majority vote of the board of freeholders for an indefinite term. He may be removed by a majority vote of the board subject to due notice and a public hearing.

Sec. 48. Salary. The salary of the county manager shall be fixed by the board of freeholders.

Sec. 49. Vacancies. The office of county manager shall be deemed vacant if: the incumbent moves his residence from the county without board permission; or he is by death, physical or mental illness or other casualty unable to continue to serve as county manager. Any vacancy in his office shall be filled in the manner prescribed in section 47 of this article. The board of freeholders may appoint the deputy manager or any department head to serve as acting county manager until a successor has been appointed.

Sec. 50. Duties. The executive power of county shall be exercised by the county manager. The county manager shall:

a. Report annually to the board of freeholders and to the people on the state of the county, the work of the previous year
and he shall also recommend to the board whatever action or programs he deems necessary for the improvement of the county and the welfare of its residents.

b. Prepare and submit to the board an annual operating budget, a capital budget and a capital program; establish the procedures to be followed by all county agencies in connection therewith, and supervise all phases of the budgetary process.

c. Enforce the county charter, the county's laws and all general laws applicable thereto.

d. Supervise the care and custody of all county property, institutions and agencies.

e. Supervise the collection of revenues, and he shall audit and control all disbursements and expenditures.

f. Sign all contracts, bonds or other instruments requiring the consent of the county.

g. Organize the work of county departments subject to the administrative code adopted by the board.

h. Review, analyze and forecast trends of county services and finances and programs.

i. Develop and maintain centralized budgeting, personnel and purchasing procedures.

j. Negotiate contracts for the county subject to board approval and recommend the nature and location of county improvements and execute improvements determined by the board.

k. Assure that all contractual and statutory terms and conditions imposed in favor of the county are faithfully kept and performed.

l. Serve as ex officio nonvoting member of all appointive county government bodies.

Sec. 51. Powers. The county manager:

a. Shall supervise and control all county administrative departments.

b. Shall appoint the deputy manager, the heads of all county departments, and all other administrative officers and county personnel the manner of whose appointment is not prescribed elsewhere in this article.

c. May remove or suspend any official in the unclassified service of the county over whose office the county manager has power of appointment.
d. May delegate to any administrative officer powers of appointment and removal of their departmental employees subject to civil service provisions.

e. May require reports and examine the accounts, records and operations of any county agency.

f. May order any agency under his jurisdiction to undertake any task for any other agency on a temporary basis.

C. FREEHOLDER BOARD

Sec. 52. Legislative Power. The legislative power of the county shall be vested in the board of freeholders.

Sec. 53. Organization. At its organizational meeting each January the board shall select one of its members to serve as chairman and one to serve as vice-chairman for the year.

Sec. 54. Attendance by County Manager. The county manager may be present at all board meetings and participate in all deliberations, without the right to vote.

Sec. 55. Board Powers. The board of freeholders:

a. Shall appoint a county manager under the provisions of this article and may create the office of deputy manager.

b. May appoint a clerk to the board.

c. May appoint a county counsel.

d. Shall appoint members of all boards and commissions and other bodies whose manner of appointment is not otherwise specified in this article.

e. May pass a resolution of disapproval of a suspension or dismissal

f. Shall approve the annual operating and capital budgets.

g. Shall pass whatever ordinances and resolutions it deems necessary.

D. DEPUTY MANAGER

Sec. 56. Appointment. Subject to creation of such position the county manager may appoint a deputy manager who shall serve at his pleasure; the board may not prevent his suspension or dismissal.

Sec. 57. Qualifications. The deputy manager shall be qualified by education, experience and ability to perform his duties.
Sec. 58. Duties. The deputy manager shall be responsible only to the manager. He shall, under the direction and supervision of the manager, undertake to assist in the administration of the county, performing whatever duties the executive deems necessary.

ARTICLE 5. COUNTY SUPERVISOR PLAN

A. FORM OF GOVERNMENT

Sec. 59. Form; Designation. The form of government provided in this article shall be known as the “county supervisor plan.”

Sec. 60. Elected Officers. Each county operating under this article shall be governed by an elected board of freeholders and an elected county supervisor and by such other officers and employees as may be duly appointed pursuant to this article, general law, or ordinance.

B. COUNTY SUPERVISOR

Sec. 61. Qualifications, Election, Term. The county supervisor shall be a qualified voter of the county. He shall be elected from the county at large for a term of 3 years.

Sec. 62. Salary. The salary of the county supervisor shall be fixed by ordinance of the board of freeholders.

Sec. 63. Vacancies. The office of county supervisor shall be deemed vacant if the incumbent moves his residence from the county or he is by death, physical or mental illness or other casualty unable to continue to serve as county supervisor. Any vacancy in his office shall be filled in the manner prescribed by law for the election of county officers at the next general election occurring not less than 60 days after the occurrence of the vacancy. The board of freeholders shall appoint one of their number to serve as acting county supervisor until a successor has been elected.

Sec. 64. Duties. The Executive power of the county shall be exercised by the county supervisor. The county supervisor shall:

a. Report annually to the board of freeholders and to the people on the state of the county and the work of the previous year. He shall also recommend to the board whatever action or programs he deems necessary for the improvement of the county
and the welfare of its residents.

b. Preside over board meetings, with the right to vote in cases of ties.

c. Serve as spokesman for the board.

d. Serve as representative of the board on ceremonial and civic occasions.

e. Through the county administrator: enforce the county charter, the county’s laws and all general laws applicable thereto.

f. Serve as ex officio nonvoting member of all appointive county bodies.

g. Represent the board in all dealings with the county administrator, except as otherwise specified herein.

h. Sign all contracts, bonds or other instruments requiring the consent of the county.

Sec. 65. Powers. The county supervisor:

a. Shall insure adequate supervision, and control of all county agencies and care and maintenance of all county properties by the county administrator.

b. With the advice and consent of the board, shall appoint all officials whose manner of appointment is not prescribed elsewhere in this article.

c. May remove or suspend anyone occupying one of the offices over which the county supervisor has power of appointment.

d. May require from the county administrator reports, and examine the accounts, records and operations of any county agency.

e. May order any agency under his jurisdiction to undertake any task for any other agency on a temporary basis.

f. Shall approve each ordinance of the board by signing it, or may veto any ordinance by returning it to the clerk of the board within 10 days of passage with a written statement of his objections to the ordinance.

C. FREEHOLDER BOARD

Sec. 66. Legislative Power. The legislative power of the county shall be vested in the board of freeholders.

Sec. 67. Board Powers. The board of freeholders:

a. Shall pass whatever ordinances and resolutions it deems
necessary and proper.

b. Shall appoint and remove the county administrator by a majority vote and may create the office of, appoint and remove, a deputy administrator or by a majority vote.

c. Shall advise and consent to all appointments by the supervisor and administrator for which board confirmation is specified under this article.

d. May appoint a clerk to the board.

e. May appoint the county counsel.

f. May pass a resolution of disapproval of a suspension or dismissal.

g. May override a veto of the county supervisor by two-thirds vote.

h. Shall approve the annual operating and capital budgets.

D. CHIEF ADMINISTRATOR

Sec. 68. Appointment. The chief administrator shall serve at the pleasure of the board.

Sec. 69. Qualifications. The chief administrator shall be qualified by education, experience and ability, to perform his duties.

Sec. 70. Duties. The chief administrator shall be responsible to the board through the supervisor except as specified below. He shall be responsible for the efficient administration of the county’s government. He shall:

a. Prepare and submit directly to the board an annual operating budget, a capital budget and a capital program, establish the procedures to be followed by all county agencies in connection therewith.

b. Supervise the collection of revenues, and he shall audit and control all disbursements and expenditures.

c. Supervise the care and custody of all county property, institutions and agencies.

d. Organize the work of county departments, subject to the administrative code adopted by the board.

e. Review, analyze and forecast trends of county services and finances and programs.

f. Develop and maintain centralized budgeting, personnel and purchasing procedures.
Sec. 71. Powers. The county administrator:

a. Shall supervise and control all county administrative departments.

b. Shall appoint the heads of all county departments and all other administrative officers and county personnel the manner of whose appointment is prescribed elsewhere in this article.

c. May remove or suspend any official in the unclassified service of the county over whose office the county administrator has power of appointment.

d. May delegate to any administrative officer powers of appointment and removal of their departmental employees subject to civil service provisions.

e. May require reports and examine the accounts, records and operation of any county agency.

f. May order any agency under his jurisdiction to undertake any task for any other agency on a temporary basis.

ARTICLE 6. BOARD PRESIDENT PLAN

A. FORM OF GOVERNMENT

Sec. 72. Form; Designation. The form of government provided in this article shall be known as the “board president plan.”

Sec. 73. Elected Officers. Each county operating under this article shall be governed by an elected board of freeholders and a freeholder board president and by such other officers and employees as may be duly appointed pursuant to this article, general law, or ordinance.

B. BOARD PRESIDENT

Sec. 74. Qualifications, Election, Term. The board president shall be a duly elected member of the board of freeholders. He shall be elected by the board of freeholders at their organizational
meeting for a term of 2 years.

Sec. 75. Salary. The salary of the board president shall be fixed by ordinance of the board of freeholders.

Sec. 76. Vacancies. The office of board president shall be deemed vacant if: the incumbent moves his residence from the county; or he is by death, physical or mental illness or other casualty unable to continue to serve as board president. Any vacancy in his office shall be filled in the manner prescribed by law for the election of county officers at the next general election occurring not less than 60 days after the occurrence of the vacancy. The board of freeholders shall appoint one of their number to serve as acting board president for the remainder of the unexpired term.

Sec. 77. Duties. The executive power of the county shall be exercised by the board president. He shall:

a. Report annually to the board of freeholders and to the people on the state of the county, the work of the previous year and he shall also recommend to the board whatever action or programs he deems necessary for the improvement of the county and the welfare of its residents.

b. Preside over board meetings with the right to vote on all questions.

c. Serve as spokesman for the board.

d. Serve as representative of the board on ceremonial and civic occasions.

e. Through the county administrator: enforce the county charter, the county’s laws and all general laws applicable thereto.

f. Represent the board in all dealings with the county administrator.

g. Execute all contracts, bonds or other instruments requiring the consent of the county.

Sec. 78. Powers. The board president:

a. Shall insure adequate supervision and control of all county agencies and care and maintenance of all county properties by the county administrator.

b. With the advice and consent of the board, shall appoint all members of independent or advisory boards and commissions and all other officials not serving in the administrative service of the
county the manner of whose appointment is not prescribed elsewhere in this article.

c. Shall serve as an ex officio nonvoting member of all county appointive bodies.

d. May require from the county administrator reports and examine the accounts, records and operations of any agency of county government.

e. May remove or suspend anyone occupying one of the offices specified in subsection b of this section.

C. FREEHOLDER BOARD

Sec. 79. Legislative Power. The legislative power of the county shall be vested in the board of freeholders.

Sec. 80. Organization. The board shall elect a president as specified in this article. At its organizational meeting each January the board shall select one of its members to serve as vice-president for the year.

Sec. 81. Board Powers. The board of freeholders:

a. Shall pass whatever ordinances or resolutions it deems necessary and proper.

b. Shall appoint and remove the county administrator and may create the office of, appoint and remove, a deputy administrator.

c. Shall advise and consent to all appointments by the president and administrator for which board confirmation is specified under this article.

d. May appoint a clerk to the board.

e. May appoint the county counsel.

f. May pass a resolution of disapproval of a suspension or dismissal.

g. Shall approve the annual operating and capital budgets.

D. CHIEF ADMINISTRATOR

Sec. 82. Appointment. The county administrator shall serve at the pleasure of the board.

Sec. 83. Qualification. The chief administrator shall be qualified by education, experience and ability to perform his duties.

Sec. 84. Duties. The chief administrator shall be responsible to the board through the president except as specified below. He shall
be responsible for the efficient administration of the county's government. He shall:

a. Prepare and submit directly to the board an annual operating budget, a capital budget and a capital program, and establish the procedures to be followed by all county agencies in connection therewith.

b. Supervise the collection of revenues, and shall audit and control disbursements and expenditures.

c. Supervise the care and custody of all county property, institutions and agencies.

d. Organize the work of county departments, subject to the administrative code adopted by the board.

e. Review, analyze and forecast trends of county services and finances and programs.

f. Develop and maintain centralized budgeting, personnel and purchasing procedures.

g. Negotiate contracts for the county subject to board approval and recommend the nature and location of county improvements and execute improvements determined by the board.

h. Assure that all contractual and statutory terms and conditions, imposed in favor of the county are faithfully kept and performed.

Sec. 85 Powers. The county administrator:

a. Shall supervise and control all county administrative departments.

b. Shall appoint the heads of all county departments and all other administrative officers and county personnel the manner of whose appointment is not prescribed elsewhere in this article.

c. May remove or suspend any official in the unclassified service of the county over whose office the county administrator has power of appointment.

d. May delegate to any administrative officer powers of appointment and removal of their departmental employees subject to civil service provisions.

e. May require reports and examine the accounts, records and operations of any agency of county government.

f. May order any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis.
ARTICLE 7. PROVISIONS APPLICABLE TO ALL PLANS

A. RELATIONS BETWEEN THE LEGISLATIVE AND EXECUTIVE BRANCHES

Sec. 86. Separation of Powers. In any county that shall have adopted a charter under this act, the board of freeholders shall deal with county employees only through the officials responsible for the over-all executive management of the county’s affairs as designated in this act.

Nothing in this act shall prohibit the board’s inquiry into any act or problem of the county’s administration. Any freeholder may require a report on any aspect of the government of the county at any time by making a written request to the head of the executive branch of county government. The board may, by majority vote of the whole number of its members, require the head of the executive branch to appear before the board.

Section 87. a. Appointments and Dismissal. No member of any board of freeholders shall individually or collectively seek to influence the head of the executive branch to appoint or promote any person to, or to dismiss any person from any position in the executive branch of county government, except that the board may, by a resolution of disapproval, adopted by a two-thirds vote of the whole number of the board, prevent the dismissal of certain employees under conditions as set forth in subsection b of this section.

b. Suspension Procedure. Suspensions will take effect immediately upon personal service of notice setting forth the order of suspension or dismissal. Dismissal or suspension for a definite term shall occur automatically in 30 calendar days from receipt of notice. But, if the officer or employee requests a public hearing on his dismissal or suspension for a definite term, no action beyond temporary suspension may be taken until the individual to be suspended or dismissed is given a public hearing.

B. RECALL

Sec. 88. Elective Officers; Removal by Recall Petition and Vote. Any elective officer shall be subject to removal from office for
cause connected with his office, after he has served at least 1 year, upon the filing of a recall petition and the affirmative vote of a majority of those voting on the question of removal at any general, regular county or special election.

Sec. 89. Recall Petition. A recall petition shall demand the removal of a designated incumbent, and shall be signed by voters equal in number to not less than 20% of the registered voters as of 40 days before last most recent primary or general election.

Sec. 90. Signatures to Recall Petition. Each signer of a recall petition shall add to his signature his place of residence giving the street and number or other sufficient designation if there shall be no street and number. Within 10 days from date of filing the petition the county clerk shall complete his examination and ascertain whether or not such petition is signed by the requisite number of qualified voters and shall by certified or registered mail send a copy of the certificate to the person filing the petition.

Sec. 91. Notice to Officer; Recall Election, Notice of Filing of Petition. If the petition shall be sufficient the county clerk shall within 2 days notify the official whose recall is sought thereby. If within 5 days after the service of the notice by the county clerk the official sought to be recalled by such petition does not resign, the county clerk shall order and fix a date for holding a recall election not less than 60 nor more than 90 days from the filing of the petition.

Sec. 92. Ballots. The ballots at the recall election shall conform to the requirements respecting the election of county officers, as provided in this article or in the State Election Law, whichever shall apply.

Sec. 93. Removal of More Than One Officer. If the removal of more than one officer is sought the same provisions for submitting to the electors the question and direction hereinbefore described shall be repeated in the case of each officer concerned.

Sec. 94. Election of Successor; Use of Recall Ballot. The same ballot used for submitting the question or questions of recall shall be used for the election of a successor to the incumbent sought to be removed.

Sec. 95. Laws Governing Recall Elections; Selection of Candidate for Successor of Recalled Incumbent. The provisions of this article or of Title 19 of the Revised Statutes (Elections), whichever shall apply in the county in accordance with the provisions of this
act, concerning nominations, ballots and elections of county officers, shall apply to the election for the recall of officers and the election of their successors.

Sec. 96. Publication of Notices of Recall Elections; Conduct. The county clerk shall publish notices of arrangements for holding all recall elections and they shall be conducted as are other elections for county officers.

Sec. 97. Results of Elections.

a. If a majority of voters cast their votes in favor of the recall, the term of office of such officer shall terminate, upon the certification of the results of election by the county clerk.

b. If a majority of voters cast their votes against the recall of the officer, he shall continue in office as if no recall election had been held.

Sec. 98. Successor Where Incumbent Resigns or is Recalled. If the office of the incumbent shall become vacant either by his resignation or by the result of the recall election, his successor shall be the nominee receiving the greatest number of votes at the recall election.

C. COUNTY LEGISLATION

Sec. 99. Meetings of Board. The board of freeholders shall by ordinance or resolution designate the time of holding regular meetings, which shall be at least monthly. The Clerk to the board shall keep a journal of the board’s proceedings and record the minutes of every meeting.

Sec. 100. Rules of Procedure, Quorum; Resolutions; Compensation.

a. The board shall adopt its own rules of procedure.

b. A majority of the whole number of the members of the board shall constitute a quorum.

c. A resolution shall mean any act or regulation of the board. The vote upon every resolution shall be taken by roll call.

d. The compensation of the county executive, supervisor, manager or board president, and of freeholders and the chief administrator and department heads shall be fixed by ordinance.

Sec. 101. Ordinances.

a. An ordinance shall mean any act or regulation of the board required to be reduced to writing, published after introduction,
and considered for final passage after public hearing at a meeting subsequent to the meeting at which it was introduced.

b. Except as otherwise provided by general law the procedure for the passage of ordinances shall be set forth in this section (detail omitted in this synopsis).

c. No ordinance other than the county budget ordinance shall take effect less than 20 days after its final passage by board and approval by the county executive, or supervisor or board chairman or president, where such approval is required, unless the board shall adopt a resolution declaring an emergency and at least two-thirds of all the members of the board vote in favor of such resolution.

Sec. 102. Recording of Ordinances and Resolutions. The clerk to the board of freeholders shall record, and, at the year's end publish all ordinances and resolutions adopted by board.

Sec. 103. Rules and Regulations. No rule or regulation made by any agency of the county, except such as relates to the organization or internal management of the county government or a part thereof, shall take effect until it is filed by the clerk to the board of freeholders with the clerk of each municipality in the county.

D. INITIATIVE AND REFERENDUM

Sec. 104. Petition. The voters of any county shall have the power of initiative and, pursuant thereto, may propose any ordinance and may adopt or reject the same at the polls. Any initiated ordinance may be submitted to the board by a petition signed by a number of voters equal to 15% of the registered voters of the county as of 40 calendar days before the last most recent primary or general election.

Sec. 105. Power of Referendum. The voters shall have the power of referendum and, pursuant thereto, may approve or reject at the polls any ordinance submitted by the board to the voters or any ordinance passed by the board, against which a referendum petition has been filed as herein provided (detail omitted in this synopsis).

Sec. 106. Petition Papers. All petition papers circulated for the purposes of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance.
Sec. 107. Filing of Petition Papers. All petition papers comprising an initiative or referendum petition shall be assembled and filed with the county clerk as one instrument. Within 20 days after a petition is filed, the county clerk shall determine whether each paper of the petition has a proper statement of the circulator and whether the petition is in proper form. He shall certify the result thereof to the board at its next regular meeting.

Sec. 108. Amendment of Initiative or Referendum Petition. An initiative or referendum petition may be amended at any time within 10 days after the notification of insufficiency has been served by the county clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition.

Sec. 109. Suspension of Ordinance. Upon the filing of a referendum petition with the county clerk, the ordinance shall be suspended until 10 days following a finding by the county clerk that the petition is insufficient or, if an amended petition be filed, until 5 days thereafter.

Sec. 110. Submission to Board of Freeholders. Upon a finding by the county clerk that any petition or amended petition filed with him is sufficient, the clerk shall submit the same to the board without delay. Provision shall be made for a public hearing.

Sec. 111. Submission of Ordinance to Voters; Withdrawal of Petition. If within 60 days of the submission of a certified petition by the county clerk the board shall fail to pass an ordinance requested by a referendum petition, the county clerk shall submit the ordinance to the voters, unless a paper signed by at least four of the five members of the committee of the petitioners shall be filed with the county clerk requesting that the petition be withdrawn.

Section 112. Referendum Election. Any ordinance to be voted on by the voters in accordance with sections 104 through 116 of this act shall be submitted at the next general or regular county election. If no such election is to be held within 90 days the board may in its discretion provide for a special election.

Sec. 113. Number of Proposed Ordinances Voted Upon. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this article, but there shall not be more than one special election in any period of 6 months for such purpose.
Sec. 114. Publication of Ordinance. Whenever an ordinance is to be submitted to the voters of the county at any election, the clerk shall cause the ordinance to be published.

Sec. 115. Ballots. The ballots to be used at such election shall be in substantially the following form:

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Yes
No
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"Shall the ordinance (indicate whether submitted by board or initiative or referendum petition) providing for (here state nature of proposition) be adopted?"

Sec. 116. Results of Election; Conlicting Measures. If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become valid. If the provisions of two or more measures approved at the same election conflict, then the measure receiving the greatest affirmativaive vote shall control.

E. ELECTION DISTRICTS

Sec. 117. Division of County Adopting District Representation System. Whenever any county adopts a district representation system as set forth in section 14c of this act, said county shall be divided into districts by the district commissioners as hereinafter provided.

Sec. 118. District Commissioners. The members of the county board of elections, together with the county clerk of the county, shall constitute the district commissioners.

Sec. 119. Meeting of District Commissioners; Division into Districts. Within 5 days following the election at which the voters of the county shall have adopted one of said optional plans, the district commissioners shall forthwith proceed to divide the county into such number of districts as is specified in the adopted plan.

Sec. 120. Boundaries of Districts. The district commissioners shall determine the district boundaries so that each district is formed of compact and contiguous territory. Each district shall be as equal as possible in population.

Sec. 121. Report and Certificate. Within 30 days after the adoption of one of said optional plans, the district commissioners shall file their report setting forth the district boundaries fixed and determined.
Sec. 122. Notice of District Boundaries. A notice of the district boundaries as fixed and determined by the district commissioners shall be published by the clerk of the county. Thereafter, all officers elected or appointed in the county for or representing the districts thereof shall be elected from or appointed for the districts fixed by the district commissioners.

Sec. 123. Adjustments in District Boundaries Following Census. Within 3 months following the official promulgation of each decennial Federal census, the district commissioners shall make such adjustments in district boundaries as shall be necessary pursuant to section 120 of this act.

F. SUCCESSION IN GOVERNMENT

Sec. 124. Schedule of Installation of Optional Plan Adopted. The schedule of installation of an optional plan adopted pursuant to this act shall, as provided herein, take the following course:

a. An election upon the adoption of an optional plan may be held at any time in accordance with the provisions of article 1 of this act.

b. In the event of a favorable vote of the voters at the above election, the first election of officers under the adopted plan shall take place at the next general election occurring no less than 75 days next following the adoption of one of the optional plans in this act.

c. The offices of the entire board of freeholders and all other offices established by any plan in this act which has been adopted by the voters of the county except sheriff, clerk, surrogate and register of wills shall be voted on at the first general election following adoption of such plan. In November of the first general election after the adoption of any plan under this act, the terms of all incumbent members of the board of freeholders shall terminate at noon on the first Monday following the election of the new board of freeholders. On that date the newly-elected freeholders shall take office. All freeholders and other officers elected in the first general election following the adoption of any plan under this act shall take office at noon on the Monday next following their election, but their terms shall expire in accordance with the plan selected. In the event that the plan approved provides for concurrent terms, all freeholders shall be elected for concurrent 3-year
terms. In the event that the approved plan provides for staggered terms, terms shall be as follows:

1. If there be five members to be elected, two shall be elected for 3 years, two shall be elected for 2 years, and one for 1 year.
2. If there be seven members to be elected, three shall be elected for 3 years, two for 2 years, and two for 1 year.
3. If there be nine members to be elected, three shall be elected for 3 years, three for 2 years and three for 1 year.

In all elections, after the first election under this act, all members shall be elected for 3-year terms.

Sec. 125. Adoption of Administrative Code. On May 1 following the organization of the first board of freeholders elected under this act, the board of freeholders shall adopt an administrative code organizing the administration of the county government, setting forth the duties and responsibilities and powers of all county officials and agencies, and the manner of performance needed. The administrative code shall not change the duties or powers of county officers whose existence is mandated by the constitution or diminish the duties, responsibilities or powers of any elected or appointed head of the executive branch or chief assistant thereto or chief or county administrator.

Sec. 126. Effective Date of Administrative Code. At 12:00 m. on May 1 following the organization of the first board of chosen freeholders elected under this act, the administrative code shall enter into effect, and all hitherto existing agencies shall assume the form, perform the duties, and exercise the power granted them under the administrative code and shall do so in the manner prescribed therein.

Sec. 127. Existing Resolutions. Such resolutions remain in force where not inconsistent with the provisions of this act.

Sec. 128. Transitional Provisions.

a. No subordinate board, department, body, office, position or employment shall be created and no appointments shall be made to any subordinate body, or to any office or position, between the date of election of officers and the date of the adoption of the administrative code.

b. All actions and proceedings of a legislative, executive or judicial character which are pending upon the effective date of an optional plan adopted pursuant to this act may continue, and the appropriate officer or employee theretofore exercising or discharg-
ing the function, power or duty involved in such action or proceeding.¹

G. CIVIL SERVICE

Sec. 129. Employees in the Classified Service. On May 1 following the election of the first freeholder board elected under any plan set forth in this act, all officers and employees in the classified service of the county shall be transferred to the agency to which the functions, powers or duties in which they were engaged are allocated under the administrative code. The adoption of any plan under this article shall not adversely effect the compensation or civil service tenure, pension, seniority or promotional rights of any county officer or employee in the classified service.

Sec. 130. County Administration of Civil Service. The board of freeholders of any county adopting one of the plans of government set forth in this act may apply to the New Jersey Civil Service Commission for permission to administer the merit system through a county department of civil service.

Sec. 131. Procedures for Establishment of County Department of Civil Service. The President of the New Jersey Civil Service Commission shall instruct his staff to determine if administration of civil service by that county would be consistent with the administration of an equitable civil service system throughout the state, the best interests of public employees throughout the state and within the county requesting such approval, and the public interest in the efficient governance of the county on behalf of its citizens.

The commission shall, by rules adopted for the purpose, require the board of freeholders to submit a plan for the administration by such county department of a system of civil service. Such plan shall not be implemented nor shall such department be operative until after receipt by the requesting board of freeholders of a statement of approval, in writing, of the Civil Service Commission and, in any event, until after the passage of 2 years from the date upon which such plan is submitted by the board to the commission. The revision, amendment or repeal of such plan and the acts and ordinances enacted in connection therewith shall be subject to the approval of the commission in the same manner.

¹Words appear to be missing from the latter part of this sentence, which is quoted as it is printed in the New Jersey law.
H. THE BUDGETARY PROCESS

Sec. 132. Fiscal Year. The fiscal year of the county shall be the calendar year except as may be otherwise provided by the Local Budget Law.

Sec. 133. Current Expense Budget and Capital Budget. On or before January 15 of each year, the budget officer (i.e. the county executive in the case of a charter adopted under article 3, the county manager in the case of a charter adopted under article 4, or the chief administrator in the case of charters adopted under articles 5 and 6), shall submit to the board of freeholders, a budget document consisting of: (1) the current expense budget for the ensuing fiscal year; (2) the county capital budget, and (3) a budget message. Public hearings on budget requests shall be held.

Sec. 134. Scope of Budget and Message. The budget document shall be prepared by the budget officer in such form as will comply with the Local Budget Law and shall explain the budget in both fiscal and program terms.

Sec. 135. Scope of Capital Budget and Program. The capital budget and program shall be prepared by the budget officer in such form as required by law, together with such schedules and analyses as he deems desirable, or as may be required or approved by the board of freeholders. A capital program shall be projected for a period not greater than 6 years.

Sec. 136. Budget Notice and Hearing. A public hearing shall be held on the current expense budget and capital budget in accordance with the Local Budget Law.

Sec. 137. Board Action. After the public hearing, the board shall act upon the budget document in accordance with the Local Budget Law.

Sec. 138. Appropriation Requests and Allotments. During the next to last month before the beginning of the fiscal year, the head of each agency of the county shall submit to the budget officer a work program for the year, including all requests for appropriations for its implementation. No expenditure for a department, office or agency shall be made from the appropriations except on the basis of approved allotments.

Sec. 139. Payments and Obligations. No payment shall be authorized or made and no obligations shall be incurred against the county except in accordance with appropriations duly made.
Sec. 140. Other Payments and Obligations. Nothing in this section or otherwise in the charter shall be construed to prevent the making of payments or contracts for capital improvements to be financed wholly or partly by the issuance of bonds.

Sec. 141. Annual Post-Audit. The board of freeholders shall provide annually for an independent audit of the accounts and financial transactions of the county.

I. PUBLICATION OF OFFICIAL NOTICES

Sec. 142. Requirements. Whenever public notice is required under this act, the person charged under any section of this act with the duty of publishing such, shall cause all such notice to be published in two newspapers designated by vote of the board of freeholders. The two newspapers designated by the board of freeholders shall be:

a. Both printed and published in the county, one of which shall be either a newspaper published at the county seat or a newspaper published in the most populous municipality in such county.

b. One printed and published in such county and one circulating in such county, if only one daily newspaper is printed and published in such county, or

c. One published at the county seat and one circulating in the county if no daily newspaper is published, or

d. Both circulating in such county, if no newspapers are printed and published in such county.

J. GENERAL PROVISIONS

Sec. 143. Partial Invalidity. If any portion of this act shall be adjudged invalid by any court, such judgment shall not invalidate the remainder thereof, but shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have rendered.

Sec. 144. Short Title. This act shall be known as the "Optional County Charter Law."

Sec. 145. Effective Date. This act shall take effect immediately.
Be it enacted by the Legislature of the State of Utah:

Section 1. Authorization. The legislature of the State of Utah hereby finds and determines that greater economy and efficiency in providing local governmental services can be achieved in certain counties of the state by modernizing the existing form of county government in these counties to conform more closely to the needs and desires of their citizens. In order to accomplish this purpose, optional plans of county government embodying specified forms of citizen representation, or specified forms for the organization, administration, and allocation of governmental powers, duties, functions and services, or both may be proposed, approved, and placed in operation in counties wishing to do so.

Section 2. Proceeding regulations. (1) Proceedings for the adoption of an optional plan of county government authorized by this act may be initiated in accordance with any one of the alternative methods provided in this act. When a proceeding has been initiated, no other proceeding may thereafter be initiated except by petition unless the first proceeding: (a) has been concluded by a negative note of the governing body of the county; (b) has been concluded by either an affirmative or negative vote of the electors; or (c) has been pending for at least two years since its initiation.

(2) Whenever the voters of any county shall have adopted an optional plan of government pursuant to this act, no subsequent proposal leading to possible adoption of a different plan may be initiated until at least six years shall have elapsed after the date of the election at which such plan was adopted.

(3) “Initiation,” within the meaning of this section, occurs when the governing body of the county duly adopts a resolution commencing proceedings under section 3 of this act, or when a petition, signed by the requisite number of qualified voters, is filed.
Section 3. Method for initiating proceedings by county governing body. The governing body of the county may initiate proceedings for adoption of an optional plan of county government by one of the following methods:

(1) Adopting a resolution of intent to approve an optional plan described in the resolution, fixing the time and place for holding a public hearing or series of public hearings thereon commencing not less than 90 days after the adoption of the resolution, and providing for the giving of a reasonable notice of such hearing or hearings. The optional plan proposal need not be set forth in full in the resolution or in any published or posted notices concerning it if at least three full and complete copies are made available for public inspection and copying in the office of the county clerk, and reference to it is made in the resolution and in all notices of the hearing or hearings. After the conclusion of the last of the hearings, and within six months after the adoption of the resolution of intent, the county governing body may by final resolution approve the optional plan, amend the optional plan and approve it as amended, or reject it.

(2) Adopting a resolution submitting to the voters of the county, not less than 90 days after the date of the resolution, at a general or special election to be designated by the county governing body the question: "Shall a study commission be established to study the present form of government in ...... county, and to consider and make recommendations respecting the adoption of an optional plan of county government?" The resolution shall specify the total membership of the proposed study commission at not less than seven nor more than eleven persons and shall designate whether the members are to be elected or appointed if the question receives an affirmative vote. If the resolution provides that the members are to be elected, it shall also provide procedures for nonpartisan nomination and election of the members at the same election at which the question of the establishment of the study commission is submitted to the voters. If the resolution provides that the members are to be appointed, the appointing process shall be governed by subsection (2) of section 5 of this act.

(3) Adopting a resolution establishing a study commission with an appointed membership to study the present form of government in the county, specifying the total membership of the commission at not less than seven nor more than eleven persons, and providing
for the appointment of the membership of the commission in the manner provided by subsection (2) of section 5 of this act.

Section 4. Method for initiating proceedings by citizens. The citizens of a county may initiate proceedings for the adoption of an optional plan of county government by one of the following methods:

(1) Filing with the county clerk a petition bearing signatures of registered voters, equal to or exceeding in number 15% of the total number of votes cast in the county at the next preceding gubernatorial election, calling upon the governing body of the county to submit to the voters of the county the question of adoption of an optional plan of county government described in, or annexed to, the petition. The full and complete text of the proposed optional plan is not required to be included in, or to be annexed to, the petition at the time of its circulation to or signature by the voters, if it and each of its parts contains a general description of the proposed optional plan, and makes reference to full and complete copies of it, not less than three in number, which prior to circulation of the petition shall have been filed and made available for public inspection in the office of the county clerk.

Within 30 days after the date of filing of the petition, the clerk shall report to the governing body of the county whether it is signed by a sufficient number of qualified voters. If the clerk reports that the petition is insufficient, the governing body shall publicly so declare, and the asserted insufficiencies may thereafter be cured by filing an amended or supplementary petition within 20 days after the date of such declaration of insufficiency. When the clerk reports to the governing body that a sufficient petition, as amended or supplemented, is on file, the petition shall be deemed to be a final proposal, and the governing body shall, within 30 days thereafter, take action with respect to the proposed optional plan, without change in it, pursuant to section 6 of this act.

(2) (a) Filing with the county clerk a petition bearing the signatures of registered voters equal to or exceeding in number 10% of the total number of votes cast in the county in the next preceding gubernatorial election, calling upon the governing body of the county either (i) to adopt a resolution, after public hearing or hearings, establishing a study commission of not less than seven nor more than eleven members and causing its members to be appointed pursuant to subsection (2) of section 5 of this act, or
(ii) to submit to the voters of the county at either a general or special election to be designated by the governing body, but not later than the next general election held more than 90 days after the filing of the petition, the question: "Shall a study commission be established to study the present form of government in ....... county, and to consider and make recommendations respecting the adoption of an optional plan of county government?"

(b) Within 30 days after the date of the filing of the petition, the county clerk shall report to the county governing body whether the petition is signed by a sufficient number of qualified voters. If the clerk reports that the petition is insufficient, the governing body shall publicly so declare, and the insufficiencies may thereafter be cured by the filing of amended or supplementary petitions within 20 days after the date of the declaration of insufficiency. When the clerk reports to the governing body that a sufficient petition, as amended or supplemented, is on file, it shall provide by resolution for the holding of one or more duly noticed public hearings upon the petition within 90 days after the date of filing of the petition, or of the last amended or supplemental petition, as the case may be.

(c) At the conclusion of the last hearing on the petition, the governing body shall either: (i) adopt a resolution establishing the study commission, as proposed in the petition, and convening within 10 days thereafter a meeting of the committee of appointment pursuant to subsection (2) of section 5 of this act, or (ii) adopt a resolution in conformity with subsection (2) of section 3 of this act submitting to the voters of the county the question specified in the petition.

Section 5. Establishment of study commission-Elected-Appointed Members-Duties, Powers, Meetings, Final Report

(1) If a majority of the votes cast on the question of the establishment of a study commission with an elected membership, as duly submitted to the voters pursuant to subsection (2) of section 3 or subsection (2) of section 4 of this act, are in the affirmative, the county governing body shall proceed immediately to organize the study commission and convene the first meeting of its elected members within 30 days after the election.

(2) If a resolution by the governing body provides for the establishment of a study commission pursuant to subsection (3) of section 3 or subsection (2) (c) of section 4 of this act, or if a
majority of the votes cast on the question of the establishment of a study commission with an appointed membership only submitted to the voters pursuant to subsection (2) of section 3 or subsection (2) of section 4 of this act, are in the affirmative, the county governing body shall, within 10 days after the election, convene a meeting of a committee of appointment composed of: (a) the governor, or his designee, (b) the speaker of the house of representatives, or his designee, (c) the president of the senate, or his designee, (d) a resident of the county designated by the governing body of the county, (e) a resident of the county designated by majority vote of the mayors and town presidents of all cities and towns in the county, and (f) four other residents of the county designated by majority vote of the first five. The committee of appointment shall, within 10 days after its initial meeting, appoint the members of a broadly representative study commission, each of whom must be a qualified elector of the county not then holding any public office or employment other than membership on the committee of appointment, and shall convene the first meeting of the study commission within 50 days after the date of the election.

(3) It shall be the duty of the study commission to study the form of government of and existing procedures for delivery of local governmental services within the county and compare them with other forms available under the laws of the State of Utah to determine whether in its judgment the administration of local government within the county could be strengthened, made more clearly responsive or accountable to the people, or significantly improved in the interest of economy and efficiency, by a change in the form of such government.

(4) The study commission shall have the power to adopt rules for its own organization and procedure, and to fill vacancies in its membership. It may establish advisory boards and committees, including on them persons, who are not members of the study commission which it deems to be conducive to the discharge of its duties and may request the assistance and advice of any officers or employees of any agency of state or local government. Members of the commission shall serve without compensation but shall be reimbursed by the county for necessary expenses incurred in the performance of their duties. The county governing body shall provide suitable meeting facilities, necessary secretarial, printing or
photo-reproduction services, clerical and staff assistance, and reasonably adequate funds for the employment of independent legal counsel and professional consultants by the commission.

(5) All meetings of the commission shall be open to the public. The commission shall hold public hearings and community forums and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, and conclusions. It shall report its findings and recommendations not later than one year after the date of its first organizational meeting by filing a final report in written form with the governing body.

(6) The study commission shall include in its final report: (a) a recommendation as to whether the form of government of the county should be changed to an optional form authorized by law; (b) if an optional form is recommended, a complete detailed draft of the proposed plan including all necessary implementing provisions authorized by law; and (c) any additional recommendations the commission deems appropriate to improve the efficient and economical administration of local government within the county. The commission shall be discharged upon the filing of its final report.

Section 6. Submission of optional plan to the voters - Implementing approval by the electorate. (1) Whenever an optional plan of county government has been finally proposed by any one of the methods provided in sections 3, 4 or 5 of this act, the county governing body: (a) shall cause the proposed optional plan of government to be submitted to the voters of the county for their approval or rejection at the next general election, or at a special election, to be held not less than 3 nor more than 18 months thereafter; (b) shall cause the complete text of the proposed optional plan to be published in a newspaper of general circulation within the county, at least once during two different calendar weeks within the 30 day period immediately preceding the date of the election, and (c) shall cause the complete text of the optional plan, together with the rest of the report of the study commission, if any, to be printed and made available to the public at cost, not later than 30 days prior to the election, in sufficient number to equal at least 1% of the number of voters in the county who were registered to vote at the next preceding gubernatorial election. The question to the ballot at the election shall be framed in a manner which fairly and adequately describes the substance of the proposed plan.
(2) If the proposed optional plan is approved by a majority of the votes cast at the election upon the question of its adoption, the plan shall go into effect in accordance with its own terms and provisions and at the time or times specified in it. All public officers and employees shall cooperate fully, and the county governing body may enact and enforce necessary ordinances, to bring about an orderly transition to the new plan of government, including any transfers of powers, records, documents, properties, assets, funds, liabilities, or personnel which are consistent with the approved optional plan and necessary or convenient to place it into full effect.

(3) When a proposed optional plan has been approved by the voters, the county clerk shall immediately file a copy of the plan, duly certified by him to be a true and correct copy, with the secretary of state. The approved plan shall then become the organic act for the government of the county and shall be a public record open to inspection of the public and judicially noticeable by all courts.

(4) Authorized provisions of an optional plan duly adopted by the voters supersede any conflicting provisions of statutes.

Section 7. Provisions to be included in optional plan-Exclusions-Amendments. (1) An optional plan may include, and shall be in conformity with: (a) one of the optional forms of structural arrangements provided in section 8 of this act, joined with one of the optional forms of management arrangements provided in section 12 of this act; (b) the structural arrangements for county government, which are provided by title 17, or other general laws applicable to county government, joined with one of the optional forms of management arrangements provided in section 12 of this act; or (c) both the structural and management arrangements for county government provided by title 17, or other general laws applicable to county government, without the inclusion of any optional form specified in section 8 or section 12 of this act.

(2) An optional plan submitted to the voters pursuant to section 6 of this act may include additional detailed provisions authorized by or consistent with, but not included in, sections 8 through 15 which are deemed by the sponsors of the proposal to be necessary and proper to the effective promulgation and operation of the proposed optional plan.

(3) Detailed provisions relating to the transition from the ex-
existing form of county government to the form contemplated in the proposed optional plan shall be included in the plan submitted to the voters including provisions relating to: (a) election of new officers; (b) continuity of existing offices and officers; (c) continuity of existing ordinances and regulations; (d) continuation of pending legislative, administrative, or judicial proceedings; (e) making of interim and temporary appointments; and (f) preparation, approval and adjustment of necessary budget appropriations.

(4) Adoption of a plan for an optional form of county government pursuant to this does not alter or affect the boundaries, organization, powers, duties, or functions of any school district or of any city court or justice of the peace court within the county, as they exist upon the effective date of the plan.

(5) An optional plan which has been approved by the voters and has taken effect may be amended by the county legislative body, established as provided in the plan, by a two-thirds vote of all its members but an amendment which is contrary to a specific requirement of this act applicable to the plan shall not be effective unless submitted to and approved by a majority of the voters casting a vote on the question at a general or special election.

Section 8. Optional structural forms of county statement government. Optional structural forms of county government, available for adoption by the voters of a county, include: the general county (modified) form; the urban county form; and the community council form.

Section 9. "General county (modified)" form of county government. (1) The structural form of county government known as the "general county (modified)" form retains, without change or modification, except to the extent that changes or modifications may be effectuated under other proceedings authorized by law, all existing incorporated cities and towns, special taxing districts, public authorities, county service areas, and other local public entities functioning within the boundaries of the county. Under this form of government, the county remains vested with all powers and duties vested in counties by general law, but the governing body of the county, together with such other officers as may be specified in the optional plan, shall be elected or appointed in the manner authorized by this act and as provided in the optional plan.
(2) An optional plan for this form of county government shall provide for the election of a county council, composed of not less than 3 members, which shall be the governing body of the county and shall exercise all legislative powers authorized by law. The plan shall specify: (a) whether the members of the council are to be elected from districts, at large, or by a combination of district and at-large constituencies, (b) their qualifications and terms of office, and whether such terms are concurrent or overlapping; (c) grounds for and methods of removal of council members from office, (d) procedures for filling vacancies on the council; and (e) the compensation, if any, of council members together with procedures for prescribing and changing such compensation from time to time.

Section 10. "Urban County" form of county government.

(1) The structural form of county government known as the "urban county" form retains, without change or modification, except to the extent that changes or modifications may be effectuated under other proceedings authorized by law, all existing incorporated cities and towns, special taxing districts, public authorities, county service areas, and other local public entities functioning within the boundaries of the county. Under this form of government, the county remains vested with all powers and duties vested in counties by general law, but in addition is vested with and empowered to exercise within the unincorporated territory of the county all powers and duties which, by general law, are conferred upon cities whose population is equal to that of the unincorporated territory of such county.

(2) The urban county is empowered to enter into contractual arrangements for the joint exercise of powers or for performance of services and for that purpose, may employ and be subject to the provisions of the interlocal cooperation act, chapter 13 of title 11. By contract, the urban county may perform for any city, town, special taxing district, public authority, county service area, or other local public entity within the county any governmental service or function which such entity is lawfully empowered to perform for itself within its own territory, or which the county is lawfully empowered to perform anywhere within the county boundaries. No contract service or function shall be performed by the county except for a consideration which is at least substantially equal to the cost of performing it.
(3) The plan for an urban county form of county government may provide for organization of the unincorporated territory of the county into one or more county service areas and, for this purpose, may provide for special organizing or implementing procedures which differ from those provided in the county service area act, chapter 29 of title 17. Except to the extent that the plan provides to the contrary, all noncontract services and functions lawfully performed by the county solely within unincorporated territory and on a county-wide basis shall, after the effective date of the plan, be deemed performed and extended solely as services of, and financed by and through, the county service area or areas, subject to the county service area act. The plan may provide for, limit, or condition the services and functions which the urban county is authorized to perform and extend within the territory of incorporated cities and towns within the county and may provide procedures by which such provisions, limits, or conditions may be established and changed from time to time.

(4) The plan for the urban county shall provide for the election of a county council, composed of not less than 3 members. The council shall be the governing body of the county and shall exercise all legislative powers authorized by law. The plan shall specify: (a) whether the members of the council are to be elected from districts, at large, or by a combination of district and at-large constituencies, (b) their qualifications and terms of office, and whether such terms are concurrent or overlapping; (c) grounds for and methods for removal of council members from office, (d) procedures for filling vacancies on the council; and (e) the compensation, if any, of council members together with procedures for prescribing and changing such compensation from time to time.

Section 11. "Community Council" form of county government. (1) The structural form of county government known as the "community council" form unites in a single consolidated city and county government the powers, duties, and functions which, immediately prior to its effective date, are vested in the county, the largest city in the county, such other cities and towns as elect to merge in it, and all special taxing districts, public authorities, county service areas, and other local public entities functioning within the boundaries of the county, except school districts. The consolidated government shall have power to extend on a county-wide basis any governmental service or function which is autho-
rized by law or which the previous county, cities, and other local public agencies included therein were empowered to provide for their residents, but no such service shall be provided within an incorporated municipality which continues to provide that service for its own inhabitants, except upon a contract basis for the municipality, and no taxes, assessments, fees, or other charges shall be extended or collected within the municipality for the purpose of financing any service which is not provided by the consolidated government within the municipality. “Largest city” as used in this section, means a city or cities the population of which, as shown by the most recent decennial or special census, exceeds 35% of the total county population.

(2) The incorporated cities and towns, other than the largest city, in the county shall retain independent corporate existence and shall continue to provide local services to their inhabitants of the type and to the extent provided in the plan, but any such city or town, by majority vote of its qualified voters, cast either concurrently with the election at which the plan is approved or subsequently to it, as provided by the governing body of the city or town, may cause the city or town to be dissolved and its powers, duties, and functions vested in the countywide government.

(3) The governing body of the county-wide government shall be a council composed of not less than five persons as specified in the plan, elected respectively from communities, which collectively include all of the territory within the county, having boundaries described in the plan embracing substantially equal populations. In addition to other powers vested in the county-wide government by law or pursuant to this act, the county council shall have all of the legislative and policy-making powers which it is possible for the governing body of a county or a city to possess and which are not expressly denied by the constitution, by a general law applicable to all cities or all counties, or by a specific restriction in the plan itself.

(4) The voters of each community shall elect a community council composed of the community’s elected member of the county council, who shall be chairman of the community council, and not less than two nor more than four additional members elected either from districts of substantially equal population within the community, or at large therein, as may be provided in the
A community council shall have the power and duty, in conformity with guidelines prescribed by the county council, to adopt policies and formulate specific programs relating to and defining the kinds and levels of local governmental services necessary to satisfy the needs and desires of the citizens within the community, but a community council shall have no power to engage personnel or to acquire facilities, property, or equipment for the administration or performance of such services. Authorized programs for local governmental services which have been approved by a community council shall be submitted to the county council for implementation and shall be carried into effect by the county council and county executive unless, by a vote of not less than three-fourths of its entire membership, the county council determines that a particular program, in whole or in part, should be rejected as contrary to the general welfare of the county. A community council program for local governmental services within a community: (a) shall include a method or methods for financing such services; (b) may provide for supplying of such services by contract or by joint or cooperative action pursuant to the interlocal cooperation act, chapter 13 of title 11, in which case the community council shall be deemed a “public agency” within the meaning of said act; and (c) may provide for supplying of such services through the creation of county service areas pursuant to the county service area act, chapter 29 of title 17.

(5) Notwithstanding subsection (4) of this section, in any community which includes, in whole or in part, the territory of any incorporated city or town, no community council program for local government services above the minimum level of area-wide services provided county-wide shall be submitted to the county council for implementation unless it first is submitted to the governing body of each such city or town for review. Within 30 days after such submission, the governing body of the city or town (a) may file with the community council a written statement of its comments, suggestions, and recommendations relating to the program, and the community council shall give due consideration thereto; or (b) may, by resolution or ordinance, provide that any designated part of the community council program relating to a service to be provided within the city or town shall be submitted to the voters thereof at a general or special election to be held therein within 60 days after the date of the resolution or ordi-
nance. Any part of the program submitted to the voters of a city or town pursuant to this subsection shall not be included in the program as submitted to the county council unless it receives an approving vote at such election by majority of all votes cast on the question.

(6) Except as provided herein, the qualifications, mode of election, term of office, method of removal, procedure to fill vacancies, compensation, and other appropriate provisions relating to membership on the county council or community councils shall be provided in the plan.

(7) Upon the effective date of the plan and as provided in it, all properties and assets, whether tangible or intangible, and all obligations, debts, and liabilities, of those governmental entities which are merged into the new county-wide government shall become vested and transferred by operation of law in and to the new county-wide government. The properties, assets, obligations, debts, and liabilities of any city or town not merged into the new county-wide government, so far as allocated, used, or incurred primarily to discharge a function which under the plan will no longer be a responsibility of the city or town, shall likewise be vested in and transferred to the new county-wide government. All transfers under this subsection shall be subject to equitable adjustments, conditions, and limitations provided in the plan and determined by procedures specified in the plan; but the contractual rights of any bondholder or creditor shall not be impaired.

(8) Upon the effective date of the plan and as provided in it, non-elective officers and employees of governmental entities which are merged into the new county-wide government and such officers and employees of non-merged cities or towns whose qualifications and duties relate primarily to functions which under the plan will no longer be a responsibility of those cities or towns, shall be blanketed in and transferred to the new county-wide government as officers and employees of it. Standards and procedures relating to such personnel transfers, and for resolving disputes or grievances relating thereto, shall be provided in the plan.

Section 12. Optional management forms for county government. Optional forms of management arrangements for county government, available for adoption by the voters of a county include: the county executive and chief administrative officer-council form, the county executive council form, and the council manager form.
Section 13. County executive and chief administrative officer-council form. (1) A county operating under the management arrangement known as the “county executive and chief administrative officer-council” form shall be governed by the county council, a county executive elected at large by the voters of the county, and appointed chief administrative officer, and such other officers and employees as are authorized by law. The optional plan shall provide for the qualifications, time and manner of election, term of office, compensation, and removal of the county executive.

(2) The county executive shall be the chief executive officer of the county, and shall: (a) direct and organize the management of the county in a manner consistent with the optional plan; (b) carry out programs and policies established by the council; (c) faithfully enforce all applicable laws and county ordinances, (d) exercise supervisory and coordinating control over all departments of county government; (e) except as otherwise provided in the optional plan, appoint, suspend, and remove the directors of all county departments and all appointive officers of boards and commissions; (f) exercise administrative and auditing control over all funds and assets, tangible and intangible, of the county; (g) serve as and perform the duties of the budget officer of the county, as provided in the uniform municipal fiscal procedures act, which shall be applicable except as otherwise provided in the optional plan; (h) supervise and direct centralized budgeting, accounting, personnel management, purchasing, and other service functions of the county; (i) conduct planning studies and make recommendations to the council relating to financial, administrative, procedural, and operational plans, programs, and improvements in county government; and (j) exercise a power of veto over ordinances enacted by the council, including an item veto upon budget appropriations, in the manner provided in the optional plan.

(3) The chief administrative officer shall be appointed and removed by the county executive, with the approval of the council, except that the plan may specifically provide for his appointment and removal by the council. He shall have the qualifications, training, and experience and receive compensation as provided in the optional plan. He shall be principal staff assistant to the county executive and under the direction and supervision of the county executive shall: (a) exercise supervisory control over all functions of the executive branch; (b) study and make recom-
mandations to the county executive with respect to the administration of county affairs and the efficiency and economy of county programs and operations; (c) maintain a continuing review of expenditures and of the effectiveness of departmental budgetary controls; (d) develop systems and procedures, not inconsistent with statutes, for planning, programming, budgeting, and accounting for all activities of the county; and (e) perform any other functions and duties required of him by the optional plan, by any applicable statutes or ordinances, or by the county executive.

(4) All powers and duties of the county shall be allocated for administrative and executive purposes to departments of the county as designated by the optional plan. Transfers of employees and reallocation of powers and duties between departments may be made by the county executive in his discretion, except as otherwise provided in the plan or by ordinance.

Section 14. County executive council form. (1) A county operating under the management arrangement known as the "county executive-council" form shall be governed by the county council, a county executive elected at large by the voters of the county, and such other officers and employees as are authorized by law. The optional plan shall provide for the qualifications, time and manner of election, term of office, compensation, and removal of the county executive.

(2) The county executive shall be the chief executive officer of the county and shall have the powers and duties provided in subsection 13 (2) of this act.

Section 15. Council-manager form. (1) A county operating under the management arrangement known as the "council-manager" form shall be governed by the county council, a county manager appointed by the council, and such other officers and employees as are authorized by law. The optional plan shall provide for the qualifications, time and manner of appointment, term of office, compensation, and removal of the county manager.

(2) The county manager shall be the administrative head of the county government and shall have the powers and duties of a county executive, subsection 13 (2) of this act, except that the county manager shall not have any power of veto over ordinances enacted by the council.

(3) No member of the council shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the manag-
er in the making of any appointment or removal of any officer or employee or in the purchase of supplies, attempt to exact any promise relative to any appointment from any candidate for manager, or discuss directly or indirectly with him the matter of specific appointments to any county office or employment. A violation of the foregoing provisions of this subsection shall forfeit the office of the offending member of the council. Nothing in this section shall be construed, however, as prohibiting the council while in open session from fully and freely discussing with or suggesting to the manager anything pertaining to county affairs or the interests of the county. Neither manager nor any person in the employ of the county shall take part in securing, or contributing any money toward, the nomination or election of any candidate for a county office. The optional plan may provide procedures for implementing this subsection.
