ACIR State Legislative Program

2.

Local Government Modernization

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FOREWORD

ACIR's Legislative Program

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

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

The Commission recognizes that its contribution to strengthening the federal system will be measured, in part, in terms of its role in fostering significant improvements in the relationships between and among Federal, state, and local governments. It therefore devotes a considerable share of its resources to encouraging the consideration of its recommendations for legislative and administrative action by government at all levels, with considerable emphasis upon the strengthening of state and local governments.

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

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

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

How to Use the Suggested Legislation

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

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

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

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

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

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

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

ACIR Assistance

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

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

September 1975

Robert E. Merriam
Chairman

Summary Contents

ACIR
STATE LEGISLATIVE PROGRAM

ACKNOWLEDGMENTS

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

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

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

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

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

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

Wayne F. Anderson
Executive Director

Part II

LOCAL GOVERNMENT MODERNIZATION

Table of Contents

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1
Formation, Boundaries, and Dissolution

2.101 LOCAL GOVERNMENT CREATION, DISSOLUTION, AND BOUNDARY ADJUSTMENTS[1]

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

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

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

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

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

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

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

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

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

[3]Florida Commission on Local Government, *Local Government Formation,* Special Report 73-2 (February, 1973), pp. 29, *et seq.*

[4]Chapters 165 and 171, *Florida Statutes;* Chapter 1029, *North Carolina Laws of 1959.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] ACIR, *op cit*, Report A-44, p. 151.

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

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

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

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

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

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

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

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

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

Title V provides for separability and effective date clauses.

SECTION 5. *Financial Allocations.*

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

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

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

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

Title IV

MUNICIPAL ANNEXATION

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

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

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

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

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

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

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

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

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

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

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

(2) provide for extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[1]Delete this proviso if either *Title II* is not adopted.

SECTION 4. *Procedure of Annexation.*

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

(b) The notice of public hearing shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. *Appeal.*

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

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

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

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

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

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

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

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

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

(1) that the statutory procedure was not followed; or

(2) that the provisions of Section 2 were not met; or

(3) that the provisions of Section 3 have not been met.

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

(1) remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

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

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

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

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

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

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

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

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

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

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

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

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

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

Title V

SEPARABILITY AND EFFECTIVE DATE

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

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