TEMPORARY GRAN COMMISSION
BY STATE AND LOCAL OFFICIALS

John J. Pembrey
Chairman

Charles N. McPherson
Richard L. Griffith
George Klein
John L. McShane
Charles M. Palfrey
A. L. Redman
Benjamin T. Keen
Albert S. Roberts
James A. Thompson

Michael F. Cline

Mary Wright

Stephenson L. Buckner
Secretary
TO: Honorable Hugh Carey,
   Governor of the State of New York;
   Honorable Warren Anderson,
   President Pro Tem of the Senate;
   Honorable Stanley Steingut,
   Speaker of the Assembly;
   Honorable Members of the Legislature of the State of New York

This volume is the third part of the final report of the Temporary State Commission on State and Local Finances in compliance with Chapter 1000, Laws of 1973. The Commission was directed to make a comprehensive review and analysis of the role and responsibility of the State in mandating expenditures and programs upon local government. The continuous concern by local officials and taxpayers regarding State mandates expressed at our hearings reinforced the need for analysis.

During the last year, the Commission held public hearings in Albany, Binghamton, Buffalo, Farmingdale, Hornell, Kingston, Lake George, New York City, Rochester, Syracuse, Tarrytown and Watertown. The Commission received nearly 1,500 pages of testimony from 143 representatives of local governments and interested groups.

This volume contains the Commission's Report on State mandates.

Respectfully Submitted,

John J. Feeney
Chairman

March 31, 1975
STAFF

Richard F. Decker
Executive Director

William B. Eimicke
Director of Studies

Robert L. Beebe
Legal Consultant

James A. Unger
Associate Director of Studies

Thomas A. Smith, Information Systems Coordinator
James B. Ellsworth, Research Associate*
Brian T. Stenson, Research Associate
Timothy R. McGill, Research Assistant
Anne H. Pope, Research Assistant
Noel Watson, Research Assistant

Brian Mc Ardle, Administrative Assistant
Gail D’Arcy, Executive Secretary

Rita DeBrino
Marcia Mahar
Rita Snay**

*Resigned 1/75
**Resigned 10/74

The Staff member primarily responsible for the preparation of this report was Robert L. Beebe. Historical research for Part I, Chapters 1 through 5 was by Noel Watson. Chapter 6 was by James B. Ellsworth III. Legal research for Parts II and III was by Timothy R. McGill.
STATE MANDATES
UPON LOCAL GOVERNMENTS
CONTENTS

PART I
THE ORIGINS AND DEVELOPMENT OF THE ELEMENTS OF LOCAL GOVERNMENT IN NEW YORK STATE

Summary ........................................ 6

Chapter 1 The Colonial Period (1609-1776) ....... 10
  The Dutch Era (1609-1674) .................. 10
  The Period of Transition (1664-1674) ....... 14
  The English Period (1664-1776) ............ 16
  Quasi-Governmental Elements (1609-1776) 18
  Conclusion ................................... 19

Chapter 2 Early Statehood (1777-1865) .......... 21
  Introduction .................................. 21
  The Appearance of the Village ............... 23
  The Cities .................................. 26
  Town Government ............................. 28
  The Town Meeting ............................ 29
  The Special District .......................... 32
  The School District ........................... 33
  The County .................................. 36

Chapter 3 The Period of Consolidation
  (1865-1945) ................................ 39
  Introduction .................................. 39
  Cities and Villages ............................ 41
Chapter 7 Home Rule as a Legal Concept

The Plenary Power of the
Sovereign State

Alternative Conceptual Schemes
for Granting Home Rule

Degrees of Protection

Mandatory/Permissive Dichotomy

Chapter 8 Constitutional Home Rule

Historical Evolution

Constitutional Home Rule
in New York Today

Chapter 9 Statutory Home Rule

State Legislative Authority

State Statutes Directly Providing
for Local Governments

Statutes Addressed to
Particular Functions

Chapter 10 "Mandates" in the Body
of Municipal Laws

State Statutory and Administrative
Law Mandates Directed to
Particular Functions

Judicial Mandates

Local Response to the
Commission's Inquiries

Chapter 11 Summation

Appendix A "Permissive Grants"
Summary

IN ANALYZING THE LEGAL relationships between the State and its constituent local governments, it is essential to understand first the precise structure of those constituent local governments. During the formative stages of this report, the Commission's staff learned that no single document detailing New York's local governmental history and structure existed. As a result, the staff believed that it was necessary to produce such a study in order to properly lay the groundwork for the analysis of the State's role in mandating programs and expenditures.

Part I of this report provides the reader with a comprehensive history of the development of the various kinds of local governments in New York State. This history is intended to educate and orient the reader in understanding the very complex structure of the State's local governments. We believe that it is the first published attempt to provide this orientation and that it should serve as a basic reference source for future research and analysis of local government questions.

Chapter 1, The Colonial Period, traces local governmental development from the first settlement in 1609 to American independence in 1776. The essential finding is that during this period the phenomenon of localism predominated in New York. This phenomenon was marked by the absence of a strong central government within the colony and by the lack of a rational statewide plan for the development of local government. In essence, there was a random development of localized rule whose primary purpose was preservation of the individual settlement. At the time of the American Revolution, New York State's local governmental system was notably less developed than comparable systems in other colonies.

The second chapter, Early Statehood, begins with the Revolutionary period in 1777 and traces the development through the Civil War era ending in 1865. During this period cities and towns were the principal forms of local government. However, cities and towns proved to be inadequate in meeting the demands for services in the burgeoning population centers, and as a result several new forms of local government were created. The origins of the village, special district and school district can be found in this era, and the early development of these new forms are traced in this chapter. During the same period, the county developed as an administrative arm of the State, rather than as a form of local government.

The third chapter, The Period of Consolidation, traces the developments from the Civil War years to the end of World War II. During this era two principal phenomena are noted. First, in conjunction with a decrease in the number of town and city incorporations, there was a rapid increase in the number of villages and special districts. Such growth was essentially the response to higher demand for local services. At the same time, however, it created an underlying competition with the older established government forms — the towns and cities. This competition is partly responsible for the second phenomenon of this period, namely standardization and statutory consolidations of the various forms of local government within the State. Thus during this era the Legislature enacted several statutes, including the Village Law, the Town Law, the General City Law, the County Law and the General Municipal Law. Each of these was a response to the practical problem of consolidating the multitude of statutes which had been enacted during the first hundred years of statehood. However, each consolidation can also be seen as an indication of the underlying competition among the various forms of local government to preserve their status and, in effect, to prevent development of newer forms.

The fourth chapter, The Modern Period, traces development from 1945. During this era, movement toward more centralized local government can be seen in the enactment of the Suburban Town Law, the continued growth of special districts and the at-
attention which is currently being paid to the restructuring of county government. Rather than development in the direction of new forms, activity during this period had been one of restructuring of the old forms. Development of the Municipal Home Rule Law and increased attention to constitutional home rule provisions have also occurred.

Chapter 5, The Public Authority, traces the development of this very controversial quasi-governmental entity, which has come to play such an important role in local governmental finances. The essential theme is the striking difference between the origins of the public authority as a regional transportation facility and the somewhat amorphous entity which, because of hidden cost and complex finances, is almost unaccountable to the taxpayers of the State. The public authority would appear to be the sole attempt at a new form of local government in New York State.

Chapter 6, The Municipal Housing Authority, traces the origins and development of this almost ever-present adjunct to the State's local governments. The chapter describes the long-standing and continuing problem of inadequate urban housing and the attempts which have been made to solve it. The complexities of the situation are evident, and the presence and effect of municipal housing authorities within local governments are clearly described. The subject is one which is appropriate for future study.

Part II of this report begins with an analysis of the principle of home rule, which in any discussion of State-local relations, always becomes a primary consideration. Part II analyzes home rule both from its constitutional and its statutory perspective which provides a working understanding of the limits which the principle places on State and local activities.

Chapter 7, Home Rule as a Legal Concept, describes the essential function which sovereignty plays in the State-local relationship. As a result of the American Revolution, the United States and the several states which comprise the union are endowed with independent sovereignty. Local governments, however, do not have a concomitant independence; their very existence is a result of a grant from the sovereign state. Thus it is essential to recognize that home rule is a qualified grant from the State to the local government, and, by means of one action or another, the State may always supersede local legislation. In New York, constitutional home rule initially took the form of certain protections, such as the guarantee of local election of specified local officials. Eventually, constitutional home rule came to include grants of specific powers to local government.

In understanding that home rule ultimately stems from the sovereign, it is also necessary to understand that this grant can be either one which is protected by the Constitution or one which is given solely through legislation. A constitutional grant of home rule cannot be rescinded by simple legislative action but rather must take the form of a constitutional amendment. Accordingly, the constitutional grant is the firmest and most protected home rule power available to local government. In the alternative, the legislative grant of home rule may be rescinded or modified by simple legislative action.

Chapter 8, entitled Constitutional Home Rule, traces the development of those home rule protections and grants which are contained within the Constitution. Initially, such power was solely in the form of the protection of certain local activities such as local selection of local officials. Near the end of the nineteenth century, additional provisions were adopted to restrict certain State legislative action in local affairs. The essential principle of "property, affairs or government" of local governments was derived during this period. Ultimately, in the early twentieth century, actual constitutional grants of power were adopted. As noted, these constitutional provisions are more than mere protections from State interference. Through such grants, local governments receive constitutional authorization to exercise various local activity, such as the police power.

Chapter 9, entitled Statutory Home Rule, describes in some detail the protections and grants of home rule powers to local governments from the State Legislature. As has been stated, these grants are made solely through State legislation and they can be rescinded or modified by the same means.

The authority of the State Legislature to enact legislation which affects local governments brings
together both the concept of the grant of home rule power and the concept of the State-mandated program or expenditure. First, there is a large body of law which provides for the structure and duties of the various forms of local government within the State. These statutes relating to municipal law are at once both grants of home rule and mandated programs and expenditures. This report accumulates a listing of the various statutes which provide for home rule, both by municipal jurisdiction and by function.

Part III, contained in Chapter 10 entitled *State Mandates*, provides an identification of the multitude of statutory provisions which are believed to be the source of State-mandated local programs and expenditures. It is noted that State mandates can emanate from one of three sources. Programs and expenditures mandated by the Constitution do not comprise a significant number of local programs and expenditures. Likewise, judicially imposed mandates do not represent a significant portion of the local budget. However, the third source of mandates, namely the statutory enactments from the State Legislature, includes a large and varied number of statutes which most definitely mandate programs and expenditures on local governments. It is emphasized that while there are certain constitutional grants of home rule power to local governments, there is very little in the Constitution which restricts the State Legislature from acting by general law to preempt a program and, thus, to mandate expenditures on local governments.

The section of Chapter 10 which identifies State mandates is intended as an inventory and not an exposition. The listing is intended to show the breadth and scope of the statutes which are, in fact, State mandates; and to show that mandates do emanate from the State Legislature, and that the programs which they encompass are very broad and sweeping in their scope. This is not to say that all mandates are unpopular with local governments. The mere fact of the existence of a State statutory mandate does not presuppose local resistance, and the question of the appropriateness of the mandate is an altogether different study from that which has been conducted.

Finally, in Chapter 11, *Summation*, the staff concludes that the role of the State in mandating programs and expenditures on local governments is virtually unrestricted in its potential. The use and imposition of this authority is a determination made in the first instance by the State Legislature. Retrenchment or restriction of any of the various mandated programs must likewise come from that forum. The Commission hearings and this report should serve as a beginning for the study and analysis of this complex subject.
PART I

The Origins and Development of the Elements of Local Government in New York State
1

The Colonial Period
(1609-1776)

The Dutch Era (1609 – 1674)

THE FACT THAT many years ago the Dutch were the original colonists in what we now know as New York State is probably known to a good percentage of the people who attend to even a casual study of history or government. However, beyond that fact of the original Dutch presence, there is probably a significant lack of understanding of how much, if any, of the Dutch influence remains today. Accordingly, in undertaking a total review of local government history in New York State, we begin with the Dutch and we begin with the study of an era of which there is little common understanding.

The influences to be discussed here are, of course, limited to those related to government, and we will focus our discussion on how the structure of local government in the State is related, if at all, to the original Dutch presence. There is difficulty in beginning, both because of the relative antiquity of the Dutch era (1609-1664, 1674-1675) and because of misleading impressions of the period created by a few historians and “popularizers”, of whom Washington Irving is the best-known example. Much of the Dutch influence on the institutions of colonial New York was obliterated by the English conquest, and as a result, searching for traces of Dutch governmental forms today somewhat takes on the character of an archeological expedition. However, no understanding of the Colonial Period is complete without an examination of the Dutch era, spanning as it did more than fifty years of New York’s earliest history and leaving a strong but subtle imprint on the State’s governmental structures.

At the outset, it must be recognized that although a history of the initial settlement of New York is beyond the scope of this discussion, it is necessary to consider the rationale and the method of colonization and settlement (on the part of both the Dutch and the English) as a key to understanding the subsequent development of the institutions of the colony and the State. The Dutch experience in the colonization of “New Netherlands” is something of an historical anomaly because the governmental institutions and traditions which had worked so well in the mother country never really seemed to take root in the New World. Holland in the sixteenth century, despite its small size, had become a great nation, and its people had developed a deserved reputation for courage and industriousness against great odds. The difficulties imposed on Holland by nature had shortened the country in terms of natural resources and had given her perhaps the most difficult physical circumstances of all nations of Europe. Given the necessity of constantly defending their country against the encroachment of the sea, the Dutch were forced to become self-reliant as a simple matter of survival.

Out of this necessity for co-operation in the interests of mutual survival, grew the distinctive political system which characterized Holland. The interlocking co-operative relationships which characterized the Dutch on the individual level were extended to their political system. The strongest and most distinctive characteristic of this system was the principle of localism. Holland was not so much a nation as a collection of towns, each of which governed itself by
passing its own laws, each of which had financial autonomy, and each of which was required to provide for its own defense. Although the system was not one of participatory democracy and the citizens of the individual towns were certainly not completely equal before the law, nonetheless a form of local self-government prevailed. Moreover, it is significant to note that sovereignty did not reside in the individual states of the Dutch Confederation, but rather in the constituencies which elected the various legislative bodies (at the local level, for example; the municipal councils of towns). Therefore, in the last analysis, the government of Holland was a system of semi-oligarchy at the local level, rather than that of a rigidly centralized nation-state.

Beyond the towns, in addition, lay other localized units: the family, well established as the basic unit of society; the “guild”, a prevalent form of trade association; and the provinces, the geographic subdivisions of the Confederation itself. Unquestionably, the concept of decentralized authority was a strong characteristic of the Dutch political system. Accordingly, then, it can be seen that the first political experience of the Dutch colonists was the experience of local self-government.

Given this tradition, one might expect that these transplanted institutions might flourish equally as well in the New World as they had in the mother country. In fact, however, such was not the case, and to understand the reason for this, one must understand the motivating force behind Dutch colonialism. That motivating force, baldly stated, was monetary gain. Given the country’s absence of adequate natural resources, the Dutch were forced to become a seafaring and trading people. And while unlike their English and Spanish competitors, the Dutch were not by nature or inclination a colonizing or empire-minded people (having quite enough to occupy them at home), their development as an outward-directed merchant people, spurred by necessity, led inevitably to colonies.

The problems experienced by the Dutch in governing their empire in North America, and the reasons for the eventual loss of that empire, are intricably intertwined with the extraordinary manner in which the colonization itself took place. While other nations were chartering and settling colonies in the name of the King, or the nation, or a religious principle, the Dutch colonies were founded in the name of a commercial trading concern, the Dutch West India Company. As a result, the North American colonization was a wholly commercial venture from start to finish, and it is therefore essential for us to consider the bizarre corporation under whose auspices this process took place.

The Dutch West India Company, described by one historian as “a sort of marine principality with sovereign rights on foreign shores”, was incorporated in 1621 for the explicit purposes of settling portions of the New World and opening lines of trade, and for the implicit purpose of harassing Spain, interfering with Spanish seaborne commerce, and, whenever possible, for taking possession of Spanish plunder. The charter of the West India Company was modeled after that of the highly successful Dutch East India Company, which had been organized earlier in the seventeenth century for identical purposes (its territory of course being the East Indies). The West India Company was given exclusive trade rights to the west coast of Africa and to the east coast of America, from Newfoundland to the Straits of Magellan. It was given the power to make treaties, found colonies, appoint governors, establish the machinery for the administration of justice, raise the necessary military forces for its own and the colonies’ defenses, form alliances with native Indian tribal chiefs, encourage settlement and population of its possessions, establish forts, maintain police, and even to declare war and to make peace (with the consent of the States General of the United Netherlands).

The West India Company, like the East India Company, was an “armed commercial monopoly with most extensive powers and enormous capital”. At its best, it was a boldly conceived, efficiently authoritarian mechanism for the establishment of colonial settlements. At its worst, it was an arrogant, chauvinistic, law unto itself entity whose attitude toward the citizens under its control was best summed up by the famous remark of Peter Stuyvesant, who, when asked to justify his governing authority, declared: “We
derive our authority from God and the West India Company, not from the pleasure of a few ignorant subjects."8

The best-known historian of this period, himself often accused of being overly pro-Dutch in his sympathies, has castigated the Dutch approach to the governing of its North American colony, thus: "It was an evil day for New Netherland, when the States General committed to the guardianship of a close and grasping mercantile corporation, the ultimate fortunes of its embryo province in America."9

The Dutch Colonial towns of the West India Company were organized on the model used in the home country, with one major exception: most local officials, whether administrative, legislative or judicial, were not elected by the people, but were appointed by the Director-General of the West India Company. In this practice can be seen some of the seeds of the downfall of the Dutch experiment in New Netherland: for if there was one characteristic which typified the West India Company during its latter stage of governing New Netherland, it was an overwhelming record of appointing corrupt and incompetent personnel. This disastrous fault was to lead both to the bankruptcy of the Company itself and to the loss of New Netherland to the English under conditions in which the Dutch settlers actually welcomed English conquest as a relief from the corruption and insensitivity of their commercially-obsessed corporate rulers.

Once having assumed control over the province of New Netherland, the West India Company exercised governing authority which was virtually absolute. A sampling of observations from students of this period in New York's history may communicate the degree of this corporate domination:

"In no other part of the continent from the Carolinas to Maine was there so little popular political liberty as was to be found in the Dutch New Netherland."10

"The members of the (New Netherland) settlement had no voice whatsoever in the manner of its administration...the director general represented the Company as the political ruler of the colony...Executive power (resided) in the director general and his council, which consisted of the chief officers of the Company and the skippers of the Company's ships who happened to be in New Amsterdam." (emphasis supplied)11

"As was shown by the official inquiries made from time to time into the affairs of the colony, usually followed by small reforms, the Dutch government was not wholly unmindful of the evils wrought by the mercenary corporation to which it had delegated too great powers; but the initial error of delegating those powers having been committed, not even the States General could set right what had begun, and what continued until the end to be, hopelessly wrong. From the start, that ill-conceived colonial venture had in it the seeds of failure. The wonder is not that it ended so soon, but that it lasted so long."12

Thus, after less than two decades of rule, the Dutch West India Company had created such serious problems within the colony of New Netherland that attempted "reforms" ordered by the government in Holland were, ultimately, to prove insufficient to save the colony. The sentiments of those living in New Netherland were so negative vis-a-vis the Dutch that the "threat" of English conquest and rule was at best ignored and perhaps even hoped for. However, for some years prior to that inevitable conquest, the government in Holland did institute certain changes in a belated attempt to permit the colonists to exercise some measures of the limited self-government which existed in the Mother Country.

One of the "reforms" occurred in 1640, when the Dutch government, responding to reports from their colony indicating lack of growth of the settlements and general dissatisfaction on the part of many settlers, issued an order which sharply curtailed some of the previous practices of the West India Company. Policies governing land grants, which had been previously tailored to encourage settlement of large estates by wealthy landowners ("patroons") were modified to stimulate the establishment of smaller holdings and the settlement of New Netherland by greater numbers of colonists.13

From the standpoint of local government, an important feature of the Order of 1640 was the abolition of the system of administration in which all
authority was concentrated in the Director of the West India Company and his Council at New Amsterdam. The new approach to local government in the colony was to grant to the colonial towns the same form of town government which existed in the towns of Holland. What this meant in practice (as will be seen from the subsequent discussion of town government) was the replacement of the commercial autocracy of the West India Company with a system of semi-oligarchy at the local level. This was admittedly a positive step, but it was hardly sufficient to counteract the results of years of neglect.

One of the most striking characteristics of the Dutch era and one of our primary conclusions drawn from the history of the era, is the near total lack of the local governmental structure and tradition in place in 1664. The primary form of local government, such as it was, in the colony of New Netherland during the early period of its development was the town. At the time the English wrested control of the province from the Dutch (1664) there was nothing in the governmental structure comparable to that which we now know as the county. Nor was the city a widely dispersed governmental form, there being only two cities in the entire area, New Amsterdam and Albany. And each of these cities was somewhat of a special case, as will become apparent from our subsequent discussion of city government. In fact, with the exception of a small number of towns, of both Dutch and English origin, prior to 1664, one finds almost a void of local governmental structure.

A discussion of town government during this period necessarily requires two parts, both because there existed a relatively significant number of English towns in New Netherland, and because there were radical differences between those towns organized by English settlers and those organized by the Dutch. Although perhaps surprising, it is nevertheless a fact that a number of English towns had grown up during the Dutch period of rule in New Netherland (particularly on Long Island), long before the English conquest. A nearly-laboratory situation thus existed for a time, during which two unique forms of local government evolved side-by-side. The Dutch towns were of course modeled after the town governments of Holland; the English towns had been settled by colonists who emigrated from nearby New England, and these towns exhibited a form of government which might be described as English town government, once-removed. An examination of the differences will swiftly indicate some of the reasons why the English towns survived and prospered, while the Dutch colony perished.

The English towns were immediately far more successful and developed far more rapidly than their Dutch counterparts, apparently for two reasons. First, the Dutch towns were subjected to the importation of the aristocratic and oligarchic institutions from the town governments of Holland; and, second, the significant difference in the rationale of colonization by the Dutch and the English directly affected the growth of Dutch towns. It is this latter factor which should be addressed first.

The Dutch policy of colonization, which as we have seen was commercially-oriented, contained as a result serious shortcomings which worked against the establishment of deep-rooted communities. One of these shortcomings was the Dutch concept of land grants. The Dutch policy, which was modified but not materially altered by the order of 1640, granted land rights “in severality” — that is, to single individuals rather than to groups. The predictable result: large, widely separated land holdings.  

By contrast, the English policy had been to make such grants in common to groups of settlers, which led to a more social spirit, better-organized communities, a more closely-knit structure of local government, and not least, much better defense against the Indians. It has been said of this period that there were three common characteristics which held the English towns together: “common church, common land and common danger.” The superior organization of the English towns having gradually become apparent, the Dutch authorities in the mother country were moved to send out an order in 1645 directing that in the future, Dutch colonists and their families were to “settle themselves... in the manner of villages, towns and hamlets, as the English are in the habit of doing, who thereby live more securely.”
Taking note of these factors, the closest observer of the local communities of this period concluded, regarding the Dutch towns: "...It is doubtful if any community, either of political power or of lands, existed until about 1645. Accident... (and other factors) were usually the causes which led to the concentration of population in any locality." And that furthermore: "The town was by no means a spontaneous natural growth among the Dutch." (emphasis supplied)

It should be further noted that, in spite of the earlier Dutch settlement of the area, the English invariably organized and incorporated their towns sooner. At least four English towns were incorporated prior to the earliest Dutch town charter, and by the time the English annexed the province in 1664, there were still only nine incorporated Dutch towns in all of New Netherland.

The Period of Transition (1664-1674)

If the Dutch phase of New York's early history can be referred to as a period of exploration and settlement, then the early English phase, which opened with the conquest of the Dutch settlement and its transfer to the English in 1664, can be described as a period of consolidation. The new English rulers of New Netherland had inherited a settled, stable and non-resisting population, but they had also inherited a strange language, unique culture and alien governmental system. In order to appreciate the interaction between the two systems, which helped to shape the subsequent development of New York, it is helpful both to analyze the nature of the existing Dutch government at the time the English inherited it and to examine what the English did with it.

As has been discussed, the Dutch system of administration in New Netherland was basically unresponsive, unenlightened autocracy. The embryonic customs of self-government which prevailed throughout the Eastern colonies were virtually nonexistent in New Netherland. The English, in 1664, inherited two types of autocracy: regional and local.

On a regional level, as we have seen, New Netherland was ruled by the Dutch West India Company as an autocratic province; and, on a local level, the towns of New Netherland were governed in the almost equally autocratic manner and tradition of the Mother Country. In sharp contrast, and often in close proximity, the English towns developed in accordance with the more democratic English tradition and with a natural pragmatism dictated by the circumstances of the hostile environment.

The English thus started with significant advantages over their Dutch competitors when it came to organizing local government. Once the towns were organized and functioning, however, the English system displayed other advantages over the Dutch which were to prove equally significant in establishing the overall superiority of the English approach to local government and, in fact, the ultimate success of the English colony. Holland had often been described as "a nation of towns", and it can be said without fear of contradiction that the principle of localism was perhaps the strongest political influence felt by the Dutch citizens. Towns in Holland not only governed themselves and exercised financial autonomy, but they were responsible for their own defense. Moreover, it is significant to recall that the Netherlands itself was not a rigidly centralized nation-state, but, rather a confederation of provinces. So the Dutch were no strangers to the practice of local self-government, and it could reasonably have been anticipated that their institutions would function equally well after being transplanted to the New World.

However, there was a significant weakness in the Dutch approach to local government which stood in glaring contrast to the English. While the Dutch had strong traditions of local autonomy, they had not made comparable strides in the area of individual participation in government. And so, even after the Order of 1640 had halted the practice of having most or all local officials appointed by the Director General of the West India Company, the system which took its place, based on the town governments of Holland, could hardly be described as participatory democracy.
Dutch towns in the Mother Country had been run as “closed corporations” and town offices had been regarded by the populace as the appropriate domain of the more aristocratic citizens of the town, who came to be called “burghers.” The town councils ordinarily filled vacancies in their membership by selecting their own replacements.

It was this principle of the “closed corporation” which subsequently came to be applied to the towns of New Netherland. However, this aristocratic, semi-feudal approach to town government was ill-suited for transposition to the towns of a far-flung colonial settlement where conditions were vastly different from those of Holland. The resulting discontinuity caused immediate difficulties in the day to day operation of the local governments of the new colony.

The closed corporation was soon supplanted by two other Dutch principles of local government, “partial retirement” and “double nomination”, both of which are significant because they were to survive well into the English period. Partial retirement, as the name suggests, was simply means of staggering the turnover in local governmental councils by arranging retirement of members on a percentile basis. Double nomination, which sometimes became “triple nomination”, was the practice of submitting to the directors of the West India Company a double (or triple) number of nominees for local governmental office, from which list the Company would then appoint the local officials.

The Order of 1640 and its cautious moves toward greater citizen participation pale into insignificance in comparison with developments under the English. The English settlers in New Netherland had a well-developed system of representative government which they brought with them from New England, in contrast to the Dutch tradition of aristocracy. The famous institution of the “town meeting” had already been successfully established in New England; the Dutch had no such practice. The charters of English towns provided for the election of the magistrates (town officers) by popular election, in one degree or another; in the Dutch towns the magistrates were nominated by their outgoing predecessors, thus upholding the tradition of the closed corporation.

...the following conclusions may be drawn concerning the local government of New Netherland: 1) The Dutch settlements showed slight communal feeling; were with difficulty concentrated into towns; developed little political activity or interest; and finally received (rather than demanded) a form of government which gave scant room for popular control. 2) The English settlements under the Dutch jurisdiction showed a common interest from the first; received land grants in common; undertook political functions almost unconsciously; demanded and usually received far greater privileges from the Director and Council than were given to the Dutch towns.

The result was the “conquest” of New Netherland by the English in 1664. This bloodless transfer of sovereignty, as mentioned earlier, was not only unopposed but was perhaps welcomed by the colonists. And with the inception of English rule, there came, almost immediately, the implementation of the attributes of English colonial government, beginning in 1665 with the Duke of York’s Laws.

The inevitable difficulties associated with the imposition of a different culture and government upon the colony of another nation, seen, from the vantage point of history, to have been remarkably few. This relatively smooth transition was undoubtedly facilitated and hastened by the fact that the colony was so far removed from a truly Dutch tradition of government and because there was so very little of internal central and local governmental structure. In effect, there was really very little of an institutional nature to protect and preserve, and the English moved into a vacuum.

In 1673, the Dutch engineered an abortive attempt to regain their colony by seizing control of the City of New York and the governmental apparatus of the colony. However, by 1674 this last vestige of direct Dutch control had been driven from the colony, and the English dominion was complete. This transfer was not only relatively swift, but it was also of primary significance to the entire history of the State, and one of the principle manifestations of change was in the elements and structure of local governments.
The English Period
(1664-1776)

At the time of the English conquest then, it was the town which was well-established as not only the earliest but also the primary element of local government among the English settlers. This first element of local government, as we have seen has origins which definitely precede the Duke's Laws (1665) and the consequent introduction of the first dim outline of a new element of local government: the county. From this point through the major part of the eighteenth century — up to approximately the time of the Revolutionary War — the development of local government in the colony of New York was limited to three governmental units, the town, the county, and the city, with concentrated development limited to the towns and counties. As for the fourth member of the State's earliest elements of municipal government, namely, the village, this unit did not appear as an officially recognized form until the last decade of the eighteenth century. More than a century passed from the time of the English conquest to the passage by the New York State Legislature of acts to incorporate the villages of Lansingburgh, Waterford, Troy and Utica.30

It is interesting and perhaps indicative of the pervasive spirit of localism that although the literature of the eighteenth century frequently makes reference to “villages”, “boroughs” and “hamlets”, these terms were actually references to areas of settlement which were not incorporated and had no legally recognized municipal identity. Frequently these terms, particularly “village”, were used interchangeably with “town” or in a manner meant to imply “a small town”; but in virtually all instances these usages are imprecise as legal terms of art. The term “village” gained a more clearly defined meaning in 1847 when the first general law governing village incorporation was enacted by the New York State Legislature.31

Prior to this clarification, the term “village” seems to have worked its way into various pieces of legislation rather haphazardly.

This lack of precision is typical of the development of local government during the period prior to the Revolution. The development could perhaps best be described as a random pattern of growth. Local government grew and evolved not so much according to any definite system as it did in response to the differing characteristics of the settlements in various locations and regions of the State. The cities of Albany and New York grew up as commercial centers largely because of their proximity to the sources of commerce. Elsewhere in the colony, cities did not develop. Farm-centered clusters of settlers evolved into townships. Areas in which the Dutch ethnic strain was disproportionately large developed along different lines from corresponding areas under predominantly English hegemony (the Albany area being the most prominent example of this divergence). And this pattern, or lack of it, was significantly accentuated by another, lesser-known influence: the inordinately long period during which New York was without a strong central government.

"New York was not granted a permanent assembly until sixty-seven years after its initial settlement — sixty-seven years during which localism took root and flourished in all parts of the colony. No such time lag occurred in any of the other colonies. (emphasis supplied)32"

"... (For) sixty-seven years the population outside the capital at New York City had little to do with the central government, except in times of stress when energies were directed mainly toward resisting it."33

There is good reason to believe that this absence of strong central authority had a great deal to do with the lack of a definite structured system of local governmental forms. The initial combination of absence of local governmental structure stemming from the commercially oriented settlements of the Dutch and the absence of a central representative colonial government until after 1674, resulted in the evolution of the weakly structured elements of local government of 1700. Despite this random evolution, however, certain concrete changes did take place following the accession to power of the English, i.e., 1664, which significantly shaped the future of local institutions. Particular mention should be made of the developments of 1665, 1683, 1686, 1691 and 1703.
The "Duke's Laws" of 1665, in addition to creating what was in effect a system of embryonic counties, were particularly important because of the effect which they had on town government. The Duke's Laws granted what amounted to official recognition of the town as the basic unit of local government, and they extended to the town a greater measure of local self-government than it had heretofore enjoyed. The wording of that section of the Duke's Laws which introduces the topic of self-government is very simple, direct and revealing:

"Whereas in particular townes many things do arise, which concern onely themselves, and the well Ordering their Affairs, as the disposing, Planting, Building and the like, of their owne Lands and woods, granting of Lots, Election of Officers, Assessing of Rates with many other matters of a prudentiall Nature, tending to the peace and good Government of the respective Townes the Constable by and with the Consent of five at least, of the Overseers for the time being, have power to Ordaine such and so many peculiur Constitutions as are Necessary to the welfare and Improvement of their Towne; Provided they bee not of a Criminall Nature. . . ."

"All votes in the private affairs of particular Townes shall be given and determined by the Inhabitants freeholders, and in matters Committed to Arbitration, or'at Sessions, either as to Juries in all Cases or to Justices on the Bench, where the Law is not Clear shall bee Carried by the Major part of the Suffrages, the minor to be concluded by the vote of the Major."35

It has been remarked that "Our modern statutes contain no broader grant of home rule than this provision in the body of laws prepared for the colony by the first royal proprietor of New York. It contained the essential principles of English municipal freedom, combined with the privileges and immunities which had been enjoyed under the Dutch regime."36

The question may arise as to the reason why the English, in the year 1665, suddenly made a grant of greater self-government to the towns. It is significant to note here that the Duke's Laws were not an entirely original charter drawn up for the benefit of the colony of New York, but were based on, and compiled from, the laws of other New England colonies.37 Furthermore, since the laws were promulgated only a year after the capitulation of the Dutch (scarcely time for mass demand for democratic privileges to have developed at the local level), it may reasonably be presumed that the application of the Duke's Laws to the colony of New York was a natural manifestation of the spread of British institutions of local self-government.

By the year 1682, when the first general assembly of freetholders was called, there were indications that the tempo of popular interest at the local level had quickened considerably; it is recorded, for example, that Governor Dongan was requested to call the Assembly "in response to the urgent demand of the people for representation in the government of the colony."38 This Assembly, convened in 1683, brought about a far-reaching change: a transfer of sovereignty from the Duke's governors and their councils, who "made rules and orders, which were esteemed to be binding as laws";39 to a new bicameral legislature, composed of Council and General Assembly, subject to the veto power of the Governor and then the King.40 For the purposes of this discussion of local government, however, the most significant action taken by the Assembly was the subdivision of the colony into counties.

The Duke's Laws had paved the way for the introduction of the English "shire", or county government, in 1655 by introducing the "riding", a judicial district which was the forerunner of the county (the county having its start in New York as a judicial body rather than as an administrative or legislative one); and by dividing the area known as "Yorkshire" (Long Island) into three such "ridings".41 The Assembly of 1683 introduced the word "county" for the first time in colonial legislation, in the following passage:

"(Be it Enacted) THAT the persons to be Elected to sit as representatives in the General Assembly from time to time for the several Cityes, townes, Counties, Shires or Divisions of this province and all places within the same shall be according to the proportion and number hereafter Expressed."42

This act of 1683 goes on to list ten "counties" and to specify the number of persons from each
county eligible to "sitt as representatives". It should be noted that this legislation, which was an act of the colonial legislature and not a charter, is officially entitled "The Charter of Libertyes and priviledges granted by his Royall Highnesse to the Inhabitants of New York and its Dependencyes".

Two days after the passage of the Charter, the Assembly returned to the subject of "countyes" long enough to pass "An Act to divide this province and dependences into shires and Countyes". This act, "Having taken into Consideracon the necessity of dividing the Province into Respective Countys for the better governing and settling Courts in the same", proceeded to divide the province into its original twelve counties, adding the County of Orange and "the Dutchesss County" to the ten mentioned in the earlier act (New York, Westchester, Ulster, Albany, Richmond, Kings, Queens, Suffolk, Dukes and Cornwall). The Act then specified that there should be a "High Sheriff" for each county in the Province.\textsuperscript{43}

The same day, November 1, 1683, the Assembly passed an Act authorizing each "City Towne and County throughout this Province" to elect by majority vote of freeholders "a certaine number" to serve as Assessors. The taxes generated by these assessments were to be paid to "a certaine Treasurer" also to be chosen by majority vote of freeholders of each "City, town and County".\textsuperscript{44} In 1684, an act was passed making the office of Constable elective in both towns and counties.\textsuperscript{45} In these two acts can be seen the beginnings of locally elected officials.

In 1686, Governor Dongan granted the first official city charters, to the "Citty of New York" and the "Citty of Albany".\textsuperscript{46} These two cities, originally chartered by the Dutch, had maintained their special governmental status subsequent to the English conquest. This grant, in 1686, by the English government, conveyed this official legal recognition which became the primary source of subsequent city incorporations in New York State.

In 1691, the Assembly further extended the local self-government powers granted to townships by authorizing the freeholders of every town to assemble and "make, establish, constitute and ordaine from time to time such prudential orders and rules for the better improving of their respective Lands..." as were thought necessary. In conjunction with this grant, the towns were specifically authorized to elect surveyors.\textsuperscript{47}

Also in 1691 an act was passed which proved to be of great subsequent significance to the future development of both towns and counties. This act established a popularly elected supervisor from each town whose duties included activities at both the town and county levels.\textsuperscript{48} The supervisors from each town in the county were to meet as a board and determine the proper apportionment of county expenses among the various towns. In addition to serving as the obvious forerunner of the modern-day Board of Supervisors, this group served as the first legally established link between the towns and counties. Moreover, since prior to this law the county government had been controlled by a county court composed of the various justices of the peace, the law of 1691 made the first real break with the judicial origin of the county and paved the way for the emergence of the county as a legislative, administrative and political body. The justices of the peace remained, but they no longer exercised non-judicial power, such power passing into the hands of elected officials.\textsuperscript{49}

The law of 1691 was repealed by the Assembly in 1701 and re-enacted, in more detailed but substantially similar form, in 1703.\textsuperscript{50}

**Quasi-Governmental Elements (1609-1776)**

Before dismissing the structure of local government prior to the Revolution as being characterized entirely by towns, counties and cities, at least passing notice should be paid to the existence during this period of what might be described as quasi-governmental, quasi-political local units. These were principally in two forms: "patroonships" (established by the Dutch) and "manors" (established by the English). While neither form survived, and while their influence on the subsequent evolution of local government was negligible ("manor" has survived as a form of nomenclature in many areas of the State),
they have nonetheless been the subject of a good deal of curious attention by scholars in quest of traces of "feudalism" in the New World; and they merit discussion because they were for a time, at least in some cases, functioning forms of local government.

The Dutch patroonship and the English manor had a common genesis in that they both arose as a part of the approach to the problem of land distribution by the colonizing countries. The presence of large amounts of virgin land on the new continent not unexpectedly led to novel and rather liberal methods of distribution by both English and Dutch authorities.

"The erection of 'Manors' by the English in New York, like the previous erection of 'Patroonships' by the Dutch in the same Province, was simply the establishment and carrying out, of what they deemed the best method of promoting the growth and development of their new possession under their own laws and customs."

Pursuant to these "laws and customs", the Dutch, faced with the problem of populating their new colony, provided that any settler who brought fifty adults to the new colony, within a four-year period would receive a sixteen-mile tract of land, and would himself become known as a "Patroon". The English governors, facing no such settlement problem, simply distributed large grants of land which came to be called "Manors" to their political supporters, some of whom began referring to themselves as "manor lords".

It perhaps will come as no surprise to note that of the two systems, the Dutch was the less successful. Only one patroonship, the large estate of "Rensselaerswyck", lasted into the English period, while several of the manors survived well into the eighteenth century. A similar type of English land grant, called a "patent", is best described as being a grant of land bestowed upon several recipients, instead of one, with the ultimate subdivision of the estate becoming the responsibility of the patentees themselves. Patents existed parallel to the manors, but it was the manors which managed to achieve the greater political significance.

Three manors (Livingston Manor, Cortlandt Manor and Rensselaerswyck, the latter having achieved manorial status after the English conquest) ultimately had their own representatives in the Assembly.52

Some of the larger manors achieved a political status which was comparable to that of the township or the "precinct" and which included the privileges of popular election of local officers. The precinct existed, during this period, as an administrative subdivision of the county, smaller than the county but larger than the township.53

The manors did not evolve into other forms of government, nor were they directly replaced by other forms. Rather, their ultimate dissolution, like their origin, became a matter of land distribution, and they were gradually broken up into smaller tracts and either distributed among members of the original manorial family, or sold to "outsiders". Their political functions were in most cases absorbed by the counties and townships which survived as the dominant forms of local government.54

Conclusion

Thus by the time of the Revolution, three elements of local government existed in New York State. Town governments with both Dutch and English origins existed throughout the State as the principal element of local government. The cities of New York and Albany, both dating back to the time of early Dutch settlement, functioned as well recognized, chartered municipalities, each, however, being a unique commercial center of the colony. And, finally, a system of counties was in place and chartered, although that system was of relatively recent origin and still somewhat limited in purpose and function.

The colony had, by 1776, come through almost 170 years of development, during which time the function and structure of local government had generally received inadequate attention and had often been disregarded. An inward directed philosophy, which can be designated as "localism", had flourished, and in such circumstances the colonists had become accustomed to government without the interference of a central authority, but also government
without direction from either a central or regional authority. This random evolution of local government had, by 1776, produced the structures and circumstances which we have described, namely an agrarian, basically rural society in which the primary governmental influence was the rather minor, somewhat informal element known as the town.

In colonial New York, the inhabitants were concerned principally with survival and the production of goods for commerce. Government, even local government, was not an important factor in the lives of the colonists. And, of course, when the force of the sovereign in England was brought to bear on the colonists in the attempt to extract revenue from the colony, the reaction was so intense that it fueled the Revolution. And with the inception of the Revolution, the inhabitants were forced to contemplate the structure of government within the colony, and in 1777 the first State Constitution was enacted.
Early Statehood (1777-1865)

Introduction

WITH THE ADOPTION of the first State Constitution in 1777, New York embarked upon its initial experience with complete self-government. The lack of attention which had retarded the orderly development of local governmental institutions during colonial times could reasonably have been expected to be reversed now that the colony was an independent state. In truth, however, changes came with glacial slowness.

The Constitution of 1777, reflecting its drafters' obvious concern with consolidating the existing order and with preserving the rights which had been enjoyed under British rule, introduced only minor changes in the existing structure of local government. Most of these changes had to do with local officials and their manner of election or appointment. Thus, Article XXIX ("Certain town and county officers") provided as follows:

"The town clerks, supervisors, assessors, constables, and collectors, and all other officers, heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of the legislature."

"That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature."

It is to be noted that the Constitution did not make any changes in the functions of these or any other local officials, limiting itself strictly to ratifying and continuing their prior status. With one minor exception, the total constitutional coverage of local government in 1777 was contained in this Article (XXIX), in Article XXVI (providing for the annual appointment of sheriffs and coroners), and in intermittent references to the county as the principal district governing electoral eligibility. The one minor exception worthy of note is the provision contained in Article XXXVI ("Royal grants and charters"), which specifically guarantees the property rights of the "manor lords" by providing that "nothing in this Constitution contained shall be construed to affect any grants of land, within this state, made by the authority of the said King or his predecessors, or to annul any charters to bodies politic...made prior to [October 14, 1775]."

Equally as important as this guarantee of the continued existence of the manors, however, was the elimination, in effect by omission, of their right to representation in the Assembly (which, it will be recalled, had been exercised in only three cases). Article IV ("Assembly, how constituted") specifically restricted membership in the Assembly to members representing "the city and county of New York," "the city and county of Albany," and the twelve other counties. Thus the period during which the great landed estates exercised quasi-governmental powers began to draw to a close; and the first Constitution rather passively recognized the counties, cities and towns as the only full-fledged forms of local government.

As the period of independent statehood began, the new State found itself with only two cities (New York and Albany), fourteen counties (including New York County and Albany County) and a large num-
ber of towns which fell into three categories in terms of origin: Dutch towns created under the Dutch, English towns created under the Dutch, and English towns created under the English. From the beginning of independence through the end of the Civil War in 1865, the further growth of local government in New York State was characterized by five broad patterns of development, each of which we will consider in detail, as follows:

1. The appearance of the village as a separate and legally distinct form of local municipal organization.

2. A gradual and orderly growth in the number of cities (reaching a total of 16 by 1865), a growth which was traceable directly to the expansion of commerce.

3. A very rapid growth and spread of the town (which, during this period, continued to be the principal unit of local government), accompanied by a steady movement toward greater home rule for towns.

4. The birth of the “district” as a subunit of the town necessary for the provision of certain special services, generally to specific areas of the town.

5. A very rapid growth in the number of counties, accompanied by the continued transformation of the county from a quasi-judicial, administrative subdivision of the State to a true element of local government.

New York began the period of statehood with no real indication that the city would play any significant part in the spread of local government through the State. Not only were there only two such units in the State, but also there was nothing resembling a pattern of city government, inasmuch as New York City and Albany had little in common, having grown up in different ways as the products of unique local conditions. New York, long the capital of the colony, was also the colony’s pre-eminent port and trading center, and this commercial orientation, together with its political position, quickly gave it the cosmopolitan, international flavor which was to remain its unique characteristic. Albany, though similarly a trading-center, could not have become a city at this early a date without the stimulus of commerce. Aside from its early commercial activities, Albany could hardly have been more different from its sister city at the mouth of the Hudson.

“Located far from the seaboard counties... the early settlers of Albany and environs developed traits and attitudes which for a long time thereafter set that area apart from the rest of the colony. The consequence of this was a north-south, seaboard-frontier, city-country polarity—to which was added the inevitable ethnic demarcation facilitated by the concentrations of Dutch in the upper Hudson Valley. Had not the fur trade and Indian diplomatic activity been centered there, colonial Albany would almost certainly have been nothing more than an obscure backwater town. But fur and Indians, which contributed essential elements to Albany’s distinctive style, at the same time assured it of political and economic power that could not be ignored in the councils of government. Thus the Albany area became a center of powerful special interests which enabled it, for at least the first hundred years of its existence, to compete on fairly equal terms with its sister city at the mouth of the Hudson...Its frontier location, its almost totally Dutch character, and its fur-centered economy all conspired to emphasize a separate, special and unique position.”

It is apparent then that the new State’s cities were a pair of unique and atypical municipalities which could hardly be expected to serve as models for future cities. And in fact, the future pattern of city development in the State came to be linked, not so much to Albany and New York, but to another form of municipal government: the village.

“The city is, generally speaking, an outgrowth of the village.” Leaving aside the State’s first five cities (Albany and New York; Schenectady and Troy, which went directly from town status to city status; and Hudson, a singular case which was incorporated from a precinct (Claverack) which appears to have originated as a commercial entity), the normal pattern of city development soon became village-locity. Writing in 1906, the State’s most prominent Constitutional historian stated, “I think it will be found that in the case of all cities subsequently incorporated there was a transition from an organized village government to a city charter, and that this constituted the third stage of municipal development:
The Appearance of the Village

The final decade of the eighteenth century is marked by the appearance of the village, the last of the four forms of general purpose local government to appear in the State and the first such form to appear as a result of local demand. This new unit of local government soon came to be recognized as a definite stage in the transformation of the wilderness into the robust and expansive population that rapidly became one of the leading agricultural and industrial states in the new nation. The inconsistency between the traditional conception and understanding of the village and its modern role in the structure of local government is a significant factor which will be discussed in later portions of this study. At this point, it is essential to understand the origins of this fourth element of local government.

The village must first be viewed as a derivation of town government.

"The first settlements and hamlets were incorporated as towns...The town governments extended over the neighboring lands attached to the hamlets. Later the town, or township, acquired a well-defined area with fixed boundaries. The town government thus extended over the thickly settled, as well as the thinly settled areas. It was only when the thinly settled districts within the townships were found to have special needs that special authority was given to them, and then only for certain specified purposes — generally, at first, for the extinguishing of fires." (emphasis supplied)

Secondly, the village may be regarded as the only purely local form of government in terms of its origin and development. Lacking the State-linked characteristics of counties and towns, the village never faced the necessity of evolving into a truly local institution. Its creation has always been a matter of voluntary initiative on the part of its residents, its officers have always been locally elected rather than appointed, and the scope of its authority has always been limited to matters of purely local concern.

Finally, as mentioned earlier, the village as a legal entity does not seem to have appeared by design. While the first Constitution mentioned only counties, cities and towns as recognized forms, the framers left a loophole by ordering that "it shall be in the power of the future legislatures of this state for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts as shall to them appear necessary."

The village form of government did not emerge until the 1790's. The legislative vehicle for the creation of this new form of local government was incorporation by "special" enactment of the State legislature. As noted previously, the term "village" worked its way into New York State law in a haphazard manner. Although the word itself does not appear in legislation until 1794, in the act incorporating Waterford, a similar act in 1790 granting specific powers to the trustees of "that part of the town of Rensselaerwyck, commonly called Lansingburgh", is widely regarded as the first de facto reference to village government in New York law. However, this lack of precision in terminology has led to a situation in which no two accounts of village development in New York State can quite agree. Thus, among major historians, we find one stating that "Organized village government began with the incorporation of Lansingburgh, in 1790", a second citing 1794 as the date of the first village incorporation, and yet a third stating that "the Act (of 1798) providing for the incorporation of Troy and Lansingburgh is the first authorization in the State for the village form of government."

To complicate matters further, a fourth observer points out that, "The first act granting special privileges to a part of a town, or township, was passed in 1787, entitled 'An Act for the better extinguishing of fires in the town of Brooklyn'." This act may thus be regarded as the forerunner of either the village or the special district, or both.

Villages, like cities, have been termed as "voluntary" municipal corporations. This is because, unlike counties and towns, they were formed because the inhabitants wanted the new government and the State legislature was merely responsive to that need. A primary motive was that the "...incorporation of vil-
ances enabled small settled areas to provide services for their people without obligating the rural portion of the town with the costs. And, significantly, because village taxpayers continued to pay town taxes, the towns within which villages were incorporated lost no revenue as a result of such incorporations.

The academic debate as to pinpointing the first incorporated village can be traced mainly to the fact that some of the early enactments either failed to include an incorporation clause or did not delegate either the taxing or the debt power, or both, to the trustees of the "village." In any event, even when the incorporation clause was omitted, there was a reference to the creation of "trustees," certainly a strong indication of the corporate form. And although the early village board may have lacked the taxing power, it did have both substantial rulemaking and regulating powers over the inhabitants and the power to enforce such provisions by imposing penalties. In any case, all the necessary legal elements were present, at the latest, by 1798.

Each time the legislature incorporated a new village, it provided for the basic structure, organization and municipal management. The extensiveness of its grants was entirely within the discretion of the legislature. There was no supervening requirement that each village to be incorporated was to receive the same grants of power and delegations of duties. In fact, while the overall pattern of incorporation was similar for each village, the actual designation of powers and duties was generally not identical.

Prior to 1847, the State legislature made its delegations to incorporated villages through "special" legislation. However, during the same session at which the legislature provided for incorporation under the General Village Act (1847), it also passed the first general laws applicable to all incorporated villages. These laws existed outside of any village charter, but they applied to all villages, and thus they can be seen as the initiation of a general statewide structure for this element of local government.

The first of these general laws was an act in relation to firemen in incorporated villages. The law enabled villages to create hook and ladder companies and to pass ordinances for the government of such companies. The second general law was an act in relation to cemeteries in incorporated villages, which enabled the voters by resolution, to direct that the village purchase suitable lands and levy and collect a general tax upon the taxable property within one year or in equal proportions within three years. The trustees could also pass ordinances as to the cemeteries. The law imposed a duty upon the trustees "...to reserve a reasonable portion of such ground for the interment of strangers and other persons who may die in such village..." The third general law was an act to legalize and confirm the official acts and proceedings of the officers of the incorporated villages. For example, if an oath was taken before a justice of the peace, instead of before the correct person, then it was to be considered valid. The law also added that oaths before justices of the peace would henceforth be acceptable.

This change in the State legislature's perception of the village form of local government was undoubtedly precipitated by the third State constitution of 1846, which contained the following mandate:

It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations.

And, in addition to the initial general laws just described, the legislature also passed in 1847, a comprehensive general statute for village incorporation and organization. Under this statute, commonly referred to as the "General Village Act," when the stated procedures were followed, certain town inhabitants could petition to create a village and, therefore, dispense with the prior practice of petitioning the state for "special" legislation. Such villages would then operate within the structure defined in the act as to village offices and the like. Villages that were already operating under special charters were empowered to adopt any provision of the General Vil-
lage Act that they desired, and any inconsistent portion of their special charters would be superseded (in effect creating a hybrid charter with the most favorable provisions of each law).

A description of the essential features of the General Village Act gives one an idea of village government in its early development.

This legislation established a procedure whereby:

Any part of any town or towns, not included within any incorporated village, and containing a resident population of not less than three hundred persons, and if it shall include within its boundaries a territory of more than one square mile in extent, containing a resident population of at the rate of not less than three hundred persons to every square mile of territory included within such boundaries, may be incorporated as a village under the provisions of this act. (§ 1)

The mechanics for the petition for incorporation were clearly stated. There had to be an accurate survey and map, a census, proper notice and the like, and ultimately a court order incorporating the village, if the electors assented thereto. (§ 2-9) Of the substantive provisions, the nearest lines of division for analytical purposes are: structure, powers and duties.

The act also provided specialized duties for each of the village officers in their respective areas of responsibility. For example, the assessor was required to make assessments “...as nearly as practical, prescribed by law for making assessments by town assessors...” (§ 59). Besides the duties expressly stated, the officer also had to perform such other duties as were to be imposed upon him by law or the by-laws (§ 56).

One should keep in mind that the General Village Act did not purport to be exclusive. As earlier stated, a previously incorporated village could choose by resolution, to come within some provisions of the general act while leaving portions of the special charter in effect. Also, the State legislature could, and did, continue to incorporate villages by special legislation. The General Village Act also provided that the general laws of the State applicable to incorporated villages (at the time of the General Village Act or thereafter) and to the officers thereof, applied, in addition, to the provisions of the General Village Act “...so far as the same can be so applied and are consistent with the provisions of this act.” (§ 89)

Thus by the Civil War era, a fourth element of general purpose local government had become firmly established throughout the State. It had, during the more than sixty years from its inception, developed a definite position and role in the overall structure of the State’s local government. It had also gained Constitutional recognition and broad statutory standards had been developed. Incorporations proceeded at a very even rate on an average of slightly more than three per year, so that by 1860, the villages of the State were numbered at 204.

Because of the various possibilities for incorporation and structure, internal village organization varied, but such variation was of little significance to the early role of the village. By way of review, however, as a result of the early differences in origin, by the mid nineteenth century, the various legal provisions affecting villages were as follows:

1. Villages incorporated “specially” pre 1847 and amendments subsequent thereto.
2. Villages incorporated under the General Village Act of 1847 and amendments subsequent thereto.
3. Villages incorporated “specifically” post 1847 and amendments subsequent thereto.
4. The first “general” laws, applicable to all incorporated villages (as to fire companies, cemeteries and legalization of certain acts).
5. “Special” laws applicable only to villages specified therein (which could be either “specially” or “generally” incorporated villages).

The origins, development and spread of the village can stand alone as significant factors in the history of New York’s local government. However, in addition to its individual significance, the village also must be recognized as the middle stage of the historical development of town to village to city. The transition from village to city finds its origins during this same era in the State’s history.
The Cities

Both cities in existence at the time of the First Constitution had received their charters during the early colonial period.\(^7\) The First Constitution recognized their existence and provided that their charters would continue to be effective.\(^8\) As to any further incorporations, the Constitution contained no restrictions upon the State legislature.\(^9\)

By 1865, the State had incorporated 14 more cities.\(^10\) The cities received their charters by “special” State legislation. There was no supervening requirement in the constitution or otherwise that mandated that cities be created by “special” legislation or that cities even be created at all. The question was one of legislative grace, and historically, as it was with villages, incorporation was at local request. There was no list of criteria which, when satisfied, entitled a group of inhabitants to become a city as a matter of right.

The transition from village to city subsequently became the normal pattern of municipal development, and the question arises as to why village residents inevitably decided, at some stage of village development, to adopt the city-charter form of government. Unfortunately the answer appears to be neither simple nor clear-cut. A study of the histories of the sixteen cities which had been incorporated by the end of the Civil War reveals only one common thread: *whenever a village passed from the village to the city form of government, it was always as a result of local demand*, which was often expressed in the form of a petition from the villagers to the legislature.

Unfortunately, the great majority of these documents have not been preserved, but the few that are available indicate that the reasons cited by the petitioning villagers to justify their request for city government range from the general to the specific. In general terms, many villages sought city status because of what might be called the argument of civic prestige: the city was traditionally an older, larger, and more formidable unit of government than the village, and was considered to be held in higher esteem by the other local governmental units and by the State Legislature. In addition, however, many villages sought city charters for very specific reasons, ranging from the case of the Village of Syracuse, which joined with the neighboring Village of Salina to form a single new city, to the case of the Village of Brooklyn, which became a city over the objections of, and largely to escape annexation by, the City of New York.

The latter case is worthy of further comment, if only because the additional arguments of the villagers, aside from their fear of absorption by their larger neighbor, are set forth so completely in the fully-preserved “Memorial of the inhabitants of the village and town of Brooklyn, for an act consolidating and incorporating them as a city.”

In view of the fact that this petition is one of the few accessible documents of its type, and reflects in great detail the reasoning of the villagers’ quest for city status, it is worthy of extensive quotation. The reader should pay particular attention to the descriptions of town, village and city government contained within the petition.

“Since that period [of the last request] the reasons for the desired act of incorporation have greatly increased, and the necessity for its passage become more evident and urgent. The prosperity of the village of Brooklyn had, prior to the year one thousand eight hundred and thirty-three, been very great. Its population had quadrupled since the year one thousand eight hundred and sixteen and had swelled beyond its incorporated limits, but during the past year its growth has far exceeded the ratio to be derived from any former period. The extent too, and magnitude in amount of the purchases which have been made with a view to still further enlargements, (and many of which are in the course of actual settlement,) have been unprecedented, and give the strongest reasons for believing that its extraordinary prosperity will not be temporary. Brooklyn may now be estimated as containing upwards of twenty thousand inhabitants. The extent and variety of its manufacturing establishments have also kept pace with its increase in population, and having regard to the amount of the latter, are probably unequalled in any part of this State. The excellence of its natural location as a place for business, the situation of its territory with reference to the prospects of unrivalled scenery which it commands, and the
peculiar advantages which it possesses in point of health, derived not only from its elevation, its exemption from stagnant waters and marshes, and the purity and salubrity of its atmosphere, but from the excellent quality of its water, are beginning to be properly appreciated; and your memorialists look forward with hope and pride to the time when it shall become a beautiful, thriving and populous city, and an ornament to the State. This however they cannot expect unless a proper direction be given to its growth. The more rapid this may become, and the greater the natural vigor which impels it, the more necessity is there for that early attention which is requisite to insure in maturity proper shape and proportion, and to impart a wholesome character.

To accomplish this a suitable act of incorporation is required, which shall be calculated to remedy the defects in their present system of local government, and adapted to their future condition.

Your memorialists would now respectfully call the attention of your honorable body to some of the reasons which render the passage of the proposed act desirable.

With respect to that portion of Brooklyn which is already incorporated, they would barely remark, without entering into detail, that the present act of incorporation has been found so imperfect and inadequate in some of its provisions, and objectionable in others, as to be wholly insufficient for its proper government. Your memorialists have before stated, that the population of the village has so increased as to have extended beyond the limits to which they have just referred. The interests, wants, and conveniences of that portion of your memorialists who reside beyond this district are identified with those of the inhabitants within the same. They need, therefore, the same species of government, the same powers in relation to streets and other public objects, and all the various efficient regulations necessary for a thick and growing population. Yet they are living under the mere town system, which is wholly inadequate and insufficient for their purposes.

In view too, of the continual growth of Brooklyn, and of what is to be in all probability its future extent and population, provision is necessary with respect to the laying out of streets, avenues and squares. There is nothing of more importance in a young and growing city than an attention to the formation of its streets. By this means, health, convenience, regularity and beauty may be secured, and much expense avoided, which is often occasioned by alterations rendered necessary by the injudicious manner in which lands are originally laid out.

Another objection arises from the present plan of a town and village government within the same limits. To keep up this complicated system, a double set of public officers is rendered necessary, at a considerable annual expense. But the principal source of complaint on this head exists in the fact that Brooklyn, both as respects town and village, is, for all county purposes, recognized only as a town; and, although constituting, in point of population, near four-fifths of the whole county, and paying about seven-eighths of the aggregate amount of its taxes, has but a single voice in the board of supervisors of the county.

This is a point to which your memorialists desire particularly to call the attention of your honorable body. There is no right of our citizens more valuable to them than that of representation. It is a right too, which happily for us can never be questioned, for it forms the very basis of our republican form of government, and is secured by the constitution of our country. Population and taxation are the foundation of this right, and must be looked to for the purpose of forming the rule by which representation is to be apportioned. Considering how very inadequately, in reference to this rule, your memorialists are represented in the board of supervisors of the county, and looking around upon the examples afforded upon this subject in the cases of other cities in this State, they cannot doubt that your honorable body will grant them that relief in this respect, to which they seem to be so justly entitled.81

The town-to-village-to-city progression is unquestionably a significant historical fact of the development of local government in New York during the nineteenth century. Despite limited primary and secondary source material, it is evident that in addition to the desire for civic prestige, city charters were also sought as vehicles for achieving and exercising increased control and management over local concerns. The example of Auburn is not atypical. The village could have adopted additional provisions from the 1847 General Village Act; it could have sought additional amendments (by State "special" legis-
tion) to its own "special" village act; or it could have sought, as it did, a city charter. The latter two approaches were the most flexible and the best way to tailor the legislation to the local needs. As between the two, the choice seems to have followed from the degree of home rule power sought. Had Auburn sought only to gain a few minor powers, it is likely that it would have looked to amend the "special" village act, under which it was operating. However, Auburn was seeking a significant expansion of its governmental role, as the comparison of its village vis-a-vis city powers clearly shows (see Appendix B).

In these early years of Statehood virtually all city governments were structured by special charter provisions. It would not be practical here to attempt to review each of the sixteen charters and to analyze their comparable and contrasting provisions. The Auburn situation is offered as a typical example of charter government during this era.

Initially there were no general laws applicable to cities. By 1835 there were eight cities in New York State, all operating under their own special city charters, amendments, and other applicable special laws. In 1835, however, the State legislature did enact a "general" law extending certain privileges to the firemen in the State. Specifically, in the event of the removal of a fireman from one city to another, he would be able to apply the duration of his prior service to his new job in ascertaining certain job benefits.82

The next general law applicable to cities provided for the election of mayors in 1840.83 And in 1860, the legislature passed a general law to compel the attendance of witnesses before committees of common councils of cities and to punish false swearing by such witnesses.84

In short, through the middle of the 19th century, the legislature generally chose to make delegations to its handful of cities by "special" enactments. General laws were used only in the isolated instances described.

Town Government

During the approximately eighty years from the first Constitution to the end of the Civil War, one is struck by the very even and deliberate development of town government in New York State. During this span of approximately two generations, the statutes show the town as the mechanism through which the newly self-governing and rapidly expanding populace imposed the structure and order of its civilization on the wilderness into which it was moving. The rudimentary towns of the colonial era and in the early years of statehood were authorized to attend to the ascertainment of boundaries, the creation and maintenance of commons and division fences, the containment of livestock, the protection against the dangers and nuisances of wild and stray animals, and the care and protection of the citizenry by means of a sheriff and a fund for the poor. Moneys were generated through the assessment and taxation of real and personal property. The officials necessary to operate this government were primarily the town clerk, the sheriff or constable, the assessor and the justices of the peace and the election of these officials and the determination of the budget were matters for the annual town meeting.

Early additions to this simple structure included requirements for oath taking and record keeping and provision for additional special town meetings. However, until the turn of the century, town government was, as stated, a basic rudimentary structure designed to provide some form of order to the wilderness settlements which were the towns of New York. The early expansions or restrictions in the authority of towns were accomplished by acts of the legislature, the most significant probably occurring in 1795 when the town was selected by the State as the unit to administer funds set aside by the State for the support of common schools.85

This early expansion was essentially superseded by the emergence of the "District" system in 1812 (to be discussed below). The year 1801, however, proved to be an unusually fruitful one in terms of new powers granted to towns; so much so that it has frequently been cited as the year in which "town government in this State assumed comparatively, definite form."86 In that year, the legislature passed separate major acts devoted solely to town government, which collectively accomplished the following:
the granting to the town meeting of officially recognized status and the delimitation of its powers and duties (the Town Act of 1788 had earlier dealt with the institution of the town meeting, but only in such a manner as to ratify its existence as a legacy from the Colonial period, no new powers having been established); the specification of the duties of highway commissioners and the granting to the commissioners of the power to "divide their respective towns into as many road districts as they shall judge convenient;" establishment of provisions for "the settlement and relief of the poor;" and creation of assessment districts in towns and establishment of the duties of assessors, supervisors and town clerks relative to assessment and taxation.

By this time also there had been a dramatic increase in the number of local town officials who were elected by popular ballot. The famous "supervisor law" of 1703 had specified that there should be four elected town officials: one supervisor, two assessors, and one collector. By 1801 this group had grown to include supervisor, clerk, assessors, collectors, highway commissioners, constables, pound master, fence viewers and overseers of the poor. The adoption of a Constitutional amendment in 1826 allowing the people of the various towns to select justices of the peace by popular vote, virtually completed the policy of decentralization and town self-government.

As the second quarter of the nineteenth century closed, the statutory structure of town government had become more complex. The various corporate powers of the towns were specifically codified, the roster of officials had been further expanded to include the selector of weights and measures and various bodies such as the board of auditors, and there were many new provisions concerning the collection, disbursement, and accounting of public funds.

However, it is striking that despite the increase in structure, procedure, and number (926 towns were in existence by 1860), the primary purpose and function of the town apparently remained that of providing order where none had existed previously. When the society developed beyond its frontier stages, when population increased and became concentrated, when more refined services were demanded and became necessary, in short, when the settlement matured into something more than a frontier outpost, then the new elements of local government were likely to either supplement or supersede the town.

The Town Meeting

As indicated by the repeated references to the town-meeting found in the laws and literature of the period, this institution played an enormously significant role in the early history of local government in the State. Since the primary interests of the residents of the towns, as we have seen, were such basic and crucial problems as survival, defense, protection of crops and livestock and control of predators, it is not surprising that highly developed parliamentary institutions were a luxury that did not appear during the first decades of statehood. Fortunately for the citizens, however, they had inherited certain principles and practices from their English ancestors which filled the gap. In effect, in governmental development during the formative period of statehood. Among these was the institution of the town meeting, which was probably the single most substantial and meaningful political institution at the local level during both the Colonial period and the period of early statehood.

The town meeting was one of the features of New York government which predated the State and also the colony; its earliest appearance in New York was a result of the settlement of the colony by col-
onists from New England, where the institution was already firmly established. From New England, its ancestry may be traced back to England and from there to Germany.95

Consequently, when the colony of New York was first in the process of organization, the framers of the earliest laws found the town meeting already functioning at the local level, although in a much more limited form than its counterpart in New England. It was only necessary to recognize the institution formally in the early laws of the Colony, and this was done as early as 1665, in the first set of laws promulgated for the Colony of New York: the Duke’s Laws.

The authors of the Duke’s Laws evidently felt that the institution of the town meeting was so well-known that any description of it was unnecessary, and it is referred to only in a casual and peripheral manner. Thus, in the portion of the Laws dealing with “Townships,” we find the following injunction: “If any man shall behave himself offensively at the Towne meeting towards and before the Constable and Overseers, they shall have power to Sentence him for such offences, the penalty not exceeding twenty shillings...” If the Duke’s Laws are to be regarded as the first set of laws governing the colony, then this passage may be taken as the first reference to the town meeting ever to appear in New York law. The Laws do not refer to the institution again, except to provide that two classes of local officers, namely overseers and constables, shall be “chosen in all Towns upon the first day of April, or Second, yearly, by the plurality of the votes of the Free holders in each Town...” Subsequently, the first Tuesday in April became the almost universal day for all town meetings throughout the Colony.

For almost a hundred years after the Duke’s Laws, we find, in the Laws of the Colony of New York, a similar pattern of cursory, indirect, and occasional attention to the institution of the town meeting. The laws of the period indicate that the colonists were too much concerned with the basic requirements of sustenance and survival, with time out for occasional internal improvements, to spend much time passing laws governing political institutions. Beginning in the decade of the 1750’s, however, we find a substantial quickening in the pace of legislation on the subject, along with another development worth examining: the spread of the institution of the town meeting to other units of local government.

Beginning in 1754, (with “An Act for the Relief of the Poor in Dutchess County; to Enable the Inhabitants of the Several Precincts thereof to Elect overseers of the Poor and to Ascertain the places of their Respective meetings”),96 and concluding in 1770, (with “An Act to Impower the Freeholders and Inhabitants of Rykes Patent, in the Manor of Cortlandt, in West Chester County to Elect Annually, one Supervisor and such other Officers as are therein mentioned”),97 there is found a decade-and-a-half of laws, the cumulative result of which was the extension of legislative recognition of the institution of the town meeting to every existing unit of local government (apart from the city). This recognition extended to units which were only quasi-political in nature, as well as to full-fledged forms: the township; the precinct (1754); the “division” of the county (West Division of County of Richmond, 1754);98 the manor (Cortlandt, 1756);99 the district (Shohar, 1760);100 the county itself (Cumberland – 1766 – a special act authorizing perhaps the only “county-wide town meeting” on record);101 the “division” of the manor (Cortlandt, 1768);102 and finally, the patent (Rykes, 1770). To this list could be subsequently added the village, which, following its official appearance in the 1790’s, promptly began holding town meetings.

The meetings themselves are variously referred to in the above acts as “town meetings,” “annual meetings,” “annual town meetings,” “annual meeting for electing town officers,” “annual meetings for the election of manor officers,” and similar variations; but whatever the description, their familial relationship is always established by the inevitable occurrence of the phrase “On the first Tuesday in April.”

From the above facts, two conclusions may be drawn:

1. The town meeting, obviously, was by no means restricted to the town;
2. The majority of the laws during this period of 16 years did not "create" or authorize new town meetings but merely recognized such institutions as already existing in the governmental units affected by the legislation. The legislation was normally not concerned with the meeting as such but rather with which and how many officers should be elected, who was eligible to vote, and similar substantive matters. The town meeting in a given locality was obviously a functioning institution at the time a given law was passed, even if it had never been authorized by or mentioned in a single prior law. It was, in fact, an indigenous local institution of self-government which did not require, though it frequently received, State legislative recognition.

From the town meeting of the Duke's Laws, authorized to elect only constables and overseers, we find a steady accretion of power over the years as the institution became more and more the natural mechanism for the transaction of all local legislative business, particularly that involving the election of officers. Thus, by the time of the Civil War, the town meeting was authorized to elect, in all the towns of the State (save for occasional localized exceptions) the following town officers: one supervisor; one town clerk; three assessors; one collector; one or two overseers of the poor; one to three commissioners of highways; not more than five constables; one town sealer of weights and measures; as many overseers of highways as there were road districts in the town (except in four named counties); and "so many pound masters as the electors may determine."¹⁰³

In addition to the annual town meetings, which were so well-established that "no previous notice need be given," special town meetings were authorized to be called on a few days' notice for several specified purposes. At special town meetings, action could be taken to fill vacancies in certain offices; to raise money for the common schools or for poor relief "when a proposition to that effect shall not have been acted upon at the annual town meeting;" and to carry out all deliberations relative to lawsuits, including their financing. It was further provided that "no special town meeting shall have power to act on any subjects other than such as are specified..." in the above list.¹⁰⁴ The special town meeting, in other words, functioned as a safety valve.

Although the New England town meeting, from which the New York version was derived, was outwardly similar in form and was also an annually-held event (with similar provisions for special town meetings), there were two important differences between the New York and New England versions. The New England town meeting had greater scope and correspondingly elected more officers, particularly in the area of educational affairs. This occurred because the operation of the schools was far more deeply intertwined with the operation of the township than ever came to be the case in New York. The second major distinction found in the New England township was the institution of the selectmen, who first appear in New England records as early as the first half of the 17th century.¹⁰⁵ The selectmen were "a committee, from three to thirteen in number, annually chosen by the inhabitants to order their prudential affairs. In this body the town found its chief expedient for representative government; the selectmen being in fact the 'town representative(s) ... acting under the 'instructions' of the town meeting and accountable to that body for their acts. Any business might be assigned them to transact; or a function at one time delegated to them could at another, in the discretion of the town meeting, be entrusted to the assessor, collector, constable, or some other officer."¹⁰⁶

It was the institution of the selectmen which proved to be the key distinction between the New England town meeting and its New York counterpart. The presence of this feature of representative government at the town level gave the New England township a flexibility and a growth potential which were lacking in the New York town, which, for whatever reason, failed to acquire equal political sophistication. Thus, we find two divergent paths of the development of local government in New York and Massachusetts. The latter was more town-oriented, with townships grown to larger size and town meetings surviving intact, while the former displayed a pattern which found the township "spinning off" its thickly
settled areas to become villages, which, when large enough to require the elected-representative form of government, chose incorporation as cities (the common council taking the place of the Massachusetts selectmen). Finally, we find here an additional (perhaps the major) reason for the village-to-city transition which has marked New York government: the village, grown out of the township, lacking the mechanism for representative government, became a city when it found the town meeting no longer adequate for its needs.

The Special District

We have referred earlier to the fact that the village developed, in effect, out of the shortcomings of the town. Exactly the same observation can be made about the “district,” a special-purpose form of local government which first appeared in New York State in either the 1780’s or 1790’s, again depending on interpretation and terminology. As noted, the first act (after statehood) granting special privileges to part of a town appeared in 1788, relative to fire prevention (“An Act for the better extinguishing fires in the town of Brooklyn in Kings County”). By means of this law, the citizens of a specific portion of the town of Brooklyn, within geographic boundaries specifically outlined in the first part of the Act, were granted “custody care or management” of fire engines, were authorized to appoint firemen, and were authorized to “raise, levy and collect” such sums “as they shall deem necessary and proper” for the purposes of repair and replacement of equipment and the purchase of additional equipment. Such sums were to be “raised, levied and collected, at the same time, and in the same manner, as the monies for the maintenance, and support of the poor, within the same town, are by law directed to be raised, levied and collected.” The money was then to be turned over to the town clerk, “to be by him paid and applied, for the purposes aforesaid, at such time and times, and in such manner as the major part of the firemen aforesaid, shall from time to time direct and appoint.”107 While this Act nowhere mentions the word “district,” it was repealed and replaced by an Act of 1795 with the identical title and almost identical wording, save for the repeated appearance of the designation “district” to refer to the defined geographic area.108

As indicated, these early statutes were the first district laws enacted by the new State. Actually, the roots of the fire district, and therefore of the special district, are to be found in Colonial times. An extremely significant and uniquely interesting law on this subject, which seems to have escaped the notice of all subsequent historians, appeared in 1768, as Chapter 1383 of the Laws of the Colony of New York, entitled “An Act for the more effectual extinguishment of Fires near the Ferry in the Township of Breucklin in Kings County.” This act, which was the lineal ancestor of the two later acts on the same subject, described a portion of the township “near the said Ferry” and authorized the inhabitants of the described area to meet annually “on the First Tuesday in April” and choose “six able and discrete Persons residing within the District aforesaid” to serve as firemen. In order to finance the purchase and repair of equipment, it was further provided that “the Assessors of the Township of Breucklin...shall...cause the Freeholders and Inhabitants of the said District to be justly assessed for their several proportions of the sum of twenty pounds...” And, as for those citizens who did not take the new district seriously: “…in Case any person shall refuse to pay the sum on him assessed the same Measures shall and may be pursued as might have been taken in Case of a Refusal to pay the proportion of an Assessment towards defraying the necessary and contingent Charge of the said County.”

In addition to the appearance of the word “district,” sufficient characteristics of later special districts are to be found within this ancient law to justify the conclusion that, in a very real sense, the special district is older than the State itself.

The emergence of the fire district is one example of the cautious and piecemeal fashion in which special-purpose local government developed. Another example can be found in the appearance of the first highway districts. “An Act to regulate highways,” passed in 1797,109 may be regarded as the first full-
fledged highway district law in the State. Its origins may be found, however, much earlier. The privileges which were eventually to be incorporated into the Act of 1797 first began to appear not in general legislation, but in special laws affecting only limited areas of the State. Thus, as early as 1779, we find an Act limited to five counties (Ulster, Orange, Dutchess, Charlotte, Westchester) which authorizes the inhabitants and freeholders of the “townships manors districts and precincts” within these counties to elect highway commissioners by secret ballot at town meetings. The commissioners are then authorized to divide their “towns and precincts...into as many road districts...as they shall judge most convenient...” with one overseer of highways to be elected from each district.

Here we find, within a single act, the term “district” used with both its meanings: first, to refer to an administrative area of a county; second, to designate a special-purpose governmental area. The act also repeals all Colonial laws relating to public highways or private roads in these five counties, and authorizes a feature to be found in all subsequent highway legislation until after the Civil War: the “labor system.” This feature, which was, in effect, the financing mechanism for the district, subjected all able-bodied residents of the township to a system of conscription utilized for the purposes of maintenance and repair of roads. This system, which encompassed all the highways in the State outside of cities and villages, required the owners of property within the various districts each to perform a specified number of days’ labor, in proportion to the value of his property.

A third example of the granting of special powers to part of a township, an example unrelated to either the fire or the road district, can be found in an act passed in 1796, granting certain privileges to the residents of a portion of the township of Schenectady, within geographical limits defined in the act. By means of this legislation, the “freeholders and inhabitants” of the defined area were authorized to elect certain commissioners whose primary duty was regulation of the police, but who were also granted broad authority over streets, markets, paving and grading, the operation of a ferry system, and the “prevention and removal of nuisances.” This act, which does not mention the word “district,” furthermore established a system of assessment of real property within the defined geographical area. Although the act of 1796 was a singular piece of legislation which established no real precedents (except perhaps to serve as a forerunner of the “police district”) and which cannot be classed in importance with either the fire or the road districts, it does provide yet another example of the very early development of embryonic special districts.

By the time of the Civil War, the special district concept was thus manifest almost entirely in two types of units — fire districts and road districts — with the total number of such units in existence during this period being a matter of uncertainty, due to the lack of records available for the period. The many other types of special districts in existence today did not begin to appear until the last decade of the nineteenth century.

The School District

The view of the district as conceptually a derivation of town government takes on a new dimension upon examination of the school district. Town and school district government share not only a common origin but also certain common characteristics which have survived down to the present day, the most obvious of which is best understood by reference to the institution of the town meeting. Although the town meeting itself, while surviving in New England, has largely disappeared in New York, its lineal descendant may be found in the school district meeting. In turn, the explanation for this may be found in the fact that the school district and the township were both “imported” into New York from New England, where they had evolved from a common ancestor: the original New England township.

In his admirable study of the origins of local governmental forms, An Introduction to the Local Constitutional History of the United States, Professor George E. Howard makes the following observation:

“Originally in New England...the township and the school district were identical. Teachers were employed, school laws enacted, and school
rates levied by the town-meeting or its agents, just as other civil business was transacted. And the character of the school district as essentially a township has never been lost. Whatever its form, even when a small independent division of the county, as in many western states, its organization is always a reproduction of the township constitution. The subdistrict meeting is a tungkinemat\textsuperscript{112} in miniature; the clerk, treasurer and moderator have the town officers as their prototypes; and the board of directors are but the selectmen of the district chosen to order its educational affairs.\textsuperscript{113}

While the first law establishing full-fledged school districts did not appear until 1812, once again the roots are to be found in earlier legislation; and once again the earliest developments are to be found not in general (i.e., Statewide) laws, but in special laws affecting limited areas of the State. In 1791, the legislature approved “An Act for building a school house and maintaining a school in the town of Clermont.”\textsuperscript{114} This law is significant because it authorized the first school in the State to be established by public funds, all education previously having been privately funded. This statute authorized the use of so-called surplus poor relief funds for the purchase of land, the erection of a schoolhouse and the hiring of a schoolmaster. (“Surplus poor relief funds” were moneys which had been collected for the purpose of poor relief, under the statutes authorizing such collections, but which turned out not to be needed.) The supervisor, town clerk and overseer(s) of the poor in the town were designated the first trustees of the school. The law of 1791 thus authorized the first town-school link to be found anywhere in the State.

The first general law which assigned a specific school-related function to the township appeared in 1795, entitled simply “An Act for the encouragement of schools.”\textsuperscript{115} This act, whose primary purpose was the establishment and apportionment of funds for a State-supported system of common schools, can be said to have authorized the first school “quasi-district,” inasmuch as it “made it possible for persons conveniently located in any part of the town to elect trustees to look after hiring the ‘school master’ and the erection of school buildings.”\textsuperscript{116}

The Act of 1795 accomplished several things. In creating the office of “Commissioner of Common Schools,” the law established the first town affiliated school official in the State, and it provided that such officers should be popularly elected by the inhabitants and freeholders of the various towns. The number of commissioners was set at “not less than three nor more than seven.” The town meeting, not surprisingly, was specified as the place and manner of election. The commissioner of common schools was designated as the official in charge of distributing the funds apportioned to the town among the “districts,” while the supervisor became the official who handled the apportionment of funds granted to each county among the various towns within the county. Local management was placed in the hands of two groups of officials: the elected town commissioners and the school district “trustees,” the latter being appointed by, and to act in behalf of, “the inhabitants residing in the different parts of any town... as many associate together... for the purpose of procuring good and sufficient schoolmasters, and for erecting or maintaining schools... in such and so many parts of the town where they may reside as shall be found most convenient...” (emphasis supplied)

The law of 1795 thus broke new conceptual ground in three distinct ways: by granting to the town its first school function; by creating the first town-linked school officials, in the person of the commissioner of common schools; and by authorizing clusters of citizens in portions of towns to undertake the direct control of education under no one’s auspices but their own. It is this latter development which is most important for the purposes of this discussion.

It is significant to note that although the act of 1795 granted school-related powers to the township, nevertheless such powers were of an indirect nature: i.e., the primary function of the commissioners of common schools concerned the allocation and distribution of funds. Similarly, the county was also given a tangential relationship to education: the supervisor’s role, like the commissioner’s, was concerned primarily with fund distribution. It was the emerging “district” which became, in effect, the agency of
government closest to the operation of the school system. And here we find another link between the district and the other descendants of town government, the village and the city; namely, the direct control of education. "The direct control of the schools of New York by the vote of those to whom the right of suffrage has been given, has been exercised in three territorial divisions of the state. These divisions are the school district, the village, and the city. The town and county have performed more or less indirect functions affecting these three independent organizations."117

The first appearance of the precise term "school district" in the laws of the State occurs in an act passed in 1811, one year before the first full-fledged school district law. Once again, a special act. applicable only to a certain area, introduced principles and, in this case, terminology which were later to be incorporated into general legislation affecting the rest of the State. The 1811 law, "An Act relative to the Trustees of common Schools in the town of Jerico,"118 authorized the inhabitants of the town to choose at their town meeting a number of persons to be designated as "the trustees of the common schools of the town of Jerico;" which individuals were given broad authority over the operation of the common schools, including the duty to distribute funds "among the several school districts in said town." It should be noted that the act, while mentioning the "districts" several subsequent times, nowhere offers a definition or description of the term.

These details were supplied by a law of 1812, entitled "An Act for the establishment of common schools."119 This law authorized the election of town commissioners of education who in turn were empowered to "divide their respective towns into a suitable and convenient number of districts, for keeping their schools..." The Act further provided that "whenever any town in this state shall be divided into school districts, it shall be the duty of one of the school-commissioners of said town, within twenty days after, to make a notice in writing, describing said district, and appointing a time and place for the first district meeting..." This is the first reference in the laws of the State to the school district meeting. The Act authorizes the participants at the meeting, among other things, to "vote a tax on the resident inhabitants of such district..." sufficient to provide for school expenses; and to choose trustees, district clerks and collectors.

With the law of 1812 the school district emerged in virtually complete form, and additional legislation passed during the next three decades was concerned not with new concepts but with refining and occasionally altering the basic features spelled out in the 1812 act. The principle of the direct control of schools by the people at the local level had been firmly established through the mechanism of a governmental offshoot of the town. The basic school district functioned as the sole unit of its type until the formation of the "union free" (or consolidated) school district, shortly before the Civil War.

The union free school district appeared as the result of an act of 1853.120 Something of a conceptual hybrid, its major purposes (not necessarily in the order listed) were the following:

1. To provide a legal mechanism for the merger of existing common school districts whenever and wherever necessary;

2. To enable villages and cities, by adopting the union free form, to modify and expand their educational systems without the necessity for special laws in each case, which had been the only method available to them prior to this time;

3. To permit, through new and broader methods of financing (to be discussed below), the union of the "primary" (lower) grades with the "academic" (higher) grades, within the same system wherever possible. A section of the bill even provided that "Whenever an union school shall be established...and there shall exist within its district an academy...the trustees thereof may...declare their offices vacant; and thereafter the trustees of such union school shall become the trustees of the said academy...and the said academy shall be regarded as the academic department of such union school;"

35
4. To introduce a new approach to the financing of education at the local level. The union free school district, by authorizing broad use of property taxation and also because of the much more extensive tax base brought about by the merger of the smaller districts, was both financially able and philosophically committed to abolish the "rate-bill," a method of financing which had been introduced in 1814 and had immediately become the focus of attacks from the advocates of totally free schools.

Prior local school financing had been accomplished by one of three methods. The first was a direct tax imposed to cover such basic expenses as school construction. The second was the State fund for the support of common schools, which was earmarked for the salaries of teachers. The third was the rate-bill, a form of tax assessed upon the parents of the children to make up the necessary shortages in school operating expenses. Since the tax could be waived upon application by those parents deemed to be indigent, and since the children involved were then popularly regarded as charity recipients, the rate-bill was regarded as out of step with the movement toward increasingly free education. Consequently, when the union free district was instituted, one of its prime goals became the abolition and replacement of such methods of financing by a uniform system of property taxation within the district, the slogan being current at the time that "the children of the State should be educated by the property of the State." In this respect, the development of the union free school district can be seen as one chapter in the century-long struggle for "free schools" in New York, a full discussion of which is beyond the scope of this treatment, except to note that this democratic and egalitarian movement within the State determined, to a large extent, the shape taken by the developing local school districts.

There was one further philosophical reason for the new district which bears mentioning, and it also was a product of the free-school line of reasoning. As expressed in the annual report of the State Superintendent of Public Instruction in 1855, in reviewing the Act of 1853: "It is believed that (the policy of) ... permitting the union of an academical with the primary departments and thereby facilitating the classification of pupils and preventing those who are able to pay for their education in the more advanced studies from being withdrawn from the public schools to private establishments ... is a policy ... eminently wise and beneficial. ..." (emphasis supplied)

Under the terms of the new statute, a Board of Education consisting of from three to nine members was elected at a special meeting of the school district electors. The Board, which replaced the trustees of the basic district and inherited their duties, was constituted a body corporate and became the only body of elected officers chosen under the new system. The powers of the Board of Education were wide-ranging, from the ownership of actual school property and the employment of teachers to the right to exercise all the powers of trustees and even to fill vacancies in their own membership. The creation of the Board of Education as a greatly strengthened governing body, combined with the greater geographic area and consequent increase in taxable property normally found in the union free districts, resulted in both economies of scale and an increase in the funds available for both school construction and faculty.

The County

As for the remaining unit of local government, the county, a turning point in its development was reached in 1821 with the introduction of the State's second Constitution. The provisions of this new document virtually completed the decentralization of county government, which had been a steady process since the county was created as an administrative arm of the State. Not least among the accomplishments of this Constitution was the abolition of the "Council of Appointment," a complicated, semi-legislative, semi-executive body which had retained, until 1821, the power to appoint the principal officers of the county. Established by the first constitution in order to handle the selection of "All officers other than those who, by this Constitution, are directed to be otherwise appointed,"12 the Council of Appointment
had functioned as a midpoint in development between the time when all local county officers were centrally appointed and the later time at which popular election became uniform.

The first New York State constitution in 1777 recognized the existence of 14 counties and preserved the former colonial grants to the counties.122 The constitution also gave the Legislature the power to divide the State into "...such further and other counties and districts as shall to them appear necessary."123 By 1854, 60 counties had been established and population was the primary basis for determining boundaries.125

The first constitution also provided for certain county officers. The sheriff and coroner,126 loan officers, county treasurers, clerks of the supervisors,127 and various court registers and clerks were all to be appointed;128 the loan officers, treasurers and clerks to be guaranteed selection locally (and, therefore, such appointments could not be made at the State level without a constitutional amendment).

The second State constitution expanded the guarantee of local selection of certain county officials.129 Sheriffs, clerks of the counties and coroners were to be elected;130 and mayors, district attorneys and certain court clerks were to be appointed.131 Subsequent amendments in the 1830's provided for election of mayors.132

It is interesting to note that the completion of this transfer of power over the counties from the central government to the local level coincided with the end of the rapid creation of new counties by the State. During the interval between the first and second State constitutions (1777-1821), forty-one new counties were erected;133 from 1821 forward, the county was increasingly a local unit of government.

The Constitution of 1846 included a provision which opened the "statutory home rule" door for counties. The Constitution provided that:

"The legislature may confer upon the boards of supervisors of the several counties of the State, such further powers of local legislation and administration as they shall from time to time prescribe."134

Prior to the adoption of the 1846 Constitution, the counties were primarily involved in such functions as the operation of poorhouses and jails, maintenance of waterways, protection of persons and property, and the levying of taxes.135 Under the 1846 Constitution, however, each county was directed to elect a county judge (who would also use two justices of the peace), sheriffs, clerks (including a register and clerk of New York City), coroners and District Attorneys.136 And all officers, whose elections were not so provided, were to receive the constitutional guarantee that the election or appointment would be done by local selectmen.137 This expanded the guarantee of the first constitution as to local selection of local officials.

The action by the Legislature to establish the basic structure of county government had begun during the Colonial period. For example, the early town officers, directed to meet as a board, were to become the county legislature or board of supervisors.138 However, the delegation of powers by the State to the county level of government was piecemeal. The first general law applicable to all counties was enacted in 1778,139 and provided for the board of supervisors to examine town charges, to audit county charges and to apportion the assessments among the towns within the county.140

In 1830, in a grant of general powers to the county as a "body corporate," each county of the State was given power to:

1. Sue and be sued;
2. Purchase and hold lands, within its own limits for the use of its inhabitants;
3. To control, purchase and hold such personality, "...as may be necessary to the exercise of its corporate or administrative powers; and
4. "To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its inhabitants."141

No county possessed any corporate powers, except as enumerated above and as granted by any State "special" legislation, "...or shall be necessary to the exercise of the powers, so enumerated or given."142
The powers of counties were exercisable through the board of supervisors, or in pursuance of a resolution adopted by the board. The board of supervisors of each county was empowered to:

1. Make such orders concerning the corporate property of the county, as they deemed expedient;
2. Examine and settle all accounts chargeable against the county, and to direct the raising of such sums as may be necessary to defray the same;
3. Audit the accounts of town officers, and to direct the raising of such sums as may be necessary to defray the same; and
4. Perform all other duties as were enjoined on them by any law of this state.

In 1838 the powers of county boards of supervisors were enlarged to include the power to:

1. Levy and collect such sums as necessary to construct and repair bridges therein;
2. Apportion the tax so to be raised in #1 equitably among the towns and wards;
3. Levy and collect sums for rebuilding or repairing court houses or jails, or the clerk’s office;
4. Appoint special commissioners to lay out public highways in cases where satisfied as to the need; and
5. Levy and collect sums for the construction and repair of roads and bridges.

In 1849, counties were empowered to alter town boundaries and to erect new towns. In 1855, the State made an additional grant of power to boards of supervisors to adopt a seal, and in 1858 the State gave the boards of supervisors a subpoena power, so as to effectuate examination of witnesses and materials relating to the “...affairs or interests of the county.”

By the mid-19th century there were also a number of governmental services which were provided at county expense. Typical of the county charges were the following:

1. The support of bastards by certain county superintendents of the poor.
2. In certain counties the support of the poor.
3. Certain election expenses.
5. Damage from riots.
6. Children in orphan asylums.
7. Indigent and criminal lunatics.
8. Expenses of excise board.
10. Expenses of printing court calendars.

The counties emerged as administrative arms of the State, and as such, State supervision was extensive. By the middle of the 19th century, there were a number of duties provided by law for the board of supervisors, county treasurers, loan officers, clerks, sheriffs, coroners, surrogates and district attorneys.

It remains only to be noted that the county was the earliest unit of local government in the State to reach a virtual standstill in terms of numerical growth, so that the 60 counties in existence by the decade of the 1860’s were to remain unchanged in number until 1899, when Nassau County was created (from Queens) as an independent county. For all practical purposes, county expansion was complete by the Civil War.
The Period of Consolidation (1865-1945)

Introduction

THE LATTER HALF of the nineteenth century and the first half of the twentieth century saw the emergence of trends in local government which, in many ways, were different from those displayed during the State's formative period. Along with increasing industrialization and the growth of population came an increasing dependence on the newer forms of municipal organization — villages, cities and districts — and a corresponding decrease in the tendency to turn to the town as an attractive form of local government in preference to other forms. (This is not to say, however, that town government was not important.) Thus, the rate of growth in the number of towns in the State reached a peak prior to the Civil War, and subsequently, town incorporations virtually ceased; concurrently, there was a sharp increase in the growth rate of the town's major competitor as a local municipal form, the village (and, as a corollary, a similar rise in the growth rate of the village's descendant, the city). Later, during the decade of the 1920's, a similar pattern occurred, as the growth rate of the village crested and then the number of village incorporations declined sharply while there was a very rapid rise in the growth of the special district as an organizational form.

In addition to the changing patterns of municipal organization and the accompanying experimentation with new forms, the period between 1865 and 1945 was also one of reorganization, rearrangement and recodification of the laws governing local government in the State. By the time of the Civil War, the basic elements of local government in New York State had been conceived and created. The random nature of this development and the fact that new elements or units were often somewhat ad hoc responses to the need for additional local services combined to create the beginnings of the complex structure which exists today.

As this multiplicity of elements became more apparent during the latter half of the nineteenth century, the State became more concerned with establishing a uniform statutory structure for each form. The resulting State legislative attempts to somewhat standardize the framework of the State's network of local governments is probably the principal development of the era. At the close of this period, New York had a comprehensive Town Law, County Law, Village Law, General City Law, General Municipal Law, and General District Law, the first five of which had been recodified in order to bring some order out of the tangled collection of laws which had grown up in conjunction with the four basic forms of local government, and the last of which — the General District Law — had been created in an attempt to facilitate and standardize the process of creating special districts. An examination of some of these reorganizational developments provides a useful starting point for an appraisal of trends in local government during this period.

The decade of the 1890's was an unusually busy one for the legal development of local government, producing the original Town Law, the original County Law and the first General Municipal Law (Chapter 685, Laws of 1892; Chapter XVII of the General Laws). The 1892 General Municipal Law,
which was further amended in 1909, was intended by the Commissioners of Statutory Revision to collect in one place all the random laws of the State which applied to more than one form of local government, not only in order to properly organize the existing laws, but also to provide the machinery for the introduction of future legislation which would be applicable to more than one municipal form. For example, as to public improvements, it was hoped that the enactment of a single State code applicable to all forms of local government would eliminate the need to enact separate statutes related to public improvements for each form of local government. The functional utility of such an approach is indicated by the fact that, although the General Municipal Law was intended to apply only to cities, counties, towns and villages, “with the passage of time sections have been added which apply to school districts, fire districts, to New York City alone; others apply to the United States, the State of New York, public authorities, public districts, district corporations, civil divisions, political subdivisions and quasi-public organizations.” The General Municipal Law can thus be seen as one of the first examples of a conscious approach on the part of the State to the questions posed by a multiplicity of local governmental forms.

It is somewhat interesting to note that, although the town is a much older unit of government in New York than the village, nevertheless the State’s lawmakers came to grips with the question of standardization much sooner in the case of the village law than in the case of the town law. As described in the preceding chapter, the first General Village Law was enacted in 1847, whereas the so-called “original Town Law” did not appear until 1890. A study of the literature of the period yields no clear-cut reason for this seemingly inverted order of legal development. However, it seems plausible that the earlier approach to standardization in the case of the village was directly related to the rather casual manner in which the village developed as a corporate form. Whereas the town was an organic entity, locally deep-rooted and older than the State, the village began to appear in a piecemeal fashion as the result of special State laws (i.e., charters) passed at local request and frequently differing from one another. Such similarities as did appear in the various village charters were not the result of conscious design, but, reflecting the legislature’s own sense of inadequacy in the area, were the result of a legislative technique which later came to be known as “incorporation by reference” (and which later came to be illegal). By means of this labor-saving device, the legislature would proceed to incorporate a new village and then define its powers, or rather, avoid doing so, by declaring that “the trustees of the (newly-formed) Village of X shall have the same rights and privileges as the trustees of the (pre-existing) Village of Y.” This technique, hardly a scientific approach to the problem, was abandoned with the adoption of the first General Village Law. Thus, it can be seen that another distinction between the first Village Law and the “original Town Law” is the fact that the Village Law was to a large extent an original creation drawn up with the specific purpose of standardization, while the Town Law was primarily a collection and integration of pre-existing statutes.

Two years after the appearance of the “original Town Law” came the first County Law, “An Act in relation to counties” (Chapter 686 of the Laws of 1892), which became Chapter 18 of the General Laws. This law dealt with, among other topics, the corporate status of counties (it was by means of this act that the county first became a municipal corporation), Boards of Supervisors, clerks, district attorneys, county judges, highways, bridges and jails; and it applied to every county in the State except the county of New York.

Here, again, one of the older forms of local government, in this case the county, did not receive its own fully codified set of laws until long after the newer unit, the village. And once again, the reasons for this sequence can only be surmised, since they were not specified in the legislation. In this case, it seems likely that the long delay in the approach to the development of the county law is traceable to the fact that the county was for so many years primarily an instrument of the State and only evolved fully into a true unit of local government over a period of
decades. Therefore, for many years, there was no need for a system of laws outlining the local powers of counties, since for the most part they had none.

Cities and Villages

The era under discussion could well be referred to as the “period of urbanization,” characterized by the addition of 46 new cities and over 300 new incorporated villages (between 1865 and 1945). The urban trend was further reflected by the spillover into, and growth of, suburban areas (apart from incorporations) and by the subsequent rise of the special district as a device for supplying essentially urban services.

It has been correctly observed that “A description of the development of city functions is much more difficult than for any other unit since the majority of New York cities operates under charter provisions rather than under general laws.” This charter-oriented city pattern renders a description of “city government” (in the sense that we have discussed “county government” or “town government”) an impossibility, since to do so would necessitate an examination of each of the city charters, with amendments, for the entire course of this era. Obviously this would be a study in itself.

It should be noted that the first major attempt at standardization of any of the conditions of city government occurred in 1900, with the appearance, in rudimentary form, of the “General City Law.” Very brief and basic in its original version, the General City Law was essentially a consolidation of statutes which were applicable, or could be made applicable, to all cities, and consisted of a very short list of topics, including such mundane items as plumbing, drainage, bridges, rooming houses, and tuberculosis hospitals. The appearance of the General City Law accentuated the differences, rather than the similarities, among the State’s cities; hence the inclusion within its provisions of only the very few features of city government which were amenable to standardization. For the most part, city government continued its individualistic, charter-oriented path of development.

To a lesser degree, the same observation could be made with respect to the State’s villages, which also developed originally on a piecemeal basis by means of individual charters. The difference between the subsequent paths of village and city development can be found in the fact that numerous attempts were made by the State to eliminate the charter-oriented pattern in the case of the villages, beginning (as discussed previously) in 1847 with the appearance of the first General Village Law.

The General Village Law did not prohibit the formation of subsequent villages by “special” act; and in practice, many villages continued to be incorporated by such State legislation. Consequently, the revised General Village Law of 1874 introduced a prohibition against “the passing by the legislature of private or local bills incorporating villages.” This prohibition was likewise included in all subsequent revisions of the Village Law, and, consequently, there have been no villages organized by special act since 1874. Thus, an examination of the modern state of village organization in New York discloses that the overwhelming majority of villages currently in existence were organized under one or the other of the various revisions in the Village Law since 1847, with a sprinkling of villages still in existence under their original charter form.

The increase in numbers and statutory recognition of the village form of local government led inevitably to increased constitutional status. This trend toward recognized and protected status culminated in 1938, when the Constitution of that year was adopted with a “Village Home Rule” section, granting powers of local legislation to villages with populations of 5,000 or more.

As stated, during this era, there was a significant, if not explosive, increase in the number of city and village incorporations. In the case of the city, this period of growth in numbers began in the third constitutional period (which lasted until 1894) and ended approximately as the rate of growth of the special district reached its maximum rate. In the case of the village, there was a similar pattern of rapid growth up to 1930, followed by a decline in the rate of growth as the district emerged.
This extremely rapid expansion in numbers, in combination with the relative inattention to development of a uniform State statutory structure, is evidence of the demographic trend which found these local government forms to be both available and flexible. They were, in fact, the most important forms in their effect on the populace during this era, and the development to be noted is their proliferation and vitality.165

Towns

As we have previously noted, the movement in the direction of a comprehensive body of laws for each municipal form began in 1828, when the various laws affecting the towns of the State were first consolidated (in Chapter 11 of the Revised Statutes of that year). This practice, which was continued under the second, third, fourth and fifth editions of the Revised Statutes, was modified under the sixth, seventh and eighth editions by broadening the “Town Laws” to include the laws applicable to cities and villages, a practice which was abandoned in 1895, when the ninth edition reverted to the previous practice and reconstituted the Town Laws into Chapter XX of the General Laws of that year. In the interval between the eighth and ninth editions, the legislature had adopted what has been referred to ever since as the “original” Town Law (Laws of 1890, Chapter 569). This first attempt to create a truly comprehensive body of laws to govern the towns of the State dealt with, among other topics, the following: the corporate status of towns, town meetings, town officers, the town board, and the municipal debt law. The law of 1890 served as the Town Law essentially unchanged until 1909, when it was revised and expanded for the first time to include numerous statutes pertaining to special districts (to be discussed below). This revision, which became the new Town Law (Chapter 62 of the Consolidated Laws) survived until 1932, when a major revision was enacted into law as a result of the recommendations of a joint legislative committee established in 1927.

The twists and turns in the development and rearrangement of the Town Law, in addition to reflecting the quest for some form of rational systemization of the legislation governing local municipal forms (should villages and cities be categorized separately, or are they “towns?” Where should the laws governing “districts” be placed?) are perhaps also reflective of the fact that an enormous and highly diverse collection of town laws had developed over the years. The town was the oldest and still the major form of local government, and it continued to be the unit with the highest degree of uniqueness and individuality. Consequently, the laws governing towns had emerged not as standardized statutes, applicable everywhere, but, rather, as specific responses to local needs. As we have seen, a very different pattern was followed in the development of the body of laws applying to villages, and there was yet another pattern in the case of counties.

The “decline” of town government, if it can be called that, should not be misunderstood or overstated, for towns continued to acquire new powers and to expand their authority in certain areas during this period. However, the town form of government, at least in New York, was designed to meet the needs of an earlier and simpler type of society, and it lacked the structural sophistication which might have enabled it to adapt itself more thoroughly to new and different needs on the part of the citizens. The previous chapter has described how the more complex township of New England was able to grow and develop in ways which were not open to its New York counterpart. The problems of the New York town arose from the fact that, in the words of one observer, “...the same administrative organization established to handle problems pertaining to the impounding of stray animals, enforcing the penalty for leaving the town gate open, or assessing a labor tax for the church or local road is attempting to meet problems incident to a highly industrialized and preponderantly urbanized society.”166 Predictably, the attempt failed and this failure in turn led to the growth of a type of governmental functionalism which found new units of government arising to meet specific and frequently very limited needs.

An attempt at revitalization of town government through an updating of the Town law was begun in 1927, when a committee of the Legislature produced
a set of recommendations which subsequently resulted in the enactment (in 1932) of what came to be known as the "Kirkland Law." Thus, a statute which at first glance appears to be a massive reworking of the Town Law (occupying 126 pages in the Laws of 1932), the Kirkland Law was, in fact, an overly conservative document whose primary achievement was recodification, not far-reaching reform. Much of this caution was by intent; as expressed in the statement of objectives of the Joint Legislative Committee which produced the law: "The Committee has cautiously avoided drastic changes or unusual innovations in local government..." The result was a law with two primary accomplishments.

First, the new statute provided for the division of the State's towns into two classes, based on population, with the figure 10,000 serving as the dividing line. The purpose of this division was to facilitate the passage of general laws applicable to all towns in a certain class and correspondingly to decrease the need for special legislation.

The second result of the Kirkland Law was the strengthening of the Town Board. The legislation, again quoting from the Committee's statement of objectives, "...centralized in the town board powers previously scattered elsewhere and thus fixed the responsibility for local government in those directly responsible to the electorate." The result of this "centralization" was a section of the law (Article 64), entitled "General Powers of Town Boards," which included some 23 items, granting to the town board powers ranging from control of town finances and acquisition of real property, down to and including such relatively insignificant items as the authority to commit town funds for esthetic improvements and entertainment. Significantly, however, many of these same powers had previously been exercised by the town meeting, and the Kirkland Law simply consolidated the various statutes as grants of authority to the town board.

The changes described above, the division of towns into classes based on population and the strengthening of the Town Board as a repository of town powers, can in one sense be interpreted as indications of the continuing trend toward home rule for local governments. In another sense, however, the 1932 recodification can be interpreted as an attempt to reinforce town government to prevent the further loss of traditional town functions to the newer units of government.

Thus, it can be seen that the town form of government was primarily static during this era. Both the number of towns and their overall legal structure remained essentially unchanged in the decades which took New York State from the Civil War to the twentieth century. In the sense that it represented an accurate reflection of the movement of population and the new sources of demand for government services, this static condition is explainable. In the sense that town government sought self-preservation rather than the drastic change that the new demographic and social patterns demanded, the static condition of the era was clearly counterproductive.

**Special Districts**

By introducing a standard procedure for district formation, the "General District Law" of 1926 (c.470) had the principal effect of facilitating the formation of special improvement districts. It is of historical interest that this procedure (which involved prior notice of district formation, provision for public hearings in the area to be affected, and a procedure for modification of the proposed district limits after petition of the affected parties) was not the result of a conscious attempt on the part of the State's lawmakers to design a rational method of district formation, but rather a forced response to an emergency situation. A Supreme Court decision concerning another State had the effect of calling into question the legality of all existing districts in New York, many of which had been created with, as it turned out, insufficient attention to the Constitutional rights of the residents of the areas which were encompassed by the districts. In short, the State, which had by now approached the subject of general laws for all other units of local government, had waited too long in the case of the special district.

It is of further interest to note that the General District Law was, in the words of the Attorney General,
"intended to apply to all districts to be created, whether under the Town Law, County Law or any of the other general statutes. It provides that, where the present district law in a particular case calls for substantially similar procedure that the steps may be taken under either the particular district statute or under this new general district law. Thus, as the various laws creating and defining the functions of public districts are amended from time to time in compliance with the Supreme Court's decision those statutes will contain the entire procedure affecting the particular kinds of districts and it will not be necessary to follow the provisions of this General District Law."170

In other words, the General District Law was intended not as a permanent solution to the problem of district creation, but rather as a stopgap measure to serve as a bridge between possible legal chaos and a subsequent return to a pattern of local-option district formation under general laws. It is not true, as some authorities have stated, that the sole purpose of the Act was to facilitate the creation of special districts.

At any rate, 1926 would have been somewhat late for an act intended for such a purpose, since the special district had mushroomed as a form of government. As with many other developments in local government, this process began in the 1890's, and, over the next several decades, the fire and road districts were joined by similar units designed to handle lighting, garbage, water, sewage, sidewalks, parks, police, docks and incinerators.171 The earliest count shows a total of 1,331 districts in existence in 1920 with a rapid expansion to 2,564 by 1934.172 Subsequently, a steady and significant increase has resulted in the current presence of over 6,000 districts.173

As mentioned above, the laws governing various types of special districts first "migrated" into the Town Law in 1909, when four articles of the consolidated Town Law of that year were devoted to four types of districts: lighting, water, garbage and sewer.174 It is of further interest that, in addition to the articles devoted to these four types of districts, Article 22, entitled "Local Improvements Generally," provided the equivalent of an appeal process through which corrections could be made in the "assessments to be levied upon pieces or parcels of land contained within certain districts, in proportion to the benefits accruing to said several pieces or parcels of land by reason of such improvement..." This legislation thus anticipated the passage of the General District Law by some seventeen years.

The outstanding characteristics relative to the pattern of special district growth during the time period under discussion (1865-1945) were twofold: the dramatic increase in number, and the great diversity of functions for which the district came to be employed; the governing principle seemed to be "when in doubt, create a district." The predominance of the special district as a provider of essential services and an element of local government became a fact of life during this era.

School Districts

As stated previously, the decade of the 1890's was an unusually fruitful one for developments affecting towns, counties and cities. In the case of the school district, changes of similar magnitude did not occur until the second decade of the twentieth century, and then almost entirely within the year 1917.

The two basic types of school districts developed prior to the twentieth century, i.e., the common school district and the union free school district, had served the State sufficiently well so that no further major type of district was created until 1914. In that year, the first "central rural school district" was formed, under the statutory authorization of Chapter 55 of the laws of that year. The central rural district ("rural" survived as a part of the terminology until 1944, when it was dropped and the district was retitled simply the "central school district") was conceived largely as a second-stage attempt to bring about consolidation in existing districts. The union free school district, while still existing, had not accomplished this goal in as great a degree as had been anticipated, a failure which has been attributed by most authorities to the complexity of the law creating that district. The degree to which the central rural district succeeded in this regard is indicated by the fact that the common and central school districts sub-
sequently became by far the two most numerous types, with the union free a distant third.

Chapter 55 authorized the commissioner of education to "...lay out in this state in any territory exclusive of a city school districts conveniently located for the attendance of scholars and of suitable size for the establishment of central schools to give instruction usually given in the common schools and in high schools, including instruction in agriculture." (emphasis supplied) The law authorizing the central rural district can thus be seen to be extraordinarily simple, particularly when compared to its counterpart authorizing the union free district. Its two main features were the provision that districts be "of suitable size for the establishment of central schools," and the provision that agriculture be included prominently in the available course of study. Hence the designation "central rural."

Although the statute creating the central rural district included authorization for the establishment of high schools, in practice many of the districts formed under this statute did not include a high school; consequently, in 1917, yet another type of district came into being: the "central high school district" (Laws of 1917, Chapter 137). This legislation provided that

"Two or more adjoining school districts may be formed into a central high school district in the manner provided in this article, for the purpose of erecting, establishing and maintaining therein a high school for the secondary education of the pupils residing in such district who have completed the work of the elementary grades in the several school districts included in such central high school district."

The "several school districts" referred to in the law were in fact common school districts and union free school districts, which were permitted to merge solely for the purpose of forming and operating a high school, while retaining their separate identities for all other purposes. Under a unique consolidation arrangement, the board of education of the central high school district was to be composed of representatives from the governing boards of the component union free and common school districts. It remains to be noted only that the original expectations for this type of district — that it would eventually blanket the non-urban areas of the State, much as the central rural district did — were never realized, and in fact only five such districts were ever formed.

The fifth major type of school district also appeared as the result of a law of 1917, in this case a district designed exclusively for the problems of cities. "An Act to amend the Education Law, by providing for a board of education in the several cities of the State," (Laws of 1917, Chapter 786) had the effect of repealing approximately 250 special laws relating to school systems in various cities and replacing them with one law,175 The new law had been necessitated because, in the words of the State Education Department,

"The 59 cities in existence in 1917 had made varying provisions for their school systems. These, in turn, depended to a large extent upon whether or not the school system was coterminous with; i.e., covered identical territory covered by, the city. In a great many cases, the city charter left the existing school situation as it was found at that time, and the boundaries of existing school systems in most of these cases were not the same as those of the newly formed city. In other cases, the school system and the city had identical boundaries. Thus, in many of the coterminous units the provision for the school system had become a part of the city charter, while in others the general provisions of the Education Law remained applicable and the school district remained known as a union free school district, when the City School law was enacted in 1917...it had become a compromise between the new enactment and the status quo, and in regard to a great many matters the law provided that whatever had been the statutory provision in effect...(in 1917)...was to continue to be the law from then on."176

In addition to thus creating something of a patchwork situation which ultimately required revision, the new law, as its title indicated, provided for, and defined the powers of, boards of education in all the cities of the State; and in that sense, can be seen as a part of the continuing trend toward home rule for cities.

There was one further legislative enactment of 1917 which merits discussion here, if only briefly. This was New York's single, short-lived excursion into
the “township system” of school district organization: the utilization of the town as the basic unit of school organization. Enacted into law by Chapter 328 of the Laws of 1917, and strongly supported by the Board of Regents (as were all the other major educational laws of this year), this experiment simply established the town as the basic unit of school organization, creating in each town a “town board of education,” which was to be a body corporate “having jurisdiction over all the schools in the town...” with the exception of certain existing districts. It was contemplated, however, that the town would ultimately become the center of educational organization everywhere in the State except, of course, for cities. The “township law,” as it came to be called, was repealed one year later after what one observer has described as “the greatest storm of protest ever made against a law enacted by the legislature.”

Although the heart of the protest against the new system was the claim of higher taxation (particularly from those districts which had enjoyed a considerably lower rate than other districts prior to the installation of the new system), it seems fair to say that the new approach did not receive an adequate trial, having been in operation only one year. It is significant to note that even today, many educators regard the experiment as a progressive step forward in school district organization which should have been given a reasonable trial period. While an analysis of their arguments is beyond the scope of this discussion, the reader is referred to the 1693-page treatise of the subject by the State Education Department, The Township System.

Counties

The movement toward consolidation and self-preservation which became such a conspicuous feature of the twentieth century development of towns, cities and villages, did not leave counties unaffected. However, the specific manner in which the county was touched by this “home rule” movement varied greatly from its impact on other units. While the development of town, city and village home rule took the form of a steady, ongoing transition toward a formal structure which protected the development which had already occurred, the development of county government proceeded rather by fits and starts, frequently becoming confused in a tangle of competing forms. This varied progression serves as a reminder that the county in New York has always been a form of local government different from any other: the only local unit which evolved from a higher (i.e., State-linked) to a lower (fully local) level. Given this path of development, it is perhaps not surprising that the search for an appropriate structure within which the county could exercise its developing power proceeded, often simultaneously, in several directions.

The first moves toward classifying counties according to size, in order to eliminate the over-abundance of special county laws, occurred as early as 1903, when efforts were made to amend the Constitution for the purpose of county classification. These efforts were unsuccessful, but shortly thereafter, in the decade between 1910 and 1920, there appeared the first flurry of resolutions in the Legislature to amend the Constitution to provide for “optional” or “alternative” forms of county government.

The need for alternatives to the existing pattern of county organization was expressed during this period by the observation of the Constitution Convention of 1915 that “the single rigid type of county government existing in this State for over two centuries and frozen into the State constitution is entirely obsolete.” Pursuant to this sweeping observation, the convention proposed an amendment to the Constitution which for the first time would have authorized the Legislature to provide for differing forms of county government, subject to the approval of the electorate of each affected county. The move was stillborn, however, when the recommendations of the Convention were rejected by the voters.

In the following decade, the focus of attention shifted to specific counties, specifically, Nassau and Westchester; and the proponents of county government reform attempted (in 1921) to accomplish their goal through an approach which had been used repeatedly throughout the history of New York local government: the initiation of a reform through the
use of special legislation, whose effects would be limited to certain local areas wherein the reform could be "field-tested" for possible later application on a State-wide basis. Again, however, the projected reform proved premature, when the voters of the two counties rejected the proposed charter revisions prescribed for them by the Legislature. (Both counties were later to reorganize under special charters granted by the Legislature.)

While thus unsuccessful in terms of legislative results, the trends and developments of the two decades between 1910 and 1930 helped to pave the way for the appearance of the "County Home Rule Amendment" of 1935, the first major State-wide renovation of county government. This amendment, which was the first proposal of its type to be approved by the voters, directed the Legislature to enact legislation providing "alternative" forms of government for counties (excluding the counties comprising New York City), conditional upon the approval of the electorate in each county. The amendment itself specified that any such "alternative" form of county government should have the authority to exercise greatly broadened powers of home rule, including the right to "transfer . . . any or all of the functions and duties of the counties and the cities, towns, villages, districts and other units of government contained in such county to each other or to the State . . . " the right to abolish units of government following the transfer of their functions; the right to exercise powers of local legislation through the Board of Supervisors (or other elected body); and the right to establish methods and procedures for selecting county officers or for abolishing their offices. It was by means of the subsequent implementing legislation that these new home rule powers for counties began to take definite form.

Beginning in 1935, with "An Act to amend the county law, in relation to optional forms of county government and classification of counties," the movement toward a diversified pattern of county home rule began to crystallize. The 1935 act provided, first, at popular option, two plans for county government, the so-called "County President" and "County Manager" plans ("Plan A" and "Plan B"), and, second, (and perhaps more important), the introduction for the first time in a successful State-wide act, of the concept of an executive head for county government. The absence of such a provision for a county executive had long been considered as one of the major shortcomings of the General County Law, and the executive feature was to reappear in all subsequent legislation on this subject.

With respect to the 1935 law, it remains only to be noted that both the County President and the County Manager plans were patterned largely after corresponding forms of city government (the "strong mayor-council" form and the "city manager" form, respectively), and, thus, the county was able to draw on the home rule experience of its older sister unit of local government.

The Act of 1935 was followed in rapid succession by subsequent legislation in 1936 and 1937, which further developed the concept of local-option county government selection. The 1936 law, commonly called the Hearon Act, authorized no fewer than five forms of local government from which counties could choose, of which three offered the county executive feature. Of the three, one provided for an elected executive, the second for an appointed executive, and the third for an appointed executive whose powers of appointment were subject to confirmation by the Board of Supervisors. The remaining two plans, which omitted the executive, were basically modifications of the existing form of county government.

The following year, 1937, saw the appearance of what came to be known as the "Optional County Government Law." This addition to the State's consolidated laws provided four definite forms from which counties could choose: the "county manager" form, "county mayor" form, "county director" form, and "county board" form. As indicated by their designations, three of these forms were very definitely executive-oriented. The Optional County Government Law soon joined a long list of previous "reforms" in county government which met with a distinct lack of success in terms of utilization. Only one county ever having taken advantage of its provisions, the Law was repealed in 1974.185
"These... unsuccessful efforts at county reorganization under the various alternative plans suggest that:
1. There was little demand for these particular plans or, perhaps, for any pre-cut plan for the reorganization of counties;
2. Most counties were satisfied with their existing form; or
3. It was too difficult to adopt one of the new forms."186

Of these suggested explanations, it is the lack of demand for any "pre-cut plan for the reorganization of counties" which seems the most plausible; and, not coincidentally, it was this objection which was later eliminated by the County Charter Law. In the interval between the appearance of the Optional County Government Law and the appearance of the County Charter Law, however, there was one other major attempt at "pre-cut plans" for county government which is worth examining; the Alternative County Government Law of 1952.187 If the County Charter Law (which appeared in 1959) can be said to mark the beginning of the modern period of county government, the Alternative County Government Law may be regarded as the last major attempt at reform of county government to emerge from the movement which had begun four decades earlier.
The
Modern Period
(1945-1975)

The County Charter Movement

THE "FEELING" for a county executive, which had been reflected in various ways in earlier legislation, became fully dominant with the Alternative County Government Law, all four of whose available plans for county government were executive-oriented: the "county administrator," "county manager," "county director," and "county president" forms. It was stated in support of the new law that "All persons interested in county government are agreed that there should be an executive head to county government especially in those counties where a substantial increase in population has taken place."188

The executive concept varied from plan to plan, as follows: the "county administrator" was to be appointed by, and to serve during the term of, the board of supervisors of the county. The "county manager" was also to be appointed by the board, but for a term of indefinite duration (at the pleasure of the board). The "county director" was to be appointed by the board for a fixed four-year term. These three plans can thus be seen to be variations of each other, each offering a county executive who would be, in effect, the creature of the board of supervisors. However, the fourth alternative, the "county president" (who also had a four-year term), was to be elected directly by the people, and he would possess a veto power over the actions of the board of supervisors.189

In spite of the allegedly universal demand for executive leadership within a reorganized county governmental structure, however, the Alternative County Government Law, like its predecessor revisions, was also a failure in terms of utilization. The coming charter-based reorganization of county government was forced to wait until the appearance of the County Charter Law in 1959.190

The County Charter Law was adopted as a result of, and to serve as the implementing legislation for, the so-called "County Home Rule Amendment" to the State Constitution (approved by the voters in 1958).191 This amendment directed the Legislature, during calendar year 1959, "to confer upon all counties outside the City of New York the power to prepare, adopt and amend alternative forms of county government, subject to such limitations as the Legislature shall prescribe."192

Pursuant to this Constitutional mandate, the County Charter Law was approved by the Legislature at the 1959 Session. In the words of its sponsor at that time:

"1. It empowers such counties to draft and adopt their own charters as local laws subject to approval by the voters of the county in accordance with the majorities required by the Constitution Art. IX § 2(c).
2. It requires that such charters shall (a) provide for a board of supervisors or other elective governing body with powers of local legislation, appropriation and determination of county policies, (b) specify the agencies and officers who shall be responsible for the performance of the functions, powers and duties of the county, and (c) the manner of selection and terms of office, if any, of its officers.
3. It authorizes such counties to (a) have an elective officer with veto power over actions of
the board of supervisors, (b) transfer functions of local government among local units of government as permitted by the Constitution Art. IX § 2, (c) provide for an administrative code to supplement the county charter, and (d) abolish and create offices.\textsuperscript{193}

The bill also outlined the specific techniques by which the drafting of a new charter might be undertaken, including restrictions on charter counties designed to prevent them from interfering improperly in such areas as State affairs, certain aspects of judicial, educational and tax-related matters, and with the functions of public authorities.

There has been a rather dramatic implementation of this new law, and, in combination with the Municipal Home Law of 1963 (to be discussed below), it has brought about the appearance of 17 charter counties in the State (through 1974). Of more significance, however, are two other facts: 1) Fifteen of the seventeen charter counties have full-time county executives; 2) Charter counties include more than 70\% of the State's population, exclusive of New York City.\textsuperscript{194} There would, therefore, appear to be a substantiation of the observation in 1952 that "All... are agreed that there should be an executive head to county government especially in those counties where a substantial increase in population has taken place."

In addition to the spread of the charter approach to county government and the concomitant increase in the number of county executives, the postwar period was also marked by other conceptual changes in county government structure. One such change involved the spread of the mechanism of the special district to the county level. This development will be discussed below. The other major change occurred in the institution of the county legislature.

Earlier sections of this study have traced in detail the origin of the earliest county legislative body — the board of supervisors — from its roots in the townships. It will be recalled that as early as 1691, the town supervisor became a county official, in his auxiliary capacity as a member of the county board of supervisors. As stated, this action established the first link between town government and county government, a link which was to last for almost three hundred years.

This link was effectively destroyed by decisions of the United States Supreme Court during the 1960's — the so-called "one man, one vote" decisions — which, when applied to the county level of government, outlawed the existing arrangement, which found towns represented on the county board in precisely the same manner in which states are represented in the U.S. Senate: i.e., one vote for each town, regardless of population. While county responses to these decisions have varied, the single most utilized approach to the restructuring of the county legislature has been the creation of single-member districts, approximately equal in population, and which bear no relation whatever to the towns within the counties. The representatives elected from these districts, having obligations only to the county and no connection to the towns, are exactly what their titles indicate: "county legislators."

Thus, this judicial decision, seemingly limited to considerations of franchise, may actually come to be recognized as one which necessitated the alteration of the most basic conception of the structure and purpose of county government. This possibility of fundamental change may be the most important county government development of the modern era.

**The Numerical Decline of the School District**

On the surface, the one outstanding area in which the development of the school district differs markedly from the development of all other units of local government is that of numbers. While the rate of growth of towns, villages, cities and counties has either slowed substantially or stopped altogether, rarely has there been an actual decline in the number of existing units. In the case of the school district, however, the reverse has been the case to a dramatic degree. The figures alone are startling. From a peak figure of nearly twelve thousand individual school districts in 1857,\textsuperscript{195} the number had dropped by 1974 to only 756.\textsuperscript{196} In other words, a decrease of over ninety percent (more than 11,000 units) over the same period of time (1857-1974) during which the other units of local government were increasing in
number, with one unit in particular — the special district — enjoying a phenomenal growth rate.

An analysis of this enormous decrease reveals first that it has been continuous and steady, with every decade witnessing a net decrease; and, second, that the reasons have been several. The trend began with the passage of the Union Free School Law in 1853, one of whose purposes, it will be recalled, was to accomplish mergers of existing common school districts. It succeeded in its goal only to the extent that within four years the upward trend in school district growth was reversed, and the total number of districts began a moderate decline. The decline did not become precipitous, however, until the passage of the Central (Rural) School Law of 1914 and its amendment (liberalizing State financial aid) in 1925. In that point forward, the Central School District was of the largest single cause of the consolidation and reduction in number of the districts in the State, accounting for well over half the total reduction.

In a summary of trends and developments in school district organization prepared in 1958, a special legislative committee, which had made an exhaustive “head count” of district numbers over the years, succinctly analyzed the multiple reasons for the decline:

"The over 11,500...reduction in the number of basic school districts...may be attributed largely to central school districts which between 1925 and 1957 absorbed over 8,200 common, union free and small central school districts. City school districts created by special acts of the legislature prior to 1951 may have absorbed 500 small districts. Union free schools created after 1853 probably accounted for 1,500. The consolidation of common school districts after 1913 probably absorbed another 600. Enlarged city school districts since 1951 have involved over 200 former union free and common school districts. The remaining 500 probably represent consolidations and annexations not otherwise accounted for.”

With reasonably good accuracy, the committee went on to forecast:

1. Combination of small central districts most of which were created between 1925 and 1947
2. Achievement of a small number of additional enlarged city school districts
3. Creation of a small number of additional central school districts, and
4. Dissolution of the remaining common school districts and small union free school districts and their annexation to central, enlarged city school districts, or larger union free school districts

When these steps have been completed, there will be approximately the same number of city school districts as now (62), probably an increased number of union free or central schools employing a Superintendent of Schools (possibly 125), and possibly about 350 central school districts or a total of somewhat over 500 basic school districts.

The actual figures for these categories in 1974 were 62, 172, 479, and 756. Thus, in addition to the trend toward consolidation which has seen the central, union free and city school districts “cannibalizing” the smaller districts and emerging as the preeminent types, it appears probable that the common school district, the State’s first, is headed toward extinction.

It should be apparent from the above discussion that the State’s school district picture — at least from the standpoint of terminology — has long been a confused jumble. The variety of districts includes “common,” “union free,” “central rural,” “central,” “central high,” “city,” and “enlarged city.” It should also be noted at this point that one will frequently find references to several other types of districts which are not included in this list, and a brief mention of which will be made here. To complicate matters further, some of the “districts” listed below are actually school districts in the true meaning of the term; and others are not.

The “districts which are not districts” are the Supervisory District (despite the name), the Board of Cooperative Educational Services (BOCES), and the County Vocational Education and Extension Board. The Supervisory District is a territorial subdivision of the State, composed of a number of true school districts, within which the District Superintendent
functions, in effect, as an area “Field Representative” for the State Commissioner of Education, his duties being both administrative and pedagogical. The Board of Cooperative Educational Services is simply an organization of existing school districts formed for the purpose of providing shared services, both educational and in terms of facilities. The County Vocational Education and Extension Board was created earlier than the BOCES, had some of the same functions to a more limited extent, and is now largely being replaced by BOCES.

The above units are not regarded as school districts in the true meaning of the term, since they lack the power of taxation. Instead, they service, rather than replace, existing districts, and, consequently, are usually referred to as “service districts.” Often placed in this category is the Central High School District, which as we have seen was also created to service other districts, the primary “service” being, of course, the construction of a high school, with the existing districts retaining the power of taxation.

However, reflecting the confusion which has characterized the entire area of district classification, the State Education Department has continued to list the Central High School District in its annual tally of true school districts.

The additional “districts which are true districts” include the Intermediate District, the Neighborhood District, and the Central City District. The Intermediate School District exists in name only, having been authorized in 1948 to be composed of other contiguous school districts, to employ a Board of Education and to provide services similar to those of the BOCES. None has ever been organized. The Neighborhood District is of historical interest only, having existed intermittently through the State’s history as a legal mechanism to provide for the education of those children who lived in a rural area so near another state that it was advantageous for them to attend school in the neighboring state. The applicable taxes, of course, were paid by the citizens of their community, necessitating the organization of a district for the purpose.

The “Central City School District,” of which there are seven, is a district in a small city which began its existence as a Central School District under a special provision of the Education Law and which is now legally considered as a City School District. The reason for the authorization of these districts was the fact that they are no larger — and often smaller — than many Central School Districts; do not have the wealth of assessed valuation and the number of pupils normally associated with City School Districts; and, for the accident of political history which made them cities rather than villages, would have had the various benefits of State aid available to Central School Districts.

The State aid reasons long since having disappeared, the continued existence of these units as a separate type of district may be regarded as further evidence of the type of calcification which has prevented complete reorganization.

There are two further terminological distinctions which should be made. The State Education Department frequently uses the term “Village Superintendency” or “Independent Village Superintendency District,” which refers to nothing more or less than a Union Free or Central School District which employs its own Superintendent of Schools, and, therefore, does not fit into a supervisory district. Secondly, Central and Central High School Districts are frequently categorized as “types of Union Free Districts” because of certain similarities in their methods of operation; but here again, this usage, even within the Education Department itself, is not consistent.

Finally, certain other terms spawned by the educational establishment, such as “Joint School District” and “Consolidated School District,” are, for the purposes of this discussion, meaningless.

The Spread of the Special District

During the same period of time in which the school district continued to decline in numbers, the special district as an organizational form continued to spread rapidly. In so doing, the special district displayed a growth rate which was rivaled only by a related form which appeared much later than the
district: the public authority (to be discussed below). In addition to its growth in numbers and the wide variety of functions for which it came to be employed, the special district exerted very profound effects upon other forms of local government, so much so as to indicate that the pattern of development of New York local government in the twentieth century might have been very different had the district not existed. To summarize the effect the district had upon the rate of growth of the other units, it could be said that the district was the competitor of the village and the city and the ally of the county and the town.

That the district has had an adverse effect upon the incorporation rate of new villages (and, therefore, derivatively, of cities) cannot be doubted. The incorporation rate of villages began its downward trend parallel to the rise of the district. There is a second way, however, in which district growth has adversely affected cities and villages, which is perhaps less obvious; and that is the fact that the district has restricted the number of territorial annexations by both. It is in this regard that the district has functioned most importantly as the ally of town government.

In order to cope with the increasing urbanization of specific areas within their borders, towns have increasingly resorted to the use of districts to supply certain services — services which are always of an urban nature — to the citizens of areas within a given town whose needs are not common to the town as a whole. Were these property owners unable to obtain services from the town, they would undoubtedly seek to obtain such services elsewhere, normally by petition for annexation to the nearest village or city. On the other hand, if the services become available from the existing town — particularly, as is often the case, at a lower tax rate than would be afforded by the village or city — the reasons for annexation disappear. The district can thus be seen as the major weapon by which the town has been able to retain its territorial integrity. The other side of the coin is that the widespread use of the district to supply essentially urban services has itself worked changes on the nature of the town; and the growth in the numbers of town-centered special districts is a direct reflection of the increasing urbanization of town government.

We have already observed that the special district, although an ancient organism of local government, did not become part of the Town Law until 1909. Laws governing districts are now found in both the Town and County Law and the district is widely used by the county as well as the town. And, although the first county special district did not appear as the result of a general law until 1953, the need for such an instrument at the county level had apparently been felt much earlier. By 1943, consideration of county special districts had reached the stage of legislation in the form of a bill which permitted the creation of “County Water Departments” (the term “district” with respect to the County Law apparently seeming out of place to the legislators). The bill passed Senate and Assembly but was vetoed by Governor Dewey, partly on the interesting grounds that

“At the present time, the water supply in communities outside the large cities is handled by water districts. This bill, if enacted, would represent another step in the transfer of responsibility for government from the people in the localities where they live to larger aggregates of government. There has been no showing of necessity for this measure. In the absence of such showing, I hesitate to have this State contribute further to the centralization of government and the enhancement of the distance between the people and their government.”

By the time the first county water district (now called a “district”) became a reality in 1953, the “home rule” arguments which had disturbed the Governor had been eliminated by the simple expedients of legislative specification that (1) the new district need not be county-wide in scope, and (2) that “...the initiative for the formation of the new-type district (would rest) largely in the hands of the municipalities which will be its components.”

In short, rather than a mechanism for removing a governmental function from a lower to a higher level, the county special district now became an instrument for cutting across functionally obsolete political boundaries, much as the town special district had
emerged, but on a broader scale. The legislation creating the first county district, Chapter 868 of 1953, included terminology specifying that “No county water district shall be established hereunder which shall consist wholly of territory within one city, within one village or within that portion of one town outside of a village.” Identical terminology appeared in subsequent acts relating to other types of county districts. The county district was thus limited to a unit which only came into being when two or more municipalities (or parts of two or more municipalities) were involved, and which might be county-wide in scope or might involve only a portion of a county. The only variation which was not possible under the law was a district involving more than one county, and this omission suggests that there may be another type of special district yet to appear in the State.

The Suburban Town Law

The tensions between town government on the one hand, and village-city government on the other — implicit in the rising use of the special district as a defense mechanism by the town — burst into the open in 1962 with the passage of the suburban Town Law over the strong objections of village and city officials across the State. Long under consideration as a means of enabling town government to cope with increasing urbanization, legislation similar to that enacted had first been introduced in the Legislature in 1958. In that initial proposal, the first mention of the significant phrase “urban towns” can be found.

The motivating force behind the Suburban Town Law was the pattern of population growth in the State which found eighty percent of the entire State increase in the decade 1950-1960 occurring in towns.206 The last major revision in town government had been the “Kirkland Law” almost thirty years previously. In the intervening period, changes in the Town Law had been minor and on a piecemeal basis, and the question of increasing home rule had not been squarely faced. Consequently, many towns had become larger, both in population and assessed valuation, than many villages and cities which enjoyed much more sophisticated powers of home rule. And, with increasing population had come increasing urbanization.

By the time the Suburban Town Law became a reality, the “urban town” of the earlier discussion had become the “suburban town” of the Law’s title, a change which may have been caused largely by the fact that the outstanding examples of population growth during the decade of the 1950’s occurred in the suburban areas near New York City, Buffalo and Rochester. Essentially, the Law provides for a new form of suburban town government (on a permissive basis) for towns having a population of 25,000 or more.207 In approving the legislation, Governor Rockefeller stated that the new law was “the result of conscientious efforts by town officials throughout the State to accommodate town government to the problems of the growing suburban areas surrounding the metropolitan centers of the State.”208 Interestingly, in the words of a hostile representative of the village point of view, the new law was seen as “…a hasty attempt] to make the towns into cities…”209

Various provisions of the Suburban Town Law granted the following new privileges and powers to those towns which elected to place themselves into the new category of “suburban towns”:

1. The power to adopt local laws similar to those which could be adopted by cities and large villages under the provisions of the City Home Rule Law and the Village Home Rule Law respectively. These laws fell into two categories, affecting:

   - the “property, affairs or government” of the town;
   - other enumerated subjects, “whether or not they relate to the property, affairs or government of the town,” a long general list of items tailored to permit suburban towns enough latitude to resolve the maximum number of local problems at the local level.

2. Centralization of administrative and executive authority in the Town Supervisor, who would be empowered to:
— appoint a Director of Finance,
— prepare a capital budget when established by the Town Board,
— bring charges before the Town Board for the removal of appointive department heads.

3. The conversion of the Town Board from its historic role as a legislative, executive and administrative body to one which would be solely legislative in character. The executive and administrative duties formerly exercised by the Town Board were to be transferred to the Supervisor, who would, however, continue to be a member and the Chairman of the Town Board, and the representative of the town on the County Board of Supervisors.

4. Authority to reorganize town functions on a departmental basis, to create new departments of town government, and to appoint heads and deputies of such departments.

5. Increased flexibility in providing local improvements and services, geared to the more complete integration of special improvement districts into the structure of town government.

6. Increased powers to enter into inter-governmental cooperative arrangements with villages located within the town.

7. The establishment of legislative procedural safeguards against the annexation of town territory by a city, the effect of which would be to make any petition for annexation of town territory by a city subject to approval by the Town Board.

It was this last provision, not surprisingly, which generated so much of the hostility to the new law from officials of city government across the State. City-village opposition also centered on the absence of legislative controls on the local lawmaking powers of the new class of towns, particularly with regard to such issues as Workmen's Compensation, Civil Service, and bond issues. In addition, there was opposition to the power of the new towns to establish in place of District Commissions, "town departments," similar to those found in cities, with part of the cost to be borne by village taxpayers. The strenuous village objections made no apparent impression on the Governor, who, when signing the Suburban Town Bill into law, overlooked the villages altogether as he pronounced the new law "another important step in the efforts of my administration to strengthen the governments closest to the people so that they may meet the needs of our time."

The Culmination of Home Rule

Consistent with the previously described actions of local governments to consolidate and preserve their institutional existence, the modern period has been marked by a phenomenon designated as "home rule" for local governments. The movement toward home rule for all forms of local government reached a logical convergence in 1963 and 1964, with the passage of two new Consolidated Laws: the Municipal Home Rule Law and the Statute of Local Governments. Rather than continuing the practice of expanding the principle of home rule on a piecemeal basis, with separate approaches for counties, towns, cities and villages, the new laws made a sweeping, inter-municipal approach to the problem, and together had the effect of serving as the implementing legislation for the newly adopted Article IX of the State Constitution – the so-called "Local Governments" article.

The article itself, which took effect at the beginning of 1964, was divided into three sections, the first of which outlined a "bill of rights" for local governments, the second of which dealt with the powers of the Legislature in matters affecting local governments and the home rule powers of such local governments (and decreed that there should be a "statute of local governments" enacted by the Legislature), and the third of which was primarily concerned with existing laws and definitions.

With respect to the implementing legislation, the Municipal Home Rule Law was by far the broader of the two in scope. It made an all-out assault on the existing approach to legislation dealing with home rule for various units of local government, replacing
in toto the Village Home Rule Law and the City Home Rule Law. In addition, this legislation replaced the “home rule” provision of the County Law and the Town Law with the County Charter Law and the Suburban Town Law. Employing much the same approach as had been used decades earlier with the “General Municipal Law,” the Municipal Home Rule Law attempted to deal in one place with a host of issues affecting the four general-purpose forms of local government. It was determined that, rather than revising the laws governing all four municipalities to bring them into harmony with the newly mandated provisions of the “Local Governments” article of the Constitution, it would be simpler to establish a new law which would incorporate all of the changes.

The law furthermore extended to towns and villages of less than 5,000 population the types of home rule powers which had long been enjoyed by their larger sister units.

The Statute of Local Governments granted a broad range of specific powers to the four general-purpose forms of local government, affecting such actions as zoning, planning, adoption of ordinances and acquisition of property. Finally, the statute decreed that the powers could not be restricted except by the action of two successive legislatures: a grant, in other words, of quasi-permanent home rule.
The Public Authority (1921-1974)

BEGINNING IN 1921, the county, city, town, village, school district and special district were joined by a seventh type of governmental organism which swiftly came to assume major importance in the State: the public authority. The Port of New York Authority, created as the result of an interstate compact between New York and New Jersey, became the forerunner of a pattern of development which has led to the creation of over two hundred public authorities in the State. However, except for its designation as a public authority, the Port of New York Authority was atypical with respect to the vast majority of its successor units, which were formed wholly within New York State, and the overwhelming majority of which are local or regional authorities, rather than State-wide.

It is safe to say that no other form of governmental unit has been the subject of so many inaccurate characterizations as has the public authority. Even today, many observers continue to refer to the authority as a “district.” Therefore, before discussing what the authority is, it would be well to begin by discussing what it is not. And, since this discussion is devoted to local government, a logical starting point is the relationship of the public authority to the other classes of local government.

1. The public authority is not a form of local government. The public authority is a corporate instrumentality of the State which may be created only by the Legislature or by municipalities acting through State enabling legislation. The fact that many, if not most, public authorities have a clearly localized and regional flavor, which is often reflected in their titles (East Hudson Parkway Authority, Capital District Transportation Authority) is both deceptive and, for the purposes of this discussion, irrelevant.

All forms of local government in New York State—counties, cities, towns, villages, school districts and special districts—fall into one or the other of two corporate categories established by the State’s “General Corporation Law”: i.e., municipal corporations and district corporations. A municipal corporation, defined as including “a county, city, town, village and school district,” obviously excludes public authorities. A district corporation is defined as including “any territorial division of the State, other than a municipal corporation, heretofore or hereafter established by law which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.”

This definition also excludes the public authority, though not so obviously as in the case of the former category. Here the reasons for exclusion are twofold: the concept of territoriality and the power of taxation or assessment, or both. These distinctions will become clearer upon discussion of the second example of a category into which the public authority does not fit: the category of districts.

Finally, from the standpoint of the category “local government,” the public authority “...is not created for the administration of civil government and it lacks all of the distinctly political attributes generally exercised by local government such as the
police, licensing, taxation, legislative and judicial powers. 215

2. The public authority is not a "district." Once again, the definition of "district corporation," which includes many special districts in the State (excluding, of course, school districts) 216 refers to "any territorial division of the State... which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments." 217

Among the many powers which public authorities may exercise under New York State law, including the power to incur indebtedness and the power to collect fees, charges or tolls, one does not find the power to levy taxes or benefit assessments. The New York State Constitution contains the following prohibition:

"No public corporation (other than a county, city, town, village, school district or fire district or an improvement district established in a town or towns) possessing both the power to contract indebtedness and the power to collect rentals, charges, rates or fees for the services or facilities furnished or supplied by it shall hereafter be created except by special act of the legislature."  218

Second, the public authority is not a "territorial division of the State" as required by the definition of "district corporation." The only territorial restriction placed upon public authorities in New York State is the requirement that they be "organized to construct or operate a public improvement wholly or partly within the State." 219

Upon further analysis, it becomes apparent that these two distinctions between districts and authorities — the principle of territoriality and the power of taxation or assessment or both — far from being unrelated, actually come very close to being two sides of the same coin. The reason a "district" requires territorial boundaries is to define the area within which it may "tax or assess" property. Conversely, the authority relies on user fees of one type or another and, consequently, does not require territorial boundaries. While the "district" is a governmental device which is designed largely to get away from the constricting and often artificial boundaries of the traditional political subdivisions, the "authority" carries this functionalist approach one step further and does away with territoriality altogether.

It is vitally important to keep these distinctions in mind, particularly if one is using one of the many reference works on the subject which employ the terms "district" and "authority" interchangeably.

3. The public authority is not — within the normally accepted meaning of the term — a political subdivision of the State. While the term "political subdivision" has been used in an imprecise manner under New York Law, with its content (in terms of included units) varying from usage to usage, and while the public authority is often casually described as a political subdivision in the same way that it is often casually described as a "district," the relevant distinctions here would seem to be Constitutional. Thus we find the State Constitution, in Article V, §1, empowering the Legislature to assign to the State Comptroller the "supervision of the accounts of any political subdivision of the State;" and, separately, in Article X, §5, assigning outright to the Comptroller the supervision of the accounts of every public corporation "other than a county, city, town, village, school district or fire district or an improvement district established in a town or towns." It appears, therefore, that "...the political subdivisions referred to in Article V include those public corporations excluded in Article X and that public authorities which would be included under Article X as public corporations are not included in the definition of a political subdivision under Article V." 220

Article X, §5, gives further evidence of constitutional differentiation between public authorities and political subdivisions. It states:

"Neither the State nor any political subdivision thereof shall at any time be liable for the payment of any obligation issued by such a public corporation." 221 (emphasis supplied)

And finally,

"In this section a public corporation as defined does not include: ...a county, city, town, village, school district or fire district or an improvement district established in a town or towns." 222
If the public authority is not a form of local
government, not a district and not a political sub-
division of the State, then what is it?

Webster defines “authority” as “A public
administrative agency or corporation having quasi-
governmental powers and authorized to administer a
revenue-producing public enterprise.” It should be
noted that the definition says “revenue-producing”
and not “self-supporting.”

Just as the “district” in New York is a very dif-
ferent thing from the “district” in California, and the
Massachusetts township is very different from the
New York town, so the term “authority” may mean
different things in different states. To that extent,
“authority” may be regarded as a popular term which
lacks legal precision, and it is necessary to specify
exactly which type of corporate form is being dis-
cussed when we use the term “authority.” In New
York, the answer is “public benefit corporation.”

New York’s General Corporation Law dis-
tinguishes between private corporations and public
corporations, and specifies that any public corpo-
rations shall be one of three types: a municipal corpo-
rations, a district corporation or a public benefit cor-
poration.223 We have already seen that the authority
is excluded from the first two categories, and since it
is indisputably a public corporation, it falls into the
third classification: the “public benefit corporation.”
The public benefit corporation is defined by the Gen-
eral Corporation Law as “a corporation organized to
construct or operate a public improvement wholly or
partly within the State the profits from which enure
to the benefit of this or other states, or to the people
thereof.”224 For the duration of this discussion, the
term “authority” should be understood to mean
“public benefit corporation.”

The State’s maiden venture into the field of pub-
lic authorities was the Port of New York Authority,
organized in 1921. As the prototype of subsequent
authorities in the State, the Port of New York Author-
ity embodied a number of characteristics which
originally set the pattern for the scores of public
authorities which followed. However, it is perhaps
more significant that many later authorities have sub-
sequently deviated from the model of the Port
Authority, in some cases to such an extent that they
can be said to scarcely resemble the concept of the
public authority as originally planned. Three such
deviations which can be identified involve the con-
cepts of geographical scope, fiscal self-sufficiency and
range of functions.

The Port of New York Authority was, of course,
a very large-scale enterprise, spanning the port opera-
tions of two major industrial states and playing
a large role in the economies of both. While there have
been examples of subsequent authorities of equal
or greater geographical impact (for example, the New
York State Thruway Authority), the trend has been
in the opposite direction. Modern authorities are
generally created at lower geographical or jurisdic-
tional levels, including many authorities which are
wholly located within the jurisdictional area of a
single unit of local government (the parking authority
being perhaps the best-known). To the extent that
small localized authorities are utilized on an inter-
jurisdictional basis, there would appear to be no
serious questions of prudence raised by the authority
approach. In this context, the authority merely serves
as a device for cutting across often obsolete political
boundaries, much as the special district has done (or
much as the Port of New York Authority did, on a
much broader scale), and the question of size be-
comes irrelevant. To the extent, however, that the
authority operates within the jurisdictional area of a
single municipality, serious questions of an entirely
different type are raised. In the majority of these
cases, the public authority appears to have been em-
ployed as a device to escape or circumvent local debt
limitations. Such rationale bears little resemblance
to the original purpose which brought the authority into
being.

Second, the Port of New York Authority estab-
lished the principle that a public authority should
ultimately be self-supporting. Although created by
substantial investments from both participant states,
and receiving additional financial aid for a number of
years thereafter, the Port Authority became finan-
cially self-supporting during the 1930’s and has
remained so ever since (so much so that it has been
frequently referred to as the most successful of all
authorities). While there have also been subsequent examples of equally self-sustaining authorities, once again the trend has been in the opposite direction, and today there are scores of authorities in the State which require public financial assistance of one type or another.

Finally, the original concept of an authority, which was fulfilled by the Port Authority, was of an enterprise which would direct all aspects of the project it had undertaken: planning, financing, construction or purchase, maintenance, operation and financial support. With subsequent authorities, however, the trend has been in the direction of “fragmentation,” so that today we find widespread use of such terms as “building authorities,” “financing authorities,” “managing authorities,” and “commerce and development authorities.”

In each case, the term denotes an authority which has only a single major function as its reason for having been created. Perhaps the best example of this approach to authority specialization is the New York State Housing Finance Agency, which has served as the prototype for all subsequent “financing authorities.”

At the opposite extreme from this specialized approach, and very definitely atypical with respect to the State’s other authorities, is the enormously complex authority known as the Urban Development Corporation, whose enabling legislation authorizes it to become involved in virtually every aspect of housing, redevelopment, planning, architecture, acquisition of real estate, financing, leasing, management and operations, involving residential, industrial, or civic projects. The UDC’s complexity and uniqueness make it, like the housing authorities, an example of a type of authority which is not a part of the Public Authorities Law.

Although the majority of the State’s remaining authorities can be found authorized in the Public Authorities Law, the Law fails to supply an overall definition, restricting itself to outlining the powers of each authority individually. The reason for this unique approach is reflected in the Constitutional amendment of 1938 which authorized the creation of such public benefit corporations by special act of the Legislature. The amendment thereby reversed an earlier State policy of providing general enabling legislation authorizing the establishment of (local and housing) authorities. The reason for the reversal of State policy, from the general enabling act to the “specific legislation” approach, “...stemmed from the desire of the State to control and restrict the growth of the authority form by requiring that each situation for which an authority is demanded be examined separately so as to determine its appropriateness.”

As is readily apparent today, the widespread use of the authority device in New York has raised serious questions, primarily of a financial nature. The General Corporation Law definition of “public benefit corporation” refers to “a corporation...the profits from which enure to the benefit of this or other states...” However, the statute neither specifically defines “profits” nor requires that such public benefit corporations be self-supporting. This absence of law has had far-reaching consequences on the subsequent financial position of the authorities and of the State itself. It has often been pointed out that the combined debt of the State’s authorities exceeds the debt of the State.

A discussion of the fiscal consequences of the spread of the authority device is not only beyond the scope of this history, but it has, to some extent, been done elsewhere; specifically, in the series of three major reports issued on the subject by the Department of Audit and Control.

A second fundamental question raised by the growth of the authority device is a philosophical one which concerns the proper place of this new and fundamentally different politico-economic device in the structure of existing government. When should the “authority” device be used and when should it be avoided? In which cases could the functions for which an authority was designed be handled equally well, or better, by an existing agency, commission or department of State or local government? To what extent should an authority be accountable to the public, as opposed to operating in an amorphous and indirect manner (as is alleged that many authorities do)? What should be the proper relationship between a public authority and the various forms of local
government with which it interacts? Is the authority, in fact, a "fourth branch of government?" 228

The public benefit corporation is the newest element of New York’s local governmental structure; but at this early stage of development, there is much to consider in analyzing its current and future role. It seems evident, however, that if they are to proliferate, then they will undoubtedly increasingly affect the citizens of the State; and if they affect the citizenry, there should be an increased understanding of their presence.
The Municipal Housing Authority:
Origins, Functions and Fiscal Impact

Introduction
HOUSING has been a matter of concern to the successive governments of what is now New York State since the Dutch were faced with creating a supply of housing to shelter the first traders and settlers. In recent years, billions of dollars in State loan and subsidy funds have been made available to public and private developers of low and middle income housing facilities. Large additional sums of money have been made available to public housing programs by the Federal government and by the municipal governments in which projects have been developed. Since the vast sums of money required to combat this urban problem would strain both the private market for housing obligations and the tax and debt capacities of any single government, special public corporations have had to be created to combine the tax advantages and security of governmental obligations with an independent source of revenue and credit. The municipal housing authority was the public corporation which was created to serve this function in New York.

Several aspects of municipal housing authorities are important enough to justify further study. The sheer size of the state’s fiscal commitment to public housing is one such aspect. The Legislature has currently authorized municipal housing authorities in 135 cities, towns and villages throughout the State. As of March 31, 1974, a total of $957,926,000 in State loans has been committed to 146 projects in various stages of completion. A substantial amount of Federal aid and of local government contributions and required local matching funds has also been channelled into low income housing through municipal housing authorities. A major section of this study will examine the funding mechanisms employed by such authorities and will identify those requirements which mandate additional taxes and expenditures by localities as distinct from those provisions which are permissive in nature.

A second important aspect of municipal housing authorities is their evolution as a semi-autonomous public device for dealing with housing problems. Historical material will be presented to show the evolution of housing authorities from earlier public and private attempts to provide and maintain a supply of safe and sanitary housing for low and middle income persons in the State. Attention will be given to the use of major governmental powers such as taxation, regulation and condemnation to combat housing problems and to the development of loan and subsidy programs to stimulate the construction of rental housing through private initiative and through direct governmental intervention.

Finally, the powers and duties of a municipal housing authority will be assessed to show the extent to which it is an independent agency. Relationships to the State and Federal government will be traced, patterns for bond and project approval will be discussed, tie-ins with other State and local laws will be analyzed and operating and reporting requirements will be outlined to establish areas of housing autho-
rity independence and zones within which it is subject to outside control.

The over-all aim of this study is to promote understanding of the municipal housing authority as a part of the broader context of State and local government. As such, this report should be read in conjunction with other staff studies dealing with the evolution of general purpose local governments — counties, cities, towns and villages — in the State as well as with studies of other public authorities and special governmental districts. In keeping with the concern of those studies for tracing the evolution of local government, this report will begin by tracing the evolution of the municipal housing authority, starting with the colonial period, continuing through early Statehood and the tenement house reform era and climaxing with modern times.

The Colonial Experience

While private ownership of land was a tradition brought from Europe by the colonists, both the Dutch and the English subjected the private right to property to invasive social control. Special taxes on proprietors were levied; the power to inspect and the right of entry by public authority was established and governmental powers of condemnation and qualified expropriation were used to assure an adequate housing supply.

Early housing policy was concerned with sheltering settlers, with the proven relationship of an adequate housing supply to the growth of trade and economic development and with the value of settlements as visible proof of national authority over a given territory. While the Dutch were generally slow to develop settlements in the new world (preferring, instead, to concentrate on the fur trade), they took some pains to establish housing at major trade centers such as New Amsterdam (New York City) and Albany. The Dutch West India Company issued detailed instructions for the development of housing, fortifications, streets and trade buildings at those outposts. 230

At first, the dual nature of the Dutch West India Company as both proprietor and governor produced a fusion of public and private elements in housing. However, as land was granted to individuals and buildings were planned and constructed by persons who were not acting as agents of the Company, regulations took on more of a governmental air. In an edict issued by "the Director General Petrus Stuyvesant and Council" and addressed to "all and everybody of our subjects," persons who had been granted lots in the City of New Amsterdam were warned that they had to erect "good and convenient" houses within nine months or the lots would revert to the Patroon or Landlord making the grant. In the same act, surveyors were appointed, were granted powers of inspection and were given the power to condemn all improper and disorderly buildings and fences. 231

Explicit recognition of the important role of housing in aiding economic development was contained in a statement of legislative intent made as part of a Dutch law of 1658. In legislation relating to the City of New Amsterdam, it was noted that, as population increased in the city, undeveloped lots in private hands were forcing overcrowding; thus, retarding the "advance of trade and injuring the advance of the city."

The legislation provided for the compilation of lists of vacant property and provided for the lots to be valued and taxed as a stimulus to the construction of housing by private developers. The owner was given the choice of paying the tax and keeping the lot or of selling it to the city at the price put on it by the Burgomasters, who, in turn, would sell the property to anyone who promised to build upon it. 232

In 1664, the Dutch were forced to surrender the colony to the English, who inherited the same problems in community development the Dutch had been faced with. The Minutes of the Common Council of the City of New York for February 2, 1676 enacted a housing policy that was essentially similar to the one followed by the Dutch:

"Upon application made to us by Several persons who are willing to repair and build houses in this City for their convenience and accomodation: And wee being informed that there are Several Lots, and parcels of Ground in this City convenient to build on: and Several houses ruinated and decayed: The Owners whe-
of being either absent, or unwilling to build or repair the Same: The which wee having taken into our consideracon, for the generall good of this City; doe order that all the Land convenient to build on; and all the ruined and decayed houses which are untenentable within this City, bee forthwith viewed, apprized and valued by persons by us therunto chosen and desired on their oaths: And to bee disposed off to those who are willing to build or repair the Same."233

Once again, housing was recognized as a matter of governmental concern, decayed housing and a shortage were recognized as being detrimental to the good of the city and a method of putting property into the hands of interested developers was found that involved the use of governmental powers of condemnation.

Early Statehood

With the coming of independence, housing-related legislation in New York State changed focus. Emphasis was placed on the regulation of existing rental housing to insure that it met certain standards of sanitation and of fire safety rather than on the stimulation of new construction through tax penalties on the condemnation and resale of undeveloped residential property. Legislation was enacted by the State on behalf of the City of New York to regulate the fireproof construction of roofs and chimneys, the disposal of sewage and the provision of building setbacks.234

Regulation of building setbacks was of particular importance in the City of New York since housing in that city was often built to cover virtually the entire lot for block after block. This practice cut down on the circulation of air and sterilizing sunlight in certain neighborhoods with the result that epidemics of disease repeatedly infected those neighborhoods and endangered the health of the residents of the city as a whole. At the request of the Common Council of the City of New York, the Legislature, on April 4, 1880, passed a law for the purchase of overcrowded lots by the city with or without condemnation and authorized the demolition of the buildings on such lots and provided that the property be resold "as they (the Council) shall think will best conduce to the health and welfare of the city."235 This act reestablished the use of the governmental power of condemnation as a major tool for use by municipalities in meeting housing objectives. Equally important, it continued the historical pattern of relating housing regulation to the police power of the government to protect public health.

The period of early Statehood also saw the assertion of the government's power to fix occupancy standards for such public places as taverns, lodging houses and boarding houses. In an ordinance dated June 25, 1804, the Common Council of the City of New York provided for the permanent inspection of such premises, asserted the municipality's right of entry to make inspections and delegated the power to fix occupancy standards for individual premises to the inspector.236 The powers of regulation and inspection contained in this act formed part of the basis for the regulation of tenement houses in the State and became part of the tradition on which the power was granted to a municipal housing authority to make inspections and to conduct studies to determine the existence of dilapidated and insanitary housing in a municipality.237

The Tenement House Reform Era

During the period after the Civil War, governmental regulation became the major public tool for providing an adequate housing supply. Reform-minded citizens became increasingly conscious of the danger to the community that was present in the waves of crime and disease emanating from squalid tenement houses. Coupled with this was a sincere concern for the spiritual and physical welfare of the individuals who lived in such degrading surroundings. Through newspaper articles and by means of carefully documented studies done by public health officials, city inspectors, medical doctors and settlement house workers, public attention was, once again, directed toward housing problems that had long been in existence.

As part of the drive to secure passage of regulatory legislation, a study of tenement housing in New York City and in Brooklyn was published in the
Assembly documents for 1867. The report brushed lightly over the Brooklyn situation after documenting that relatively few tenements in Brooklyn were in poor sanitary condition. The bulk of the report dwelt on the far graver problems associated with tenement housing in New York City. Fifty-two percent of the 18,582 tenements in the city at that time were reported to be in poor sanitary condition. The conditions cited as being dangerous to public health were ones that the city had had long experience with: too many people in each tenement, lack of a safe water supply, common use of sinks and privies, insufficient ventilation and sunlight due to overbuilding on lots, cellar apartments that were damp, dark and musty and the existence of waste water drainage that was not connected to the city sewer system. The report recommended that the legislature mandate drainage, ventilation and building standards and that owners be required to make periodic inspection of their properties in order to ascertain their true condition.238

The most important housing legislation of this era was the Tenement House Act of 1867. The act applied only to the cities of New York and Brooklyn and set standards for ventilation of sleeping rooms, the provision of fire escapes and lavatory facilities, the occupancy of cellars for dwelling purposes, the sanitary condition of lodging houses and the protection of stairways by banisters. There were also regulations requiring open space between buildings, the height of rooms and the dimensions of windows. Landlords were required to report cases of infectious diseases to the municipal board of health and the board was granted access to tenements and lodging houses for the purposes of inspection and for the disinfection of such houses when necessary.239

Enforcement problems rendered the Tenement House Law of 1867 partially ineffective in meeting city housing problems. Cases were slow in coming to court and landlords put off making the repairs and providing the facilities required by the statute. As a result, reformers shifted their emphasis away from public regulation as a tool for housing improvement and became involved in private, philanthropic efforts aimed at improving rental housing for working-class families. The housing reformers hoped to accomplish by example what government regulation of tenements was failing to produce. In New York City, well-to-do reformers began to import British thinking on tenement design and to construct new tenements and rehabilitate old ones based on international models. Settlement houses were established where tenant education, social programs and religious instructions were instituted to deal with that part of the housing problem which was caused by poor housekeeping skills, mismanagement of personal finances and moral depravity.240

By the 1880's, privately initiated and privately funded limited dividend housing associations began to spring up as a vehicle for constructing and operating model tenements. These associations generally hoped to demonstrate to landlords that adequate housing could be provided to low-income families at an attractive rate of return.241 Limited dividend sponsors usually kept sufficient rent to yield a four or five percent dividend on the money invested and used the remainder of the profits to further improve the properties they owned or to acquire and rehabilitate new properties. While no comprehensive data dealing with the financial success of the companies has been found, an 1895 report of an investigative committee of the State legislature cites several instances in which limited dividend projects were profitable over a period of years. The project having the longest history exhibited an average dividend of between 3-1/2 and four percent over an eight-year span despite what was described as a poor location, wasted hall space and an overly large courtyard.242

The turn of the century saw two developments in the area of low-income housing: the spread to upstate cities of concern about poor quality housing and the resurgence of interest in the regulation of rental housing. In 1892, Buffalo, the second largest city in the State, appointed members of the local Charity Organization Society as housing inspectors and undertook an examination of its own tenements.243 The survey encompassed tenement house problems in only two neighborhoods in the city and documented that only 20 percent of the 248 tenements in those neighborhoods did not meet acceptable standards of cleanliness, ventilation, plumbing and water
supply. Rather than let housing deteriorate further, in 1893, Buffalo instituted housing regulations adapted from Boston and New York City models.

Around the same time, a housing survey of Manhattan, Brooklyn, Queens, Richmond and the Bronx was conducted. Both the Buffalo and the five-borough surveys were published in the Report of the New York State Tenement House Commission of 1900. Side by side, they make an interesting comparison of the tenement housing problem between upstate and downstate cities. The survey reported that there were 82,652 tenement houses in the five-borough area. More than two-thirds of the New York City population was found to be living in tenements. Overcrowding, an insufficiency of light and air, lack of separate toilet and lavatory facilities for each dwelling unit and the lack of cleanliness were cited as major problems in the quality of tenement housing in the city. The Commission report made it clear that, while the types of deficiencies found in tenements were the same throughout the State, the intensity of tenement housing problems varied markedly—even between the two most populous cities in the State.

The Tenement House Commission report provided the factual documentation necessary to secure the passage of the tenement House Act of 1901. While the substance of this law was an elaboration of the Tenement House Act of 1867, it represented a significant departure from previous legislation in that, through it, the State set housing standards that applied to more than one city and to more than one part of the State. Further, this law served as a model for most of the tenement house legislation enacted in the United States from its enactment until the close of the second world war. The law did not constitute a Statewide housing code, however, since other cities around the State subsequently adopted codes which applied only to a specific city and which varied from the 1901 law. From this point on, governmental regulation of standards for rental housing continued to be a major thrust in the effort to develop and maintain an adequate housing supply.

The Modern Period

While many current housing programs rely on a mix of private sponsorship and governmental incentives to meet low and middle-income housing needs, the hallmark of the modern period in housing programs has been the sustained application of a wide variety of governmental powers and devices in an effort to mitigate housing problems. Government has played a key role, first in stimulating private sector responses to housing needs and, more recently, through direct governmental intervention in financing, planning, constructing and operating housing projects. The first modern move designed to stimulate the construction of rental housing was the enactment of a tax exemption in an effort to alleviate a critical housing shortage that followed World War I. This statute amended the tax law to permit a county, city, town, village or school district to exempt new buildings planned for dwelling purposes and constructed prior to 1924 from local taxes until 1932. This exemption did not apply to any assessment for local improvements made during construction, and under an opinion of the Attorney General, could also be limited to the portion of tax due on the value of the new construction while the land itself could be taxed as before.

The State Limited Dividend Housing Law

In 1926 a piece of landmark legislation, the State Limited Dividend Housing Law, was enacted to further stimulate the construction of middle-income rental housing. This piece of legislation married the technique of granting tax exemptions as initiated in the 1920 statute with much of the mechanism of the limited dividend housing associations created by tenement house reformers at the turn of the century. The law established procedures for creating private limited dividend housing companies and permitted municipalities to offer them two cost-reducing benefits: (1) the exercise of the municipal power of eminent domain on behalf of the limited dividend company to facilitate the timely acquisition of a large parcel of land at a price that was reasonably free from speculative influences; and (2) the privilege of partial real estate tax exemption so that annual operating
costs would be reduced. Municipalities were authorized to allow exemption from taxation both on new construction and on improvements to existing multiple family dwellings. The law also granted limited dividend projects exemption from the payment of franchise, organization, income and mortgage recording taxes to the State and from most fees payable to the State, the municipality and to officers thereof. The income produced by debt instruments issued by limited dividend companies was also exempt from State taxation. In return, limited dividend companies were required to raise at least one-third of the cost of a project from the sale of stock and were permitted to fund the balance of each project through conventional mortgage sources. Further requirements limited the annual dividends declarable on the company's stock to a maximum of six percent and mandated that any receipts in excess of operating costs, tax and debt payments and permissible dividends be used to further reduce rentals charged for housing.

The act also created the State Board of Housing and empowered it to study the causes of the housing shortage as well as to supervise the organization and operation of limited dividend housing companies. Before a limited dividend housing company could be formed under the provisions of this statute, the State Board of Housing had to conduct a study and reach a determination that housing conditions existed that could not be remedied by the normal operation of private housing developers and that, as a result, a housing shortage existed in the municipality in question. Once such a finding had been made, a limited dividend company could be formed under the supervision of the Board. A person designated by the State Board was required to serve on the board of the limited dividend company and the State Board was required to approve the site of and the construction plans for each project. The Board was also empowered to make inspections and order repairs, could prescribe a system of accounts to be used by the limited dividend company, and had authority to fix maximum rentals within limits prescribed in the act.

The State Limited Dividend Housing Law represented both a continuation of, and a departure from, previous State housing policies. The use of a tax incentive and reliance upon private housing development were traditional government responses to housing shortages. What was new in the limited dividend law was the scope of the exemption granted to private housing companies and the degree of State supervision to which such companies were subjected. Even in these latter areas, the State legislature was operating on the accepted principle that the responsibility to prove that funds were spent legally and that the intent of the law was fulfilled went hand-in-hand with the acceptance of a substantial and continuous amount of public financial aid.

New York was the first and virtually the only city in the State to enact the local tax exemption that constituted the primary incentive for establishing limited dividend companies. Local Law #9 of June 22, 1927 provided a twenty-year tax exemption on buildings constructed by such companies prior to 1937. This exemption was originally intended by the city to be automatic with the approval of each project by the State Board of Housing; however, the city's need for revenues to finance services during the depression, coupled with its concern that many projects were serving people who could afford to pay taxes, led to making the tax exemption discretionary with the Board of Estimate on a project-by-project basis.252

The limited dividend housing company program has continually been in existence for 48 years and has substantially the same form today as it did at its inception.253 The initial effect of the law was to stimulate the introduction of cooperative apartment housing in New York City with the first developments being sponsored by non-profit organizations such as labor unions. This program has never been very active even in New York City and was even less successful upstate.254 Generally speaking, private builders preferred to speculate for larger profits than the limited dividend provisions allowed.255

In the early 1930's, the development of housing programs in New York State was determined more by the economic problems associated with a nation-wide depression and by Federal housing policies than by purely State and local considerations. The first
Federal program to provide direct aid for housing was enacted as part of the Emergency Relief and Construction Act of 1932. At this point, Federal housing policy followed the New York lead by providing financial aid to State-regulated limited dividend housing corporations. This aid took the form of direct government loans to such corporations rather than following the tax-exemption approach that was proving to be of limited effect in New York.

Even with this loan feature, however, the Federal limited dividend housing aid program proved insufficient to meet the nation's needs. The limited dividend idea was not popular with investors because of the limitations on income and capital gains that the law imposed. Additionally, the program required housing corporations to put up 15 percent of the project cost and, in the context of the depression, this kind of capital was not easy to find. Once projects were completed, rents still had to be set at too high a level to make housing available to low-income families. In 1934, the Federal government abandoned its limited dividend policy, concentrating its efforts on the stimulation of large-scale housing construction by governmental bodies.256

In 1933, Congress enacted the National Industrial Recovery Act as a bold attempt to stimulate as many sectors of the national economy as possible.257 Although the Federal government had previously done very little either to regulate housing or to stimulate its construction, a sizable housing program was included as part of the NIRA. One observer of NIRA noted that the building business occupied a position of central importance in the economic world, utilizing materials produced by a myriad of industries and that, for this reason among others, the Roosevelt administration bent its efforts to revive residential construction as well as to stimulate public works.258 The experience of the Federal government under this act had a major effect on the creation of the municipal housing authority as a means for direct government intervention in the provision of low-income housing and in placing primary responsibility for housing functions at the local level of government.

Under the act, a Housing Division was created in the Public Works Administration and was given an appropriation of $125 million to commit to "states, municipalities and public bodies" either as outright grants or through a program of loans.259 Of this amount, $25 million was specifically earmarked for programs in New York State.260 This was a substantial carrot to dangle in front of businessmen and legislators who would otherwise have opposed public housing as a violation of the free market economy, as creeping socialism or as outright communism.261

By emphasizing the economic as well as the social value of the new legislation, Governor Lehman and the housing reformers were able to secure passage of the Municipal Housing Authority Law, the first State program involving direct governmental participation in planning, financing, constructing and operating low-rent housing projects.262

The law begins with a statement of legislative findings that summarizes the reasons underlying State and local concern about housing:

§61. Finding. It is hereby declared that in certain areas of cities of the state there exist unsanitary or substandard housing conditions owing to overcrowding and concentration of population, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, or lack of proper sanitary facilities; that there is not an adequate supply of decent, safe, and sanitary dwelling accommodations for persons of low income; that these conditions cause an increase and spread of disease and crime and constitute a menace to the health, safety, morals, welfare, and comfort of the citizens of the state, and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning, and reconstruction of the areas in which unsanitary or substandard housing conditions exist and the providing of decent, safe, and sanitary dwelling accommodations in said areas and elsewhere for persons of low income are public uses and purposes for which public money may be spent and private property acquired; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

Governor Herbert H. Lehman, in his message approving the law, cited the role of Municipal Housing Authorities in providing low-cost housing, in stimu-
lating slum clearance, in furthering the recovery of the housing industry from the Depression and in taking advantage of millions of dollars of new Federal housing money as additional benefits to be gained through the new law.\textsuperscript{265}

The concern expressed by the Governor and the Legislature with the effect of housing on public health and on the economic welfare of a community echoes themes expressed in the colonial legislation of the Dutch and the English as well as in State legislation both before and after 1934. Even the linkage of housing problems to land use problems dates back to the Dutch and has been of concern to State policy makers continuously since that time. In many ways, the Municipal Housing Authority Law represented further development of previous solutions rather than a whole new approach to combatting housing problems. What was new about the law was the use of direct government spending to fund housing and the creation of a semi-autonomous public authority to implement those programs.

Earlier chapters of this report amply document that public bodies in New York State were typically created to be general-purpose governments having a multiplicity of functions. Solutions to local problems of a governmental nature were sought through the creation of new agencies, boards, commissions, departments and divisions within the framework of the existing town, village, city or county government. It was within this context that municipal boards of health or departments of licenses and inspections were developed to deal with the regulatory aspects of housing problems. Since local governments were already performing housing functions and since the National Industrial Recovery Act allowed housing aid funds to be granted or loaned to existing State and local governments, one might question the need to create a separate governmental unit to deal solely with public housing.

In his opening message to the 1934 Legislature, Governor Lehman stated that the State needed to pass housing authority legislation in order to meet Federal requirements for receiving funds in aid of public housing under the terms of the NIRA.\textsuperscript{264} Nothing in the law itself would indicate that such was the case: the Federal government did not stress the formation of housing authorities on the local government level until a 1935 Federal district court decision held that the Federal government did not have the power to condemn local land for use in public housing projects.\textsuperscript{265}

A more likely reason for the formation of municipal housing authorities as the means for taking advantage of Federal housing aid was implied by the Governor in a radio address to a National Public Housing Conference being held in New York City. In this address, Governor Lehman offered the opinion that neither the State nor cities establishing housing authorities should be held liable for housing authority debt.\textsuperscript{266} From his subsequent discussion of the fiscal benefits of a housing authority, it was clear that the Governor meant that neither the State nor the municipalities around the State should have to pay for public housing with tax dollars. Governor Lehman pointed to the fiscal success of existing public authorities such as the Port of New York Authority in attracting private investment and buttressed this analogy by referring to the pledge of Federal funds for housing. His reluctance to commit State revenues to the housing field on a continuing basis was understandable: the State was faced with demands for increased expenditures at a time when its tax resources were depleted and its borrowing capacity was limited. Cities around the State were in no better position. If a separate corporation could be formed to issue bonds for a limited purpose and if those bonds could be retired through user charges, it appeared possible to undertake new programs.\textsuperscript{267} By setting up a public corporation, public housing could be given a business-type image that could be attractive to investors and could be severed from the strained borrowing power of governmental bodies for the purpose of marketing bonds. The revenues received by housing authorities from rentals could be earmarked to retire the housing bonds rather than being lumped into the general fund of a State or municipality for use in meeting a variety of obligations. It seems likely that economic considerations rather than any Federal mandate led to the creation of a public authority to
serve as the basic device for implementing public housing programs in New York State.

At first glance, it seems unusual that the implementation of public housing programs has emerged as a local rather than as a State or Federal government function. A primary reason for the limited role played by the Federal government in the implementation of housing programs is found in the City of Louisville case discussed above. Rather than risk an unsuccessful appeal to a hostile United States Supreme Court that might overturn the entire concept of public housing, the Roosevelt administration decided to work through State and local governments where the power to condemn property had long been established. The State of New York was not under any similar constraint against entering the execution phase of public housing programs; nevertheless, the State deferred to its localities in this area. In his address to the National Public Housing Conference, Governor Lehman stated that housing authorities should be placed at the local level of government, closer to the influence of local executive and local legislative bodies. This philosophy was in keeping with the traditional pattern of State involvement with housing problems. This report has documented that housing problems were first recognized by the cities in the State, notably New York and Buffalo. Since towns, villages and other cities either did not have housing problems or were unable to do anything to resolve those problems, State legislation in the housing area was either special legislation, affecting the needs of specific cities and sought at city request, or was permissive in nature. Bureaucracies created by the State to deal with housing problems (e.g., the State Board of Housing and its lineal descendants including the present-day Division of Housing and Community Renewal) have traditionally exercised a regulatory role over local agencies. Attempts by these State agencies to direct the activities of local governmental housing agencies have been few in number and have failed due to legal difficulties or due to local political resistance.

Further evidence for the State's reluctance to create a Statewide housing authority instead of or in addition to municipal housing authorities may be found in the debate surrounding the housing article proposed at the 1938 Constitutional Convention. In a speech to the delegates on the floor of the Convention, the politically influential Frank C. Moore pointed to upstate insistence on restriction of State power to borrow and lend for housing purposes:

"...When [the Housing Committee] held [its] first meeting, I did a little counting of noses. I found that on that committee of 17, there was a substantial group of delegates who were not at all convinced as to the advisability of housing as either a State or municipal function. I was a member of that group. All of us... went to the City of New York and, most of us, to the City of Buffalo, to study at first hand... the problem of housing as it actually exists... I think we all came back with a feeling that at least in some areas of this State there was a definite need for housing powers..." 

It is probable that similar sentiments were expressed in the 1934 debate over the passage of the initial Municipal Housing Authority Law although documentation on this point is difficult since debates in either house of the Legislature were not transcribed at that time. In any case, the State did not create its own housing authority and did not compete with its localities in the housing area.

The Municipal Housing Authority Law originally limited the creation of housing authorities to cities. In this way, any upstate towns, villages and counties that were philosophically opposed to undertaking housing functions were not put on the spot by being given a grant of authority that they were not disposed to exercise. Under the new law, nine cities around the State created their own housing authorities between 1934 and 1938: Schenectady, New York City and Buffalo were first and Port Jervis, Syracuse, Yonkers, Lackawanna, Utica and Peekskill followed suit. Under the impetus of Federal funding, upstate as well as downstream cities were recognizing and attempting to deal with their housing problems.

In 1938, the combined pressure of the New York State Conference of Mayors and Municipal Officials, the State Division of Housing and the existing Municipal Housing Authorities led the Legislature to permit counties and first-class villages to seek legislation establishing housing authorities.
All of this legislative activity took place without specific provision in the State Constitution either in authorization or in denial of State and municipal aid for housing purposes. Article VII, Section I of the pre-1938 Constitution specifically prohibited the giving or loaning of money by the State or any of its subdivisions in aid of any private corporation or private undertaking. The constitutionality of the new Municipal Housing Authority Law was attacked from the perspective of this article on the grounds that housing was fundamentally a private rather than a governmental function. In *New York Housing Authority v. Muller*, the State Court of Appeals denied this contention and upheld the constitutionality of the housing authority law. In its opinion, the Court built upon an earlier decision affirming the constitutionality of the State Limited Dividend Housing Law. In that decision, the Court upheld the provisions of the limited dividend law granting tax exemptions to limited dividend housing and imposing financial and operating regulations on limited dividend housing companies on the grounds that housing was a public purpose insofar as the limited dividend program was designed to protect public health, family life and morals. The Court further held that the act did not give public funds in aid of private companies since such companies were supervised by a public body. In the *New York Housing Authority* case, the Court of Appeals went on to cite a new definition of public use, stating that previous cases on different matters had abandoned the test of public use as “use of a facility by anybody and everybody.” Instead, the court said it would apply the test of whether the primary purpose of a piece of legislation was a public purpose and would allow for some incidental public benefit. The Court affirmed that low-income housing programs were in the public interest since the ills of slum housing affected the public at large and since a large segment of the city’s population would be eligible to participate in the program.

Despite the Court decision, many delegates at the Convention of 1938 felt that the new State Constitution should declare a responsibility for housing in clear terms. They were opposed by other delegates who were concerned that such a responsibility would necessitate excessive tax and debt burdens and that public housing would offer unfair competition to private enterprise. To further complicate the issue, the housing article was often perceived by the delegates as an upstate versus downstate dispute. Robert Moses indicated that the housing article had been drafted by the City of New York and Senator Baldwin, the sponsor of the draft receiving serious consideration by the Convention, openly admitted that New York City expected to be the chief beneficiary of the housing article if the new Constitution was ratified. On the other hand, a group of upstaters led by Frank C. Moore professed initial opposition to the principle of housing as a governmental function. In the end, a compromise was reached which assigned housing functions to specific units of government and which provided for a substantial but Constitutionally limited amount of State and local aid for public housing programs.

The housing article which was proposed by the Convention and ratified by the voters provided authority for both upstate and downstate municipalities to undertake housing programs. Senator Baldwin summarized the rationale for this part of the agreement:

“...upstate communities felt that if we were writing an Article for a Constitution which...would be a permanent instrument, for at least 20 years, we should not confer all the benefits of this to the City of New York. There are other upstate cities which as they grow and even today, may have problems approaching closely the problem of the City of New York.”

Frank C. Moore expressed the prevailing upstate sentiment on the floor of the convention:

“I don't believe that the upstate delegates are opposed to the extension of housing powers to the units of government that need them...So far as the upstate group is concerned, they believe those powers should be coupled with such fiscal safeguards as our experience...has determined wise.”

Under pressure from Mr. Moore’s supporters, the Convention agreed to limit the authority to undertake housing functions to cities, towns and villages, nullifying the effect of earlier legislation extending
public housing functions to cities, first-class villages and counties. The argument for not extending authority over public housing to counties hinged on concern about overlapping jurisdictions and pyramiding taxing power:

"The first question presented was, should all these subdivisions of government, be permitted to go into the field of housing?

In the City of New York your counties cannot, of course, incur any indebtedness. Our upstate county government is an overlying unit of government. It overlies the cities, the towns and villages contained in the county. In the City of New York under the proposal, you would have one municipal agency within the city exercising housing powers. Upstate, if counties were left in, we would have the cities, the towns and the villages in the county carrying on housing functions and on top of all that we would pyramid the debt by having the county carrying on the same functions, too."279

Today, as a result of the ratification of Article XVIII of the 1938 Constitution, cities, villages and towns may seek the creation of housing authorities or may undertake public housing programs of their own.280

The new housing article authorized cities, towns and villages to incur indebtedness for housing purposes in an amount not to exceed 2% of the assessed valuation of taxable real property in the municipality and to exclude such debt from the computation of other debt limits specified in the Constitution. Section Eight of Article XVIII was adopted to ensure the legality of excess condemnation — the practice of taking more property than is necessary for a public undertaking and subsequently leasing or selling the surplus — in furtherance of housing development and slum clearance. Section I of the Article expressly authorized the Legislature to provide for low rent housing for persons of low income and for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas.281 As interpreted by the courts over the years, "low income" persons may include all of those persons and families whose housing need cannot be met by the unaided operations of private enterprise.282 As a result, persons of any income level could potentially qualify for tenancy in Municipal Housing Authority projects if economic conditions warranted.

The Municipal Housing Authority

In 1939, the Public Housing Law was adopted, incorporating the former Municipal Housing Authority Law and making changes in light of the new State Constitution.283 With the passage of the new law, the method for creating housing authorities was changed. No longer could a municipality create its own housing authority; rather, Municipal Housing Authorities could only be created by a special act of the Legislature. Once an authority was created, its jurisdiction was coterminous with that of a city or village or, in the case of towns, with the town outside-of-village area.284

Under the Public Housing Law, the Municipal Housing Authority has emerged as a semi-autonomous form of local government: neither subject to municipal control as is a municipal department nor as independent as are other public authorities such as the New York State Thruway Authority. In its organizational framework, its financial structure and its operating procedures, the municipal housing authority exhibits a certain amount of municipal, State and Federal control along with a considerable degree of autonomy.

From the moment of its organization, a municipal housing authority embodies both autonomy and control. A municipality approaches the State Legislature with a request for special legislation creating the authority. This legislation need not be completely uniform from one authority to another; rather, some local modification is possible. In any case, authority is dependent upon an agreement between the State and the municipality for its initial existence. Once an authority is created, the chief executive officer or body of the municipality has the power to appoint members to the governing board of the housing authority and can designate the initial officers serving on that board.285 Local control is further strengthened in those authorities supervising 100 or more occupied dwelling units in cities having populations under 1,000,000 by a provision requiring two
elected tenant representatives to serve on the governing board of the authority. Autonomy is provided for members of the housing authority board in several ways. Members are appointed for staggered terms of office and for longer terms of office than the single term of a municipal executive officer or body. Further, only one member of the housing authority board can also be a municipal officer or employee. After the initial appointment, board members choose their own officers. These provisions prevent the municipal government from packing the housing authority and converting it into a rubber-stamp extension of the municipality.

Other organizational provisions demonstrate a similar balance between local control and authority autonomy. Members of the housing authority board may be removed from office at any time by the local executive but only for causes specified in the Public Housing Law and only after being given a copy of the charges against them and after having an opportunity to defend themselves in a hearing at which a record is kept. This record and a copy of the findings must be forwarded to the Commissioner of the State Division of Housing and Community Renewal, not for final approval but to provide some outside scrutiny and to serve as a psychological hedge against arbitrary dismissals. These organizational provisions closely parallel arrangements granted to independent regulatory agencies to keep them reasonably free from political considerations as they exercise their statutory duties.

A similar mix of independence and control is evidenced in the power of Municipal Housing Authorities to appoint their employees. The housing authority is given the power of appointment but must exercise this power within the constraints of local civil service law. Compensation of employees must meet with the approval of the local legislative body.

The ultimate tool of local control over a municipal housing authority rests in the power to dissolve the authority. A municipality or the authority itself may apply to the supreme court in the county in which the municipality is located for an order dissolving the authority. After a hearing and upon satisfying the court that housing authority obligations will be paid, the court may order that the authority be dissolved. Upon such dissolution, housing authority property reverts to the municipality. In this way, recalcitrant authorities may be brought under municipal control and authorities that have completed their useful functions may be terminated rather than remaining as dead wood.

Within this organizational framework, a municipal housing authority exercises considerable powers relative to public housing. Some authority powers are familiar ones that have been exercised by local departments of health or sanitation since the tenement house reform era and by State commissions and the State Board of Housing or its successors since that time. For example, a housing authority is empowered to investigate into living conditions in a municipality and into means for improving such conditions, to determine where insanitary or substandard housing conditions exist, to enter any building or property to conduct investigations and to make surveys necessary to carry out its purposes.

Other housing authority powers are relatively new to governmental bodies. Not until the enactment of the Municipal Housing Authority Law was a governmental body in the State specifically empowered to plan, carry out and operate housing projects. To carry out this power, housing authorities were authorized to make and execute contracts, to acquire real or personal property by purchase, condemnation or otherwise, to own, hold, clear and improve real or personal property, to demolish structures and clear areas and to construct, reconstruct, improve, alter or repair any project or to contract for such work to be done. All of this can be done without municipal government input or approval, if the authority so desires.

One aspect of governmental autonomy is the power to deal directly with another unit of government. In this regard, a municipal housing authority has the power to acquire, manage or operate all or part of any project undertaken or completed by any government or housing company. A housing authority is specifically authorized to independently enter into agreements with the Federal government,
to act as an agent of the Federal government, or to otherwise cooperate with it in connection with any municipal, Federal or Federally aided housing projects. The State has authorized municipal housing authorities to contractually give the Federal government the right to supervise and approve the construction, maintenance and operation of Federally aided or Federally assisted housing projects undertaken by the authority.294 These provisions also reflect the role of the municipal housing authority as a coordinator and implementer of local, State and Federal housing programs.

A municipal housing authority has substantial power in the area of establishing rental rates and in tenant selection. Subject to the terms of any loan or subsidy contract with the local, State or Federal government, the power to fix rentals rests exclusively with the authority.295 The authority also has the power to select tenants for its projects, again subject to the terms of any loan or subsidy contract with a government and within income and other standards set by statute.296

A municipal housing authority is also empowered and required to provide a relocation service for tenants displaced by its projects. The authority may also make relocation payments to persons and businesses who are displaced as a result of its activities. The law sets per-family and per-business ceilings on the amount of such aid and requires that the payments be included in the cost estimates for State and municipally funded projects. The authority may contract with the Federal government and with a municipality to accept and distribute relocation payments for Federally funded or Federally aided projects according to mutual agreement.297 In addition, the authority may enter into agreements of cooperation with a municipality or its agency to aid, at no cost to the authority, in the relocation of persons displaced as a result of demolitions undertaken by urban renewal agencies.298

The powers of a housing authority are limited by several specific legal mandates other than those described above. Every plan or project proposed by a municipal housing authority must have the prior approval of the local legislative body and of the local planning commission, if any.299 All authority projects are legally subject to any planning, zoning, sanitary and building laws, ordinances and regulations applicable in the municipality in which the project is situated.300 Any changes in the official map and any zoning changes required to implement a housing project must be submitted with and considered as a part of the housing plan required for each project.301

Another set of mandates applies to the administration of contracts to be let by a housing authority. All contracts for demolition, excavation, construction, alteration, renovation, materials and supplies in excess of $10,000 must be made on the basis of sealed bids. Specifications must be prepared for three parts of each contract over $50,000 — (1) plumbing and gas fittings, (2) heating, ventilating and air conditioning and (3) electric wiring and standard illumination fixtures — in order to permit separate bidding.302

Another set of mandates pertains to the filing of required reports with the Commissioner of the Department of Housing and Community Renewal. A housing authority is required to file annual reports with the Commissioner detailing financial, operating and other types of information. In addition, the authority must file copies of each project proposal, embodying plans, layout, estimated costs and the proposed method of financing the project.303 All by-laws, rules and regulations made by an authority must be filed with and approved by the Commissioner before they become effective.304 This latter mandate has the potential for giving the State considerable leverage over organizational matters within the authority.

The fiscal powers of an authority reflect its nature as the implementing device for housing programs funded by a variety of levels of government. In order to justify the confidence of investors, the authority is left in an autonomous position in allocating its revenues; however, in the issuance of indebtedness, other governmental controls apply. Unlike the old Limited Dividend Housing Companies, the housing authority does not have to use surplus income to subsidize lower rentals. Instead, a housing authority may invest its reserves, sinking funds and surplus funds in
any investments which can be legally made by savings banks. 305

Municipal Housing Authorities may undertake projects wholly financed by the issuance of their own bonds provided that the municipality approves. 306 This limitation is yet another illustration of the need for local control voiced by Governor Lehman in his campaign to enact housing authority legislation and is in line with the concern over debt controls expressed by the upstate delegates at the Convention of 1938. Within this limitation, the authority is free to set maturity dates, interest rates, fix the form of the bonds, establish their denominations and set other terms and conditions by its own resolution. 307

Authority bonds are subject to several other conditions. In compliance with the State Constitution, bonds for State projects and for non-Federal projects financed without a loan from a government may be issued for a period of up to fifty years and for a period not exceeding the probable life of a project. Bonds for financing Federal projects are limited to sixty years or the life of the project, whichever is shorter. 308

To secure the payment of bonds or other obligations, a municipal housing authority is permitted by law to make covenants pledging income, grant funds, property and other assets as security or it may make covenants guaranteeing not to pledge such security to others. An authority may even agree to a bond covenant against incurring new indebtedness for a specified period. 309 The flexibility and variety of its authorization to make bond covenants is designed to promote the marketability of housing authority bonds at favorable rates of interest. As an additional element of investor security, a municipality is permitted to guarantee either the principal and interest on the bonds or may guarantee the interest only, at its own option. 310

Subject to certain limitations, an authority may also issue notes to raise needed funds. Notes may be given only in anticipation of a bond issue for which a government has agreed to purchase 80 percent of the bonds or in anticipation of a loan which a government has agreed to make to the authority. On a Federally financed or Federally aided project, notes may be issued up to the difference between the project cost and the face value of the bonds issued for the project, provided that such notes are secured by an agreement between the authority and the Federal government to issue a Federal loan covering the principal and interest required to retire the note. 311

In order to give the widest possible market for the financial instruments of a housing authority, many types of public and private investors are authorized to purchase such instruments. The State, its subdivisions, municipalities and all other public bodies are authorized to invest in obligations of housing authorities. In the private sector, housing authority obligations are legal investments for a wide variety of banking institutions, investment companies, insurance companies and associations, and other fiduciaries. 312 These provisions were designed to provide more capital for housing purposes than was possible under laws creating private housing companies.

In the event that a housing authority defaults on payment of its obligations, the Municipal Housing Authority Law provides several remedies. As was discussed above, certain assets and income may be pledged to the repayment of bonds and notes. In addition, debt holders may foreclose mortgages or sue to compel the housing authority to perform as required by its contracts and covenants. 313 Recourse to the State or municipality for payment of defaulted housing authority obligations is generally limited only to those obligations for which the State or the municipality has expressly assumed responsibility. A municipality is obligated to make good on authority bonds or other obligations which it guarantees. Further, the municipality is obligated to repay any State loans to a housing authority with interest where the authority acts as an instrument of the municipality. 314

To increase the attractiveness of investment in housing authority obligations, the principal and interest on such obligations are exempt from taxation. 315

The taxable status of housing authority property has undergone some changes since the enactment of the Municipal Housing Authority Law in 1934. Overall, these changes have allowed municipalities to
receive some form of revenue from authority projects, either through restrictions on exemptions or by authorization of payments in lieu of local taxes. Generally, the housing authority is exempt from payment of any taxes or fees to the State or to any of its subdivisions. Within this framework, exemptions on State or Federal projects administered by a local authority are limited. Projects funded by the State or the municipality are limited to a 50-year property tax exemption and exemptions on Federal projects are limited to a 60-year period. Projects built by housing companies, by the Federal government or by the municipality and leased by the authority for a minimum ten-year lease period are exempt from property taxes only for the period of the lease. On State projects, the exemption is limited only to the value of improvements and the locality may continue to tax the land at rates applicable to other properties in the taxing district. With respect to taxation of local housing authority projects, the municipality has a choice of three options: (1) it may agree that no tax is due for any year or period of years, (2) it may fix a sum to be paid by the authority in lieu of taxes on a project-by-project basis or (3) it may arrive at a mutual agreement with the housing authority on the size of the payment in lieu of taxes that must be paid by the authority. In any case, the size of the in lieu payment may not exceed the tax last levied upon the property included in a project prior to its acquisition by the authority. While such payments do not reflect the increasing costs of municipal services during periods of inflation and increasing costs, they do partially offset the loss of revenue to the municipality occasioned by the normal operation of a housing authority.

In addition to providing tax exemptions to housing authorities, the State also has authorized an extensive program of State loans and subsidies. Subject to the approval of the municipal comptroller and the local legislative body, the Commissioner of Housing and Urban Renewal may make State loans to an authority or to a municipality for one or more projects provided that such projects are not also the recipients of Federal funding. These loans are limited in amount to the project cost plus working capital in the amount of two percent of the project cost or $100,000, whichever is less.

Granting of a State loan to a housing authority is dependent upon several conditions in addition to the availability of funds to be used for that purpose: (1) the project must conform to a plan for improving a substandard and insanitary area, (2) the project must be protected by zoning standards, (3) the authority must demonstrate that probable revenues will permit repayment of the loan, (4) the project must conform to housing maintenance and building construction codes, (5) adequate provision must be made for recreation space and access to schools and places of employment and (6) the locality must provide adequate housing for the elderly. The authority must repay the loan together with the interest paid by the State plus a proportionate share of the direct cost of borrowing the money as certified by the State Comptroller. The repayment period for loans to a given project is limited to fifty years or to the life of the project, whichever is shorter. If repayment is not forthcoming, the State may withhold State monies due to the municipality or to the housing authority. The mandates relating to State loans are designed more to insure that State money is spent on well-conceived projects than to limit the autonomy of a housing authority. The only exception to this is the mandate relating to housing for the elderly, which imposes a priority on the construction and use of public housing. Even the interest requirements are more favorable to the authority than would be the case if the authority had to borrow from the private market. In any case, State law does not require the authority to seek State loans, and the authority is free to borrow elsewhere if more favorable rates can be found.

The State may also make subsidies in aid of local housing authority projects. The Commissioner of Housing and Urban Renewal may contract to make periodic subsidies to an authority or municipality to assist in keeping rentals within limits affordable by low income persons and to aid the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas. The total amount of subsidy funding available each year is limited to $44,050,000.
and there is a formula limiting the amount of aid payable to any one project. Subsidies are further limited by a requirement that the municipality at least match the amount of the State subsidy. For subsidy matching purposes, the municipality may count the value of tax exemptions granted to the project. Subsidy funds may be pledged to the repayment of authority bonds but may not be mingled with Federal aid without the approval of the Commissioner of Housing and Urban Renewal and may not be used to pay the administrative expenses of the housing authority.

Municipalities may provide their own aid to housing authorities and may raise the revenues necessary to undertake their own housing projects even in the absence of a municipal housing authority. In addition to the general indebtedness municipalities are allowed to contract under the State Constitution and by the provisions of the Local Finance Law, municipalities generally are allowed to contract indebtedness up to two percent of their average assessed valuation. Towns and villages under 5,000 in population must finance housing projects within their regular debt limits. Cities or villages over 5,000 in population are allowed to incur the additional two percent housing debt only on the condition that they impose sufficient "nuisance taxes" from a statutorily prescribed list of alternative taxes to provide for the payment of the principal and the interest on indebtedness for housing programs.

A municipality is authorized and permitted to offer loans and subsidies to a municipal housing authority operating within its jurisdiction. Since the housing authority is empowered to pledge revenues and make other concessions to attract funds, and since the locality does not have to offer loans, then the municipality is free to seek concessions on policy and operating procedures from the authority as conditions for the loans. The same holds true for municipal subsidies. The municipality may make capital or periodic subsidies to an authority operating within its limits but is restricted by State law as to the method for financing such subsidies. Subsidies can only be paid from monies appropriated for the purpose and subsidy funds must come from funds available for current expenses rather than from the issuance of municipal debt. A municipality may levy specified taxes to finance these subsidies.

A municipality is also permitted, at its discretion, to offer additional fiscal aid to a housing authority. It is authorized to guarantee the principal and interest or the interest only on indebtedness contracted by the authority. This guarantee must not exceed the probable life of a project for which a guarantee is made. Each municipality in which a municipal housing authority is located may also make an annual appropriation to a housing authority to pay the administrative expenses of the authority.

Due to the tax exemptions granted to housing authority projects and due to the image of such projects as housing second class citizens, the State felt it necessary to include certain mandates in the Municipal Housing Authority Law. The law requires a municipality to provide the same police, fire, health and other services to tenants of housing authority projects as are provided to other residents of the community. Within this general framework, a municipality or special district may agree to provide services to housing authority projects both within and without its boundaries in exchange for an agreed upon charge or, at the discretion of the governmental legislative body, for no fee at all.

Conclusions

Local governments in New York State have had a concern for housing problems since the Dutch established the first Colonial settlements in the State. Housing problems received primary recognition in the cities around the State with the City of New York serving as the earliest and strongest proponent of new solutions to housing problems. As housing problems received widespread recognition upstate as well as downstate, special housing powers and fiscal provisions were incorporated in the State Constitution. The nature of these provisions was influenced by the economic crisis of the Depression and by the Federal response to that crisis as much as or more than by conditions peculiar to communities within the State of New York. As a result, the Federal, State and local
levels of government participated, for the first time, in the planning, financing, construction and operation of housing projects undertaken by a public authority rather than limiting their efforts to regulating private housing or trying to stimulate private housing construction.

The municipal housing authority has emerged as a device for implementing the housing programs funded by the Federal, State and local levels of government. While it is sufficiently autonomous to satisfy investors that its obligations will be repaid in a responsible fashion, it is subject to considerable influence in its operations by the regulations of the United States Department of Housing and Urban Development, by State statutes and by the terms of contracts voluntarily drawn between the authority and the State and the authority and the municipality in which it is located. In each case, the imposition of operating conditions and policy guidelines is tied to the provision of financial aid. Initially, the Municipal Housing Authority Law provided substantial tax exemptions on housing authority obligations and on authority projects. This feature was perhaps the harshest mandate imposed by the State on its localities in the interest of housing development. With the subsequent authority to levy payments in lieu of taxes on housing authority projects, the effect of this mandate has been mitigated. The remaining State mandates on municipal relationships to a housing authority within its jurisdiction are generally permissive ones authorizing but not requiring temporary or on-going programs for municipal loans and subsidies in aid of authority projects. To date, the State has not developed onerous requirements or rules and regulations to confine the operations and policies of local authorities. Rather, the State has, through the Constitution and the Public Housing Law, instituted only those controls which are consistent with keeping housing indebtedness within Constitutional limits and with merely reviewing the annual reports of such authorities to the Commissioner of the Division of Housing and Community Renewal. Thus, the Municipal Housing Authority may be characterized as exhibiting a balance between fiscal autonomy and local influence, if not local control.

NOTES

2 Ibid., pp. 19-20.
5 Brodhead, op. cit., p. 23.
6 Ibid., p. 135; O'Callaghan, op. cit., p. 90.
9 Brodhead, op. cit., p. 137.
13 O'Callaghan, op. cit., pp. 218-222.
15 Ibid., pp. 4-5.
16 Ibid., p. 5.
18 McKinley, "English and Dutch Towns", p. 5.
19 Ibid., p. 4.
20 Ibd., p. 6.
21 Ibid., p. 10. The four towns: Mespath (Newtown), 1642; Hempstead, 1644; Vissingan (Flushing), 1645; Gravesend, 1649.
22 Dixon Ryan Fox, Yankees and Yorkers, New York, New York University Press, 1940, p. 70.
23 Brodhead, op. cit., p. 453.
24 Ibid., pp. 448-449.
25 Ibid., p. 453.
28 Ibid., p. 18.
29 Ellis, Frost, Syrett, Carman, op. cit., p. 28.
31 Laws of 1847, Chapter 426.
33 Ibid., p. 39.
34 Frank C. Moore, "Local Government in New York State," remarks before the Committee on Local Government and Home Rule, Constitutional Convention of 1967, p. 3; Fairlie, op. cit., p. 27.
38 Moore, op. cit., p. 3.
40 Moore, op. cit., p. 3.
41 Fairlie, op. cit., p. 27.
43 Ibid., pp. 122-123 (Chapter 4).
44 Ibid., pp. 131-132 (Chapter 9).
45 Ibid., pp. 146-147 (Chapter 6).
46 Ibid., pp. 181-216.
48 Ibid., pp. 237-238 (Chapter 6).
49 Bonomi, op. cit., p. 35-36.
51 DeLaney, op. cit., p. 90.
52 Bonomi, op. cit., p. 186.
53 Ibid., p. 35.
54 For a differing viewpoint, one which stresses the formative influence of the manorial system on the subsequent history of New York, see Sung Bok Kim, Manors, Landlords, and Tenants in Colonial New York, 1664-1775, to be published by University of North Carolina Press.
55 Bonomi, op. cit., p. 40.
57 L. of 1785, c. 75.
58 Lincoln, op. cit., p. 614.
61 N.Y. CONST. Article XII (1777).
63 Fairlie, op. cit., p. 200.
64 Moore, op. cit., pp. XV-XVI.
65 Morey, op. cit., p. 108. This is an incorrect statement by this author, who should have referred to the Laws of 1788 (Chapter 80).
66 7 STATE OF NEW YORK SPECIAL LEGISLATIVE COMMITTEE ON REVISION AND SIMPLIFICATION OF THE CONSTITUTION, BACKGROUND STUDIES ON LOCAL GOVERNMENT 3 (1958).
67 L. of 1847, c. 151. Also, the ordinance could not be inconsistent with the laws of the State and they could be enforced via penalties not to exceed $20 per offense.
68 L. of 1847, c. 209.
69 At a maximum cost of $1,500, unless the village had a population over 4,000 people and then at a maximum cost of $2,000, (amended by L. of 1864, c. 117 to raise the maximum to $2,500 and $4,000).
70 The ordinance could not be inconsistent with laws of the State and they were enforceable via penalties not to exceed $20 per offense.
71 L. of 1857, c. 552.
72 L. of 1847, c. 426.
73 L. of 1847, c. 426, §92.
74 The moment of filing in the clerk's office of the papers so submitted to the judge and the certificate so made by him is the moment of incorporation.
75 See appendix,
76 Malone, op. cit.
77 1 COLONIAL LAWS OF NEW YORK 181, 195 (1686), New York City also received a Dutch grant in 1653,
78 N.Y. CONST. art. XXXVI (1777).
It is not necessary to find in the State constitution any express authority for the State's action. "The legislature of this state possess the whole legislative power of the people, except so far as they are limited by the constitution," Bank of Chemung v. Brown 26 NY 467, 470 (1863).


"Memorial of the inhabitants of the village and town of Brooklyn, for an act consolidating and incorporating them as a city," N.Y. State Assembly Document #36, Jan. 17, 1834.

L. of 1835, c. 243.

L. of 1840, c. 21. New York City was excepted because special legislation had already accomplished the same in New York City.

L. of 1860, c. 39.

L. of 1795, c. 75.


L. of 1801, c. 78.

Ibid., c. 186.

Ibid., c. 184.

Ibid., c. 179. (Frequent references by several authorities to a fifth major act of this year, relative to a judiciary system in towns, are not supported by this writer's research.)

Laws of the Colony of New York, c. 133.

L. of 1801, c. 78.


Laws of the Colony of New York, c. 964.

Ibid., c. 1459.

Ibid., c. 967.

Ibid., c. 1015.

Ibid., c. 1122.

Ibid., c. 1318.

Ibid., c. 1378.


Ibid.

Howard, op cit., p. 76.

Ibid., p. 75.

L. of 1788, c. 80.

L. of 1795, c. 28.

L. of 1797, c. 43.

L. of 1779, c. 31.

L. of 1796, c. 31.

"Town-meeting" (Old English).

Howard, op cit., p. 234.

L. of 1791, c. 41.

L. of 1795, c. 75.

Malone, op cit., p. 129.

Carl H. Grifffy, The History of Local School Control in the State of New York, New York, Columbia University, 1936, p. 16.

L. of 1811, c. 49.

L. of 1812, c. 242.

Chapter 433.

Article XXIII.

N.Y. CONST. art. XXXVI (1777).

N.Y. CONST. art. XII (1777).

15 STATE OF NEW YORK SPECIAL LEGISLATIVE COMMITTEE ON REVISION AND SIMPLIFICATION OF THE CONSTITUTION, BACKGROUND STUDIES ON LOCAL GOVERNMENT 23 (1958).

Id. at 22.

N.Y. CONST. art. XXVI (1777).

N.Y. CONST. art. XXIV (1777).

Id.

N.Y. CONST. art. IV, §15 (1823).

N.Y. CONST. art. IV, §§8, 11 (1823).

N.Y. CONST. art. IV, §§9, 10, 13 (1823).

N.Y. CONST. amend. art. IV, §10 (1833); N.Y. CONST. amend. art. IV, §10 (1838).


N.Y. CONST. art. 111, §17 (1846).

15 STATE OF NEW YORK SPECIAL LEGISLATIVE COMMITTEE ON REVISION AND SIMPLIFICATION OF THE CONSTITUTION, BACKGROUND STUDIES ON LOCAL GOVERNMENT 91 (1958).

N.Y. CONST. art. VI, §14 (1846); N.Y. CONST. art. X, §§1 (1846).

N.Y. CONST. art. X, §2 (1846).

15 STATE OF NEW YORK SPECIAL LEGISLATIVE COMMITTEE ON REVISION AND SIMPLIFICATION OF THE CONSTITUTION, BACKGROUND STUDIES ON LOCAL GOVERNMENT 4 (1958).

L. of 1778, c. 65.

15 STATE OF NEW YORK SPECIAL LEGISLATIVE COMMITTEE ON REVISION AND SIMPLIFICATION OF THE CONSTITUTION, BACKGROUND STUDIES ON LOCAL GOVERNMENT 5 (1958).

Revised Statutes, Part I, Ch. XII, Title 1, Art. 1, §1.

Id. at §2.

Id. at §4.
144 Revised Statutes, Part I, Ch. XII, Title II, Art. 1, §4.
145 L. of 1838, c. 314.
146 L. of 1849, c. 194.
147 L. of 1855, c. 249.
148 L. of 1858, c. 190.
149 Revised Statutes, Part I, Ch. XX, Title VI, §2. This may be a town change as well.
150 Revised Statutes, Part I, Ch. XX, Title I, §2. This is a mandate as a county change for Warren, Washington, Saratoga and Genesee. Section 24 is enabling authority for any other county to assume such as a county change.
151 Revised Statutes, Part I, Ch. VI, Title VIII.
152 L. of 1850, c. 324.
153 L. of 1855, c. 428.
154 L. of 1857, c. 61.
155 L. of 1842, c. 135, §§26, 32.
156 L. of 1857, c. 628.
157 L. of 1840, c. 386, §10.
158 L. of 1862, c. 86.
159 Revised Statutes, Part I, Ch. XII, Title 2.
161 Malone, op. cit., p. 92.
162 L. 1900, c. 327; c. 22 of the General Laws.
164 Article IX, Section 16.
166 Ibid., p. 62.
167 Chapter 634.
169 Ibid.
170 Memorandum of Attorney General Albert Ogtinger with reference to proposed "General District Law," New York State Governor's Bill Jacket Collection, L. 1926, c. 470.
171 Malone, op. cit., p. 130.
172 Ibid., p. 13.
174 Consolidated Laws of the State of New York, Chapter 62, Articles 11, 12, 13, 15.
176 University of the State of New York, the State Education Department, Division of Law, Law Pamphlet #14, "School District Reorganization," Albany, N.Y., 1962, p. 15.
177 Grifley, op. cit. p. 67.
180 Ibid.
182 L. of 1935, Ch. 948.
183 L. of 1936, Ch. 828.
184 L. of 1937, Ch. 862.
185 L. of 1974, Ch. 28.
187 L. of 1952, Ch. 834.
188 Memorandum of State Comptroller J. Raymond McGovern in: Senate Bill Int. 2523, Pr. 2630, New York State Governor's Bill Jacket Collection, L. 1952, Chapter 834. This memorandum sheds additional light on the chaotic state of county government at the time, through the following observations: "The various laws now enacted are voluminous and confusing to the various county officials interested in a change of county government. The result has been that no county except Monroe County has taken advantage of such laws. . . . County officials have also stated that under the present laws they are so confused that they hesitate to adopt any of the many forms now provided."
190 L. of 1959, Ch. 569.
191 Article IX, §2.
192 Memorandum of Governor Nelson A. Rockefeller, Filed with Senate Bill, Int. 3416, Pr. 4440, New York State Governor's Bill Jacket Collection, L. 1959, c. 569.
193 Memorandum of Senator John H. Hughes, New York State Governor's Bill Jacket Collection, Ibid.
195 "Master Plan for School District Reorganization, New York State," Report of the Joint Legislative Committee on the State Education System, Legislative Document #25, Albany, 1947. Exact figures on the number of districts in existence at any given time tend to vary slightly from source to source, particularly in the earlier years; probably reflecting poor record-keeping and/or legal imprecision. The figure cited by the "Master Plan" as representing the all-time high is 11,857.

196 Figure supplied by State Education Department, Bureau of School District Organization.

197 Chapter 673.

198 An "enlarged city school district" is a city school district which has been increased in size through consolidation with one or more contiguous areas, each of which itself contains one or more common, central or union free districts. Enabling legislation for this expanded type of district is found in §§81524, 1525 and 1526 of the Education Law.


200 Ibid., p. 15.

201 Chapter 861.

202 Canandaigua, Little Falls, Mechanicville, Norwich, Port Jervis, Salamanca, Sherrill.


204 Memorandum of Governor Thomas E. Dewey in re: Senate Int. 1187 (1943). Quoted in: Memorandum of Public Service Commission in re: Senate Int. 992 (1953), New York State Governor's Bill Jacket Collection, L. 1953, Chapter 868.

205 "Memorandum of Public Service Commission," op. cit.

206 Figure supplied by Office for Local Government.

207 Although a general (Statewide) law, the Suburban Town Law contained a separate set of differing provisions for certain towns in Erie County, reflecting the fact that the law in its final form was a hybrid composed of two earlier measures, one general in scope, one limited to Erie County. The provisions dealing with Erie County towns will not be discussed here.


209 Memorandum of Westchester County Village Officials Association, New York State Governor's Bill Jacket Collection, L. 1962, c. 1009.


211 L. of 1963, Ch. 843.

212 L. of 1964, Ch. 205.

213 McKinney's Consolidated Laws of New York, Book #22, "General Corporation Law," §3(2).

214 Ibid., §3(3).


216 The majority of special districts in the State do not fit into the category of "district corporation"; rather, they are subordinate agencies of towns and counties, and this type of district may properly be regarded as a part of the town or county. This category also excludes public authorities.

217 McKinney's Consolidated Laws of New York, op. cit., §3(3).

218 Article X, §§5.

219 "General Corporation Law," §3(4).


221 Ibid., p. 68.

222 Ibid. This report, the most comprehensive ever produced on the public authority in New York State, also contains (pp. 68-70) a further discussion of the term "political subdivision" as used in Federal legislation, particularly with respect to the Internal Revenue Code: a difference in usage which has contributed to the terminological confusion in the body of New York law dealing with the public authority.

223 "General Corporation Law," Article 1, §2.

224 Ibid., Article 1, §3(4).

225 Housing authorities, because of their complex relationships with several levels of government, and in some cases with private organizations, have long been considered as distinct from other types of public authorities, not included in the Public Authorities Law, and will be discussed in a subsequent chapter.

226 McKinney's Consolidated Laws of New York, Book #65, Chapter 24, §§6521-6528.


228 See "Statewide Public Authorities: A Fourth Branch of Government?", New York State Comptroller's Studies on Issues in Public Finance, Study #1, Vol. 1, 1972. See also: Austin J. Tobin, "Authorities as a Governmental Technique," remarks before the Third Annual Institute, "The Place of Authorities in the Life of New Jersey Citizens," Rutgers University, 1953. The author was at the time Executive Director of the Port of New York Authority. This article deals extensively with such topics as authority accountability, autonomy, operating efficiency, corporate structure, and the relationship of the authority to the sphere of private enterprise.

229 Division of Housing and Community Renewal, Statistical Summary of Programs (March 31, 1974).


231 Ibid., Vol. I, p. 28.

234 Ford, op. cit., p. 80.
235 Ibid.
237 Ford, op. cit., p. 81.
239 Laws of 1867, Ch. 908. "An Act for the regulation of tenement and lodging houses in the cities of New York and Brooklyn."
241 Ibid., pp. 175-77.
244 Ibid., Vol. II, pp. 349-356.
247 L. of 1901, c. 334.
249 L. of 1920, c. 949.
251 L. of 1926, c. 823.
253 Private Housing Finance Law, §70, et. seq.
254 Statistical Summary of Programs, pp. 59, 66.
259 Ibid., pp. 5-7.
263 Governor Herbert H. Lehman, Message of Approval, January 31, 1934, in Legislative Bill Jacket, L. of 1934, c. 4.
265 U.S. v. Certain Lands in the City of Louisville, 78 U.S. 684 (1875).
267 Staff Report on Public Authorities, op. cit., p. 18.
268 Brown, op. cit., p. 10.
270 Revised Record, op. cit., p. 1525.
273 New York Housing Authority v. Muller, 270 NY 333 (1936).
277 Ibid., p. 1505: Baldwin.
278 Ibid., p. 1526: Mr. I.C. Moore.
279 Ibid., p. 1526: Moore.
280 Also, Public Housing Law, §30, subdivision 1; §55.
283 L. of 1939, c. 808.
284 Public Housing Law, §31.
285 Ibid., §30(2), 32.
286 L. of 1969, c. 488.
287 Public Housing Law, §30(2), 32.
288 Ibid., §34.
289 Ibid., §32(1).
290 Ibid., §57.
291 Ibid., §37(b).
292 Ibid., §37(a) c, f, g, m, o, v.
293 Ibid., §37(1) b.
Appendix A

BASIC PROVISIONS OF THE
"GENERAL VILLAGE ACT"

Structure

Some of the more important organizational provisions of the "General Village Act" were:

1. meetings for elections and how to be held, who could vote, how to be canvassed, terms of office, annual elections, how to fill vacancies, oaths of office ($§ 18, 13, 21, 32, 20, 23, 24, 27, 26)

2. "The officers of such village shall be five trustees, three assessors, one collector, one treasurer, one clerk, three street commissioners when such village shall be a separate road district, such number of fire wardens not exceeding five, as the trustees shall from time to time, by a by-law, authorize and direct to be elected, and one poundmaster."($§ 25)

3. electors could vote tax resolutions to raise taxes for certain designated purposes, on proper notice and according to state procedures, and taxes were to be assessed and collected "...in conformity, as far as practicable, with the provisions of law in respect to the assessment and collection of taxes by town assessors and collectors." ($§ 29, 30, 31, 33, 34)

4. how accounts or claims were to be made, numbered, audited; how warrants were to be drawn by the trustees to pay them; only to pay those for which the village was legally liable to pay; and how payments were to be made ($§ 36, 38, 35, 39, 40, 41)

5. there were stated restrictions on borrowing and potential personal liability if an officer violated the provisions ($§ 43, 44)
Powers

Some of the more significant delegations of power found in the "General Village Act" are listed in the following:

1. The electors were empowered
   a. to order money be raised by tax for the following purposes only:
      i. expenses of incorporation;
      ii. certain fire fighting equipment;
      iii. a suitable engine house;
      iv. make and maintain public wells, reservoirs;
      v. establishing a pound;
      vi. cemetery purposes*;
      vii. to make and repair sidewalks where the owners refuse;
   viii. constructing and repairing crosswalks;
   ix. to insure public property;
   x. prosecuting and defending suits;
   xi. procuring necessary record books;
   xii. publish various by-laws, notices, accounts;
   xiii. officers' compensation;
   xiv. highway purposes, when such village shall be a separate road district;
   xv. expenses of any acts required by law;
   xvi. any other specific purpose authorized by law. (§ 28)
   
   b. to direct the trustees to cause sidewalks to be made or repaired at the property owners' expense. (§§ 45, 46)
   
   c. if a village already had been incorporated by special charter, the electors could adopt any of the "favorable" provisions of the "General Village Act" that they desired. (§ 92)

2. The trustees were empowered, in their discretion:
   a. to make such by-laws not inconsistent with the Laws of New York or the United States, as they deemed proper.
   b. to regulate animals roaming at large.
   c. to prohibit encumbering of sidewalks.
   d. to compel owners to remove snow from sidewalks.
   e. to compel persons to remove dead animals and stagnant water.
   f. to prohibit flying kites, playing ball, etc. in the streets.
   g. to authorize election of fire wardens.
   h. to compel occupants of buildings in such village, in which a fire shall be kept, to keep fire buckets.
   i. to enter or authorize entrance of buildings to examine fire-places, stoves and the like and make regulations in regard thereto.
   j. to disallow accounts submitted to them.
   k. to raise by tax to discharge indebtedness upon dissolution of a village. (§§ 57 (25) (18), 58, 37, 91)

*Under the provisions and restrictions of the Laws of 1847, c. 207.

3. And by amendment in 1851, the trustees were empowered, in their discretion:
   l. to prevent encumbering of streets, highways and alleys.
   m. to prevent or regulate the firing of guns, fireworks, and the like, and disturbances of the peace.
   n. to prevent having in village limits dead carcasses or other unwholesome substances and require removal and destruction.
   o. to abate nuisances injurious to public health.
   p. to protect shade trees along streets or sidewalks.
   q. to prohibit or regulate bathing and swimming.
   r. to regulate or prevent riots, noise, disturbances, disorderly assemblies, disorderly houses, grocers, houses of ill fame, drunkenness or disorderly conduct in public.
   s. to restrain and punish vagrants, beggars, prostitutes, and disorderly persons.
   t. to regulate or prevent bells, horns, crying of goods and other merchandise, hawking or peddling in village streets.

Duties

The following is a listing of the most notable duties of village trustees found in the "General Village Act."

1. The trustees have the duty:
   a. to appoint one of their number to be president and another to preside if the president is not there.
b. to appoint a person to keep poll lists at meetings.

c. to make appointments to fill vacancies.

d. to provide for public property, records and papers.

e. to see that officers perform duties and take measures to punish neglect of duty.

f. to call special meetings when interests of village require it.

g. to give requisite notice before elections.

h. to present at every annual meeting details of receipts and expenditures and sidewalk status.

i. to present at every annual meeting estimated expenses and taxes.

j. to carry into effect all lawful resolutions.

k. to audit accounts and claims against such village; to draw warrants on the treasurer to pay; to publish or post a statement of such accounts and claims.

l. to audit all claims of the poundmaster.

m. to decide sufficiency of the treasurer's and collector's bonding.

n. to fix compensation of assessors, treasurer, clerk and collector.

o. to prescribe (consistent with this chapter) the manner the treasurer keeps accounts and vouchers and the clerk keeps records and papers.

p. to issue warrants to collect taxes and liens.

q. if uncollected to lease to satisfy the taxes and liens.

r. to compel every male 16 years or older, to aid in in extinguishing fires when nearby.

Appendix B

COMPARISON OF THE CHARTER PROVISIONS
FOR THE VILLAGE OF AUBURN AND THE CITY OF AUBURN

Village of Auburn (1847)

Auburn was incorporated as a village in 1815,1 which law was subsequently amended to add provisions in 18162 and again in 1830,3

City of Auburn (1848)

The City of Auburn was incorporated and city charter granted in 1848.5

STRUCTURE

The basic structure of Village government in Auburn was as follows:

1. Incorporation clause and boundaries were set.

2. Election provisions; such as, terms of office, penalties for not serving when elected, and the like.

3. All of the following were required:

a. 5 trustees

b. 1 mayor

c. 3-5 assessors
d. 1 collector
e. 1 treasurer

f. 1 police constable

The basic structure of the new city government was as follows:

1. Incorporation clause, boundaries and civil divisions.

2. Election provisions of city and ward officers; such as, creation of inspectors, who is entitled to vote, and the like.

3. All of the following were required:

a. Common council (i.e., mayor plus aldermen)

b. 1 mayor
c. 1 assessor (per ward)
d. 1 city treasurer
e. 1 police justice
Village of Auburn (1847)

4. Fire companies with fire warden and as many firemen as was deemed necessary (permissive, also)

5. Empowered to tax if the funds were used for:
   a. erection of public buildings
   b. purchase of realty or personalty
   c. procurement of fire engines and other fighting apparatus
   d. reasonable compensation to officers
   e. necessary repairs & improvements
   f. a-e, all with voter consent

6. Taxes to be collected in like manner as for towns and counties.4

7. The village was constituted as a road district with the trustees having the same powers and duties as commissioners of highways.

City of Auburn (1848)

f. 1 clerk

h. 1 city superintendent and, at discretion, inspector(s) of streets (under direction of city superintendent).

i. 3 inspectors of election for each ward

j. 1 superintendent of common schools

k. 2 overseers of the poor

l. 1 justice of the peace

m. 1 marshall

n. 3 constables

o. 1 engineer of fire department and 2 assistants

p. 1 attorney and counselor

q. 1 city physician

r. 3 commissioners to form a Board of Health

s. 1 surveyor

t. 1 clerk of the market

u. 1 pound keeper

v. 1 or more sealers

w. 1 or more scavengers

x. Permissive to appoint special constables as needed.

4. Fire companies with fire engines, appointment of engineers and other necessary management; such as, fire wardens.

5. Empowered to tax. Certain maximum limits were set, which could be passed to pay the interest or principal on public debt of the Village of Auburn. Can also levy and collect poll taxes for highway purposes and the City can raise any sum for local improvements, "...when the same shall be ratified and assessed locally."6

6. Assessment and collection procedures are provided for the assessor, clerk, collector; for example, how to make local assessments. And Auburn was to be considered as a town so that the provisions on the assessment and collection of taxes in the Revised Statutes, Part I, Chapter 13, would apply to Auburn.

7. The City was divided into school districts and Revised Statutes, Part I, Chapter 15, Title 2d, was made applicable to Auburn.

8. The wards were to be considered towns.
**Village of Auburn (1847)**

The trustees were empowered to enact, amend, alter by-laws, rules and regulations in relation to the following:

1. Streets, alleys, highways
2. Nuisances, slaughter houses
3. Village watch and lighting the streets
4. Restraining geese, swine, cattle
5. Relative to improving their common lands
6. Inspection of weights and measures
7. Relative to anything whatsoever that may concern the public and good government of said village

**City of Auburn (1848)**

The common council was empowered, within the city, to make, establish, publish and modify, amend and repeal rules, regulations and by-laws for the following purposes:

1. Restrain, suppress disorderly gaming houses.
2. Liquors
3. Exhibitions, disorderly or unwholesome houses, slaughter houses
4. Gun powder
5. Horse racing
6. Incumbering streets
7. Bathing
8. Vagrants
9. Cattle
10. Unwholesome substances
11. Sidewalks
12. Ringing bells
13. Engines and cars (8 m.p.h. for the latter!)
14. Dogs
15. Infectious diseases
16. Bills of mortality
17. Wells and pumps
18. Weights and measures
19. Watchmen
20. Public pounds
21. Peddling
22. Nuisances
23. Lighting streets
24. Duties of all officers appointed by the common council
25. Fire engines
26. Public buildings
27. Fireworks
28. “Power to make, publish, ordain, amend and repeal all such ordinances, by-laws, and police regulations, as may be necessary to carry into full effect the powers given to said council by this act.”
Village of Auburn (1847)

The trustees also had the additional powers:

1. To lay out highways
2. To appoint and remove partners, carters, truckmen, common criers, scavengers and measure of wood and to regulate the fees and reward of these people
3. To permit or restrain exhibitions, carnivals, etc.
4. To regulate the quality and price of bread
5. To regulate the government of markets
6. To compel landowners to make new sidewalks and repair existing ones
7. To choose an overseer of highways
8. To establish fire companies with fire wardens and as many firemen as deemed necessary

City of Auburn (1848)

The common council also had the additional powers:

1. All powers of town commissioners of excise
2. To grant certain licenses
3. To pass necessary ordinances as to the Owasco river
4. As to buildings liable to fall
5. The management of finances and all city property
6. To ordain penalties for violation of rules, regulations or by-laws (maximum of $50/offense)
7. To fix the compensation of its appointees
8. To appoint special constables as needed
9. As to highways, streets, lanes, etc., including all powers of commissioners of highways in towns
10. To lay out, alter, widen, etc., streets, alleys, and highways
11. To regulate chimneys, the construction of fireplaces, etc.
12. To protect the city from the introduction or spreading of any infectious or pestilential disease
13. To appoint a Board of Health
14. To erect, designate a hospital and make rules and regulations for its management
15. To establish watch house
16. To establish markets
17. Of assessment and collection of taxes in Revised Statutes, Part I, Chapter 13
18. Of highways and bridges in Revised Statutes, Part I, Chapter 16, Title I
19. Of excise and the regulation of taverns and groceries in the Revised Statutes, Part I, Chapter 20, Title 9
20. In any areas not covered in this statute all powers as if a town in Cayuga County

Additional powers are also delegated to the various city officers. For example, the Superintendent of Common Schools has the same powers as the superintendent in the towns of Cayuga county, and the Overseer of the Poor has the powers of overseers of towns.
Village of Auburn (1847)

The main requirements were as to the establishment of village offices and the duties of each village official. The required offices were:

1. Trustees
2. Assessors
3. Collector
4. Treasurer
5. Clerk

There were duties set out for the above and for the other village officials which were of minor import.

City of Auburn (1848)

**DUTIES**

The public officials listed in Structure, subsection 3a to 3w were mandated. The charter delegated a number of duties to the common council and to most, if not all, of the public officials. For example, the Superintendent of Common Schools has any duties of the superintendents of the common schools in the several towns of Cayuga county. The miscellaneous provisions also contain some general restrictions on credit and contracting of debt and the like.

**NOTES**

1. L. of 1815, c. 228.
2. L. of 1816, c. CCXV.
3. L. of 1830, c. 315.
4. L. of 1816, c. CCXV included several provisions on the collector, such as, how to collect tax arrears.
5. L. of 1848, c. 106.
The Legal Structure of the State-Local Relationship
INTRODUCTION

"THE ROLE and responsibility of the State in mandating expenditures and programs upon local governments" requires an understanding of several terms, the first of which is "local government." Part I is intended to provide a comprehensive description of what "local government" in New York means in the structural or institutional sense, and, at this point there should be a clear perception of the variety and complexity which the term necessarily implies.

Knowledge of structure, however, is only the beginning of understanding, and it is at least as important here to know what powers local governments possess and what legal relationships exist between the State and its various political subdivisions. Inevitably, an analysis of this subject leads to the concept of "home rule," and Part II of this report is intended to provide a review of that concept as it relates to so-called State mandates. Home rule, it should be noted, can be a somewhat amorphous concept; but as it relates to the charge of this Commission, and as it is popularly conceived by most people, home rule refers primarily to the right of State and local governments to enact laws governing the activities which occur within a municipality. This next portion is intended to provide the analysis of the legal structure within which the local and State governments operate.
Home Rule as a Legal Concept

The Plenary Power of the Sovereign State

"HOME RULE" may be defined in a broad sense as local control over matters of local concern. The principle provides to what extent the people of a particular locality should be permitted to govern themselves. A home rule question of a large scale was settled by the Declaration of Independence and the war with Great Britain. However, on the State level, the goal of home rule is not complete autonomy, but rather, a division of governmental responsibility between State and municipality. The desire is to permit local control of matters which are best administered locally, without legislative interference by the State.¹

The great weight of authority denies the existence of any inherent right of local self-government which is beyond State legislative control. For the local governments (counties, cities, towns and villages), the State is the repository of all powers.² State governments continue their plenary authority over local municipal affairs unless and until contrary constitutional or statutory provisions are adopted.³ In other words, if a State chooses not to delegate any powers of government to its political subdivisions (either by constitutional provision or by statute), then the powers remain reserved to the State; likewise, any powers previously granted to local governments by the State can be revoked. Accordingly, "home rule" in the first instance is a matter of State constitutional or statutory grace. The scope of "home rule" powers will be whatever the State Constitution or State Legislature deems it to be. All of the home rule evolution and many of the questions that arise, come into sharper focus when one keeps in mind this crucial concept.

Alternative Conceptual Schemes for Granting Home Rule

There are two broad theoretical vehicles for granting municipal home rule. In both, the State carves out a portion of its plenary power and grants it to its political subdivisions. The contrast between the two theoretical approaches accentuates the most fundamental assumptions concerning State home rule grants to local governments.

First, the State may provide for areas of an "absolute" grant of governmental power to the local governments. "Absolute" means a total restriction upon any State legislative interference in the area of the grant; the only way for the State to act in the area of the grant would be by constitutional amendment. For example, the State could make an "absolute" grant of local lawmakers power over the wages and salaries of local government employees. The municipality could then set a minimum wage that was inconsistent with State standards, and the local provisions would prevail. This type of home rule power would be absolute to the point that local legislation could supersede any State legislation (be it general or special law) within the area of the granted power.

In the alternative, the State may choose to carve out certain segments of its power and grant it to municipalities, not in any absolute sense, but with "strings attached." In this concept, the municipalities have the delegated authority in the areas designated, but the State retains legislative authority in the same areas. For example, the State could grant zoning powers to its local governments, but subsequently the
State could determine that a particular local zoning law was unsuitable (e.g., for police power purposes), and the State could enact a statute changing the local law. There could be other constitutional limitations upon the State, such as the “taking” provisions in the State’s Bill of Rights, but the point is that State action would not be prohibited merely because the area was of local concern and the power had been granted to the local governments. New York, along with all of the other states, has taken this second approach. There is no desire, as manifested in any State constitutional or statutory scheme, to vest the police powers of the State in all the counties, cities, towns and villages, beyond recall.

The states, have, however, variously interpreted their home rule needs, and consequently, *within the second approach* to home rule, each state has individualized its methods to some degree. Among the numerous state patterns, one can perceive two prominent approaches which were contrasted in the most recent constitutional convention debates. One should keep in mind that the following patterns are within the generic classification of the qualified (or “strings attached”) grant of home rule. The question then becomes not whether the State should retain authority in the areas of delegation, but how many and what quality “strings” should the State choose to retain.

One pattern which is available is that in which residuary State legislative authority may be exercised only through general State laws setting general standards for all units of a reasonable classification. In other words, although local units could supersede any and all State “special” legislation, they would be subject to all State “general” legislation. This concept emerged in its most recent form as a minority recommendation from the 1967 Constitutional Convention, and it is popularly referred to as the “Fordham Plan.”

A second pattern which permits more State action is that in which the State may choose to grant various selected powers to its municipalities while at the same time retaining the right to act in those very same areas via State special legislation targeted at particular local governments (as well as, via general laws). To date, New York State has chosen to operate under this second scheme.

Generally speaking, within these two patterns both the grants of powers and the retained powers are different. As stated, the “Fordham recommendation” was that there should be a complete grant of all of the State’s powers. New York has chosen to make specific grants of selected local lawmakers powers. As to the “strings” retained by the State, the “Fordham” recommendation was to restrict State legislative “interference” in the area of a grant to action by general law only. New York, on the other hand, uses a more complicated mix. When concerned with the “property, affairs, or government” of the local government, the State is restricted to the use of general laws. However, outside local “property, affairs, or government,” the State may use either general or special laws to mandate local administration.

At first glance, the “Fordham Plan” would appear to be a generous grant to municipalities. However, the actual effect of its implementation would really depend upon how extensively the State enacted restrictions and upon how the courts construed the general restrictions that were enacted (i.e., broadly in favor of State power or narrowly in favor of local power). In other words, one cannot accurately predict whether local governments would have more or less powers under the “Fordham” plan than under the present New York framework.

One definitive statement that can be made about the “Fordham” structure is that the elusive concept of “property, affairs or government” is absent entirely. In the present New York scheme, “property, affairs or government” is found on both sides of the dual structure, i.e., as an integral part of the grants and equally as enmeshed within the powers retained by the State.

Another contrasting aspect of the two approaches is that of evincing the legislative purpose. In the “Fordham” scheme, if one cannot find a specific restriction, then it can be assumed that the power at issue is vested in the municipality. In the New York type, if one cannot find a grant of power at issue, then it can be assumed that it remains reserved to the State. The difference appears to be so basic that if
the “Fordham” approach were adopted, it might cause the State to overreact with general restrictions to limit local government power.

Degrees of Protection

Assuming that the conceptual scheme providing the structure for “home rule” grants has been determined, the next relevant inquiry becomes the degree of protection to be given to the scheme. In order to properly study “home rule” one must understand the two main levels of protection, i.e., constitutional and statutory. Initially, there was very little constitutional status for home rule. Clearly this was because home rule powers of constitutional stature are of the highest legal authority in the State. Normally, if there is any conflict between a statute and the constitution, the latter prevails. And, even more importantly, constitutionally recognized local powers cannot be easily withdrawn. Any New York State constitutional amendment has traditionally required two stages. In order to amend the present constitution:

1. The Legislature (i.e., Senate and Assembly) must pass the proposed amendment by a majority in both houses in two different Legislatures, i.e., a general election must intervene; and

2. Subsequently, the amendment must be approved in a statewide referendum.

A statute, in contrast, becomes a law with a majority vote of the legislature and the governor’s approval, or, if he vetoes the bill, with a two-thirds vote of the legislature to override the veto. A law can be repealed in like manner.

Finally, as stated, in addition to constitutional grants, statutory enabling legislation (statutes that delegate powers to municipalities or to municipal officials) is also a source of local “home rule.” The State’s statutory delegations to municipalities will be either a local lawmaking power (e.g., to enact, alter or amend zoning laws) or otherwise (e.g., a county may establish a public defenders office). Both types are grants by the State legislature of home rule powers to local government.

Mandatory/Permissive Dichotomy

The fourth concept essential to an understanding of “home rule” is that State delegations of power will be either permissive (e.g., a village may have a police department) or mandatory (e.g., a town over 300 people must have councilmen). The former type is clearly within the framework of “statutory home rule,” while the latter type can be a hybrid between a home rule grant of local power to a political subdivision and a statutory directive to an administrative unit of the State. The delegated power will be “home rule” in the sense of the government action and decision-making coming from the local level (especially if the locality pays the cost), or it will be “administrative” in the sense of the local unit being required to carry out a function that the State determines should be done locally but with the decision made at the State level (especially if the State pays the costs).

The mandatory delegations that are difficult, both analytically and practically, are those which require the locality to pay the costs. The problem stems from the fact that the State is addressing the locality partly as an administrative unit and partly as an autonomous local government able to deal with problems effectively within its own jurisdictional limits. This hybrid treatment by the State into local affairs and necessarily creates a State-local fiscal relationship which by its nature may be deemed, for whatever reasons, a rejection of fiscal responsibility. This is the heart of the mandate dilemma.

Mandates where the State pays all the costs are normally no problem. The State legislature determines that a program should be administered by employees of its constituent local governments rather than through a direct State presence. When this mandate is accompanied by State financial support, it is generally neither resisted nor seriously questioned at the local level.

Likewise, enabling legislation which is permissive, but which requires the local government to absorb all or part of the costs, is normally no problem. However, in some cases the very existence of such legisla-
tion may "pressure" a local government to act, possibly even to the point where some would characterize the program as a State "mandate." (This concept will be discussed in a later section of the report). In the main, the local government is free to decide whether to utilize the State legislative authority subject to whatever factors it deems important, i.e., the program's priority at the local level, the availability of local funding capacity and other local considerations. The State legislature may determine to make such a grant because local governments have been actively seeking the power, or the State may recognize that a particular problem is the potential subject of governmental activity at the local level but that the State interest is not strong enough to require performance. In such instances, the permissive grant of authority may be the response which the State chooses.

Mandates where local governments absorb all or part of the resulting costs are in a special category. For various reasons, the State legislature may determine that the program is "local" to such an extent that local governments should be paying the cost. At the same time, however, the legislature may determine that the program is so significant, in terms of State interests, that it must be implemented, and that such implementation will be most effective through the State's network of local governments. Therefore, the State chooses to fund the mandated governmental service through the local revenue base.

The local reaction to the enactment of mandated State programs with local funding or statutes which require local expenditures is the reason for this report. However, the definition of the term "State mandate" and the appropriate use of mandates by the State are complex studies. To be analytically sound, one must recognize that State mandates constitute only a single aspect of the State's fiscal relationships vis-a-vis its constituent local governments. The organization of the remainder of this report is intended to effectuate this need for a clear perspective. Thus, Chapter 2 places the concept of home rule in its constitutional setting, and Chapter 3 describes the current condition of statutory home rule. With the legal framework established, Chapter 4 focuses on State mandates as a generic classification. Finally, Chapter 5 brings all of the elements together in an analysis of the role of the State in the use of mandates.
Constitutional Home Rule

THIS CHAPTER will analyze constitutional home rule in New York State. Subtopics are isolated and ordered for purposes of organization. In the final analysis, however, none of the subject areas can really stand alone. All of the areas interrelate to create a complex maze, where at times the only thread of consistency or the only element in common among the provisions is that they are all constitutional provisions which affect local government in the State.

Historical Evolution

It is possible to trace the origins of home rule to the Magna Carta, and one can clearly find home rule advocates in early American history, including the colony of New York. After the American Revolution, the charter-granting power became vested exclusively in the State legislative body, and whatever rights, powers, and privileges the municipal corporate exercised came to be granted either by State charter or by separate State enabling legislation.

Limitations Upon the State

The earliest aspect of State constitutional home rule preserved the colonial local government practice of local selection of local officials and prohibited any legislative transfer to State officials of functions previously performed locally. Thus, the first State Constitution provided that all the municipal officers "...heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of the legislature." Case law has construed this requirement to prevent the transfer of local functions to the State level (i.e., even if all duties of a local official are transferred to the State level, the constitution would be violated). These limitations have continued to receive constitutional protection to this day.

Constitutional protection of home rule was extended in 1874 when the State Constitution was amended to add a prohibition against "...private or local bills..." in certain enumerated areas. The Constitution provided that "...the legislature shall pass general laws providing for the cases enumerated in this section..." The present Constitutional provisions, reviewed later in this report, are almost identical to those that first appeared in 1874. The only important, substantive change in the present Constitution is the additional prohibition against private or local bills that would provide exemptions from real or personal property tax. Case law has construed private or local bills to be equivalent to what, in other areas of home rule, is called "special" legislation. Therefore, the cases defining private or local bills also go toward clarifying and defining the "general/special" law dichotomy, and, indeed, this by-product of the private or local bills section may have contributed more to an understanding of home rule in New York than the substantive provisions involved.

For the present purposes, 1894 marked the first general constitutional limitation upon the legislature. The State Constitution was amended to create a "suspensory veto" by cities. Laws relating to the "property, affairs or government" of cities were divided into "general" and "special" city laws. General laws related to all of one or more classes (there were three classes of cities at the time) while "special" laws applied to one city or to less than all of a class of cities. Every special law, after passage, required the appropriate mayor's approval before going to the governor. If not approved by the mayor, it could be repassed by both houses and then sent to
the governor. In other words, the cities could exercise a suspensive veto. The courts gave restrictive construction to the term “special city law” and, therefore, when legislation was couched in general terms the courts would treat it as “general” even if in effect it may have applied to only one city.

The 1923 constitutional amendment, in addition to its affirmative grants (discussed in the next section), directed that the legislature could not pass a law relating to the “property, affairs or government” of cities, “...which shall be special or local either in its terms or in its effect,...” (emphasis added) except by emergency message from the governor and a two-thirds concurrence of each house. The legislature could enact “general” laws in any area in the ordinary course, and outside of “property, affairs or government” the legislature could pass “special” legislation in the ordinary course. This marked two basic changes. Instead of a “suspensory veto” there was a prohibition against “special” laws affecting “property, affairs or government” unless by the special procedures stated, and second, “special” laws were defined as “in terms or in effect” i.e., the substance, not the form, determined the type.

A constitutional amendment in 1935 provided for county home rule protection. (Implementing legislation to give the amendment general effect was provided in 1937.) The amendment also applied to counties which had adopted optional forms of government. State “special” legislation as to “property, affairs or government” was restricted unless special procedures were followed (there was a requirement for a local request or an emergency message from the governor and two-thirds concurrence of each house). The Constitution and implementing legislation delegated no affirmative grants of power.

For cities, the 1938 constitution eliminated the required emergency message from the governor and substituted a requirement for a local request for “special” legislation within “property, affairs or government” with a two-thirds vote of each house of the legislature. This was the first time that the State actually “cut” one of its constitutional “strings.” Although reminiscent of the 1894 “sus-

pensory veto,” the new 1938 provision went much further. If there was no local request for special legislation within the city’s “property, affairs or government,” then the State was powerless to act via special law and was forced to rely on its remaining “string”, i.e., general laws.

The 1938 Constitution also included the first constitutional restriction upon State special legislation relating to a village’s (if population 5,000 or more) “property, affairs or government.” Thereafter the State legislature could act as to “property, affairs or government” only by general laws which in terms and effect, applied alike to all such villages or by special laws, enacted at local request (i.e., chief executive officer of the village concurred in by the local legislative body) or by message of necessity from the governor with concurrent action of each house.

In 1958 the Constitution was amended to impose different restrictions on State special legislation relating to “property, affairs or government” of counties inside New York City and those outside New York City.

Affirmative grants

As can be seen, constitutional home rule was initially related to preserving certain local practices or “protecting” local governments from specific types of State “interference.” The day to day functioning of local government was not an initial subject of Constitutional concern. And, although the various municipal corporations operated for over a century pursuant to State statutory authorizations, affirmative Constitutional recognition of local lawmaker authority is a relatively recent development.

The local lawmaker aspects of “home rule” in New York are those provisions which comprise the popular conception of home rule today. The present day Constitution provides home rule for local governments through two methods. First, there are a series of affirmative grants of power to local governments, such as power over the structure of local government, the offices created, the distribution of power among them, the method of filling them, the compensation paid, the lines of responsibility between offices and
departments and the like. The second method consists of restrictions upon State legislative interference in some of the matters over which the local government does have affirmative power.

Until 1924, municipal powers were delegated exclusively by statute. The Home Rule Amendment of 1923 gave the first constitutional direct grant of general powers to cities.\textsuperscript{33} The subject matter of local law power was limited to specific areas. Each city had the power to adopt and to amend local laws in the specified areas provided such local laws were \textquotedblleft...not inconsistent with the Constitution and the laws of the State." As a result, the cities had no constitutional right to supersede State law, general or special.\textsuperscript{34} At the close of the enumerated grants, the Constitution provided that \textquotedblleft...the legislature shall, at its next session after this section becomes part of the Constitution, provide by general law for carrying into effect the provisions of this section."\textsuperscript{35} In other words, the constitutional grants of power were not self-executing, and, therefore, the powers did not vest in the municipalities until after implementing legislation was enacted. This was done in 1924, with the enactment of the City Home Rule Law.

Another popular conception of home rule is associated with the right of a local government to formulate its own charter. However, although the City Home Rule Law authorized charter adoption (subject to the same limitations as local legislation),\textsuperscript{36} the home rule amendment in 1924 contained no such constitutional authority.

A 1928 amendment to the City Home Rule Law bestowed local lawmaking power, consistent with general law, as to a city’s \textquotedblleft...property, affairs or government."\textsuperscript{37} The constitutional revision of 1938 while retaining the basic structure of the 1923 amendment, also elevated to constitutional status the grant of local lawmaking power in the realm of \textquotedblleft...property, affairs or government."\textsuperscript{38} The 1923 requirement of implementing legislation was discontinued, and, accordingly, the new (1938) grants can be considered to have vested immediately. The phrase \textquotedblleft...property, affairs or government," was, and continues to be, a \textquotedblleft...term of art" with a Court of Appeals definition (discussed in a later section). The 1938 constitution also made provision for a \textquotedblleft...home rule request" by means of which a local government could officially seek \textquotedblleft...special" legislation as an alternative to local legislation.\textsuperscript{39}

The 1938 constitution also provided the first constitutionally protected right for a local government to supersede a State law. Cities were allowed to supersede State \textquotedblleft...special" legislation which had been enacted with the required emergency message from the governor and concurrent vote of the State legislature.\textsuperscript{40} As stated in the preceding section, this Constitution also eliminated the required emergency message from the governor for State special legislation within a city’s \textquotedblleft...property, affairs or government." Therefore, this constitutional power of supersedion applied only to the said special laws which were enacted pre-1938 (and post-1894). And here, one must keep in mind the \textquotedblleft...State concern\textquotedblright doctrine (to be explained in a later section of the report). A city could supersede the said special laws enacted pursuant to an emergency message from the governor, but only if the law was required to be so enacted. In other words, if the matter was one of \textquotedblleft...State concern," then any emergency message and two-thirds vote would have been legally superfluous and local supersession would not be possible.

In the 1938 Constitution there was also a direction that the State legislature shall, on or before July 1, 1940, confer by general law upon all villages having a population of 5,000 or more the power to adopt and amend local laws (not inconsistent with the constitution and laws of the State) relating to \textquotedblleft...property, affairs or government."\textsuperscript{41} The constitutional grant was not self-executing, but required State implementing legislation.\textsuperscript{42}

**Constitutional Home Rule in New York Today**

The various constitutional provisions and amendments described in the preceding section represent the emergence of constitutional home rule for local governments in New York State up to the 1963 constitutional amendments. The 1963 amendments served to bring the constitutional home rule position
of cities, counties, towns and villages much closer to parity (especially in regard to local lawmaking), and they are the provisions which are currently in effect.

**Article IX**

Article IX of the New York State Constitution, the “Local Governments Article,” took effect January 1, 1964. As of that date, constitutional local lawmaking power was granted to all counties outside New York City and to all cities, towns and villages (§1(a) (1)). The traditional dual approach was retained — a combination of affirmative grants of power to local units with concomitant restrictions on the State. In addition, Article IX, § 2(c) expressly provides that the powers granted are “in addition to the powers granted in the statute of local governments or in any other laws.” Therefore, any earlier enabling statutory grants remain in force.

Many of the local functions (such as public welfare, transportation, police protection, fire protection, water supply, sanitation and public health) are exercised pursuant to laws enacted at the discretion of the State, and not necessarily via constitutional provisions. These statutory home rule grants, and statutory restrictions are discussed later in this report.

**1. Affirmative grants to local governments**

The constitutionalizing of some home rule powers was seen as essential to safeguard local governments from any future retrenchment, and accordingly, Article IX, § 2(c) of the 1963 amendment included the following affirmative grants of home rule power:

[Local governments are empowered]

(i) ... to adopt and amend local laws not inconsistent with the provisions of this Constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this Constitution or any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government:

1. The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county officers.

2. In the case of a city, town or village, the membership and composition of its legislative body.

3. The transaction of its business.

4. The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

5. The presentation, ascertainment and discharge of claims against it.

6. The acquisition, care, management and use of its highways, roads, streets, avenues and property.

7. The acquisition of its transit facilities and the ownership and operation thereof.

8. The levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature.

9. The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it.

10. The government, protection, order, conduct, safety, health and well-being of persons or property therein.

Article IX, § 2(b) (3) also granted to the State legislature the power to confer on local governments additional powers not relating to their "property, affairs or government." This provision presumably is to avoid any subsequent attack based upon a theory of improper delegation (such attacks had been successful in the past, before this type clause was inserted). The general grant of power as to "property, affairs or government" was originally intended to preserve flexibility, while the enumerated grants were to protect functions and duties positively identifiable as being of concern to localities. In substantial degree, however, local authority is made to depend upon judicial construction of "property, affairs or government." The New York courts have almost uniformly
applied a maxim of construction known as "Dillon's Rule," under which all grants of local authority are narrowly construed against the municipality. While "property, affairs or government" has never been conclusively defined, decisions have generally given the term a restrictive interpretation. And although the courts have been liberal in allowing changes relating to the structure of local government, in other areas (where the scope of authorized action is uncertain) the general thrust has been in favor of the State.

Whenever possible, the municipalities will claim that their legislative power rests upon one of the enumerated grants, and in many of these instances, they rely upon the general "police power grant" in § 2(c) (10) of Article IX. Rarely is a local law struck down as not within the scope of the police power; rather, invalidity, when found, will normally be based upon some other limitation or doctrine, such as consistency with general law.

(2) Limitations upon affirmative grants

The grants of power, however, also come with various restrictions which have not all been categorized and neatly presented in Article IX. The first place to look for any restrictions of the power to adopt local laws is in the phrasing of the grant itself (e.g., see Article IX, § 2(c) (1)). Having satisfied this requirement, a local law will then be subject to the following standards:

(a) Consistency. Under Article IX, § 2(c) (i) and (ii) local laws must be consistent with the provisions of the Constitution or any "general law." Article IX, § 3(d) (1) defines a general law as "a law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages." Article IX, § 3(d) (4) defines a "special law" as "a law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages."

Prior to 1963, the courts had developed a classification approach in their attempts to delineate between general and special laws. In defining "general" legislation the courts "merely prohibited arbitrary classifications, but allowed reasonable ones." For example, population was ruled a proper basis for classification as were conditions recognized as possibly being common to a class and reasonably related to the subject of the statute. Therefore, the courts have upheld legislation as "general" even when it applied only to New York City. Also, the fact that a State law results in certain costs to local governments does not render it "special."

The courts need not be absolutely certain as to the motive and intent of the legislature. They must look for a "reasonable and possible..." basis for the classification. If such a basis is found, the legislation is "general" and the State legislature is unrestricted by the home rule provisions. This test constitutes a very low threshold for the legislature since there are conceivably numerous classifications with a "reasonable and possible" basis.

The definition of "general" and "special" laws in Article IX of the present constitution makes no reference to "reasonable classifications." At present, there is no Court of Appeals decision as to whether the pre-1963 case law from the lower courts will be retained.

Just as in the area of "property, affairs or government," case law has also provided some definition to the "consistency doctrine." Due to the proliferation of general laws in areas normally of great concern to local governments, a strict rule of "consistency" would exclude municipalities from large areas of potential authority. This is, in fact, the present state of law in New York; this "rule of conformity" has been rigorously applied. In general, the principle invalidates any local law which prohibits what State law permits, or allows what State law forbids. Therefore, a minimum wage in New York City which was higher than the State minimum would be, and has been, invalidated even though a higher city minimum wage does not appear to violate the purpose behind the State law.

A local government (county, city, town or village) can supersede a State "special" law in the areas of the enumerated grants or in the area of the general grant over "property, affairs or government." However, Article IX, § 2(c) (ii) directs that the legislature, by
general or special law, can prohibit adoption of local laws in the areas of the ten enumerated grants, if the local law relates to other than "property, affairs or government." As a result of this provision, "special" legislation outside of "property, affairs or government," but within the enumerated grants, will normally include a restriction upon the local law power. This protects the special legislation from supersession by local law.

Under Article IX, § 2(b) (3) the legislature may withdraw or restrict any powers that it has delegated beyond those receiving constitutional protection. In these situations, the legislature may include a restriction in the special law itself, or the legislature may wait until a local law superseding the special law is passed and then abrogate the local law.

The crucial feature of "consistency" is the local inability to supersede any "general" laws. The consensus over the years has been that the legislature, as the body ultimately responsible for the well-being of State citizens, should be unrestricted in its general supervisory function. In this regard, meaningful home rule depends more upon legislative grace and good judgment than upon any legal protections.

Local laws must also be consistent with the State Constitution. They must, therefore, meet due process and equal protection standards, as well as specific restrictions in Article IX or other articles of the Constitution; such as, Article VIII, § 1, restricting gifts of public monies and loans of public credit.55

(b) Preemption. When State legislation evinces intent to pre-empt the entire field, local legislation may not be validly passed without specific enabling legislation. The classic test of preemption is to look at the State law to see if it is broad and all encompassing, either explicitly or impliedly.56 The Court of Appeals has been hesitant to base a decision solely on the preemption categorization, especially when the legislature was silent. The Court has favored a reliance upon the fact that the disputed legislation was inconsistent with general state law.57

(c) Impairment of Powers. Article IX, § 2(d) states that, "except in the transfer of functions under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other local government." Article IX, § 3(d) (2) defines local government to be "[a] county, city, town or village."

(d) Powers Reserved to the State. Article IX, §§ 3(a) (1) and (2) immunizes certain subjects from local control, unless specifically provided otherwise in Article IX. These reserved functions are the maintenance, support or administration of the public school system, as required or provided by Article VI of the Constitution, any retirement system pertaining to such public school system, the courts as required or provided by Article VI of the Constitution, and matters other than the "property, affairs or government" of a local government.

(3) Limitation upon the State

Home rule advocates have traditionally claimed that unless there is an effective restraint to protect local governments from State legislative encroachment, any affirmative grant of power to local governments would be illusory. The present New York Constitution contains such a restraint in one very limited area; namely, under Article IX, § 2(b) (2), the State legislature is specifically prohibited from acting with respect to the "property, affairs or government" of any local government except by "general" law or by a "special" law:

1. enacted at the request of two-thirds of the membership of a local legislative body or at the request of its chief executive officer concurred in by a majority of the legislative body, i.e., a local "home rule request."

2. except in the case of New York City, by two-thirds vote of each house upon receiving a certificate of necessity from the governor.

Thus, the State’s authority to enact legislation in relation to local governments is unrestricted except for the single, ambiguous area of local "property, affairs or government." However, even this limited area of apparently protected local jurisdiction (i.e., "property, affairs or government") is subject to significant judicial interpretation. First, State legislation may be construed to be outside of local property, affairs or government; and second, the subject matter may be judged to be of such general State concern that the State legislation will be deemed controlling.58 Both
of these interpretations have appeared in New York law in the form of the "State concern" doctrine. One can trace the principle of "State concern" to the landmark 1929 Court of Appeals case of Adler v. Deegan. The case concerned State legislation which related to housing in New York City. The legislature had passed the bill without the two-thirds vote for what ostensibly was "special" legislation, and the new law was attacked as unconstitutional on the grounds that it was within "property, affairs or government" and, therefore, subject to the special procedures. The New York Court of Appeals upheld the State law in a decision which included major opinions by Justices Crane, Pound and Cardozo. Each opinion sought to interpret the constitutional restriction upon the State, and each can be considered as a valid statement of the law today.

According to Crane, the phrase "property, affairs or government" was a term of art to be accorded a Court of Appeals definition. The Court's definition was restrictive, and it excluded many matters which might otherwise have been included in a liberal interpretation. Outside of this restricted definition, one finds matters of State concern. Crane's approach makes "property, affairs or government" and matters of "State concern" mutually exclusive.

Pound emphasized the fact that the regulation involved the health and welfare of a large number of State citizens, and, therefore, the statute could be considered a "general" law. The idea that laws affecting New York City are necessarily "general" (based upon a reasonable classification) has been an attractive one over the years. This approach avoids the constitutionally required specialized procedures of Article IX, §2(b) (2) by categorizing the State law in question as "general."

Cardozo's concurrence has had the most far reaching impact on the subsequent courts. He articulated the "State concern" doctrine, most vibrant to this day. Cardozo believed some matters to be "city affairs only," such as, the laying out of parks, building of recreation piers, the institution of public concerts, local control of payment from the public purse and the like. Conversely, some areas were clearly recognized as the concern of the State; i.e., statutes on domestic relations, wills, contracts, crimes not essentially local, the organization and procedure of courts and others. The problem area was where both State and local governments have legitimate interests, and Cardozo's resolution was that "if the subject be in a substantial degree a matter of State concern, the legislature may act, though intermingled with it are concerns of the locality."

The Adler case, while acknowledged as the landmark decision on the question, has, because of the three written opinions, also been the cause of ambiguous interpretation on the question of how much the State concern doctrine intrudes into home rule. Following the strict dichotomy espoused by Crane, if a matter is declared to be of State concern, it is also "inherently an exclusive State concern" (emphasis added). In other words, no local governments can legislate in the area; by deeming a topic to be of "State concern," the court has simultaneously excluded it from "property, affairs, or government."

When advising local governments, the State Office for Local Government has taken this position.

On the contrary, consistent with the Cardozo approach, despite the fact that a matter is declared to be of State concern, the powers of other local governments considering the same subject matter are not necessarily diminished. This is "...because the subject matter would still be a matter pertaining to their property, affairs or government." Even as to the particular local government, the effect would be limited to the statute which is challenged. In this sense, Adler did not make health exclusively a matter of State concern.

The cases are somewhat confused on this point; for example, occasionally, a "State concern" case is interpreted by subsequent courts as an "exclusive State concern" case. In any event, one must be careful to scrutinize the court decisions for indications of their true intent.

The State legislature will often insert into special legislation a clause stating that it is of "State concern." Such a "legislative finding" would normally receive deference from the courts. However, a recent Court of Appeals decision (on other issues) indicates a willingness of the court to look behind legisla-
tive findings. This is seen by some as casting some doubt upon legislative declarations of "State concern" in the future.\textsuperscript{65}

As is now readily apparent, the construction of "property, affairs or government" has a two-fold purpose. The Court of Appeals understanding of the term will define the parameters of the general grant of power to local governments to adopt local laws; at the same time, the Court's decision will also inform the State legislature when the special procedures of Article IX, § 2(b) (2) are required for "special" legislation, and the State legislature will know that its special law is subject to local supersession.

In spite of the critical importance of "property, affairs or government," it has been suggested that since the phrase is "ambiguous and political" rather than "definite and legal," the decisions interpreting it have piled distinction without differences on each other until it is impossible to discover its true meaning.\textsuperscript{66}

Finally, as stated previously, State legislative action relating to local affairs is limited by Article III, § 17, which directs that "... private or local bills shall not be passed" on the following subjects:

1. Changing the names of persons.
2. Laying out, opening, altering, working or discontinuing roads, highways, or alleys, or for draining swamps or other low lands.
3. Locating or changing county seats.
4. Providing for changes of venue in civil or criminal cases.
5. Incorporating villages.
6. Providing for election of members of boards of supervisors.
7. Selecting, drawing, summoning or empaneling grand or petit jurors.
8. Regulating the rate of interest on money.
9. The opening and conducting of elections or designating places of voting.
10. Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.
11. Granting to any corporation, association or individual the right to lay down railroad tracks.
12. Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.
13. Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property.
14. Providing for the building of bridges, except over the waters forming a part of the boundaries of the State, by other than a municipal or other public agency of the State.

If these undertakings can be conveniently effectuated under the general laws of the State, then the State must act through general laws if it wishes to legislate.\textsuperscript{67} However, if the State cannot conveniently use general laws because of an extraordinary situation or purpose, then the State can act through special or local acts.\textsuperscript{68} (This prohibition is outside Article IX, but, due to its relevance at this juncture, has been included here.)

4 Statute of local governments and bill of rights

Article IX, § 2(b) (1) requires the State to enact a statute of local governments granting to local governments powers "... in addition to the powers vested in them by [Article IX]... " The section goes on to provide that a power granted in the Statute of Local Governments:

"...may be repealed, diminished, impaired or suspended only by enactment of a statute by the Legislature with the approval of the Governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year."

The purpose of this new and special statute is to create a repository for grants of powers not warranting constitutional protection, but worthy of greater protection from legislative repeal than the ordinary statute.

Added to the "Local Governments Article" in 1963 was a Bill of Rights for local governments. These provisions, set forth in Section 1 of Article IX, give constitutional status to elective legislative bodies, the power to adopt local laws, the local election or
local appointment of local officers, cooperation as authorized by the legislature, the power of eminent domain, the right to a fair return on certain utility services and the power to apportion costs of government services as authorized by the legislature. Annexation is prohibited without a consenting referendum or, in the absence of such consent, a finding by the Appellate Division that the annexation is in the overall public interest. The Bill of Rights also protects the right of counties to form alternative forms of county government and to transfer functions. Each of these topics can be an area of study in itself and are beyond the scope of this paper.

(5) Construction

The constitutional grants to local governments and the limitations upon the State (Article IX, §2(b) (c) (1) — (10)) are apparently self-executing and, therefore, without need of statutory implementing legislation to vest the local law powers in the local governments of the State.\textsuperscript{59} As stated previously, the 1924 Constitutional Home Rule Amendment expressly required subsequent implementing “general” legislation. The requirement was eliminated in 1938 and did not reappear in 1963.

Article IX, §3(c) of the New York State Constitution mandates a liberal construction of the powers, privileges and immunities granted to local governments. New York State Constitution Article IX also opens with the statement that “effective local self-government and intergovernmental cooperation are purposes of the people of the State.”

Some students of home rule see these provisions as evidencing an intent to expand the scope of local authority by doing away with the conventional construction \textit{against} local governments.\textsuperscript{70} The case law indicates that a liberal construction clause will not achieve such a result. “Property, affairs or government” retains its decades-old restrictive interpretation, and the State concern and consistency doctrines also appear to remain unaffected.\textsuperscript{71}

Other Constitutional Provisions

There are varied provisions outside the “Local Governments Article” which directly or indirectly affect local governments in New York State. For example, Article VIII on Local Finances directly applies to New York’s local governments (i.e., debt limits, loaning the credit of municipal corporations, etc.). Article X, §3 guarantees the right of corporations to sue and to be sued, and case law has stated instances where the section applies to municipal corporations as well.\textsuperscript{72} Article X, §5 provides requirements for the creation of public corporations, and Article XIII, §13 provides for certain county officers.

The aforementioned is merely a sampling of relevant constitutional provisions. They all provide a portion of the constitutional home rule scheme, because, at the very least, they all affect local autonomy in some way. However, as has been stated, the emphasis in this portion of the report has been on the local lawmakers aspect of “home rule,” both because the popular conception of home rule brings it to the fore and because local lawmaking is an essential part of the analysis of the State’s role in using mandates.
Statutory Home Rule

State Legislative Authority

NOT UNTIL the constitutional scheme is fully understood can one understand the statutory home rule possibilities available to the State legislature. Before it can be determined just what the State legislature is free to do statutorily in “providing” for local governments, one must ask three fundamental constitutional questions:

1. How much Legislative power is possessed by the State?
2. Assuming the creation of local governments, what if any, powers has the Constitution granted to those local governments?
3. Again assuming the creation of local governments, what if any, restrictions has the Constitution placed upon the State legislature vis-a-vis those local governments?

The answers to these questions dictate how the State legislature can act statutorily in relation to its political subdivisions.

State legislative power

Article III, §1 commits to the State legislature the entire lawmaking power of the State. Rather than specific delegations, as is the case with the Federal constitutional grants to Congress, the State Constitution delegates to the State legislature plenary power for all purposes of civil government. Therefore, when it comes to the question of establishing local governments, i.e., providing a structure and delegating powers and duties, there is no question as to the State legislative authority in the first instance.

Powers delegated to local governments

As reviewed in the preceding sections, Article IX of the State Constitution vests certain grants of authority and lawmaking power in the local governments (defined as county, city, town or village) of the State. The grants within “property, affairs or government” are not subject to restriction by the State through any State “special” laws. The State legislature cannot abrogate these constitutional grants by statute; the only means of change would be by State constitutional amendment. Therefore, except for certain applications of the “State concern” doctrine, a State statute directing that local governments may not supersede State special legislation within “property, affairs of government” would be invalid as a violation of Article IX of the State Constitution.

Restrictions on State powers over local governments

Finally, Articles IX, III, §17 et. al. of the State Constitution impose various restrictions upon the State legislature as it acts in relation to local governments and other political subdivisions. The State legislature cannot pass any statute that runs afoul of such constitutional restrictions. For example, a State “special” law, incorporating a village would be in violation of a restriction in Article III, §17.

When one assembles the constitutional provisions, they dictate legally what the State legislature can do statutorily in relation to its local governments. There are other constitutional restrictions outside of Article IX, but Article IX is the core of the home rule provisions in New York, and for that reason it has been emphasized in this report. (An example of other relevant restrictions would be the Article III, §17 prohibition of certain local or private bills.) Pursuant
to Article IX, "The Local Governments Article," a local government can supersede special laws within "property, affairs or government."

In all other situations, the State legislature can provide statutorily whatever it deems necessary, and the act will not be subject to local supersession. (See, the section on the County charter law for a possible qualification)

State Statutes Directly Providing For Local Governments

Certain statutes were passed with the primary purpose of providing for the structure, powers and duties of local governments in New York State. These statutes are the actions of the Sovereign which permit the local units to exist and function; they are referred to in this report as "statutes directly providing for local governments," and a listing includes the following:

1. Municipal Home Rule Law
2. Statute of Local Governments
3. General Municipal Law
4. Local Finance Law
5. County Law
6. Optional County Government Law
7. Alternative County Government Law
8. County Charter Law
9. "Special" city charters
10. General City Law
11. Second Class Cities Law
12. Optional City Government Law
13. City Charter Revision
14. Town Law
15. "Special" Village Charters
16. Village Law

One must keep in mind that these are not the only repositories for State delegations of structure, powers and duties of local governments. Similarly applicable provisions can be found in any State statute, and, in fact, some aspects of each are found in great numbers throughout the general and special laws of the State, throughout the decisional law from the courts and throughout the administrative rules and regulations of our State agencies. The point here, however, and the initial proposition of this section is that the primary purpose of the specific statutes just listed is to establish structure, powers and duties of local governments or other political subdivisions of the State. In this sense, they form a body of what can be broadly termed "municipal laws," a portion of which can generally be termed as "mandates." The remaining body of State statutes (e.g., Agriculture and Markets Law) does not have the primary purpose of structuring local governments, but, rather, it is normally addressed to a particular function or functions. Laws of this latter type are addressed in a later portion of the report.

The divisions of the report between the municipal law group and the other laws of the State is natural for the above reasons. However, the final analysis of the report will depict the mandate problem in terms of function and not simply in terms of physical location in our body of State law. The report illustrates that the mandates of the municipal law group are generally of a structural nature. The sovereign authority of the State to set a minimum structure for the political subdivisions it creates is unquestioned. However, the extent of that minimum structure can be questioned and very possibly should, at a later date, be considered as a separate study. In an effort to somewhat define the municipal law group, the following summary has been developed.

Municipal Home Rule Law

The Municipal Home Rule Law continues the dual approach to local lawmaking that was similarly addressed in the State Constitution; that is, an affirmative grant of powers to local governments with a concomitant limitation upon State "interference."

Affirmative grants. There are portions of the Municipal Home Rule Law that merely restate identical constitutional provisions, and they are, therefore, superfluous as a legal requirement. Abolition of these provisions would presumably have no legal effect because the vested constitutional grants would still exist. There may be a practical
benefit to such repetition, however, if for no other reason that most of the home rule problems and litigation are via statutory provisions, and it is more convenient to use one statute rather than the scattered city, county, village and town home rule provisions of old.

The primary provisions, in summary form, are as follows:

§ 10 of the Municipal Home Rule Law does make some additions to the grants in Article IX, § 2(c). § 10(1) (a) (1) adds one sentence in addition to Article IX, § 2(c) (1). “This provision shall include but not be limited to the creation or discontinuance of departments of its government and the prescription or modification of their powers and duties.”

§ 10(1) (a) (5) adds one word in addition to Article IX, § 2(c) (5). “The presentation, ascertainment, disposition and discharge of claims against it.”

§ 10(1) (a) (8) qualifies “... levy and administration...” in Article IX, § 2(c) (8) by adding “... local improvements, which in the case of county, town or village local laws relating to local non-property taxes shall be...”

§ 10(1) (a) (9) qualifies “... collection...” in Article IX, § 2(c) (9) by adding “... local improvements, which in the case of county, town or village local laws shall be...”

§ 10(1) (a) (9-a) adds one sentence to Article IX, § 2(c) (9). “The fixing, levy, collection and administration of local government rentals, charges, rates or fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon.”

§ 10(1) (a) (11) was added in 1969. “The protection and enhancement of its physical and visual environment.”

§ 10(1) (a) (12) makes a qualification to the Article IX, § 2(c) (12) police power grant in relation to the regulation or licensing of occupations or businesses.

§ 10(1) (a) (13) added in 1969 various powers over apportionment of local legislative bodies.

§ 10(1) (a) (14) gives “... the powers granted to it in the statute of local governments...”

In addition to the enumerated grants to all local governments in § 10(1) (a), the Municipal Home Rule Law provides for additional individual grants to counties (§ 10(1) (b)), cities (§ 10(1) (c)), towns (§ 10(1) (d)), and villages (§ 10(1) (e)).

Restrictions. Municipal Home Rule Law, § 10(5) restates the impairment of functions clause of Article IX, § 2(d), but the law also restricts impairment by local law of any other “public corporation,” rather than of any other “local government” as provided in Article IX. “Public corporation” is defined in § 2(11) as “a municipal corporation, a district corporation, or a public benefit corporation as defined in § 3 of the General Corporation Law.” This added restriction applies only to local lawmaking outside of “property, affairs or government.”

Section 11 of the Municipal Home Rule Law places some restrictions on the adoption of local laws, not a prohibition per se, but a statement of areas where local legislation cannot supersede a State statute. Since Article IX of the New York State Constitution requires consistency with State “general” enactments, the legal effect of the § 11 restrictions is to prohibit supersession of State “special” legislation. Also, since the Constitution does not authorize the legislature to make subsequent restrictions in the area of “property, affairs or government” the § 11 restrictions can only apply to supersession of State special legislation that is outside of “property, affairs or government.” The areas covered are: debt limitations, removal of restrictions on bond issues, the educational system, change in number or term of county board of supervisors (except in the case of an alternative form of county government), the courts as provided by Article VI, maximum hours of certain firemen and holidays of firemen and policemen, the State Comptroller, railroad crossings, civil service, sidewalks and gutters.

Procedure. Article 3 of the Municipal Home Rule Law provides the procedure for adoption of local laws, referenda requirements, and subsequent filing and publication.

The procedure, filing and publication rules apply across the board and are consulted routinely by those responsible for local legislation. The section 23 and
24 referenda requirements, however, are more selective in their application.

Section 23 enumerates the “local laws subject to mandatory referendum” including (in subdivision 2) 11 situations “except as otherwise provided by or under authority of a state statute...”

Section 23(2) (b), (c), (d), (e), (f) and (g) generally require a referendum on a local law affecting the existence or powers of an elective officer or the membership or composition of a legislative body.

Section 23(2) (h) applies to a city local law changing ward or other district boundaries from which members of the county board of supervisors are elected.

Section 23(2) (i) applies to local laws changing the law relating to public utility franchises.

Section 23(2) (a), (j) and (k) apply to city local laws creating new charters, to reductions of salary or compensation of city officers or employees, and to the membership or terms of office of the civil service commission of the city, respectively.

One should keep in mind that other State legislation may also specifically require a referendum; that is, §23 is not meant to be exclusive.76

Section 24 enumerates the local laws subject to referendum on petition. Section 24(2) lists ten situations where the qualified voters have 45 days after adoption of a local law to file a petition protesting against the law. The petition must contain ten per cent of the total number of votes cast for governor at the last gubernatorial election in such local government.

Home rule request. The use of State “special” legislation as an alternative to local legislation has been with us since 1923. Local officials often sought special legislation rather than relying upon their new grant of lawmaking powers. But until 1938, there were no provisions for a formal “home rule request.”76

Article 5 of the Municipal Home Rule Law is entitled “Requests of Local Governments for Enactment of Special Laws Relating to Their Property, Affairs or Government.” Generally, the request is made by the chief executive officer with the concurrence of the legislative body or by a vote of two-thirds of the total voting power without any executive approval. The request must declare that a necessity exists, but the necessity alleged is not subject to any judicial review regardless of any extrinsic facts.

The possibility of a home rule request is an important factor to be considered by local governments in deciding whether or not to attempt local legislation. The localities may want to go to Albany to shift somewhat the political responsibility for the legislation. And there are often referendum requirements which are costly and time consuming which can be avoided via an Article 5 home rule request.

County and city charter laws. Article 4 of the Municipal Home Rule Law consists of two parts: (1) the county charter law and (2) the city charter revision.

A city charter law is subject to all of the limitations in Article IX of the New York State Constitution and of the Municipal Home Rule Law (Municipal Home Rule Law, §§36(5) (a) and §§37(4)). Consequently, a city can acquire and exercise no new powers by revising its charter.

On the other hand, there are granted additional powers to counties that adopt charters. These powers are: first, possibly the power to supersede certain “general” State laws;77 second, the power to transfer functions from villages, cities and towns to the county, subject to referendum (New York State Constitution, Article IX, §1(h); Municipal Home Rule Law, §33(4) (c)); third, the power to eliminate or to reorganize certain elective county offices that have constitutional status, subject to referendum (New York State Constitution, Article IX, §1(h); Municipal Home Rule Law, §33(2), (3) (b) and (4) (c)). The county charter law goes beyond the Municipal Home Rule Law and should probably be placed in a separate location. Its present location as one of six articles in the current chapter may be misleading to county governments.78

Statute of local governments

Pursuant to Article IX, §2(b) (1) of the New York State Constitution, the legislature enacted the Statute of Local Governments. The purpose of this
new and special statute was to supply a vehicle for grants of powers which, although not warranting constitutional protection, should be given more protection from legislative repeal than is the ordinary statute.

Article IX, §2(b) (1) provides that a power granted in the Statute of Local Governments:

"...may be repealed, diminished, impaired or suspended only by enactment of a statute by the Legislature with the approval of the Governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

Section 10 of the Statute of Local Governments sets forth seven grants subject to such legislative "...purposes, standards and procedures..." as the legislature may prescribe. Most of these grants appear to add little, if anything, to the constitutional grants in Article IX of the New York State Constitution. However, §10 (6) does explicitly grant zoning power, a power which is not contained in Article IX or the Municipal Home Rule Law and which is generally considered to be outside of the general "police power" grant. In any event, no case law to date from the Court of Appeals has construed §10 to include areas not now receiving constitutional protection, and there have been no subsequent additions to the Statute of Local Governments since its enactement July 1, 1965.

Section 11 of the Statute of Local Governments excludes six categories from the scope of the grants. Four of the categories are situations requiring local approval in one form or another and, therefore, do not run contrary to the purposes of the statute. Another area concerns an emergency caused by enemy attack, and is by its nature of limited application vis-a-vis local governments. However, §11 (4) purportedly excludes from the scope of grants "any law relating to a matter other than property, affairs or government." Some commentators believe this section could be construed by the courts as cancelling out the grants in the remainder of the statute.79 However, this does not seem to be a reasonable construction. Article IX, §2(b) (1) of the New York State Constitution requires that the legislature grant powers in addition to those vested via Article IX. When a statutory provision is in conflict with a constitutional one, the rule of construction is that the latter must prevail.

Other "Home Rule Laws"

The rest of the group of municipal statutes will not be extensively outlined in this narrative. The more significant of these laws are highlighted in an appendix to this paper, and, at appropriate junctures, the reader will be directed to the relevant areas. In brief, the principle provisions related to municipal government are as follows.

Counties. The general source for additional county provisions (outside of the Municipal Home Rule Law and Statute of Local Governments) is the County Law. This is a general State law, even though by its terms it excepts the counties within New York City.80 There are a number of structural provisions, mandatory81 and permissive82, as well as grants of powers83 and delegations of duties.84 The provisions are in addition to those found in other State laws.

The Optional County Government Law was repealed by the Alternative County Government Law (except for Monroe County, the only county that at the time, was operating under it (§ 702, Alternative County Government Law). In 1965, Monroe County adopted its own charter and subsequently, in 1974, the legislature repealed the law in its entirety.85

While the use of the Alternative County Government Law by a county is not mandatory, if a county were to adopt one of the four types of structures it makes available, there would be certain mandated departments and duties and grants of stated powers. There is no county currently operating under the Alternative County Government Law, and therefore, practically speaking, it delegates no structure, powers or mandates for any county.

The County Charter Law gives flexibility to counties which choose to put the required machinery into motion. The permissive material has already been described in an earlier portion of this report, and the mandates are identified later.86

Towns. The predominant source of town provisions (outside of the Municipal Home Rule Law and
Statute of Local Governments) is the Town Law. This statute addresses structural questions (permissive and mandatory), grants of powers, and delegations of duties, and its provisions are in addition to those in other State laws.

**Cities.** There are two major sources for city provisions (outside of the Municipal Home Rule Law and Statute of Local Governments) i.e., special city charters and the General City Law. City structural provisions are found primarily in the special charters or revised charters under the City Charter Revision Law. Permissive material in the latter has previously been mentioned and the mandates are found in a later section. There are very few duties delegated in the General City Law, as again one must go to the City charter for such requirements. Apparently, the primary function of the General City Law is to make grants of powers to cities; nearly all the law is so directed. As with all of these “home rule laws,” the powers granted are cumulative, i.e., in addition to those in other statutes and charters.

The Second Class Cities Law is applicable to eight cities and for them is an additional source of potential structure, powers and duties.

The Optional City Government Law is still a “live” statute, and, for the cities which have opted into its structure, it is a source of structure, powers and duties.

**Villages.** In one sense, the village situation is similar to that of the towns. The principal source of village provisions (outside of the Municipal Home Rule Law and Statute of Local Governments) is one general law, i.e., the Village Law. There are structural provisions (permissive and mandatory), grants of powers, and delegations of duties. Again, the provisions are in addition to provisions in other State laws.

One must also carefully note that some villages that were incorporated by special law (before the constitutional restriction against incorporating villages by special act) continue to operate under the special legislation. For these villages, the special law would have to be analyzed for any additional grants or delegations of duties.

**Combinations.** The General Municipal Law was designed to consolidate State laws applicable to more than one local government. The attempt has not been completely successful because a number of provisions are applicable to just one type of local government, and even some “special” laws have found their way into the General Municipal Law. The law has few mandatory provisions. The vast bulk of the law concerns permissive provisions with numerous grants of powers. The provisions are not meant to be exclusive.

**Statutes Addressed to Particular Functions**

The remaining State statutes with a home rule impact are directed toward particular functions, many of which, in part at least, are governmental in nature. A listing of these State statutes includes:

1. Agriculture and Markets Law
2. Environmental Conservation Law
3. Soil Conservation Districts Law
4. Judiciary Law
5. Correction Law
6. Education Law
7. Public Health Law
8. Multiple Dwelling and Residence Laws
9. Public Housing Law
10. Public Building Law
11. Mental Hygiene Law
12. Labor Law
13. Civil Service Law
14. Pension and Retirement Laws
15. Military Law
16. Social Services Law
17. Tax Law
18. Real Property Tax Law
19. Transportation Law
20. Highway Law
21. Vehicle and Traffic Law
22. Public Service Law
23. Other Consolidated Laws (for ex., Navigation Law, Rapid Transit Law, Railroad Law, etc.)
24. Unconsolidated Laws

Again, as they relate to local governments, the statutes may and do, provide structure, powers and duties. And, as is the case with the municipal laws, the provisions may be mandatory or permissive or a combination thereof.
However, unlike the municipal laws section, there is no endeavor here to highlight the State's permissive enabling provisions authorizing structure (agencies, districts, offices, etc.) and granting local powers. The presentation in the body of "municipal laws" should sufficiently convey the diversity of governmental service that is delivered from the local level. Suffice it to note that further enabling provisions are located extensively throughout the laws listed in this section both consolidated and unconsolidated.
INTRODUCTION

THERE ARE THREE basic sources of State law — statutes, court decisions and administrative rules and regulations. Throughout all of State law, as represented by these sources, are State mandates which require (i.e., mandate) local government expenditures. The mandates exist in varied form, and they have correspondingly varied supporting rationales.

Probably the most fundamental identification problem is the determination of which State laws are legal mandates which must be obeyed by local governments or their officials (and, consequently, which can be enforced by judicial action). As stated earlier in this report, it is possible to identify mandates in any general statute, as well as in many of the special laws enacted by the State legislature.

However, the process of identifying statutory “mandates” is a more delicate task than the casual observer might suppose. One reason for this is that words in a statute (such as “must,” “shall” or “may”) do not always mean what they apparently say.

There is no arbitrary rule for the construction of such language. However, in the absence of factors indicating to the contrary, words of command are construed as mandatory and words of discretion are treated as permissive. Therefore, as a basic proposition, it can be said that in a statute “may” usually means “may” and “shall” usually means “shall.” But, as with any general rule, this one is subject to exception.

Legislative intent is the “...cardinal consideration in the construction of statutes and whether a particular provision is mandatory or...[permissive] is to be determined from the language used and the purpose in view.” A basic rule of statutory construction is that the courts should be careful to avoid “judicial legislation.” This means that the court cannot substitute its judgment for that of the Legislature. Therefore, if the Legislative intent is not clear, the court will use established rules of construction in an effort to uncover the true intent.

New York’s highest court has stated that “it is a general, although not inflexible, rule that permissive words in statutes conferring power and authority upon public officers or bodies will be held to be mandatory where the act authorized to be done concerns the public interest or the rights of individuals.” Potter’s Dwarfs on Statutes, using a slightly different rationale, states that “...where a statute directs the doing of a thing for the sake of justice, the word may means the same as the word shall.” This canon of construction has been applied by the New York courts in ultimately defining legislation directed at public officials or bodies. What ostensibly reads as solely a delegation of authority to a public official or body could very well fit within the above line of cases. In the final analysis, such delegation may not only be construed to convey the power but also to mandate that it be exercised.

The key phrase is “public interest or the rights of individuals.” For example, a statute with permissive language as to the duty of New York City to keep the streets and sewers of the city in repair was construed as being mandatory due to the corresponding public interest in its being so. Also, a statute directed at the mayor, aldermen and commonalty to provide sewers, drains, vaults, and the like was construed as a duty even though the phraseology of the statute was permissive. And a statute couched in permissive terms as to the duty of a town auditor to bring an action in the name of the town was likewise construed as mandatory due to the public interest involved. In yet another case, Livingston County was technically free from liability for the cost of certain bridge construction (the County “may” pay for the bridge), but the equities of the situation were such that the builder was entitled to be paid for the completed job. The protection of the “rights of individuals,” as well as the “sake of justice,” dictated that the legislation be construed as mandatory.
In another context, the use of the word “must” or “shall” by the Legislature does not necessarily require a mandatory effect to the statute. Rather, the statute may be construed as “directory” or as merely “permissive.” Mandatory provisions prescribing a certain mode of procedure “...must be strictly pursued,” and, if they are not, the entire action is void. Directory provisions are intended to be followed, but if disregarded, or if there is inexact compliance, the act is not rendered nugatory. This question will normally arise when the action of a public official or body is challenged because an allegedly mandatory provision was not followed.

This power of the courts to disregard statutory provisions because they are merely “directory” “...should be applied with great caution.” Case law has isolated a number of factors which are relevant to such a determination, but, in general, it can be said that the less substantial or material the action “required” the more likely that it may receive the judicial stamp of “directory.” For example, a statutory provision requiring the clerks of a town to give notice of the annual meeting was held to be directory, and, therefore, a meeting held without compliance with the statutory notice requirement was not void.

One also finds “mandatory” terms construed as permissive. For example, a statute empowering New York City to erect a court house was not construed as mandatory despite a subsequent provision that the building “shall be erected.” In another situation, the Highway Law provided that the board of supervisors shall do a certain act “upon a majority vote.” The court construed this to require approval by majority vote but not to require the actual consideration of the question. Here, as with the aforementioned construction problems, the courts will look at the entire act and surrounding circumstances to evince the Legislature’s intended construction. It should be noted that the courts have been much more receptive to the argument that provisions are permissive when applied to statutorily dictated judicial duties than for statutorily dictated public duties.

The statutes are filled with mandatory and permissive wording. In the vast majority, these construction questions have not been litigated, and the legal practitioner or public official cannot know with certitude what the final construction will be. At the very least, however, he should know that it is possible for “shall” to be interpreted to mean “may” or vice versa.

There are also mandates which do not appear to directly affect local governments with their language but which, nevertheless, have a profound dollar impact. One of the most widely recognized examples of indirect mandates are State required real property tax exemptions. Although tax exemption statutes are directed to property owners, their effect upon the local tax base can be substantial.

Other indirect mandates are less visible than the tax exemptions. For example, the lack of State enabling provisions is considered by some to mandate adverse fiscal conditions upon local governments. An oft-cited example of this type of “mandate” is the local dependence on the real property tax. Many local officials find the lack of alternative revenue sources to be as much of a mandate as some of the more “direct” types.

In addition, mandates can be identified in certain legislation which is permissive in form but which is accompanied by some type of “pressure.” The clearest depictions of this classification are the permissive statutes wherein the State agrees to provide a portion of the funding. For example, “County Law” § 223 authorizes spending to improve agriculture and the soil, and the county can obtain some reimbursement from the State. Obviously, the greater the State reimbursement, the greater the pressure which may be brought to force the local government to act.

Finally, it must be noted that some mandates are also the source of local power to act, and one must be careful when analyzing this type of “mandate.” The need for caution becomes clear when one contrasts the mandates that double as a source of power with those that do not. The latter types are truly mandates, in the sense that, prior to the State legislation, the local government had the power in question and elected not to exploit it. In the contra situations,
where the mandate doubled as a source of local power, one must make a further inquiry as to whether the local government would have acted anyway if the legislation had been permissive. For example, counties must elect a sheriff. This is clearly a State mandate, but if a county would choose to elect a sheriff regardless of the legal requirement, the mandate would not be a bothersome one.

Thus, while the existence and multiplicity of State mandates is unquestioned, the identification of such statutes can require precise analysis. This chapter is intended to provide a broad overview of those mandates which the staff has been able to identify. Almost certainly, this will not be totally comprehensive, but the range and multiplicity of mandates in New York law should be apparent.
"Mandates" in the Body of Municipal Laws

This section focuses upon the State "mandates" found in the statutes directly providing for local governments. The order of presentation will be by town, county, city and village.

(a) TOWNS
Town Law

Under the Town Law, towns are divided into two classes according to population (§10). If a town's population rises to 10,000 people, there is a mandatory change of classification to that of a town of the first class (§11) and the first class mandatory provisions become applicable.

Town offices. A town of the first class must have a supervisor, four town councilmen (unless pursuant to this chapter increased to six or decreased to two), a town clerk, two town justices of the peace, a town superintendent of highways, one assessor, and a receiver of taxes and assessments (§20(1) (a)). All the above except the assessors must be elected, and all other officials are appointed.

A town of the second class must have a supervisor, two town councilmen, a town clerk, two justices of the peace, a town superintendent of highways, three assessors and a collector (§20(1) (b)). The officials listed above must be elected; all other officers are appointed (there is a refinement in §20(1) (f) which could result in an appointed assessor).

If there are less than 300 people and taxable property is under $100,000, then there must be one justice of the peace for a four-year term and one assessor for a two-year term and no town councilmen (§20(1) (b)).

No person is eligible to hold more than one elective town office, and some town offices are incompatible with other town, village, etc., offices (§20(4)).

No county treasurer, district superintendent of schools, or trustee of a school district shall be eligible for the office of supervisor (§23).

Terms of office (§24), oaths of office (§25), official undertakings (§25) and the like are also mandated in the Town Law as are such things as requirements for monthly statements of moneys received by officers and employees (§27).

Town board. In first class towns, the supervisor and the town councilmen shall constitute the town board. In second class towns (excepting towns under 300 inhabitants and with taxable property valuation less than $100,000), the supervisor, town justices and town councilmen shall constitute the town board (§60(2)). Certain meetings of the town board are required (§§62(1), (2)). Liability in certain situations is stated (§65-a). If the town population is over one-half the county, there must be an additional supervisor. Certain expenses of justices of the peace are a town charge (§69).

Duties of Officers. The Town Law also mandates specific duties of a town clerk (§30), justice of the peace (§31), town superintendent of highways (§32), town comptroller (§34), collector (§35), constables and town policemen (§39), fence viewers (§40), the director of purchasing (§41-a) and the supervisor (§125).

Alteration of Boundaries or Dissolution. Towns seeking to alter their boundaries or to dissolve by
annexation must follow requirements as to meetings and methods of effectuating the purposes (Article 5, 5-A).

**Town Elections.** Elections are biennial unless otherwise stated (§ 80) and the qualifications of electors and conduct of elections are also provided (§§ 83, 84).

**Permissive Referendum.** A permissive referendum is required in certain stated areas (Article 7).

**Finances.** There must be submitted certain estimates (§§ 104, 105), preliminary budgets (§ 107) and other financial reporting procedures. Fourteen types of expenses are listed as town charges, but they are not meant to be exclusive. They are:

1. Compensation of town officers, employees and all necessary expenses
2. Certain damages
3. Money authorized to be raised by vote for any town purpose
4. In connection with the distribution of fish and game birds in forest preserve towns (maximum of $100 per year)
5. Certain insurance
6. Cost and expense of employing a veterinarian
7. Reasonable fees of a physician for examining a person arrested in the town and charged with being intoxicated while operating a motor vehicle.
8. Engaging of an accountant
9. Certain fees of town officers and magistrates
10. In connection with the Association of Towns of the State of New York.
11. Fees and charges of offenses committed within a village and triable before the police justice shall not be a town charge
12. Certain training for town officers
13. Cost of publishing and distributing town reports
14. Cost of acquiring, purchasing, leasing or rental of any labor-saving device, machine or equipment to assist a town officer in the performance of the duties of his office. (§ 116)

**District and Special Improvements.** The creation of improvement districts is permissive in the first instance, but if established, there are many procedural requirements to be met (Article 12, 12-A, 12-C) which can take substantial town resources. For example, the town board is to require the town engineer to prepare definite plans and specifications (§ 197).

**General and Public Improvements.** There must be submitted detailed plans, specifications, estimates and the like (Article 14, 15).

**Fire, Fire Alarm and Fire Protection Districts.** These districts can be established or extended according to local desire. Once initiated, the Town Law mandates become applicable as to hearings, appointment of fire district commissioners and a treasurer (§ 174), elections and specific duties of fire district commissioners, treasurer and secretary (§§ 175-177).

**Police.** The establishment of a police department is permissive, but if the town so acts, the qualifications are mandated as are other minor aspects of the department (Article 10).

**Zoning and Planning.** A public hearing is mandated before certain zoning actions, as are notices and publication of ordinances, amendments, maps, and the like (Article 16). There also must be a zoning commission and board of appeals (§§ 266, 267).

**Suburban Town Law.** The application of the Suburban Town Law is permissive for a qualifying town but once opted for, mandates apply (Article 3-A).

(b) **COUTNIES**

**County Law**

Under the County Law, counties are required to have a county board of supervisors or, in the alternative, an elected county legislature (§§ 150, 150-a). The actual and necessary expenses of the board or elected county legislature are a mandated county charge (§ 203).

**County offices.** The counties must elect a sheriff, county clerk, district attorney, and county treasurer, as well as a county judge, surrogate and judge for family court (§ 400(1)). Counties can make their number of coroners not less than one nor more than four (§ 400(2)). It is possible for the board of super-
visors to abolish the office of coroner (§400(2)), but
in this event there must be provision for the appointment of a medical examiner (§400(4-a)). There must be
appointed a clerk of the board of supervisors, a county attorney, a county superintendent of highways, a
sealer of weights and measures and a county historian (§400(4) (a)). And all counties are required to
appoint a chief executive officer of a county welfare department in accordance with §116 of the Social Welfare Law (§400(4) (b)). The Legislature has also provided that no county judge, family court
judge, surrogate, district attorney, sheriff, county clerk or any elective county officer shall be eligible to
hold at the same time any other elective county or town office or that of city supervisor (§411). All the
reasonable expenses of the various county officers and employees are a mandated county charge. (§203).

After mandating a board of supervisors or county legislature and the said county offices, the County
Law spells out a number of specific duties for each of the officers (any reference to “board” also includes
elected county legislative bodies (§150-a). The duties are not in the least bit exclusive. The rest of the
State’s legislation (consolidated, unconsolidated, general, special), together with the many administrative
dictates from the State, combine to add numerous State-defined duties to be performed at the county
level. Representative of these required actions are the following:

The Board. Each county must continue to maintain a county jail as prescribed by law (§217). The
board must provide suitable rooms for courts of record, must provide chambers for any resident judge
of the Court of Appeals or justice of the Supreme Court, and must supply the necessary furnishings, law
books and the like, expense of printing and publishing, compensation and expenses of court attendants,
court clerks, jurors and so on (§218(i)). The board is also required to pay certain fees to town, village and
city justice courts for services rendered (§218(2)).

Each board must provide or assure availability of conveniently accessible non-secure detention facilities
for juvenile delinquents and persons in need of supervision (§218-a).

The establishment or extension of a county water, sewer, drainage, refuse (§250) or small watershed
protection district (§299-n) or the establishment of a county agency for hurricane and erosion
control is permissive, but if the board does use this grant of power, it must follow the provisions of
Articles 5-A, 5-B and 5-D, some of which are permissive and some of which are mandatory.

The board is subject to the mandatory provisions of Article 7 of the County Law, which is the Finance
Article.

If the county population is more than 35,000, the board must establish, as provided in Article 7-A, a
county T.B. Hospital (§385).

The establishment of a County Medical Assistance Clinic is permissive, but if the board so acts, it
must do so pursuant to the provisions of Title 2 of Article 5 of the Social Services Law (§396-a).

Sheriff. The sheriff must perform the duties prescribed by law for an officer of the court and
conservator of the peace within the county and, also, any additional duties in law or from the board
(§650). He must appoint an under-sheriff (§652(i)). a matron to each jail with female prisoners (§652(2))
and he must keep jail records as required by law (§65a).

County Clerk. The county clerk must perform the duties prescribed by law for the “register.” He is
the clerk of the Supreme Court (§525(1)), and he must provide all books, files and other necessary
equipment for filing, recording and depositing documents, maps, papers in actions and the like
(§525(2)). He has to appoint a deputy county clerk (§526(1)) and perform other duties, such as reporting
name changes to the Secretary of State (§526(1)) and keeping a court and trust fund register (§530).

District Attorney. The District Attorney must conduct prosecutions and additional or related duties
as prescribed by law or by the board (§700(1)). He also must file certain statements, and he is responsible
for keeping certain records and reports (§700(2)–(7)). If the county population is over
100,000, the District Attorney must give all of his time to his duties (i.e., no second employment
(§700(8)). (Counties with a population greater than 119
100,000 get $10,000 state aid for District Attorney salaries (§700(10)).

County Treasurer. The county treasurer must perform the various duties prescribed by law for the chief fiscal officer of the county (§550(1)). He is required to receive and be custodian of county money at county expense (§550(2)). The County Law mandates that he give a yearly statement to the town clerk of each town (§550(4)), and upon demand by certain parties, he must make and file special reports concerning trusts (§551). Another example of the treasurer's duties as defined in the County Law is that, if requested, he shall be trustee of cemetery lots. (He can deduct 5% of the income “thrown off” for his administrative efforts (§553)).

County Coroner. In accordance with the County Law and any other applicable statutes, the coroner(s) must make inquiry into unnatural deaths (§§671, 674). He also has to provide certain records, reports and the like (§677). The County Law expressly provides that this article can be superseded by charter law, special law of the State Legislature, or any local law of a county under an alternative form of county government (§670(1)).

Clerk of Board. The clerk of the board of supervisors must keep records, prepare tax rolls and perform other duties of this nature (§475).

County Attorney. The county attorney must be legal advisor to the board of supervisors and every officer whose compensation is paid from county funds in all matters involving an official act of a civil nature (§501(1)).

County Superintendent of Highways. The superintendent of highways must perform any duties in the law relating to construction, improvement and maintenance of highways and bridges in the county and any additional duties prescribed by law or from the board (§725).

County Sealer of Weights and Measures. The sealer is obliged to perform the duties prescribed by law for enforcement of honest weights and measures and any additional duties in other laws (§795).

County Commissioner of Public Welfare. The Commissioner of Public Welfare must perform the duties set by law for the administration of welfare assistance and other social services (§750).

Other Offices. The County Law also grants counties the power to establish several other offices, all at the discretion of the county. The office of comptroller is not mandated upon counties (§575), but if established, the comptroller must keep and preserve various records and reports at county charge (§577(1)), appoint a deputy comptroller (§575) and perform other related duties mandated by law (§577(1)).

The office of county auditor is not mandated (§600(1)), but if established, the auditor must audit all claims, accounts and demands which are made county charges by law and which otherwise would be audited by the board of supervisors (§600(1)).

The office of county purchasing agent is not mandatory (§625), but if established, the purchasing agent must make all the purchases and contracts of supply (except as otherwise provided by law), be custodian of vouchers, requisition receipts and papers pertaining thereto, furnish certain statements and perform such additional duties as may be prescribed by law (§625).

Likewise, the office of public defender is not required (§716), but if established, the office must represent indigents accused of any §722-a crime (i.e., other than traffic infractions) (§717), submit an annual report to the board (§720) and the like. As in the case of the other county officers, the expenses incurred are a county charge (§719).

Miscellaneous mandates. The County Law also mandates for every county “...a plan for providing counsel to persons charged with crime who are financially unable to obtain counsel” (§722). There also must be provided investigative, expert and other services for an adequate defense. To meet these requirements, the statute provides a number of possible plans (including the possibility of a public defender's office) (§722) with various requirements of each, and all the expenses listed are a county charge (§722-a). Annual reports have to be filed, regardless of the plan chosen, with the judicial conference (§722-f).
Counties, through their officers and other officials, must supply various reports (§406) and records (§407).

Damages against an officer in a civil action or proceeding for an "... official act or omission..." is a mandated county charge (§409).

The cost of removal proceedings (against county officials) before the Governor is a mandated county charge (§410).

Provisions applicable to certain counties. There are also a few mandates, specifically set aside in the County Law, that apply only to certain counties. For instance, the district attorney in Monroe County has to provide certain services for the City of Rochester at least some of which will be at county charge (§825). Also, judges in Monroe, Rensselaer, Albany and Columbia Counties can mandate more money for district attorneys (§825). The board of Putnam County must establish a plumbing board at county expense (§848).

Provisions applicable to New York City. The last substantive article in the County Law contains sections which are applicable only to the City of New York. The other articles of the County Law do not cover the counties of New York City. The New York City article is a somewhat random series of statutes with minor requirements (Article 24). One must go to the vast body of special legislation to find the New York City county provisions.

Alternative County Government Law

While the use of this law by a county is not mandatory, if a county were to adopt one of the four types of structures it makes available, there would also be other mandated departments and duties. There is no county presently operating under the Alternative County Government Law, and, therefore, practically speaking, it results in no mandate for any county.

County Charter Law (Municipal Home Rule Law, Article 4)

A County Charter must:

1. Set forth the structure of the county government and the manner in which it is to function;

2. Provide for an elective Board of Supervisors who in turn must determine county policies and exercise such other functions as may be assigned to it;

3. Provide for the exercise by the Board of Supervisors of the powers of local legislation and appropriation of the county;

4. Provide for the agencies or officers responsible for the performance of the functions, powers and duties of the county, and the manner of election or appointment, terms of office, if any, and removal of such officers;

5. Provide for the equalization of real property taxes consistent with standards prescribed by the Legislature (Municipal Home Rule Law §33(2)(b)).

A county can enact, revise or repeal a county charter without submission to the voters unless the county charter requires otherwise or the subject matter of the charter law is such that a mandatory or permissive referendum is otherwise required or authorized by law.

A county can opt out of the various mandates in the County Law (County Law §2) or in a county’s specially enacted charter (if it has one) and substitute the broad, flexible mandates stated above. In addition to its power to avoid the mandates of the County Law or special charter, a county that enacts its own charter may also have the additional power to supersede some general laws of the State Legislature. (County Charter Law §34(5); See Town of Smithtown v. Howell, 31 N.Y. 2d 365 (1972)) (This is in addition to the power of counties to supersede certain “special” State legislation found in N.Y.S. Constitution Article 9 §2 and the Municipal Home Rule Law §10.) The County Charter Law expressly lists subject areas, such as education, within which general laws of the State cannot be superseded by a County Charter Law. The County Charter Law also expressly lists certain general laws of the State, such as the Local Finance Law and the Labor Law, which cannot be superseded by a County Charter Law.

The authority for a county to supersede general State enactments via a County Charter Law is grounded in an absence of State restriction. If a County Charter Law does not pertain to one of the pro-
hibited subject areas and likewise is not inconsistent with any of the general laws specifically identified, then it should not be invalidated because inconsistent with another general law (one should note that the subject area of the County Charter Law would still have to be within local law-making powers). New York’s highest court allowed a county charter to supersede a section of the General Municipal Law in 1972. The court’s opinion ruled that the State legislature passed the law in question with the intent that it be subject to county charter supersession. Whether or not such a finding will be necessary for a county charter to supersede a general State law in the future is apparently an open question. (Town of Smithtown v. Howell, 31 N.Y. 2d 365 (1972).)

Lastly, a county could abolish or affect its constitutional offices through the county charter route.

(c) CITIES

General City Law

The General City Law does not mandate a governing structure for cities. To determine what the State may have mandated in terms of city structure, one must go to the separate city charters which were granted by the State Legislature for all the cities of the State (the possibility of a city using its own charter power is commented upon in a later section).

The General City Law does require succession to certain city offices (§2-a) and provides restrictions as to appointment to other offices of members of the common council (§3).

There are also mandatory provisions for the computation (§16-b) and minimum service retirement benefits for certain retirement funds (§16-c).

Crematories for the disposal of garbage must be operated so that offensive or noxious gases are no threat to persons residing in the neighborhood (§17).

While it is permissive to have an official map, there must be a filing thereof (§26). Creation of a planning board is permissive, but if a city does so act, then the board must be of five or seven members with other ostensibly minor features required (§27). The planning board is empowered to approve plats but subject to some mandatory provisions on procedure (§32).

Plumbing boards are required to continue (§40-a) and the General City Law mandates terms of office, manner of filling vacancies, as well as some duties as to the regulation of plumbing in the jurisdiction (§44). There must be an inspector(s) of plumbing (§48) whose compensation is a city charge and who must inspect the construction and alteration of all plumbing work in the city at city expense (§49). Expenses of examining boards of plumbers are a mandated city charge (§54).

A city may appoint a board of appeals (§81). If it does, the board is compelled to hear and decide appeals from any order, requirement, decision or determination made by an administrative official and activities of the board are a city charge.

Cities of 25,000 must provide one or more station houses for the confinement of women at city expense (§90).

Creation of a city drug control authority is permissive, but once established, the city must meet certain procedural and substantive mandates in its operation (§§120, 121).

If a city spends for the arts, then it must also have an art commission (§166).

Second Class Cities Law

The Second Class Cities Law expressly provides that its provisions are applicable to the eligible cities until such provisions are superseded pursuant to the City Home Rule Law or otherwise changed, repealed or superseded pursuant to law. In other words, the State has delegated to cities of the second class the right to supersede the provisions of this statute.

Therefore, the only “mandates” upon the eight cities involved are those outside a local lawmakers powers (i.e., outside of “property, affairs or government” or the enumerated powers of Article 9 of the New York State Constitution and §10 of the Municipal Home Rule Law). The cities involved can supersede any provisions of the Second Class Cities Law which pertain to subject matters within their home rule powers.

Optional City Government Law

In 1938 the New York Court of Appeals held that this law is not a “general” enactment. The
A referendum is mandatory for adoption of a new charter (§36(b) (c) (d) (e) (f)). A referendum is also required for an Article 4 charter amendment but not if the amendment was via §10 (unless the charter rationale of the court was that only eight cities had opted to come within the statute, which was permissive, and, therefore, “…it would become general in effect only when adopted by all cities in one form or another.” (Johnson v. Etkin, 279 N.Y. 1 (1938)).

Therefore, the only apparent mandates in the Optional City Government Law are those which are outside of a city’s local lawmaking powers (i.e., outside of “property, affairs or government” or the enumerated powers set out in Article 9 of the New York State Constitution and §10 of the Municipal Home Rule Law.) Anything within the local lawmaking powers a city could supersede by local law (§10(1)(c) (1)).

City Charter Revision
The 1924 Home Rule Amendment to the Constitution and the implementing City Home Rule Law of 1924 permitted a city to frame its own charter. This meant that cities could supersede their own specially granted charters (See New York City v. Village of Lawrence, 250 N.Y. 429 (1929)). Today, they can do so by local law or by city charter revision (§10(1)(c) (1) of the Municipal Home Rule Law). In all, there are five available methods to adopt or amend city charters:

1. Local Law (§10(1)(c) (1) of the Municipal Home Rule Law);
2. Local Law after submission by a charter commission which was appointed by the legislative body (§36(2) (a) of the Municipal Home Rule Law) or which was submitted to the voters and approved (§36(2)(b));
3. Local Law adopted after submission by a charter commission which was provided for by petition of a requisite number of qualified voters (§36(3));
4. Local Law adopted after submission by a charter commission created by the mayor (§36(4));
5. Local Law adopted on petition of the voters with no commission action (§37).

The city charter power is subject to the same limitations as is the local lawmaking power with respect to supersession of State laws (§§36(5)(a); 37(4)).

(d) VILLAGES
Village Law
The following identifies the major mandatory provisions of the Village Law as recodified in 1972 (effective date of the recodified Village Law was September 1, 1973). Many of the ostensibly minor “mandates” are also highlighted to give a more complete picture of Village Law “mandates.”

Incorporation. The Village Law opens with State requirements for incorporation (Article 2). For example, if a district is dissolved due to incorporation, any district indebtedness is a village charge (§2-254).

Officers and elections. A village is obliged to have a mayor, 4 trustees, a treasurer and a clerk (§3-301). Villages may change the number of trustees via §3-304. If the board chooses to establish a board or boards of commissioners, then it must establish the composition, powers, duties and responsibilities of each such board (§3-308(3)).

Duties. The mayor has the responsibility to: a) preside at meetings of board of trustees; b) provide for enforcement of all laws, local laws, rules and regulations and see that violators are prosecuted; c) appoint department officers, members of boards of commissioners and non-elected officers (subject to approval of board of trustees and the mayor may make delegations of this power to other Village officers or employees); and act to fill vacancies caused by other than expiration of a term; d) institute, at direction of the board of trustees, all civil actions in the corporate name of the village; e) supervise police and other subordinate officers; f) intervene in court actions, at the direction of the board; g) serve as ex-officio member of each separate board of commissioners; h) appoint a deputy mayor who, during the absence or inability of the mayor, will perform his duties; i) execute all contracts in the name of the
village; j) sign orders to pay claims with the village clerk when authorized by the board of trustees when the same individual serves as both clerk and treasurer; 
k) sign checks in the absence of the treasurer or deputy treasurer, when authorized by the board of trustees; l) cause all claims to be thoroughly investigated; m) issue all licenses, unless he designates another village officer (§§3-308(3), 3-312(3), 4-400).

The clerk must, subject to the direction and control of the mayor: a) have custody of seal, books, records, papers, official reports and communications; b) act as clerk of the board of trustees and each board of village officers and shall keep records of the proceedings; c) keep a record of all village resolutions and local laws; d) prepare, sign and transmit to the village treasurer orders directing the village treasurer to pay the claims therein specified; e) produce for inspection the books, records and papers of his office (he collects fees at the rate of $.20 per folio); f) collect taxes and assessments of the village (only if directed by board of trustees resolution); g) keep an indexed record of written notices of the existence of a defective, unsafe, dangerous or obstructed condition relating to village jurisdiction (§4-402).

The treasurer is the chief fiscal officer of the village. He must: a) have custody of all moneys belonging to the village, and keep accounts in conformity with the requirements of the State Comptroller (see General Municipal Law §36); b) deposit, within 10 days, all money received by him; c) pay out village money only as authorized (§§5-524 and 5-526); d) file in the village clerk's office a statement showing in detail all revenues and expenditures during the previous fiscal year and the outstanding indebtedness of the village at that time (§4-408). If authorized by the board of trustees, the annual report mandated by General Municipal Law §30 may be used to satisfy these requirements.

All expenses of maintaining the village court shall be a village charge (§4-410(2)).

Finances. Under the Village Law, the budget officer must prepare a tentative budget (§5-504) as defined (§5-506) and in accordance with mandated procedures for adoption (§5-508). General budgetary controls are mandated, such as separate accounts for each appropriation (§5-520). There are also other financial requirements, such as audits in certain cases (§5-524).

Streets, sidewalks and public grounds. Streets and public grounds are in the exclusive control and supervision of the board of trustees (§§6-602). If a board of trustees has supervision and control of a bridge, then such control shall continue. Otherwise, it shall be a town responsibility (§6-604) unless the village chooses to assume it (§6-606). There are also some procedural mandates for highway improvements (§§6-630).

Building zones. The Village Law requires each village to have a board of appeals (§§7-700, 7-712). The regulations of the board must be in accord with a comprehensive plan (§7-704), and there has to be a public hearing before any of the regulations or restrictions become effective (§7-706). There are also some other procedural mandates, such as the requirement that the board of appeals shall keep minutes and records of its examinations and other official actions (§7-712).

Police department. Villages do not have to establish a police department. If they do, policemen have the duties of constables of towns in serving process in any civil action or proceeding (§8-802). Otherwise, there are no Village Law requirements.

Permissive referendum. There are specific instances when a permissive referendum is required (§§9-912), and the village clerk must post and publish notice of board actions which are subject to a permissive referendum (§9-900(2)).

Fire department. Villages do not have to establish a fire department. If they do, the Village Law gives the manner of selection for volunteer members of village fire companies (§10-1006) and also mandates annual meetings (§§10-1010, 10-1016).

Water. A village does not have to establish a system of water works. If it does, the same village law mandates become applicable. The board of water commissioners must prepare maps and plans and the like (§11-1106). The board of water commissioners must keep the system of water works under repair. If there are extensions, the water commissioners determine whether it will be a village charge, or taxed to
land benefited, or both (§11-1108). The board of water commissioners must also establish a scale of rents (§11-1118).

Light. A village does not have to establish a lighting system. If it does, then the board of light commissioners must keep the system in repair (§12-1204). The board of light commissioners must also establish a scale of rents (§12-1208).

Self-supporting improvements. A village is not required to establish any self-supporting improvements (as defined in §13-1300). If it does, the board of trustees must establish or revise charges for daily, hourly or single use (§13-1300).

Sewers. The Village Law does not require the establishment of a sewerage system, per se. However, the board of trustees, upon petition by the requisite property owners, must cause a map and plan to be prepared for a complete sewerage system for the village (§14-1400). The map and plan is subject to approval by the State Commissioner of Health. Whether or not a village must provide a complete sewerage system will depend on approval by the Commissioner of Health (§14-1400).

Cemeteries. Lands do not have to be acquired for cemeteries. If they are, the board of cemetery commissioners has supervision and control (§15-1502).

Alterations and form of government. Diminishing boundaries, consolidation (Article 18) and any village dissolution (Article 19) are subject to a number of procedural mandates, such as filing (§18-1808) and other election requirements.

Ordinances, rules and regulations. There are mandatory provisions in the Village Law pertaining to ordinances (adopted before 9/1/73), rules or regulations and the penalties for violations (Article 20).

Hearings. Villages must follow the procedure of the Municipal Home Rule Law for notice of a hearing and they must conduct hearings as provided for in the Village Law (§21-2100).

Miscellaneous. There are also other requirements to be found in the Village Law. For example, notice to land owners is required before a village may make local improvements (§22-2200). Any required hearings must be in accordance with Article 21 unless it concerns a local law, in which case, the Municipal Home Rule applies.

While the vast majority of villages came within the general provisions of the Village Law, there are villages which function under special charters. In those instances, one would have to go to the special charters granted by the Legislature to identify any “mandates.”

The Village Law, as a general enactment of the State Legislature, should not be susceptible to supersession by means of a village local law. However, the Legislature has specifically delegated to villages, the power to supersede the Village Law in certain instances (Municipal Home Rule Law §10(1) (c) (3)). Any provision of the Village Law which relates to the property, affairs or government of a village or to other matters in relation to which the village is authorized to adopt local laws (i.e., in Municipal Home Rule Law §10) may be amended or superseded by a local law, unless the Legislature shall have prohibited the adoption of such a local law.

(e) GENERAL MUNICIPAL LAW

The following identifies a number of the State “mandates” found in the General Municipal Law. The major mandates are stated together with a sampling of the more minor and, at times, indirect mandates.

General municipal finances. There are financial requirements necessitating certain reports to the State Comptroller (§§18, 30) in a particular form (§31) and with proper record keeping required (§10). The financial “mandates” are often elusive and difficult to catalogue. For instance, reserve fund money can only be put into certain investments. An “aggressive” local investor may view this constraint as mandating a certain amount of cost (whereas the State Legislature obviously intended to see public money invested carefully).

Municipal liability. The General Municipal Law defines when the State is liable for the negligence and malfeasance of public officers (§50(a) (b) (c) (d) (e) (f)). The breadth of these provisions determines the scope of the mandated cost to localities.

Miscellaneous liabilities. Cities must pay the reasonable expenses incurred by a State agency in com-
pelling the payment of money by the city to such agency (§ 70-a).

Municipal corporations (as defined in § 2) must pay certain additional damages in condemnation (§ 74-a) as well as pay moving expenses after condemnation (§ 74-b).

If a governing board of a municipal corporation provides for overtime compensation, it shall apply for retirement and pension purposes (§ 90).

If a political subdivision is operating and maintaining railroad passenger stations, the activity must be approved by the Public Service Commission (§ 98-f). If a political subdivision is acquiring and leasing railroad facilities, the actions must be approved by the State Commissioner of Transportation (§ 98-a).

And if a proposition is submitted, a city of the third class must provide and maintain a band at city expense (§ 79-a).

Public contracts. When the cost is over $50,000, certain political subdivisions must prepare separate specifications for certain portions of the work (§ 101).

Common water supplies. While some types of common water supplies (contracts between municipalities) are permitted, the law expressly states that the State Department of Health and Water Power and Control Commission still have their jurisdiction (§ 117).

Mass transit, airport and aviation. The Commissioner for Local Government is required to set rules and regulations for intermunicipal cooperative activity (§ 119-v) and all state boards, agencies, departments and so on, retain their regulatory powers (§ 119-x).

Public health and safety. Before a municipality or municipalities construct, alter or make any additions to any sewer or sewer system, there must be prepared a map and plan which has to be submitted to the State Commissioner of Health. There can be no work until approval and no deviations until approved (§ 120-n).

If a public general hospital is established, there must be appointed a 5 to 15 board of managers (§ 127(1)). There are different requirements for a county between 600,000 and 1,000,000 people (§ 127(2)).

Parks, playgrounds and libraries are mandated free (§ 144).

There is a legal duty of every municipality to erect and maintain dead-end signs (§ 125-a).

Police and fire. Localities are responsible for certain payments to cover injuries to volunteer firemen (§ 205). Injured paid firemen in a city under one million or in a town, village or fire district receive hospitalization and care at city charge (§ 207-a). Policemen receive similar benefits (§ 207-c). All these provisions are set so that there would be no double recovery, however, with any retirement and pension provisions (§ 207-c(2)). The Legislature has also mandated minimum benefits for policemen and firemen in cities who are not members of the New York State Policemen and Firemen Retirement System (§ 207-e). There are also death benefit provisions (§§ 207(f), (g), (h); 208(b), (c)).

Supplemental retirement allowances are mandated for certain retired teachers, policemen and firemen (§§ 207(f), (g), (h)).

A training program is required before any permanent appointment of police officers (§ 209-q). Members of a police force must receive one day of rest in seven (§ 208).

Metropolitan regional or county planning boards. The establishment of these planning boards is permissive; but once initiated, then a few structural requirements are triggered (§ 239-b).

Commission on human rights. The law requires that certain duties be fulfilled before using money for other things (§ 239-q).

State Statutory and Administrative Law Mandates Directed to Particular Functions

This section of the report inspects a number of subject areas by topics and isolates the Statemandated expenditures and/or programs in each. There are three levels of legal State “mandates,” i.e., constitutional, statutory and administrative. The following sections will review function by function the major constitutional and statutory “mandates”
and will identify instances when the potential for administrative mandates has been exploited.

(a) NATURAL RESOURCES

New York State Constitution

The first "mandate" to appear in the conservation article of the State Constitution concerns Forest Preserve land. The Constitution provides for the possibility of using portions of the preserve for the construction and maintenance of reservoirs for municipal water supplies. The State makes the final decisions and constructs, owns and controls whatever is built. Any such reservoir must always be operated by the State, and the State must provide for a charge upon the property and municipalities benefited to include a reasonable return to the State.

The Constitution declares that "[f]orest and wildlife conservation are hereby declared to be the policies of the state," (Article 14, §3). This section does not forbid nor require any portion of this function to be a local charge.

In 1969, a new provision was adopted which states that,

"[t]he policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products."

This section, as well, neither forbids nor requires any portion of this function to be a local charge.

Agricultural and Markets Law

There are four main areas or programs in the Agricultural and Markets Law which can be identified as mandating increases in local government expenditures.

1. Dog Licensing (Article 7).

All cities, towns and villages must prepare lists of dog owners (§108). Dogs six months or older must be licensed by the dog owner (or harbinger) with various city, town and village clerks (§109). Card indexes and reports to the State are required (§§111, 113). Seizure of unlicensed dogs is mandated, which dogs are to be fed and cared for as a local charge (§114-a). Counties suffer a statutory liability for damage to domestic animals by dogs (§118). As an offset, license fees are shared by local governments (§121 et. seq.).

2. Weights and Measures (Article 16).

Counties and cities must have a sealer of weights and measures whose salary and equipment are local charges. Also, no fees can be charged or received by the sealer or by the city or county (§§182, 183).

3. Local and Agricultural Fairs (Article 24).

The State appropriates annually (for the Department of Agriculture and Markets) reimbursement money to be distributed to various agricultural societies (§286). The delivery of agricultural and domestic arts services at the local level is not "mandated" by the State. However, localities must meet standards set by the Agriculture and Markets Department in order to qualify for the State reimbursement money.


In order to enhance farmers' ability to resist land speculation resulting from urban pressures, there is provided a procedure whereby farmers can initiate an agricultural districting process. Proposed districts are all subject to approval by the Commissioner of Environmental Conservation. The potential effect of such districting is lower real property taxes for the farmer (§305). While it is true that a county legislative body can adopt, amend or even reject the proposals for districting, the potential advantage to the farmers could very well exert pressure on the county legislature to approve the districting.

127
The act also provides that four years after its effective date, the Commissioner of Environmental Conservation is empowered to create agricultural districts. Any of those districts would clearly be a State-mandated erosion of the local tax base. The State provides assistance to each taxing jurisdiction in an amount equal to one-half of the tax loss that results from agricultural value assessments (§305(f)).

The aforementioned mandates do not cover all of the State-mandated expenditures for local governments found in the Agriculture and Markets Law. They do appear to be the most prominent. One cannot overemphasize the myriad of “mandate” possibilities. For example, §16 (24) of the Agriculture and Markets Law allows the Department to enter cooperative agreements with local agencies for the performance of inspections in order to eliminate duplication of expense. The legislation is clearly permissive, and the mandate ramifications of it are almost totally invisible. However, if an agency enters such an agreement, it must perform in accordance with the State’s standards.

This caveat as to the definite existence of further less prominent mandates will apply to the rest of this report, as well. The staff goal has been to identify and address the predominant mandates, while at the same time cautioning the reader not to take this listing as exclusive.

Environmental Conservation Law

The following statutes within the Environmental Conservation Law result in State-mandated expenditures and programs on local governments.

1. Air Pollution (Article 19).

   State standards and other requirements are applicable to local governments as well as to private persons and businesses (§19-0107(1)). Many of these requirements are not set out in the Environmental Conservation Law but are left for administrative determination.

2. Water Pollution (Article 17).

   Again, State standards and other requirements are applicable to local governments as well as to private persons and businesses (§17-0105(1)). More is provided statutorily than is the case for air pollution control. Waters are classified, and different standards for each are set (§17-0301). Various permits are required for outlets, point source discharges, disposal systems and the like (§§17-0701, 17-0505, 17-0507, 17-0803). There may be compliance schedules (§17-0813) provisions to insure verity (§17-0819) and procedural requirements, hearings (§17-0901) and so on. State aid is provided for the collection, treatment and disposal of sewage (§17-1903(2)(b)(1) and (2)), but only if there is a contract between the municipality and the commissioner concerning eligible projects (§17-1903(2)). Such a contract may include the State aid provision; and therefore, the final determination is made by the commissioner. It is possible, after deducting Federal and State money, for the local government to pay 40% or less of the cost of the project.

3. Solid Waste (Article 27).

   The solid waste provisions apply to all municipalities, defined as counties, cities, towns, villages or any designated agencies thereof (§27-0103(2)). There must be department approval of new solid waste management facilities (§27-0507). Most of the other important substantive requirements are handled administratively.

   There are State aid possibilities for the construction of new solid waste management facilities or the improvement of existing facilities, “...as determined and approved by the commissioner,” (§27-0503). The maximum possible aid would be 50% of the entire cost, including preparation of detailed plans and the like.


   Municipalities (§51-0101(6)) may submit applications for State assistance pursuant to this article. The commissioner may approve, disapprove or recommend modifications to project applications (§51-0105(21)). If approved, the locality qualifies for State assistance. For water quality improvement projects, there may be a maximum State contribution of roughly one-half of the nonfederal share of the cost of any project (§51-0505(1)(b)). For municipal air quality improvement projects, there may be a maximum State contribution of 50% of the cost thereof (§51-0505(3)). For municipal solid waste management projects, there may be a maximum State contribution of roughly 50%
of the cost of recovery equipment and 24% of the cost of disposal equipment (§51-0907(1)(b)).

There may also be an allocation of State money in implementing the Environmental Quality Bond Act of 1972 for land preservation and improvement projects (Title 7) and park lands preservation projects (Title 11). Local governments are not required to spend on these latter functions (as they are in the former areas). The relevance to the “mandate” question is that State assistance makes such projects very “attractive.” Once a local government adopts an environmental project, it becomes subject to a maze of State requirements, but with no real assurance that State assistance will not decline or, for that matter, disappear in the future. Therefore, while not a legal mandate in form, one must anticipate future developments in order to ascertain whether such State promotion is, indeed, relevant to a mandate inquiry.

5. Tidal Wetlands (Article 25).
Tidal wetlands are defined (§25-0103), and permits are required for the alteration of certain tidal wetlands (§25-0202) and for certain regulated activities (§25-0401). The commissioner is required to adopt land-use regulations governing the said lands (§25-0302).

6. County and Regional Environmental Management Councils (Article 47).
The creation, by a county governing body, of a county environmental management council is permissive (§47-0105(1)). However, upon creation, there is a possibility of State reimbursement of up to one-half of the expenditures of a county or regional council (§47-0115).

7. Fire Fighting
The Town Law mandates the responsibility of fire protection for certain towns to the town supervisor as a town charge. (Town Law, §29(12)), and the Environmental Conservation Law provides that certain counties are responsible for one-half of the fire bills (§9-1121(3)).

Soil Conservation Districts Law
The governing board of any county can declare the county to be a soil and water conservation district by resolution (§5). While the decision is entirely permissive in the first instance, once a district is declared, the mandates in the Soil Conservation Law become applicable as do the rules and regulations of the New York State Soil and Water Conservation Committee. The mandates in the Soil and Conservation Law are not of the program type, being more related to the general administration of the district. For example, the designation of district directors is required (§6), and such directors must provide for keeping a full and accurate record of all proceedings and all resolutions, regulations and orders issued or adopted and an annual audit (§8(2)).

With the creation of such a district, mandates in other laws immediately come into play. For example, under the Retirement and Social Security Law, all political subdivisions, including soil and water conservation districts, are required to participate in the social security program (Department of Audit and Control, November 21, 1957); and districts cannot establish revolving funds (Department of Audit and Control, Opinion 69-1030).

Parks and Recreation Law
The State legislature has provided that “[t]he establishment and maintenance of a statewide system of parks, recreation and historic preservation are hereby declared to be policies of the state” (§3.01). The weight of the State law does not apply to municipalities but there are sections which do so apply. State aid may be available for certain park recreation land acquisition but only after approval of the acquisition by the commissioner of parks and recreation.

The same State supervision applies to State aid for recreation development (§17.05).

The snowmobile requirements of the Parks and Recreation Law and the rules and regulations of the commissioner are required to be enforced by the police and peace officers of local governments (§27.01). The local government can seek State aid to offset the enforcement costs (§27.15).

New York State Department of Agriculture and Markets
The State Legislature has delegated rule-making powers to the Department, by and through the commissioner, (§18); and if published once in the
New York State bulletin (published by the Department of State) and filed properly with the Secretary of State, they shall have the force and effect of law (§ 19).

1. **Dog Licensing.**
The Department has no formal regulations or guidelines which mandate local expenditures under this program.¹⁴⁴

2. **Weights and Measures.**
The commissioner is empowered to adopt and promulgate rules and regulations to supplement and give full effect to the provisions of the Weights and Measurements article, and have the force and effect of law (§ 196-a). The Bureau of Weights and Measures administers and supervises this program. Regulations are contained in 1 NYCRR, Parts 220-222.

3. **Local and Agricultural Fairs.**
The Department administers the statutory materials dealing with local agricultural fairs. The State has empowered the commissioner to supervise agricultural fairs and expositions (§ 287; See § 18). Standards for these fairs are established in 1 NYCRR, Parts 350-352.

New York State Department of Environmental Conservation

The State Legislature has delegated to the Department, by and through the commissioner and with the advice and approval of the State Environmental Board, the power to adopt, amend or repeal environmental standards, criteria and those rules and regulations having the force and effect of standards and criteria to carry out the purposes and provisions of the Environmental Conservation Act (§3-0301 (2)).

1. **Air Pollution.**
The Department is empowered to adopt and promulgate, amend and repeal codes, codes, rules and regulations in this area (§ 19-0301 (1) (a)) to be enforced by the Commissioner via § 19-0305. The code rule or regulation may differ in terms and provisions as between particular types and conditions of air pollution, as between different pollution sources and as between particular areas of the State (§ 19-0303 (2)). Regulations are contained in 6 NYCRR, Parts 200-260.

2. **Water Pollution.**
The Department, acting through the commissioner, is empowered to adopt, amend or cancel administrative rules and regulations as may be necessary to carry out the water pollution provisions in the Environmental Conservation Law (§§ 17-0303 (3), 17-0303 (5) (k)). The rules and regulations have the force and effect of law (Title 7, 9). The regulations are contained in 6 NYCRR, Part 800.

3. **Solid Waste.**
The Department is empowered to adopt and promulgate rules and regulations governing the operation of solid waste management facilities (§ 27-0503 (1)). Any rule or regulation may differ in its terms and provisions as between particular types of solid waste management facilities and as between particular areas of the State (§ 27-0503 (1)). The rules and regulations have the force and effect of law (§ 27-0509). The regulations are contained in 6 NYCRR, Part 360.

4. **Implementation of the Environmental Quality Bond Act.**
The Department is empowered by the Laws of 1972, Chapter 659, to set further administrative requirements for local governments to meet in order to receive State money. Regulations are established in 6 NYCRR, Part 625.

5. **Tidal Wetlands.**
The Department is empowered to make provisions for tidal wetland moratorium permits (§§ 3-0301; 25-0202). Regulations are established in 6 NYCRR, Part 660.

New York State Soil and Water Conservation Committee

The State Legislature has established this Committee (Soil and Water Conservation District Law, § 4) and given it powers and duties vis-a-vis the soil and water conservation districts of the State. The primary functions of the Committee are to disseminate information throughout the State and to coordinate programs and cooperation among the various units of government involved in these services. The Committee does not appear to have a "mandate" role.

Adirondack Park Agency

The only area of Agency responsibility which has a direct impact on the programs and expenditures of local governments is "local planning assistance." The Agency is charged with the responsibility of assisting local governments in developing land-use programs
which meet the criteria of the act for approval by the Agency. Local governments do not have to develop such land-use programs, but there are strong incentives for them to do so. Probably the strongest incentive is the financial assistance for local planning, authorized under the Adirondack Park Agency Act. For most communities in the Park, the State covers about 7/8 of the total cost of initiating the planning program in the first two years.\textsuperscript{146} (This does not include what may be substantial administration and enforcement costs; i.e., planning board, zoning board of appeals, building code enforcement and the like.)

The local governments are not required to seek Agency approval. However, where standards in the Adirondack Park Land Use and Development Plan are more restrictive than local land-use regulations, the former prevail. And if a community has no local land-use controls, the Adirondack Park Plan would apply as the sole source of controls.\textsuperscript{146}

There are two levels to Agency approval. The statute sets standards; such as, the requirement that a local land-use program contain adequate authority and provision for its administration and enforcement (i.e., planning board, building inspector, etc., or their equivalent) (§807-2 (g)). Then the Agency must administer these provisions. The Agency has also been empowered to adopt, amend and repeal rules and regulations (§§804 (9), 809 (14)) which have the force and effect of law (§813 (a)). Regulations are established in 9NYCRR, Part 580.

(b) CIVIL AND CRIMINAL JUSTICE

New York State Constitution

The State Constitution is the source of some "mandates" regarding the State’s court system. The minimum number of Supreme Court justices allowed in each district is the number that was authorized by law September 1, 1962 (Article 6, §6(d)). The State legislature may reduce the number of Court of Claims judges to six or seven (Article 6, §9). The minimum county, family and surrogate court judges is one in each county\textsuperscript{147} (Article 6, §§10, 12, 13). The legislature may provide (outside of New York City) that a judge may act as county, surrogate and family court judge or as any two (Article 6, §14).

The legislature shall establish compensation and retirement of judges (Supreme, court of claims, county, surrogate, family, New York City courts, district courts) which may not be diminished during their term (Article VI, §25). The Constitution also requires the State to provide for the allocation of costs between the State and local governments for the operating and maintaining of all the courts (Article VI, §29).

The State legislature must provide for the submission of itemized estimates of annual financial needs of the courts to the administrative board of the judicial conference or to the said conference to be forwarded to the appropriating bodies with recommendations and comment (Article VI, §29).

Judiciary Law

The Judiciary Law mandates minimum salaries for the aforementioned judges and for county district attorneys, clerks, attendants and the like. The State provides state aid to counties and to New York City to partially offset the mandated costs (Judiciary Law, §34). The treatment of county district attorneys is just one example of the extensiveness of State mandated local expenditures in the judicial realm. Some larger counties must pay their county district attorneys an annual salary equivalent to that of a justice of the State Supreme Court. Recent State legislation raised State Supreme Court salaries and provided the extra money to cover the costs. However, the State did not provide the additional money that had to be paid to the district attorneys.

Correction Law

The following highlights the major mandated programs and increases in local expenditures codified in the Correction Law.

1. Cost of maintaining prisoners in local facilities. If a parole officer has a parolee temporarily detained in a county or New York City jail (§216) or if there is transfer from a State penal institution to a county or New York City jail to await judicial review of a trial (§601-3), or if a convicted felon is imprisoned in a penitentiary (§601-c), the State pays the costs, but at a maximum rate of $5.00 per day per capita.
2. Transportation of prisoners from a county jail to a State correctional facility. The sheriff, or one in charge is reimbursed for expenses and also for a portion of the sheriff's salary (§602).

3. Inmates who commit crimes in a State facility are prosecuted by the county district attorney in the county where the crime was committed. The State pays to the county "...necessary and proper incremental expenses..." which would appear to offset most, if not all, of the local expenditures.

4. Probation services. County probation services and New York City services, if approved (e.g., does not include capital improvements or debt service costs for capital improvements), can be partially funded by a 50% reimbursement from the State (§14-a). A county or New York City can only receive this money if it conforms to standards adopted by the director of probation and approved by the Commissioner of Correction after consultation with the State probation commission.

5. Establishment and maintenance of a basic correctional training program. The State Commission of Correction will run the program but with salaries and expenses of local officials as a local charge, or the locality can run a program with the possibility of some State reimbursement (but not to cover salaries and expenses) (§48(8)).

6. There are numerous reports. For example, a report to the correction medical review board is required upon the death of an inmate (§52(2)); annual reports covering work release programs must be submitted annually to the State legislature (§§878,899).

7. Coordinated use of State and local correctional institutions. Agreements between the department of correctional services and a county or New York City for the State to pay the costs of treatment, maintenance and custody of persons receiving a definite sentence with a minimum term of 90 days. The Locality must agree not to seek reimbursement from the State via §§602, 216, 601-b, 601-c or 835. As one can see, the mandate impact of these provisions cannot be known unless one compares local expenditures under each possibility.

8. Jails. The Correction Law defines mandatory uses for county jails (§500-a) and mandates that each sheriff (except New York City and Westchester County) shall have custody of county jails (§500-b).

Each county is required to have a physician for the county jail (§501). There are also a variety of miscellaneous mandates, such as the requirement for rooms for segregation of prisoners (§500-b), reading matter and a record of commitments and discharges (§500-e, f), sheriff liability for escape (§526) and requirements of fingerprinting and procurement, if possible, of modus operandi statements (§618(2)).

State Commission of Correction
The Commission of Correction exists within the Executive Department and is probably the main source of "administrative" mandates affecting local governments. The commission has the statutory duty of promulgating rules and regulations setting minimum standards for local correctional facilities, which have the force and effect of law (§§48(6), (7)). Local correctional facilities are defined broadly to include a county jail, penitentiary, lockup, city jail, police station jail, town or village jail or lockup, court detention pen or hospital prison ward (§40(2)). Regulations are established in 7 NYCRR Parts 5100-5200.

Division of Criminal Justice Services
Among other functions, the Division of Criminal Justice Services administers the federal Safe Streets Program in New York State. The federal program has requirements that must be met at the State and local level in order to qualify for the federal funds. These requirements are outside the scope of this report. However, the Division is our "State planning agency" responsible for establishing priorities, developing a comprehensive crime control plan and administering the block grant funds. The New York State Crime Control Planning Board (§§843, 844) also has a supervisory role in reviewing, approving and maintaining general oversight of all policies, plans and regulations for the distribution of grants. Clearly then, decisions of the Division and board could have a negative fiscal impact on a local government.

Division of Probation
There exists within the Executive Department a Division of Probation (§240) and a State Probation
Commission (§242). The commission is required to exercise general supervision over the administration of probation throughout the State. The director of the commission is empowered to adopt rules with the force and effect of law, applicable to all probation officers (§243). Regulations are established in 9 NYCRR Parts 345, 365.

State statute prescribes a scheme for State reimbursement for probation services (Executive Law, §246). Roughly, State aid to New York City and counties outside New York City is fifty percent of the approved expenditures in maintaining and improving local probation services, not to include capital additions or improvements or debt service costs for capital improvements (Executive Law, §246). If detailed local plans are approved, as meeting State standards, then the locality may be eligible for reimbursement, and payments can be withheld if the locality fails to conform to the standards of probation administration. Regulations applicable to State aid to Probation are established in 9 NYCRR Parts 355-357.

Division for Youth
A Division for Youth exists within the Executive Department (Executive Law, §500). In certain instances when there have been expenditures made by the Division for care, maintenance and supervision of youth, the social services district from which the youth was placed must make reimbursement to the State in accordance with the regulations of the division. The reimbursement is roughly fifty percent of the amount expended for care, maintenance and supervision of local charges (Executive Law, §529). In converse situations there are also reimbursements by the State to localities for care of State charges.

The most important aspect of the mandate question as it relates to youth services has to do with the State aid formula for aid to municipal youth programs. The formula was re-written by the State legislature, effective July 1, 1974 (Executive Law, §420). As with the old formula, local expenditures must be approved by the commissioner before the locality can receive any State money. The legislation also sets ceilings on the amount of State aid that can be given.

Division of Human Rights
The Division of Human Rights exists within the Executive Department (Executive Law, §293). The Division has a "mandate role" in that it has enforcement powers with respect to the substantive provisions of the Human Rights Law (Executive Law, §297). The Division may require respondents who have committed unlawful discriminatory practices to take affirmative action, and there may also be compensatory damages.

Drug Abuse Control Commission
The Drug Abuse Control Commission exists within the Executive Department (Mental Hygiene Law, §81.07). The following are the main programs with mandate aspects which are administered by the Drug Abuse Control Commission.

1. Treatment of Convicted Narcotic Addicts. Today, there exists a joint treatment effort by the Control Commission and local probation agencies. One portion of the rehabilitative services applies to convicted narcotic addicts. The Commission provides inpatient treatment services. The second stage of the program consists of aftercare supervision by the local probation unit. Prior to September 1, 1973 the aftercare phase was a State charge; it is now a mandated local charge (and because it is a probation function, it is shared by the county). The 1974 session of the legislature provided that the Commission could provide aftercare services upon request from a local probation unit. Regulations are found in 9 NYCRR Part 365, 14 NYCRR Parts 100-2022.

2. Youthful drug abuser program. A local agency (as defined, Mental Hygiene Law, §83.03(2)) may apply for a grant of State money as provided in the Mental Hygiene Law. The local agency's comprehensive plan must receive Commission approval (which could mean mandates) and the law also establishes a maintenance of effort requirement (Mental Hygiene Law, §83.09(a)). Counsel for the Commission has
estimated the local cost of these provisions exceeds eight million dollars and because of the maintenance of effort requirement, tends "...to fall more heavily upon counties which had made early and substantial efforts to help themselves." 152

(c) EDUCATION

New York State Constitution
The State Constitution mandates that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the State may be educated." (Article IX, §1). There is no regulation in the Constitution as to what revenue base should be used to support public schools.

Another constitutional provision is related to the mandate topic. The State and its political subdivisions cannot use their property, credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance of denominational schools (with minor exceptions) (Article 11, §3). This provision restricts the potential for legislative mandates in this area.

The other constitutional references to education are not directly related to the mandate question.

Education Law
The mandates located in the Education Law cut across all aspects of the education function. Typical requirements that must be met by school districts are:

1. Attendance
   (a) mandatory schooling for those 6 to 16 years of age (§3205)
   (b) resident pupils 5 to 21 years of age are entitled to attend in their school district without paying tuition (§3202)
   (c) all city school districts must test for sickle cell anemia (§§903, 904)
   (d) records of attendance and school census are required (§§3211, 3240)

2. Length of school sessions
   (a) full time day school must be in session a minimum of 180 days each year (§§3602, 3604)

3. Subjects of instruction
   (a) first eight grades must have thirteen subject (§3204)

(b) beyond the first eight grades, five subjects are required (§§801-810)

4. Fire drills
   (a) must be conducted if over 25 pupils or if the building has two or more stories; there must be 12 in a year (§807)

5. Transportation
   (a) must provide if needed (§§3675)
   (b) also physically handicapped or retarded (§§1604, 1709, 2503, 2554, 4404)

6. Health services
   (a) medical inspections mandated (except New York City, Buffalo and Rochester where done by county or city health authorities) (§901)
   (b) Non public schools can get the same service for resident children (§912)

7. Community colleges (Article 126)

8. Teachers
   (a) teacher certification (§3009)
   (b) New York State Teacher's Retirement System with its myriad of coverage and benefits (Article 11)
   (c) minimum salaries

The listing of the above mandates is designed to illustrate the scope of State mandates in the area of education.

Rules of the Board of Regents
The State legislature has granted broad "legislative" power to a board of regents. The regents may determine educational policies and establish rules for carrying into effect the laws and policies of the State (§207), which rules have the force of law (Op. Education Dept. 1938, 60 St. Dept. 135).

Typical mandates located in the Rules of the Board of Regents are:
1. Each district must provide suitable and adequate school buildings and grounds (R.R. 14.1)
2. There must be at least four recitations per week in English (R.R. 3.35-a-2)

Regulations of the Commissioner of Education
All rules or regulations, or amendments or re-enacts thereof, adopted or prescribed by the commissioner of education are not effective unless and until
approved by the regents, except where authority is conferred by the regents upon the commissioner (§ 207).

The following lists some of the mandates found in Commissioner’s regulations:  
1. Requirements as to buildings (C.R. 155.1, .3, .4)  
2. Summer high school must provide at least thirty days of actual instruction (C.R. 110.1).  
3. Teacher load will be a maximum of five daily periods (some exceptions) C.R. 100.2e  
4. Approved four year high school must include certain specified units, for example, four units of English (C.R. 100)  
5. Mandated guidance and counseling service, including personnel so certified. (C.R. 103)  
6. Junior high school is mandated eight areas of study and also guidance (C.R. 100.1d)  
7. Pupils must have Physical Education (C.R. 135.4d) and sets minimum time for Physical Education instructions (C.R. 125.4e)  
8. Mandates as to occupational education (C.R. §§ 141.1-3)  
9. Mandated safety instruction (C.R. 107.1)  
10. Each school must have a school library (C.R. 91.1, .2)

Again, one must keep in mind that these mandates are not a complete listing, but rather, they highlight another level of State mandates.

Council on the Arts
The Council on the Arts exists within the Executive Department (§527). The Council makes use of a maintenance-of-effort clause which provides that State support “...will not serve to substitute for or reduce customary support received by such organizations from non-state sources.” Therefore, if such support existed in the past, a reasonable degree must continue if the locality is to receive State money.

(d) HEALTH

New York State Constitution
The Constitution states that [t]he protection and promotion of the health of the inhabitants of the State are matters of public concern...” (Article VII, § 3). The provision does not require that any portion of the health function be delivered and funded at the local level.

Public Health Law
The Public Health Law is the repository of a number of mandated programs and increased expenditures for local governments. The following separately captions the more visible of these health related mandates.

1. Local Health Organizations. For cities under 50,000, the Board of Health shall consist of the mayor and six other persons (§301(1)). In villages, the Board of Health shall consist of trustees of the village, (§302(1)) and in towns, it shall consist of the town board (§302(2)).

Each Board of Health shall appoint a competent physician to be the health officer (§320). The State has set a minimum compensation and expense standard for local health officers (§323) and has also mandated duties for the local health officer, such as, annual sanitary surveys, periodic inspections, enforcement of the Public Health Law, and the Sanitary Code (§324).

2. County and Part County Health Districts. Establishment is permissive; once initiated a local board of health can continue or it can relinquish the services to the county (§341(3)). However, once such a health district is established, it becomes subject to certain State mandates. Specifically, the district must
perform all duties delegated by law to local boards of health.

The Board of Health of each county or part county Health Department must appoint a commissioner (§351). The commissioner is to work full time (with a few exceptions) and is responsible for the general supervision and control of the institutions, public health centers and clinics operated by the district. The Commission may collect fees subject to the approval of the county or part county board of health, or county manager or county executive and the State commissioner of health (§352). The Board of Health must also appoint a health services advisory board (§356).

A county cannot abolish its district for three years and a city that chooses to join can only withdraw after three years (§§342, 355).

In a county under 150,000 people, where such a district has not been established or where a county charter or alternative form of government does not exist — the legislative body shall constitute the Board of Health and shall have all powers and duties of a Board of Health of a county or part county health district (§356).

County or part county health departments are empowered to formulate, promulgate, adopt and publish rules and regulations known as the sanitary code of such district (§347(l)). The district code has the force and effect of law (§348). Therefore, district code requirements are “county mandates” vis-a-vis towns, villages and cities opting to be included in the district.

The creation of a department of health in a city of less than 175,000 is permissive and, if established, the department is charged with all the duties of local boards of health or local health officers (§366). And regardless of whether there is a city health department, cities must have a sanitary code (§366).

3. Consolidated Health District. Any two or more towns, villages or cities may apply to the Commissioner for treatment as a “Consolidated Health District.” In such event, any local boards of health would cease to exist, and their rights, powers and duties would vest in the Board of Health of the Consolidated Health District.

4. County and city laboratories. The establishment of a county lab is permissive but once established certain State mandates will apply. The county’s governing body shall appoint a board of managers with set terms of office, etc. (§623). The Board of Managers is required among other things, to exercise general management and control of the laboratory, to cause to be erected all necessary buildings, to make necessary repairs and to establish branch labs, if needed (§525, et. seq.). If a city is seeking State aid to do so, the city is authorized to establish a lab (§540(2)). Once established, the same duties apply as for county labs.

The State commissioner of health may establish district laboratory supply stations (§560). The expense of operation and maintenance is a charge upon the municipality or county (§562).

The Public Health Law is also the repository of numerous laws regulating the performance of laboratory services (Title V).

5. There are also specific areas of government concern where the State has mandated local governmental action.

a) Public Water Supplies (Article II). The Department of Health is empowered to establish rules and regulations applicable to all public supplies of potable waters and water supplies of the State (§1100(l)), which rules and regulations have the force and effect of law (§1102). Department regulations can even require that a village or hamlet provide, at local charge, a sewerage system (§1104). If a regulation results in the removal of a building or damage to property, compensation shall be a local charge (§1104(2) & (3)). In fact, the State legislature has given a statutory cause of action to property owners whose property has been damaged by such a health department regulation (§1105).

The Commissioner of the State Health Department can also order public water supply improvements (§1107).

b) Nuisances and Sanitation. Every local board of health and local health officer shall receive and
examine into all complaints of nuisances and shall furnish written statements of the results and conclusions (§1303(1) and (2)). Expense of abatement can be collected from the violator, and, therefore, the mandated cost can be offset to some extent (§1306).

Local boards of health also have the State mandated duty of enforcing the Public Health Law and the State and local sanitary codes (§1308). There are also standards for bathing establishments, food handling, etc. that apply to local governments as well as to the private sector.

c) Control of Acute Communicable Diseases (Article 21). Local boards of health and health officers except New York City must provide proper medical inspections (§2100) and transmit reports to the county health commissioner (§2104(1)) (who in turn reports to the Health Department). For example, poor person immunization is a county charge (§2164). Counties must provide hospital care and treatment for T.B., generally as a county charge (with minor exceptions) (§2202). Each board of health shall provide adequate facilities for the free diagnosis and treatment of persons suspectedly infected with a venereal disease.

d) Maternal and Child Health. The commissioner of the Department of Health shall establish minimum standards (§2500). Non public schools receive the same local health district care as is mandated for public schools (§2501).

e) Physically handicapped children (Article 25, Title V). Medical services for the physically handicapped may be provided at the county level as a county charge but the service must be provided within the rules and regulations established by the commissioner (§2583). The State may provide transportation (§2584).

f) Hospitals (Article 28). All hospitals, public or private, are subject to the Public Health Law requirement and standards. Written approval of the public health council is required to establish either a hospital or a "home health agency." (§§2801-a, 2801). Prior approval of the commissioner of the Department of Health is needed for construction (§2802). The commissioner can also make inspections, etc. (§2803(1)), and the council can promulgate rules and regulations (§2803(2)). A uniform reporting and accounting system is provided (§2803-b).

State approval of hospitals is carried out by means of operating certificates (§2805). There are also other ostensibly minor mandates, such as yearly disclosures of financial transactions and the requirement of admittance of all who are in need of immediate hospitalization (§2805-a, b)).

The Public Health Law also contains provisions establishing health standards for other health services such as emergency medical services, human blood and blood donating and the like. In addition, there are rules and regulations of the commissioner of the Health Department, or the State emergency medical services council and others which create additional standards which must be satisfied.

g) Vital statistics (Article 41). In this area one naturally encounters various administrative filing requirements. Each local registration district must have a registrar (§4121(1)). Certain compensation, fees and expenses are mandated (§4124).

6. State aid (Article 6). Counties and cities can apply for State aid for general public health work (Title II). The State reimbursement is roughly 50% for counties and cities not within a county or part county health district. However, aid to a county or part county health district runs 75% for the first $100,000 and then 50% (§608). And, of course, the commissioner of the Health Department's standards including those for structure, equipment, service, and administration must be "...complied with by municipalities in order to be entitled to state aid..." (§609). Specific provisions for State aid for laboratory service, tuberculosis, poliomyelitis, physically handicapped children, measles, rubella, and public nursing homes are also provided. These State aid possibilities are all limited to the amount of the annual appropriation made by the State legislature (§690).

One other State aid provisions codified in the Public Health Law concerns aid for the planning for construction of solid waste management facilities (Article 13, Title XI). The commissioner of environmental conservation may within appropriation, make
grants to municipalities not over 50% of the cost of preparation of detailed plans, etc. for construction of new solid waste management facilities or improvement of existing ones. (§1381). Again, municipalities must qualify with the commissioner and meet any rules or regulations applicable.

**New York State Constitution**

The Housing article of the State Constitution provides that the State legislature may provide for low rent housing and nursing home accommodations for persons of low income, or for the clearance, replanning, reconstruction and rehabilitation of substandard and unsanitary areas, or for both such purposes (Article XVII, §1). A later section mandates that State loans or subsidies can only be made if the “...project is in conformity with a plan or undertaking for the clearance, replanning and reconstruction or rehabilitation of a substandard and unsanitary area or areas and for recreational and other facilities incidental or appurtenant thereto.” (Article XVIII, §6)

**Multiple dwelling and residence laws**

The Multiple Dwelling Law applies to all cities with a population of 400,000 or more (§3(1)). The law allows other cities, towns and villages to come within its provisions by adopting Articles 1, 2, 3, 4, 5, 10 and 11 and such sections or even parts of sections of the other articles that the local unit wants. (§3(2)). And such local law can be more restrictive.

The locality is charged with the issuance of permits and certificates of occupancy and with the enforcement (including inspection) of any violations of light and air requirements, fire protection and safety requirements and sanitation and health requirements. New York City can apply to the commissioner of housing and community renewal for State aid up to roughly 50% of money expended (Executive Law, §378-b).

The Multiple Residence Law was designed to extend the protective features of the Multiple Dwelling Law to multiple residences in cities under 400,000 and in all towns and villages throughout the State (§3(1)). Localities run the same gamut of mandates that are encountered under the Multiple Dwelling Law.

**Public Housing Law**

The expressed purpose of the Public Housing Law was to address substandard housing conditions existent in certain areas of cities, towns and villages recognizing “...that these conditions cannot be remedied by the ordinary operation of private enterprise...” (§2).

Article 4 of the Public Housing Law provides for State aid in the form of State loans or subsidies which may run to a municipal housing authority or a municipality itself. There are expressly stated conditions precedent to any State loans (§71) and State subsidies (§73). The effect is that the proposed project(s) must conform to standards of the State Commissioner of housing and community renewal if the locality (or authority) desires State aid.

**Public Building Law**

Local governments also come within the jurisdiction of portions of the Public Building Law.

If a municipal building is a “public building” (as defined in (§50(1)), the design must comply with the requirements of the Public Building Law (§52). For example, public buildings must be constructed to provide access by the physically handicapped (Article 4-A).

**New York State Constitution**

The State Constitution provides that the responsibility for the care and treatment of the mentally ill or defective and the protection of the mental health of the inhabitants of the State “...may be provided by state and local authorities and in such manner as the legislature may from time to time determine.” (Article 17, §4). The section also mandates that the head of the department of mental hygiene visit and inspect, or cause to be visited and inspected all mental health institutions either public or private.

**Mental Hygiene Law**

The State's policy, as stated in the Mental Hygiene Law, is that the “...state and local government shall share responsibility...and in providing these services, full use shall be made of community resources...” (§1.03).
The mandates consolidated in the Mental Hygiene Law consist of two types. First, there are State requirements that arise when a local unit seeks State aid, and, second, there are State requirements which must be met regardless of whether State aid is sought.

1. **State aid Mandates.** To be eligible for State aid pursuant to the Mental Hygiene Law, a local government must establish a local governmental unit (§11.05(a)). Each unit shall have a community mental health, mental retardation, and alcoholism services board (§11.05(b)). A number of broad duties of a local unit are expressed by statute (§11.13). For example, a unit must develop intermediate range plans and forecasts (§11.13(2)). A local unit may submit either a local services plan or unified services plan (§11.14). Both types must be submitted to the commissioner of Mental Hygiene for approval. However, with the Unified Services Plan there is joint planning with the Mental Hygiene Department (§11.19). Under both plans, a local unit can obtain State aid for net operating costs and/or for capital costs if the plan is approved (§11.15). For example, there will be no approval unless the plan indicates “...reasonable efforts to extend or improve local or unified services in each succeeding year...” (§11.15(c)).

The State aid formula for a local services plan is different from the State aid formula for a unified services plan. Under a local services plan, State aid is roughly 50% of approved net operating costs (if population is under 200,000 – 75% for first $100,000 of approved net operating costs) and roughly 33-1/3% of approved capital costs. Under a unified services plan State aid is roughly $10 per capita for the first 100,000 in population, then $5 per capita for the remaining population. If the costs of the plan exceed this amount, then the State contributes 85% to a certain point and then 65% (§11.23). There is no question that there is potential for more State aid under a unified services plan and also for more State influence over what goes into the plan. The State aid for either type is closed ended, i.e., within annual State appropriation.

The commissioner also may provide State aid of up to roughly 50% for acquisition, construction and operation of hostels for the mental disabled. Creation of local units are not required to qualify for this aid; however, the local government would be subject to regulations established by the commissioner (§11.33).

2. **Mandates not related to State aid.** One also finds requirements in the Mental Hygiene Law which will apply to local governments regardless of whether the locality seeks State aid. The mandates include:

1. Requirement of operating certificates in order to provide services; (§13.01(a)).
2. Regulations set by the commissioner (§13.03) for example, setting standards of quality and adequacy of facilities, equipment, personnel, services, records, and programs;
3. Prior State approval for construction of facilities for services which require an operating certificate (§13.23(b));
4. Rights of patients to minimum standards of quality of care (§15.03).
5. General provisions as to in-patient facilities, for example, regulations and forms for admission to hospitals, schools, alcoholism facilities (Article 29).
6. Hospitalization of mentally ill (Article 31);
7. Admission to schools (Article 33);
8. Admission to alcoholism facilities (Article 35);

**Department of Health**

The Department of Health administers most of the health related mandates from the State legislature. The Department also has rule-making powers, through which the department can impose cost increasing mandates of its own. The department regulations are established in 10 NYCRR Parts 1-67. The more far-reaching of the regulations, such as the State Sanitary Code, establishment of hospitals, public water supplies and the State Hospital Code clearly have the “force and effect of law” (Public Health Law §§229, 2801-c, 1102, 3, 2803).

**Department of Mental Hygiene**

The Department of Mental Hygiene administers the statutory mandates in the mental hygiene area.
Also, the commissioner of Mental Hygiene is empowered to adopt regulations necessary and proper to implement any matter under his jurisdiction (§9.01). The regulations have the force and effect of law (§13.21).

Topically, the regulations applicable to local governments are:

1. Admission and transfer of patients (14NYCRR Parts 15–17)
2. Institutional care and treatment (14NYCRR Parts 21–24)
3. Termination of in-patient care (14NYCRR Parts 36, 37)
4. Safety (14NYCRR Parts 36, 37)
5. Regulation and quality control (14NYCRR Parts 70–74)
6. Construction of facilities (14NYCRR Parts 77, 78)
7. Operation of facilities (14NYCRR Parts 81–87)
8. Community Mental Health Services (14NYCRR Parts 100–114)

As with the other State departments, these regulations serve a dual mandate purpose. Certain regulations serve to implement substantive statutory mandates of the State legislature, while other regulations provide additional requirements for local governments (i.e., the delegation to an administrative agency of what is termed a “quasi-legislative” function).

(e) MUNICIPAL EMPLOYEES

New York State Constitution

The State constitution expressly empowers the State legislature to:

"...regulate and fix the wages or salaries and the hours of work or labor, and make provisions for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state or for any county, city, town, village or other civil division thereof." (Article XIII, §14)

The New York Court of Appeals (the highest court in the State) has construed the said Constitutional pro-

vision to be merely permissive. Therefore, the section does not require the State legislature to mandate in the area.160

The Constitution goes on to state that:

"No laborer, workman or mechanic, in the employ of a contractor or subcontractor engaged in the performance of any public work, shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency; nor shall he be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected, or used." (Article I, §17).

This provision is clearly a "constitutional mandate" which quite obviously could result in some local costs throughout the State.

Another Constitutional provision applicable to municipal employees concerns workmen’s compensation. The Constitution states that it does not limit the State legislature’s power to enact workmen’s compensation laws (Article I, §18). The State legislature is, therefore, free to either require workmen’s compensation for municipal employees or not.

On the question of retirement systems, the Constitution states that:

"After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." (Article V, §7).

The professed purpose of this provision was to preserve integrity of pension systems of the State and civil divisions. Prior to this section, members had no vested interest until retirement status was attained.161

The Constitution further provides that:

"Subject to the limitations on indebtedness and taxation, nothing in this constitution contained shall prevent the legislature from...[providing] for the increase in the amount of pensions of any member of a retirement system of the state, or of a subdivision of the state; or for an increase in the amount of pensions of any widow of a retired member of a teachers’ retirement system of the state or of a subdivision of the state to whom
payable as beneficiary under an optional settlement in connection with the pension of such member." (Article VII, § 8)

The local governments article of the State Constitution (Article IX) also makes it clear that the constitutional home rule provisions:

"except as expressly provided...shall [not] restrict or impair any power of the legislature in relation to: (1)...any retirement system pertaining to [a] public school system." (Article IX, § 3)

The present Constitution could not be much clearer in providing that the State legislature is largely unrestricted in its power to mandate increases in local expenditures for pension and retirement system benefits. The Constitution, however, does not require the State legislature to so mandate.

**Labor Law**

There are mandatory Labor Law provisions that increase costs of local governments. The primary areas are presented in the following:

1. **Public Work.** Article 8 of the Labor Law implements the New York State Constitution, Article I, § 17. The State mandates that all public benefit corporations and municipal corporations shall require only an eight-hour work day and forty-hour work week, except "...in cases of extraordinary emergency including fire, flood or danger to life or property." (§ 220 (2)). Also, the State requires the payment of the prevailing rate of wages on public work contracts for workmen, laborers and mechanics (§ 220 (3)). Apprentices may be paid a lower rate if registered with the industrial commissioner (§ 220 (3)). In addition, the State also requires the payment of prevailing wages and supplements to employees of a local government who are in an ungraded classification.162

2. **Building Service Employees.** The State also mandates prevailing wages and supplements to building service employees (Article 9). The contract must be in excess of $2,500 for these mandates to attach. Article 9 also applies to employees engaged in the collection of garbage or refuse or the transportation of office furniture or equipment (with other service employee unions currently seeking coverage).163

3. **Employment of Minors.** Employers must adhere to the State standards for the employment of minors (Article 4). Certain employments are statutorily authorized (§§ 130, 131, 132) and certain other jobs are expressly prohibited (§ 133). Employment certificates may be required with accompanying duties for the employer (§ 135).

4. **General Provisions.** The Labor Law is also the source of various miscellaneous mandates which may affect local governments. For example, the Commissioner is responsible for the inspection of boilers throughout the State. Boilers must meet the requirements of the Labor Law (§ 204) and any applicable rules of the Board of Standards and Appeals. Mandates are provided concerning the use of explosives (except New York City) setting standards, requiring licenses, certificates and the like (Article 16). Political subdivisions are empowered to establish an apprentice training program but only if approved by the Department of Education and registered and approved pursuant to §§ 814 and 815 of the Labor Law.

A few of the Labor Law provisions serve to illustrate well the mechanics of mandate proliferation. As this report has already indicated, certain employees (garbage or refuse and transportation of office furniture or equipment) have been able to obtain Article 9 prevailing wage coverage, with more employees seeking Article 9 "protection."

In a related vein is the question of unemployment insurance. At present, local governments are exempt from unemployment insurance. However, there were bills introduced in the 1974 session to make unemployment coverage mandatory on teachers.164

A bill designed to implement the State Plan submitted under the Federal Occupational Safety and Health Act (OSIHA) was introduced in the 1974 session. As to public employees, the bill provided for a study and recommendations for legislation.165 The bill may be introduced with amendments in the 1975 Legislature, and if public employees become covered, then local governments will have to comply with the applicable safety standards and could incur additional expenditures.
These are merely a few examples, but they are an accurate depiction of how mandates can generate momentum.

Civil Service Law

The State mandates the entire civil service system for the political subdivisions of the State (Title B). In order to accurately state the fiscal impact on municipalities, one would have to attempt a sophisticated cost analysis comparing the present dollar outlays by municipalities with hypothetical dollar outlays, assuming the system were not mandated.

Aspects of the Civil Service Law certainly do increase costs. For example, the Taylor Law (Article 15) provides substantial substantive rights for government employees which by their nature must introduce costs into the system of municipality/employee contracting. However, many reasonably contend that the rights established are so fundamental and necessary that any cost is more than offset by equity considerations.

Because of the foregoing considerations, civil service is identified in this report as a State mandate with crucial fiscal implications, the full impact of which is beyond the scope of this report.

Pension and Retirement Laws

There are three statewide pension systems and five New York City retirement systems. The basic statutory provisions governing the statewide systems are found in the Retirement and Social Security Law and the Education Law. The New York City provisions are found in the New York City Administrative Code, the Retirement and Social Security Law and in other consolidated and unconsolidated laws.

(1) New York State Employees' Retirement System. State law provides that a municipality may elect to participate in the State retirement system (Retirement and Social Security Law, §30). The election is exercised via adoption of a local resolution along with any required local approval. Also, if 60% of the members of any local pension system petition to become members of the State system, their participation may be approved by the aforementioned resolution procedure (Retirement and Social Security Law, §30).

Once a municipality exercises such an election it cannot terminate its participation in the plan.

(2) New York State Policemen's and Firemen's Retirement System. State law mandates that every municipality (exclusive of those maintaining a local pension system for all its policemen and firemen) employing policemen and firemen must participate in the policemen's and firemen's retirement system, and such participation shall be irrevocable (Retirement and Social Security Law, §330).

A municipality maintaining a local pension system for its policemen and firemen may elect to participate in the statewide system upon the petition of 60% of the members of the local pension system. The mechanics of the municipality’s election is by a duly approved resolution of the local legislative body.

Under both the Employees' and Policemen’s and Firemen’s systems, employer contributions are mandated in terms of rates calculated (under the relevant provisions of the Retirement and Social Security Law) by the State actuary. Therefore, the portion of the local salaries devoted to pensions is mandated by the State. If the total salary figure rises (thereby taking the absolute pension figure up with it) that is the result of the local bargaining process.

(3) New York State Teachers' Retirement System. This statewide system is available to the teachers of all school districts in the State provided a teacher meets the State standards (Education Law, §503) and files with the retirement board an application for membership.

State law provides that “...general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of [Article 11 of the Education Law] shall...be vested in a retirement board.” (Retirement and Social Security Law, §504(1)). Various actuarial determinations and appraisals are provided by law, and from such determinations the retirement board sets the rates for employees contributions (Retirement and Social Security Law, §521).

(4) New York City Retirement Systems. The New York City retirement systems are independent of the State Pension System. Therefore, State-
mandated pension benefit increases for the State systems do not add costs to New York City. However, "[i]n New York City, the pension and retirement benefits agreed upon between the city and its employees are subject to approval or further action by the State Legislature." Therefore, a State mandate can come in after, and on top of, the figures derived from the local bargaining process.

**Unconsolidated Laws**

Title 3 of the Unconsolidated Laws is entitled "Civil Service." There are a number of chapters in the Title addressing municipal employees and exerting mandate ramifications. The following lists the subject areas of mandate.

1. Requirements for municipal employers of transit employees (Ch. 5).

2. Concerning removal of policemen serving in the competitive class of civil service in the several cities, counties, towns and villages of the State (Ch. 9).

3. Town police pension fund (permissive in the first instance and then mandates) (Ch. 10).

4. Force of state; division into platoons; restrictions on tours of duty; vacations; maximum eight hours workday; forty hours workweek (unless emergency). Applicable to first and second class cities and counties, cities, towns and villages with a force of at least four members. Minimum vacation of fourteen days and required eight paid holidays (or compensatory time off or overtime) for policemen (Ch. 11).

5. Firemen in certain cities; one day off in seven in addition to platoon tours off duty etc.; vacations; emergency periods; eight paid holidays; maximum hours of certain municipal and fire district firemen (Ch. 12).

**Other State Laws**

The aforementioned laws cover the more prominent mandates relating to costs of municipal employees. There are other locations of State legislative mandates, be it in the statutory laws, or court decisions. For example, some provisions of the Public Officer's Law apply to local governments, possibly resulting in increased local costs (i.e., increased from what would be spent assuming there was no State mandate). Every public officer who is not allowed any compensation for his services shall be paid his actual expenses necessarily incurred in the discharge of his official duties (Public Officers Law, §64). Another illustration is New York's Freedom of Information Law which could very well raise some administration costs more than the offsetting fees (Public Officers Law, Article 6).

The Workmen's Compensation Law and the State Volunteer Firemen's Benefit Law mandate local government coverage of municipal employees and volunteer firemen, respectively. The coverage is a local charge which is passed on to the local taxpayers. The benefit rates under both laws were increased by the State Legislature in the 1974 session (L. of 1974, c. 583; L. of 1974, c. 584).

**Department of Labor**

The Board of Standards and Appeals within the Labor Department is charged with the duty to protect the health and safety of employees and may make rules to carry into effect this duty (§200(1)). Regulations of the Department are established in 1 NYCRR Parts 1-520. Most of the Department regulations apply only to the private sector, but as costs in private industry rise to meet Department standards, costs to local government, whenever it contracts out, also rise.

(1) Public work. "The Labor Department administers Article 8 for work performed by or on behalf of the State, a county or village, a public benefit corporation, or other civil divisions of the State, except a city. In cities, the Article is administered by the Comptroller or other analogous officer of the city."167

(2) Building service employees. The Labor Department also administers the Labor Law outside of cities, and in cities it is administered by the Comptroller or other analogous officer.

**Department of Civil Service**

The Civil Service Department has been delegated a rule-making function to be exercised through rules and regulations of the State Civil Service Commission (§6) and of the president of the State Civil Service Commission (§7). There are also other sections of the Civil Service Law which delegate specific rule-making powers.
Other Administrative Agencies

Two other administrative agencies worthy of at least passing reference on the mandate issue are the Public Employee Relations Board (PERB) and the Workmen’s Compensation Board.

PERB exists within the Civil Service Department to aid in the administration of the Taylor Law (Civil Service Law, §205). As with most administrative agencies, the Board is primarily administering legislative or judicial mandates. However, the delegations to the Board have not been restricted to mere administration and procedure; the Board has also been delegated the power to make some very substantive determinations. For example, the Board determines the representation status as an “employee organization.” (Civil Service Law, §207). Also, if certain improper practice charges are sustained (e.g., discriminatory discharges) the potential of back pay awards exists. There are also other types of monetary awards possible. At this time there have been very few such awards.168

The Workmen’s Compensation Board is an administrative agency within the Department of Labor (Workmen’s Compensation Law, §140). The Board exercises a quasi-judicial function in passing upon compensation claims. The Board’s mandate role is, therefore, minimal as it merely administers compensation standards set by the State legislature and ultimately construed by the courts.

(f) PUBLIC SAFETY

New York State Constitution

The State Constitution makes the defense and protection of the State an obligation of all persons of the State (Article XII, §1). The State legislature is required to discharge this obligation. The provisions, however, do not require nor restrict the State’s ability to mandate local programs and/or expenditures on its municipalities.

Military Law

Most of the State’s implementing legislation for the above constitutional charge is located in the Military Law. Local governments are empowered to call for the use of the organized militia to quell a local disorder (Article I, §6(2)). The local govern-

ment must then make statutorily required contributions (roughly 50%) to cover the costs of the call-up (Article X, §212). The State’s Unconsolidated Laws contain the New York State Defense Emergency Act. Under the act all counties (except within New York City) and cities are required to have and implement a civil defense plan (§9122) with various specific requirements applicable as well (§9123). The financing of a civil defense program at the local level is a local charge (§9134). The State also provides off-setting State aid to cities and counties (§9125). Federal civil defense financial and property assistance programs are also available to municipalities169 as are other federal monies.170

Unconsolidated Laws

The bulk of the enabling provisions and mandates applicable to local policemen and firemen are contained in the body of municipal laws or the civil service laws. However, there are some “live” provisions found in the Unconsolidated Laws. For example, benefits to police officers for injuries or death occurring outside their municipalities are required (Unconsolidated Laws, Ch. 9A). There is a “Special Provisions for Village Police Departments Law” which was transferred from the Village Law to the Unconsolidated Laws, Ch. 9B. There are also provisions relating to Town Police Departments in counties of 700,000 to 1,000,000 population (Unconsolidated Laws, Ch. 11) as well as provisions for opting into joint fire districts, garbage disposal plans,
town sewers, joint water works and the like (Unconsolidated Laws, Title 16, Ch. 13, 14, 15, 17, 19). These latter provisions are permissive in the first instance.

Division of Military and Naval Affairs

The State legislature has provided for a Division of Military and Naval Affairs within the Executive Department (Executive Law, §190). The Division has been designated as the New York State Disaster Coordination Agency, and thereby is responsible for the formulation of a plan for coordination of available assistance in the event of natural or man-made disasters (Executive Law, §10). The Division's plan has a definite impact on local expenditures in that it will dictate how much cost local governments must absorb.

As earlier indicated, the State has mandated local civil defense programs. However, Division regulations also have their impact as to local requirements. The Division has stated that "...State military aid can be rendered only when available resources at local and county levels have been exhausted..." (DMNA Pamphlet 500-1 dated 23 November 1973). The primary responsibility for dealing with domestic emergencies is stated to rest with the civil authority at the local level.

Division of Veteran's Affairs

Each county must have a county veteran's service agency (Executive Law, §357). The cost of maintenance and operation of the agency is a county charge (Executive Law, §359). However, counties may receive State aid with approval of the Veteran's Affairs Commission (Executive Law, §359). The establishment of city veteran's service agencies is permissive (Executive Law, §357(2)), but they still may receive State aid under §359. The State aid is roughly 50% of the local expenditures for maintenance and operation with ceilings dependent on county or city population.\textsuperscript{171}

(g) SOCIAL SERVICES

New York State Constitution

The State Constitution requires:

"The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its sub-divisions, and in such manner and by such means, as the legislature may from time to time determine." (Article XVII, §1)

As one can see, this section of the Constitution does not prohibit nor require State-mandated expenses for local government. However, the Constitution goes on to require the continuance of the State Board of Social Welfare which is mandated to "...visit and inspect, or cause to be visited and inspected by members of its staff, all public and private [charitable institutions]..." Such inspections would be close to meaningless if the Board could not set minimum standards and execute some methods of enforcement. The Constitution gives the Board the quasi-legislative power to make rules and regulations in respect to the social services function. These rules and regulations, as applicable to inspections of local charitable institutions, could be classed as constitutionally directed mandates.

Social Services Law

The Social Services Law contains a number of State mandates which are encountered primarily at the county level of government. The following divisions isolate the main areas of mandate.

1. Local Public Welfare Organization. Each county public welfare district is responsible for assistance and care of those residing or found in their territory (§62 (1)). Each county district must appoint a citizens' advisory committee(s) to exercise and perform such functions, powers and duties as the regulations of the department may require (§78).

There are various supervisory-type mandates as to records (§80), reports (§81), funds and appropriations (§§88, 92, 93). County districts must cooperate and participate in any department research and demonstration projects when requested (§113).

2. Aid to Dependent Children. This program provides allowances (§131-a) for qualifying "children" (§349). Supervision by the department is mandated (§350 (4)) to include things such as visits to the home. Emergency assistance is required (§350-j) and public works projects must be established or provided for by every county district for parents and other eligible relatives receiving aid to
dependent children (§350-k). Expenditures for allowances and administrative expenses are a county charge but “...if approved by the Department...” the county can get roughly 50% reimbursement from the State (closed-ended) (§153 et. al.).

3. Supplemental Security Income. This is a Federal program administered by the Department of Social Services. New York State has chosen to supplement this Federal grant (§207). The State funding provides payments (Article 5, Title 6) and services (Article 5, Title 7) for eligible aged, blind and disabled persons. State law defines eligibility (§§ 208, 209) and sets minimum State supplementation (§210). Reimbursement by the State may be roughly one-half the payments made and cost of administration (§§ 212, 258).

4. Home Relief. This is a general assistance program providing cash assistance for families unable to meet the Aid to Dependent Children program standards and to individuals ineligible for the Federal Supplemental Security Income Program. The State sets eligibility requirements (§§ 157, 158) as well as the schedule of grants and allowances (§§ 131 et. al.). And if there is reasonable ground to believe that alcohol narcotic addiction or drugs is responsible, the State mandates the use of a rehabilitation program with roughly 50% State reimbursement (closed-ended) (§§ 158-a, 153). Counties must also provide for the establishment of public works projects for work relief (§ 164(2)).

5. Veteran’s Assistance. This program is voluntary in the first instance (§173). However, the availability of State aid (§178) may make it difficult for a county to resist pressure from veteran’s organizations and citizens for a county election to administer and fund veteran’s assistance. Apparently, only a “...very few social service districts in the State [provide] general assistance for veterans...”

6. Medicaid. This is a health care program directed toward low income persons (Article 5, Title 11). As with the other social services programs, eligibility is defined (probably the most important “mandate”) (§366) and responsibility rests with each public welfare district (§365). Medical plans are required (§365-b (1)) and a medical director (physician) must be appointed (§365-b (2)). Personal interviews are required as are investigations “...if necessary...” (§366-a). Many department standards are set which must be followed (§364). The concept of need differs from the cash assistance concept found in the other programs. While income and resources (the standard measure in the other programs) is certainly an element in the qualification scheme, it is not the only one. Relation of income and resources to one’s level of personal expenditures for needed medical care is also evaluated. And, lastly, there is a determination by a health professional as to whether the person “needs” medical care. State reimbursement is roughly 50% of the local costs and, as with most of the other programs, Federal aid is deducted out first and the funding is closed-ended (§368-a).

7. General Provisions. There are also a number of miscellaneous provisions of the Social Services Law which mandate local costs, if not programs. Family Planning Services are mandated as a county charge (§131-a). Retroactive Social Security benefit increases and certain Federal railroad retirement monies are not to be counted in determining need (§131-f), and other Federal money is exempted, as well (§142). Whenever there is immediate need, temporary assistance or care is mandated pending investigation (§133). The State requires supervision of persons granted assistance and such persons “...shall be visited as frequently as is provided by the regulations of the department...” (§134). If a person moved into New York State within one year of his application for home relief or aid to dependent children, then it is presumed the move was to secure public assistance, and the person will not qualify (§139-a). The “mandate” for this latter provision is the time period chosen by the State legislature. The shorter the period the more cost to county government. Public institutional care is permissive in the first instance (§193), but once established certain State mandates will apply (§194). The same principles apply for community centers and services for senior citizens (Article 5, Title 12).
There are also social services mandates for the care and protection of children (Article 6). For example, permits are required to run day-care centers for children. Day care is permissive, but available State reimbursement pressures local governments to provide the service (§410-b). Counties may establish "detention facilities," but if they do, they must follow rules of the Board of Social Welfare and regulations of the Division for Youth (§408-a). Each local department of social services must establish a child-protection service (§411). The service must investigate all reports of child abuse or maltreatment (§423). Regulations of the Commissioner must be followed (§427). State reimbursement money (roughly 50%) is available (closed-ended) (§423).

**Department of Social Services**

The Social Services Department administers the myriad of transfer payments mandated by the Social Services Law. The Department is empowered, through the Commissioner, to determine policies and principles upon which public assistance and care shall be provided by local governmental units (§17 (a)). The Commissioner has general supervision of local welfare authorities, and he is required to enforce the Social Services Law and to establish regulations for local units to follow (§34). The Department can veto local rules and regulations, and it can withhold or deny State reimbursement to any social services district in the event of local failure to comply with law, rules or regulations (§20).

There are also other specific delegations of rules and regulation-making powers. For example, a 1973 change provided that the Commissioner shall provide by regulation for methods of determining eligibility to be utilized by all social services officials (§132 (3)). There are also specific delegations of rule and regulation powers in relation to payments to the aged, blind and disabled (§257), aid to dependent children (§355), Medicaid (§363-a) and so on. Regulations are established in 18 NYCRR, Parts 1-1000.

Regulations can set minimum standards which can be cost-inducing, depending on the local situation. However, regulations often go even further. For example, the Emergency Assistance to Families with Children program, which provides cash assistance to families with children in emergency situations, is mandated by the Department of Social Services.

As is the usual case, Department regulations have the force and effect of law (§34 (3) (e)). One should carefully note that the "administrative mandates" are an important portion of the total State mandate matrix.

**Board of Social Welfare**

The State Constitution mandates the continuation of the Board of Social Welfare (Article XVII, §2). The Board is a division of the Executive Department (Executive Law §730). The Board has constitutionally (Article XVII, §2) and statutorily (Social Services Law §6; Executive Law §730) delegated rule and regulation-making powers. The Board's mandates "...are directed to agencies or institutions [public and private] which care for children or adults away from their own homes." They include child-caring institutions, such as group homes for children, detention facilities, group homes operated by public child-caring agencies, and various adult homes. Regulations are established in 18 NYCRR, Parts 1-225.

(h) **TAXATION**

**New York State Constitution**

The main taxing categories of constitutional significance and relevant to mandates are:

1. **Taxing powers delegated by the State.** The State Constitution vests the taxing power for public purposes in the State legislature (Article III, §1). The Constitution does not mandate or prohibit the delegation of any particular taxing powers to local governments. In other words, the fact that local governments have generally not been delegated income-taxing powers is a State "legislative mandate" and not a Constitutional one.

2. **Tax and debt limitations.** The State Constitution imposes limitations upon a county, city, town, village or school district's ability to impose taxes and incur debt (Article VIII). Because of their clear fiscal impact, these provisions can be considered constitutional mandates. The efficacy and desirability of
these limitations have been a continuing subject for
debate. A recent Court of Appeals decision (Hurd v.
City of Buffalo) has made this issue of even more
crucial and timely concern. The "Bergan commis-
sion" report is the most recent statement in the area.
The subject of tax and debt limits is inextricably
enmeshed with the entire subject of State mandates.
However, tax and debt limitations and how they are
considered are so fundamental to our State and local
fiscal relations that, if addressed, they necessitate
their own study.

(3) Exemptions. The State Constitution provides
that "[e]xemptions from taxation may be granted
only by general laws." (Article XVI, §1). The only
exemptions given constitutional status (and, there-
fore, "constitutional mandates") concern real and
personal property used exclusively for religious,
educational or charitable purposes as defined by law
(Article XVI, §1).

Tax Law and Real Property Tax Law

The Tax Law together with the Real Property
Tax Law combines the primary State taxing pro-
visions applicable to the political subdivisions of
the State. The following will highlight the major issues
that relate to this study.

(1) Taxing powers delegated. Enabling legislation
giving cities, counties, villages and school districts
various taxing powers are found in the Tax Law, Real
Property Tax Law and the body of "municipal laws." Any
absence of a State delegation (for example, of
income taxing power), for the purposes of this report,
is identified as a State "mandate."

(2) Exemptions. Tax exemptions, because of
their negative fiscal implications (i.e., erosion of
the local tax base) are relevant to any State mandate in-
quiry. The Real Property Tax Law states that all real
property within the State shall be subject to real
property taxation, special ad valorem levies and
special assessments unless exempt therefrom by law
(§300). There are numerous real property tax exemp-
tions located in Article 4 of the Real Property Tax
Law and sprinkled throughout other laws of the
State, such as the Private Housing Finance Law, Pub-
lic Housing Law, Public Authorities Law and the Un-
consolidated Laws.

There are also exemptions for other types of
taxes, some of which are located in the Tax Law and
some of which are found in other State statutes. The
entire question of the eroding local tax base is evalu-
atated and discussed in another portion of the overall
Commission report.

State Board of Equalization and Assessment

The primary areas of local expenditures man-
dated by the State which are administered by the
State Board are:

(1) Tax mapping. Counties are required to pre-
pare and maintain tax maps for the use of cities and
towns by 1979 (Real Property Tax Law Article
15-A). The cost of preparation may be either levied
on the cities and towns in accordance with their cost
respectively or levied ad valorem upon all taxable real
property in the county (Real Property Tax Law
§1534(3)). Even so there may be some county
expenses. The expense of maintaining such maps
is a county charge. Counties receive State assistance
of $1 per parcel from the State for the preparation in
the first instance.

(2) Tax Service Agency. The State also requires
the creation of an independent real property tax
service agency "[i]n each county that does not assess
real property for purposes of taxation, except a
county wholly within a city..." (Real Property Tax
Law §1530 (1)). The director of the agency is re-
quired to undertake certain training, which is a coun-
ty charge (Real Property Tax Law §1530(3)(b)).

(3) Local Training. Assessors are also required to
undertake various training part of which is a county
charge and part of which is a charge to the assessor's
local government. The Board is empowered to call
conferences for assessors, charges for which may be
paid by the locality (Real Property Tax Law, §210).

Naturally, the tax laws also provide numerous
standards and uniform procedures for assessment,
administration and enforcement. As with any State
standard, local fiscal ramifications can result.
(i) TRANSPORTATION

Highway Law

The Highway Law consolidates the main highway provisions applicable to counties and towns. The following identifies the primary State mandates for counties and towns, respectively.

(1) Counties. All counties must have appointed a county superintendent of highways (§ 100). The State legislature, over time, has provided for a number of general duties of county superintendents to include:

- being subject to the rules and regulations of the Department of Transportation as well as to the supervision of the Commissioner of Transportation;
- general charge and supervision of the construction, repair and maintenance of all county roads, town highways and bridges within the county;
- visitation and inspection of county roads at least once per year and whenever directed by the Department of Transportation;
- prepare and submit annually a statement of the amount needed to construct, improve and maintain such county roads;
- establish grades whenever requested by a town superintendent;
- approve plans and specifications etc., as to bridges and town highways;
- report annually to the Department of Transportation as to highways and bridges in the county and submit additional reports when the Department of Transportation requires;
- whenever the Department of Transportation calls a public meeting for a county, he shall give requisite notice to towns;
- if a temporary route is used during construction, he must provide a sufficient number of detour signs;
- accurately ascertain corners of established boundaries of counties, towns, cities and villages;
- certain cutting of noxious weeds, briers and brush;
- file with the clerk of the county governing body an itemized inventory;
- prosecute for malicious injury to shade trees;
- provide for the construction of sidewalks where he deems necessary, but only if city or village consent (§ 102);

There are also mandates restricting the autonomy of the various county governing bodies. For instance, State aid provided to counties (§ 112) must be placed in the county road fund (§ 112(4)), and the statute then goes on to mandate just how county road fund money can be used (§ 114). In addition to these requirements a county must prepare a map of any proposed county road system, subject to the approval of the commissioner of Transportation (any amendments are also subject to approval) (§ 115). Before any county road funds are spent or obligated in any one year, there must be detailed information approved by the county governing body and by the commissioner of Transportation (§ 116). Any construction and/or reconstruction must conform to the requirements of the Commissioner of Transportation (§ 117). If the commissioner so requests, a county must acquire lands for a right of way or other purposes (§ 116(4)).

State law requires the commissioner of Transportation to withhold approval of any plan or outline if he believes there is not or will not be proper maintenance. Maintenance is a county responsibility (with the possibility of apportionment with towns (§§ 129, 194, 195).

As the above indicates, counties wishing to use available State money, receive State supervision as a bonus. There are also other statutes containing requirements as to county roads and bridges (§ 131-a-k), requirements as to machinery tools, equipment, implements, materials and supplies (§ 133), and the State requirement mandates that the counties are liable for injuries caused by defective highways and bridges (§ 139).

(2) Towns. As stated in the "municipal laws" portions of this report, there must be a town superintendent of highways. Over time the State legislature has provided general duties of town superintendents. Among these are:

- he is subject to the rules and regulations of the Department of Transportation;
2. the care and supervision of town highways and bridges and boardwalks;
3. inspections;
4. construction and maintenance of sluices and culverts to be kept open;
5. requirements as to loose stones, briers, brush etc.;
6. attendance of certain public meetings called by the Department of Transportation;
7. erection and upkeep of town highway boundaries as required by the county superintendent;
8. measure town highways whenever the Department of Transportation directs and make stated reports;
9. bring certain actions in the name of the town;
10. if a highway is closed for construction, the erection and maintenance of a sufficient number of detour signs;
11. collect all penalties prescribed by the Highway Law;
12. make annual reports to the county superintendent according to the requirements of the Department of Transportation;
13. all duties heretofore exercised by highway commissioners;
14. maintenance of all sidewalks in the town which were constructed by the State next to State highways or by the county next to county roads;

The Highway Law goes on to mandate requirements for towns generally, such as, requirements as to machinery, tools, equipment and implements (§142), the custody of shade trees (§153), the erection of guide boards (§154) and so on.

Towns are empowered to construct and repair town highways, but they must satisfy the requirements of the Highway Law. A county superintendent’s survey is mandated for laying out town highways and it is a town charge (§170). If a proposed improvement is carried into effect after application by any person or corporation assessable for highway taxes, the costs and expenses are to be defrayed by the town (§173).\(^3\)

In instances where officers of different towns (or cities or villages with the powers of a town supervisor) disagree as to laying out of new highways (§184), improvements (§185), apportionment of joint expenses (§187) and so on, the State legislature has provided for the final determination to come from the courts (§§184, 185) or county superintendent(s) (§187).

Even when disputes are not present, the county superintendent has a substantial supervisory role over actions by its towns (§§193, 194, 195). For example, construction or improvement of town highways by a county and town at joint expense is clearly authorized (§194). However, all plans and specifications are subject to the control of the county governing body, and the county also determines the proportions of the costs to be borne by the county and town(s) (§195(5)).

Article VIII-A of the Highway Law enables towns to improve, repair or reconstruct any portions of its town highway system and receive certain State aid (closed-ended) expressly therefore, until April 1, 1977. This opportunity comes with a set of mandates. The work is under the immediate control and direct supervision of town superintendents but subject to inspection by the county superintendent and the commissioner of the Department of Transportation (§225).

Bridges are primarily a town charge (§232) unless the county assumes some of the costs (§233).

Article X of the Highway Law governs “finances.” The State has set minimum and maximum local levies for various highway purposes (§271). The State aid formula provided in the Highway Law provides for matching State funds or less depending on the size of the local levy (§§279, 280).

**Transportation Law**

The Transportation Law was added as Book 61A of the Consolidated Laws in 1967. The following will cover the main areas of mandates now located in the Transportation Law.

1. **Supervision of certain public transportation.** The Transportation Law transferred the responsibilities of the Public Service Commission with respect to regulation of transportation to the Department of Transportation. Some of this regulatory role applies
to services provided by local governments and, therefore, comes within this mandate study.

Every municipal corporation is expressly given the right to appear as a party before the Commissioner of Transportation or before any court in any action or proceeding involving rates, service or other matters affecting the municipal corporation or any of its residents (§189).

(2) Mass transportation. State aid of up to 15% of the project cost is available to certain municipal projects (with the potential for more State contribution). The municipal project must be undertaken in accordance with the provisions of any federal grant or project approval received from the Federal Urban Mass Transportation Administration or the Federal Highway Administration (§300).

(3) Implementation of Rail Preservation Bond Act of 1974. A municipality may submit an application for State assistance toward the cost of any municipal rail preservation project which is eligible for State assistance pursuant to State requirements (§232). The commissioner reviews project applications and may approve, disapprove or recommend modifications. The State may finance the total cost or “...such lesser amount as may be set forth in the appropriation or as may be established by the commissioner pursuant to contract (§235(3)).”

(4) Statewide mass transportation operating assistance program. This State legislation was enacted for the “...purpose of making payments toward the operating expenses of public transportation systems.” (§18-a).

The five major transportation authorities (MTA, CDTA, RGRTA, CNYRTA, and NFTA) may apply for operating assistance payments up to the amounts specified in the appropriation. The counties served by the authorities must match the State payments in accordance with specified percentages.184

Other transportation authorities or municipalities may apply for assistance payments according to a State formula and the cities or counties served by the transportation system must likewise match State payments (§18-a(2)(a)).

Vehicle and Traffic Law

The Vehicle and Traffic Law is not a main source of mandates for local governments. The following lists the mandates that may have an adverse fiscal impact on local governments.

(1) Minimum Statewide standards. The regulations of traffic by the State Department of Transportation is extensive, reaching into county roads and town highways for many purposes (Article 37). The Department of Transportation adopts a uniform system and manual of traffic control devices which local governments (except New York City) must follow (Article 44).

The Department establishes extensive standards for all types of vehicles (Article 9, 10, 12, etc.), and mandates various duties of peace officers (§§423(2), 424(1), Title VI et al.).

(2) County Traffic Safety Board. Counties outside of New York City may establish a county traffic safety board at county option. However, once established a few mandates become applicable (§1675).

Other State laws

Two other consolidated laws worthy of at least passing consideration are the Navigation Law and the Rapid Transit Law.

(1) Navigation Law. Each county, city, town or village enforcing the provisions of the Navigation Law is entitled to State aid. The maximum entitlement is one-half of authorized expenditures, all within State appropriations (i.e., closed ended).

While these costs are not State-mandated, the fact that local governments are empowered to enforce the standards together with the lure of partial State reimbursement may be "coercive" enough to justify note in this study.

(2) Rapid Transit Law. The Rapid Transit Law is applicable to New York City alone. The State mandates a city Board of Transportation which must exercise a number of state-defined duties. (§10).

(3) Railroad Law. The primary State mandate found in the Railroad Law concerns the alteration of existing railroad crossings.

If a municipality petitions for an alteration or change in an existing railroad grade crossing or struc-
ture, the municipality may receive full or partial reimbursement from the State (Railroad Law, §§91; Transportation Law, Article 10).

The Commissioner of Transportation, however, is empowered on his own motion "...to institute proceedings to determine whether the public interest requires an alteration in an existing railroad grade crossing or a change in any existing structure above or below grade." Assuming a change is made, the division of expenses is 70% State, 15% municipal corporation and 15% Railroad corporation (Railroad Law, §§91, 95).

Unconsolidated Laws

Title 10, Chapter 2 of the Unconsolidated Laws provides that county roads (as defined in the Highway Law) are exempt from the jurisdiction of the highway officers of the towns, villages and cities (there are exceptions, as the local units can "police" the roads, etc.). The expense of construction and maintenance is a county charge.

The Transportation Capital Facilities Development Act of 1967 provides for the availability of State money for municipal projects that have "...been approved by the commissioner as part of or consistent with a statewide comprehensive master plan for transportation...or other recognized long range regional transportation plan...or if neither of the above exists sound transportation policy (L. of 1967, c. 717, §3). The statute provides other local requirements and delegates to the commissioner the power to prescribe rules and regulations to effectuate the act. Local governments may receive State contributions of roughly 75% of the project cost (L. of 1967, c. 717, §5(b)).

The Mass Transportation, Airport and Aviation Capital Facilities and Equipment Act of 1968 provides for disbursement of the same State money as the preceding act addressed in this report. All projects are subject to approval of the Commissioner of Transportation in "...his sole and absolute discretion." (L. of 1968, c. 628, amended Laws of 1968, c. 629). Clearly, the possibility for extensive "State mandating" is broad. Again, local governments may receive State contributions of roughly 75% of the cost of the local design (L. of 1968, c. 628, 629, §3(4)(b)).

Department of Transportation

Regulations of the Department of Transportation are established in 17 NYCRR Parts 1-900. The bulk of the provisions apply to Highways and Uniform Traffic Control Devices. Statutory authority is found primarily in the Transportation Law, Highway Law and Vehicle and Traffic Law.

(j) UTILITIES

New York State Constitution

The State Constitution does not address the public utility function and restrict nor require State mandated local expenditures in the area.

Public Service Law

The State has consolidated its major provisions relating to gas, electricity, steam, water and the telephone and telegraph in the Public Service Law. (Articles 4-8).

For the majority of local governments the requirements of the Public Service Law for the delivery of the said services do not mandate gas and electricity expenditures and/or programs. These are the local governments that do not supply gas and electricity.

The municipalities which themselves supply gas or electricity are subject to the Public Service Law requirements. And the same applies for the other services above stated.

Public Service Commission

The Public Service Commission exists within the Department of Public Service with broad powers "...to enable it to carry out the purposes of [The Public Service Law]..." (Public Service Law, §4(1)).

An order of the commission remains in force "...either for a period which may be designated therein or until changed or abrogated by the commission..." (§23(1)).

Regarding the municipalities within the bailiwick of the Public Service Commission, the commission must approve the rates charged by certain of the municipalities for the services and commission regulations and orders may require the rendering of safe and adequate services.
(k) MISCELLANEOUS

The following makes reference to some State mandates that do not easily fit into the above functional areas.

(1) Alcoholic Beverage Control Act. State law mandates local alcoholic beverage control boards at the county level (Alcoholic Beverage Control Act, §30, N.Y.C. §34). While board members are nonsalaried they are allowed expenses and are required by law to maintain an office (§38).

Local boards are to make recommendations to the State Liquor Authority on licensing. The boards are required to examine applicants for, or holders of, licenses to sell alcoholic beverages at retail, their books and records and hear testimony and take proof (§43).

(2) Condemnation Law. The Condemnation Law consolidates State law on condemnation for a public use. Through this law the State legislature has control over how condemnation proceedings are to be executed and, therefore, has control over the allocation of costs that spin off from such proceedings.

(3) Election Law. Most of the State law providing for the conduct of elections, and for related matters prior and subsequent thereto, are located in the Election Law. Naturally, the provisions will affect local governments and some of them are mandatory. For example, there has to be a board of elections in N.Y.C. and in each county of the State (Election Law, §30). Because Election Law mandates are probably the least seriously questioned, suffice it to say that there is extensive State regulation and some local expense in compliance.

(4) Public Authorities. Statutory enabling provisions creating public authorities are located in the Public Authorities Law and in other consolidated and unconsolidated laws. The most significant feature of the Public Authority as it relates to "State mandates" is the Legislative grant of tax exemptions. The desirability of such State "tax shifts" which take the form of tax exemptions at the local level is examined at length in another portion of the staff report.

Judicial Mandates

In the vast majority of cases, theoretically at least, the courts are not mandating per se, but rather, they are construing a constitutional or a legislative mandate. In other words, when disputes arise, the judiciary explains what the state Constitution or the Legislature requires.

Before commenting further on the court’s role in the construction of "mandates," the courts’ very limited role in originating a State-mandated expenditure should be given at least a passing reference. The only truly judicial mandates of this genre are those developed via the "common law" (judge made law). For example, how broad or how narrow the courts find municipal liability to be for common law torts (of municipal employees) will directly affect such a local cost. The point to be made is that it is possible (but by no means frequent) to have a purely judicially mandated increase in local expenditures. For the purposes of this report they are not significant.

The State judiciary has also assumed a role in the natural development of the mandate issue, both as ultimate arbiters of the State Constitution and as construers of State Legislative intent. In the constitutional home rule section of this report, one must necessarily perceive the "state concern" and "consistency" doctrines as giving to the State legislature a significant range of authority to institute mandates. The judiciary has thus played a major part in delimiting State “cost-mandating” powers.

Other constitutional constructions could have “mandate” ramifications, as well. For instance, a recent decision by New York’s highest court held that a State statute violated the State constitutional tax limitations that are applicable to local governments. The decision has a large and clearly adverse fiscal impact on the cities affected and consequently is relevant to this “mandate” study.

Constitutional questions, such as these, are the most far-reaching. They set whatever legal restrictions there may be on the State’s ability to mandate local costs. Once legislation passes any constitutional objections in these areas, the court makes its legal construction of the statute in question. The court’s
role in this latter "statutory construction phase" is not so important in terms of the general subject of "State mandates."

Local Response to the Commission's Inquiries

The local governments of the State are the nucleus of this study and a fortiori should be a key reference source in pinpointing State mandates and their local fiscal impact. The commission staff corresponded with the county and city treasurers of the State, the Association of Towns (for distribution to the towns) and the Conference of Mayors (for city-village response) seeking local assistance in identifying any burdensome State mandates. The staff also requested that the local officials furnish, if possible, the estimated dollar impact of any mandates which they had highlighted. There were enough county and town responses to assist the staff in identifying some of the more persistent mandates at those levels.

The commission staff realizes that for a mandate analysis to be complete, each identified mandate should include the dollar amount of local cost incurred. In the main, the local governments contacted were not able to supply this type of information. For many types of mandates, to ascertain the dollar amounts would have required an extensive cost analysis, and, in the other areas, the assumption is that the figures are simply not readily available.

In furtherance of its statutory charges the commission also held public hearings at Kingston, Syracuse, Watertown, Albany, Lake George, Rochester, Buffalo, Farmingdale, New York, Tarrytown, Binghamton and Hornell. The following organizes the hearing information, together with the aforementioned local responses, into a listing of State mandates, the effectiveness of which have been seriously questioned at the local level.

As one might expect, the local responses were varied, reflecting different local situations and needs and certainly flavored by the personalities of the local officials responsible for the correspondence and comments. The following categories use the same functional divisions as the prior sections of the report.

Counties

(1) The body of municipal laws
   a. County offices [county clerk, coroner, treasurer, etc.]
   b. Operation of jail house
   c. Employee benefits for those not in the State pension and retirement systems
   d. Some of the court system [such as, family and surrogate court judges and the expense of those offices]
   e. Solid waste disposal

(2) Natural resources
   a. Solid waste disposal systems [these must be in compliance with rules, regulations and specifications coming out of the Department of Environmental Conservation]
   b. Certain sanitary landfill sites must also meet minimum Adirondack Park Agency standards
   c. It is suggested that there be some State reimbursement for local landfills, at least similar to the present categorial aid for sewage treatment plants

(3) Civil and Criminal Justice
   a. Salaries of judges and clerks
   b. County jail [e.g., to meet State Department of Correction standards one county allegedly had to plan a jail with 38 cells when the maximum daily prisoner count in the prior year was only 15 and with no offsetting State aid]
   d. Family court commitments [these are often a county charge]
   e. Transcripts for the indigent
   f. State reimbursement for probation department expenditures does not include employee fringe benefit payments
   g. Funding base of court system is too narrow

(4) Education
   a. Resident tuition contributions

(5) Health
   a. County infirmary and health related facilities [State administrative regulation as to capital assets and operating expenses]
   b. Mental health programs [State administrative regulation as to levels of service and methods of delivery]
c. Placing of prisoners in State mental institutions
d. Certain rate reductions for county-run nursing facilities [thereby reducing revenue to the facility]
e. State reimbursement [regulations of the State, commissioner of health do not include employee fringe benefits as a part of reimbursable costs] [on a regular basis the commissioner of health has restricted certain reimbursement money for general public hospitals to counties under 50,000 population]

(6) Municipal employees
   a. Civil Service
   b. Employee benefits

(7) Public safety
   a. Civil defense
   b. Veteran's services

(8) Social Services
   a. The level of payments and State reimbursement
   b. The fee schedules are usually modified in the county budget year and often are retroactive
   c. Infirmary reimbursement is based upon year before spending and, therefore, yearly cost increases are absorbed by the county
   d. The new Supplemental Security Insurance (SSI) program continues to use Federal, State and local funding but the standards for qualification are tougher. Therefore, the county has to pick up those ineligible under home relief and with 50/50 state local funding
   e. The spiraling of nursing home rates [rate averaging ends up as burdensome to those counties whose costs are actually below the average]

(9) Taxation
   a. Tax mapping [State reimbursement is token]
   b. County guarantee of town and school district taxes levied against bankrupt railroads
   c. Tax limitations
   d. Tax exemptions [all types, from State-owned lands to constitutionally man-
dated religious, educational and charitable exemptions]
   e. The lack of State provision for additional and alternative revenue sources [such as, a local income tax, State income tax "piggyback," real property tax "circuit breaker" etc.]

(10) Transportation
   a. Motor vehicle bureaus are allegedly a State service operated by the county
   b. The Mass Transportation Assistance Act of 1974 [certain counties must make matching grants with the State]

(11) Miscellaneous
   a. Mandated increase in administration (and resulting costs) without a corresponding increase in services [such as, issuance of monthly medicaid identification cards]
   b. Mandated proliferation of record-keeping
   c. In order to realize the maximum Federal and State reimbursement money, counties are forced to de-centralize the accounting function i.e., higher bookkeeping costs
   d. Because of the different fiscal years that are used, State mandates often fall in the middle of the county budget cycle.
   e. Extensive administrative requirements [suggested "policy guidelines" rather than detailed rules and regulations]
   f. Applying for categorical aid is too complex and costly [suggested State aid instruction manual for uniform State aid claims, where possible]

Towns

(1) The body of municipal laws
   a. Two-year terms of the office for town supervisor and town clerk [felt to be a deterrent in attracting young, qualified people and a four-year term was suggested]

(2) Natural resources
   a. Air pollution regulations [almost a need to replace existing facilities (incinerators etc.) with new plants in order to meet ever-increasing requirements]
   b. Sanitary landfill sites [Environmental Conservation Department and Adirondack Park Agency regulations]
c. Adirondack Park Agency regulations [unduly restricts town growth]  
d. The inability to exact higher fines for leash law violations  

(3) Civil and Criminal Justice  
a. Town justice court fees [inadequate to finance all the costs it supports]  

(4) Municipal employees  
a. Rising workmen’s compensation costs  
b. Rising pension and retirement costs  
c. Civil Service (e.g., the requirement that persons over 29 cannot join a town police force)  
d. The requirement that localities pay prevailing wages in certain situations  
e. Hours, salary and conditions of work [such as, additional holidays, ratios of pay and the like]  

(5) Taxation  
a. Exemptions and tax abatements  
b. The lack of State provision for additional and alternative revenue sources [such as, a local income tax, State income tax “piggyback,” real property tax “circuit breaker,” etc.]  
c. Town collections for the benefit of other jurisdictions [such as, town collection of school taxes]  

(6) Transportation  
a. Traffic control devices and the installation of special traffic controls  
b. Local restrictions [such as, State refusal to permit certain proposed stop signs]  
c. State establishment of town speed limits  
d. River cleaning and bridge repair  

(7) Miscellaneous  
a. Voter registration too costly [suggested change to a year around basis]  
b. Urban development corporation’s ability to ignore local ordinances [i.e., building permits, local planning boards, etc.]  
c. State aid [towns may have to absorb most, if not all, of any cost overruns; it may be costly just to prepare a request for State aid; the State may require regional projects only, in effect, penalizing towns attempting to solve their own problems, and aid does not keep pace with mandated costs]  
d. Administrative mandates [esp. those of the Department of Health, Public Service Commission and the Department of Environmental Conservation]  
e. Mandates in the middle of the budget period  
f. Various required reports adding to bookkeeping costs  
g. State penalties for late arrival of health insurance, income tax retirement payrolls, etc.  
h. Mandates of any overlapping jurisdiction (county, school district) erodes the town’s fiscal capacity as well  
i. Timing of aid distributions [for some towns, to change the timing or make it more flexible would significantly reduce borrowing costs]  

Cities  

(1) Natural resources  
a. Park deer shelters [for native deer the State requires shelters be closed on all but one side]  
b. Dog control [State law provides the local obligation but also sets limits on the amount of the fees that can be collected]  

(2) Criminal and Civil Justice  
a. Funding base of court system is too narrow  

(3) Health  
a. Housing [claimed State inertia; cities subsidize city housing authorities without any State contributions to the subsidy]  

(4) Municipal employees  
a. 40-hour work week for policemen and firemen with no offsetting State aid  
b. Amended Taylor Law to impose mandatory arbitration for fire and police salary contract disputes [claimed that cities have lost all control of the salaries they will pay; before the mandate, cities could use an arbitration offer as a bargaining tool]  
c. Employee benefits [even though pension setup is permissive it has been contended that State raises result in pressure at the city level]
(5) Public Safety

a. Training, retirement (See, Municipal employees) and negligence suit costs (this mandate is from the body of municipal laws)

(6) Taxation

a. The lack of State provision for additional and alternative revenue sources [such as, a local income tax, State income tax "piggy-back," real property tax "circuit breaker," etc.] [another specific example is the situation of constitutional taxing limits especially after the Huron case on pension financing]

b. Exemptions

c. The State should exempt city sewage treatment facilities that are outside the city limits [similar claims for other city-owned property outside city limits]

d. Some cities would like to be able to charge higher interest charges on delinquent taxes

(7) Utilities

a. Increases in utility rates set by the Public Service Commission.

(8) Miscellaneous

a. Funeral directors are prevented from providing ambulance services

b. Permissive legislation and tempting offers of matching grants are considered by some to be relevant aspects of the question of "State mandates"

c. The timing of State aid and State reimbursement of local expenditures often ends up "imposing" heavy borrowing expenses on localities

Villages

(1) Natural resources

a. Dog control [the obligation is imposed upon the villages but with accompanying limits as to the fees that they can collect]

b. Water and sewer operations [The Department of Environmental Conservation sets numerous requirements for water and sewer operations to include plans, orders to change and upgrade work, drying beds, separate combined sewers, infiltration work and so on]

(2) Municipal employees

a. Salaries [such as, police chiefs]

b. 40-hour workweek for policemen and firemen

c. Pension and retirement costs [claimed that huge salary and fringe benefits of State employees have caused localities' employees to demand the same]

(3) Taxation

a. Exemptions [and the villages still have to provide full services]

b. Alternative revenue sources [Tax limits are too restrictive and revenue sources are limited]

(4) Transportation

a. Cost of changing village street signs

(5) Miscellaneous

a. Suggested that some services should be consolidated to a higher revenue base [police, fire, highway, landfills, engineering services]

b. Voting machines [the number are mandated]

c. Too many forms and too much red tape
d. Budgeting [the State can run a deficit but municipalities are within the confines of a regulated budget]
e. Permissive legislation can also be a problem [such as, exemptions]
11

Summation

A comprehensive review of the role and responsibilities of the State in mandating expenditures and programs upon local governments is an exceptionally broad and yet fundamental charge of this Commission. The fact that the subject is among the enumerated charges speaks for itself; the continuing criticism of "State mandates" by local officials and taxpayers amply reinforces the determination that the subject should be analyzed.

Clearly, New York State law is replete with mandated expenditures and/or programs for local governments (county, city, town, village) and for its other political subdivisions (school districts, etc.). The State has mandated a minimum structure (for the local governments, found primarily in the body of municipal laws) and has gone on to delegate duties to be performed by the local governing bodies and by the various local officials within their structure.

The prior pages certainly indicate the variety of State "mandates." Assuming a broad definition of a "State mandate," i.e., any State law which may have an adverse fiscal impact on a political subdivision of the State, there are:

1. Structural mandates (offices, etc.)
2. Regulatory mandates (setting minimum State-wide standards)
3. Mandates with a large dollar impact (entire programs, etc.)
4. Mandates with a minor dollar impact (reports, etc.)
5. Mandates with varied costs (affect some local governments more than others)
6. Indirect mandates
7. Direct mandates (social services payments, etc.)
8. Indirect mandates causing a decrease in realty values, etc.
9. Constitutional mandates (tax and debt limits, etc.)
10. Statutory mandates (county tax mapping, etc.)
11. Administrative mandates (Department regulations, etc.)
12. Pure enabling legislation (i.e., totally permissive as a local charge)
13. Pure mandate (i.e., totally mandatory as a local charge)
14. Permissive with State aid
15. Mandatory with State aid
16. Permissive with State aid subject to State standards
17. Mandatory with State aid subject to State standards
18. Permissive in first instance, with subsequent mandates, and with possible applications of State aid

One should further complicate these possibilities by assuming either a State, a local or a State and local revenue base as supporting each type.

State-mandated expenditures by local governments are better understood when one realizes the larger concept of which they are but a paradigm. This leads one to the analysis of two fundamental questions: who should make the decisions as to the delivery of governmental services and which revenue base should support which governmental service?

In question form, the fundamental issues are:

1. Which, if any, local governments shall the State create or recognize?
2. Which revenue sources shall be delegated by...
the State to its local governments or other political subdivisions?
3. Which decision-making is properly to be made at the State level?
4. Which decision-making is properly to be made at the local level?
5. Which governmental services and programs are properly to be funded out of State revenues?
6. Which governmental services and programs are properly to be funded by the local revenue base?

The early history of the State shows that government, regardless of level, was not the initiator of programs that it is today. State and local fiscal relationships were relatively uncomplicated, and the issue called “State mandates” was virtually unheard of. Local government in the frontier and rural contexts of early New York functioned principally as the protector of the citizenry within its borders. State government, meanwhile, was primarily concerned with the agricultural, commercial and industrial development of the entire State (e.g., State highways and canals).

From 1777 until 1894, there were no constitutional or statutory standards which purported to divide State and local interests. Over that period of time the State legislature gradually and fully exploited its ability to enact special legislation exacting local charges from some localities while “favoring” others. Increasing local reaction ultimately spurred the emergence in 1894 of constitutional restrictions upon the State’s ability to specially mandate programs upon cities. As explained in previous sections, the State’s mandating powers were limited only with respect to State “special” legislation. When the State attempted via special act to legislate within a city’s “property, affairs or government,” constitutional restrictions became applicable. The State was not barred from using special laws within a city’s “property, affairs or government,” but it was restricted by the requirement of specialized procedures for a valid enactment.

Eventually (1938), the Constitution was amended, in effect, to bar State special legislation within a city’s “property, affairs or government” unless there was local consent. And by 1964, this bar applied to the “property, affairs or government” of all local governments (i.e., county, town, city or village).

There has been no analogous development with respect to State general laws. The experience of the special law restrictions indicates one reason why: the dividing line between State and local interest is ambiguous and political rather than definite and legal. The case law experience in the special law realm is a certain forerunner of what would develop were the State Constitution or State legislature to attempt to describe a line between State and local interests for the purpose of limiting or barring State-mandated local charges. Justice Cardozo addressed this construction problem in 1929 and perceived the bulk of the governmental sphere to include intermingled State and local interests. The separation of concerns is no more clear today than it was then.

The Legislature is the appropriate mechanism for the determination of the direction of State mandates, and, in this determination, the Legislature must subject these mandates to intensive review.

NOTES

1 XI NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, PROBLEMS RELATING TO HOME RULE AND LOCAL GOVERNMENT 17 (1938) (hereinafter cited as 1938 CON. CON.).
4 This is assuming, as stated above, that the goal is a division of governmental responsibility between state and city and not one of complete autonomy.
5 The “general”/”special” dichotomy of State Legislation is essential to an understanding of the home rule picture
in New York State. Briefly, there are two types of “general” law. If the State Legislature passes a law which applies in form and in substance to all the political subdivisions of the State, or to all the cities in the State, or to all the counties in the State and so on, the law is a “general” enactment.

Also, if the State Legislature passes a law which applies in form and in substance to all political subdivisions of a reasonable classification or to all cities of a reasonable classification, or to all counties of a reasonable classification and so on, the law is a “general” enactment. For example, a law applicable to all first class towns (a classification based on population which the New York courts have held to be reasonable) would be a “general” law.

All other State laws are “special” and because they are more selective in their application, they pose a greater potential for abuse (i.e., certain municipalities singled out for unequal state mandated requirements, standards and the like). Consequently, as a feature of its home rule grant, New York State has traditionally placed constitutional restrictions upon the State’s use of “special” legislation.


7 An interesting modification of these two primary approaches was the proposal of the Tilden Commission in 1877. The “Tilden recommendations” are of special interest because, at that time, the commission was not hampered by any existing constitutional framework. The constitutional state was clean and the commission was able to suggest what, to them, would be the ideal constitutional home rule vehicle (of course, this is assuming that the commission has made the initial determination that “home rule” in New York State should have constitutional status).

Three of the commission’s constitutional proposals were:

1) that the State “. . . delegate the entire business of local administration to the people of the cities . . .” (p. 41).
2) that the State reserve its right to pass general laws affecting local affairs, and
3) that the State also reserve its right to pass special laws (imposing special charges upon cities) as to objects that are “. . . not purely local.” (p. 67) If “. . . the people of the whole State have an interest in them . . .” (p. 67) then the State could pass a special law, but only by a 2/3 vote.

Had these been accepted, these proposals would have resulted in a grant to cities of control over local administration and the State would have retained two types of “strings” i.e., general laws in all areas and special laws (on 2/3 vote) only if the object, while affecting the business of local administration also affected State interests.

The first two proposals are the same as the “Fordham Plan.” However, the Tilden Commission apparently felt the need to give the State an additional “string” of different quality. For matters of State concern, the State could exploit its plenary power by “special” laws, if passed by a 2/3 vote of the State legislature. Present New York Law presents a ready contrast – For matters of State concern, the State is unrestricted.

(REPORT OF THE NEW YORK STATE COMMISSION TO DEVISE A PLAN FOR THE GOVERNMENT OF CITIES IN THE STATE OF NEW YORK, ASSEMBLY NO. 68, p. 30 (1877).

8 This is an oversimplification. New York’s delegations are specific but the grants are not all enumerated. There is also a “general” grant as respects a local government’s “property, affairs or government.”

9 One should note that this is the same as the Fordham string but in a specified area only i.e., within “property, affairs or government.”

10 In New York State’s attempt to work a little flexibility into this search for a specific delegated authority for each local act, the State eventually delegated local lawmaking power over “property, affairs or government” of the municipality. This was meant to be a general grant of authority upon which a number of local actions could rely. As later portions of the report illustrate, “property, affairs or government” has been given a narrow construction and, therefore, has not been a broad basis for local lawmaking powers.

11 A third level of protection currently exists in New York State embodied in the “Statute of Local Governments” which is considered later in the report.

12 N.Y. CONST. art. XIX, §1.
13 N.Y. CONST. art. 111, §14; N.Y. CONST. art. IV, §7.
15 1938 CON. CON. 35.
16 Hyman, Home Rule In New York 1941-1965 Retrospect and Prospect, 15 BUFF. L. REV. 335, 337 (1965-1966) (hereinafter cited as HYMAN). (Counties have powers of transferring local functions (dating to a constitutional amendment in 1935) which do not run afoal of these provisions.)
17 N.Y. CONST. art. XXIX (1777).
18 One should note that a local office cannot be transferred to the State level but, unless the office is one that is constitutionally mandated, the State may abolish the office entirely.
19 N.Y. CONST. art. IX §1 (a).
20 1 C. LINCOLN, CONSTITUTIONAL HISTORY OF NEW YORK 300 (1906).
21 N.Y. CONST. art. 111, §17.
22 1938 CON. CON. 35.
23 HYMAN 340-341.
24 Id. at 342.
25 1938 CON. CON. 1.
26 Id. at 12.
27 N.Y. CONST. art. IX, §1 (1938).
28 Id.
29 N.Y. CONST. art. IX, §11 (1938).
30 One must keep in mind the importance of the “State concern” doctrine when these questions arise. Assume the State wanted to pass a “special” law affecting Albany, New York. If Albany approved of the legislation it would give the required local request. If it did not, the State would be powerless to pass such a local bill UNLESS the bill was a matter of “State concern” (and, therefore, by definition not exclusively within Albany’s “property, affairs or government”).

31 N.Y. CONST. art. IX, §16 (1938).


33 HYMAN 338-339.

34 The City Home Rule Law was the implementing legislation. There it was stated that cities could not supersede any general law; any special law outside “property, affairs or government” or any special law inside “property, affairs or government” but passed in accordance with the specialized procedures of art. XII. The bottom line was that cities could only supersede State special legislation that was not in accord with the procedures of art. 12 i.e., an unconstitutional State statute. This limited right of supersedion was not constitutionally protected but was only a statutory provision in the City Home Rule Law of 1924. (It may be appropriate at this juncture to note that there was no constitutional right of local supersedion of any State laws until the constitutional amendments of 1938 (see page 99 of this report). All special laws within “property, affairs or government” were implemented in accordance with the specialized procedures (and, therefore, constitutional State legislation) from 1894 to 1938 could be superseded by local law (only applicable to cities). From 1938 to January 1, 1964 (effective date of the 1963 amendments) there was no supersedion power. Ostensibly, this was because during the period, there could be no special legislation within “property, affairs or government” unless proceded by a home rule request. The 1963 amendments added back the “emergency message” from the governor and 2/3 vote for special laws within “property, affairs or government” and, at the same time, gave to all local governments the power to supersede State special laws within “property, affairs or government” which were passed in accordance with the specialized procedures in art. IX.)

35 Id. at 350-351.


37 N.Y. LAWS, ch. 670 (1928).


39 1967 CON. CON. 87.

40 N.Y. CONST. art. IX, §§12, 13 (1938). There were also some express exceptions, for example, pension and retirement laws, certain civil service laws, laws regarding public schools et. al.

41 N.Y. CONST. art. IX, §16 (1938).

42 This was effectuated by N.Y. LAWS, ch. 823 (1940).


45 See Baldwin v. City of Buffalo, 6 N.Y. 2d 168, 173 (1959); In the Matter of the City of New York, 228 N.Y. 140, 152 (1920); 1 Dillon, Municipal Corporations §237 (5th ed. 1911). But see HYMAN at 348-349, 354.


47 HYMAN 352.

48 Id. at 347.

49 Farrington v. Pinckney, 1 N.Y. 2d 74, 80-81 (1956).

50 Id. at 94.

51 Stapleton v. Pinckney, 293 N.Y. 330 (1944) (by implication). This is important when considering the question of “State mandates” and which ones local governments can supersede.

52 Farrington, supra note 32, at 89.


54 Wholesale Laundry, supra note 36.


57 Id. at 747.

58 1967 CON. CON. 96.

59 Adler v. Deegan, 251 N.Y. 467 (1929).

60 Id. at 491.

61 1967 CON. CON. 95.


63 1967 CON. CON. 97.


68 Shanley v. Brooklyn, 30 Hun 396 (1883); People v. Banks, 67 N.Y. 568 (1876).

69 HYMAN 351.

70 1967 CON. CON. 79.
HOME RULE 1152.


People v. Bradley, 207 N.Y. 592 (1913).

This is actually an oversimplification but it does accurately present what is in most cases, going to be the final effect. Local governments can also supersede State special legislation outside "property, affairs or government" but within one of the enumerated grants -- but the State can restrict this local power (and if the State is serious about its special legislation it will have such a restriction incorporated right in the bill itself).

NEW YORK STATE TEMPORARY COMMISSION
ON THE POWERS OF LOCAL GOVERNMENT,

1967 CON. CON. 87.


HOME RULE 1153.

For New York City, and the counties within, there is a vast amount of "special" State legislation conferring powers and mandating duties.

See p. 68.

See Appendix, p. 103.

See Appendix, p. 103.

See p. 68.

N.Y. LAWS, ch. 28 (1974).

See p. 70.

See Appendix, pp. 105, 106 and p. 67.

See Appendix, p. 105.

See p. 67.

See p. 71.

See p. 70.

See Appendix, pp. 108 and 71.

See Appendix, p. 109.

See p. 71.

See p. 73.

See Appendix, p. 111.

See General Municipal Law Article 12-b.

Available only to those counties that qualify. It is a subordinate governmental agency and the county is not liable in damages for any injury to person or property in connection with association activities (§224(b) (b)).

Statutory home rule powers are two types. They are either grants of local lawmaker powers in designated subject areas or they are a direct grant of designated power or authority which does not need a local law to exercise the power. The former type is discussed in another portion of the report. It is the latter type that is being addressed in this section of the report.

Subject to the constitution and other general laws of the State and any rules and regulations made pursuant thereto.

Nassau County is allowed to spend more than other counties of the State.

The "County Law" does not apply to the counties within New York City, "unless specifically so provided." (§2(a)) Article 24 is such an express provision.

This general grant of power has not been broadly construed in favor of cities.

This is the familiar "police power grant." Exactly how extensive this grant is, has not been clearly decided by the New York courts and there is a noticeable lack of agreement by the commentators. Suffice it to note, the cases giving substance to the police power grant are numerous.

This section is not applicable in all cases. For example, a city must be 400,000 or more people.


The board may do this on its own motion. If 25 electors assessed upon the last assessment roll of the village, petition for such action, then the board must submit at a village election a petition for incorporation (§16-1600).

If a village already had more than two, it can keep them.

In relation to public streets or lands only.

The expense will be the average cost of such construction or a fixed percent thereof. Or the property owner may construct the laterals himself.

Gilmore v. City of Utica, 121 N.Y. 561 (1890).

N.Y. Statutes §171 (McKinney Supp., 1973-1974); McConnell v. Town of Cortlandt, 193 N.Y. 318 (1908); Gilmore v. City of Utica, 121 N.Y. 561 (1890); In the Matter of Goddard, 94 N.Y. 544 (1884); Talmage v. Third National Bank of New York City, 91 N.Y. 531 (1883); People v. Batchelor, 53 N.Y. 128 (1873); Medbury v. Swan, 46 N.Y. 200 (1871); Williams v. People, 24 N.Y. 405 (1862).


C.J.S. Statutes §311.


Pottier's Dwarfs on Statutes, p. 604.

People ex rel. Cayuga Nation v. Land Commissioners, 207 N.Y. 42 (1912); People ex rel. Reynolds v. Common Council of the City of Buffalo, 140 N.Y. 300
(1893); Conway v. Board of Supervisors of Livingston County, 68 N.Y. 114 (1877); Phelps v. Hawley, 52 N.Y. 23 (1873); People ex rel. Otsego County Bank v. Board of Supervisors of Otsego County, 51 N.Y. 401 (1873); City of New York v. Furse, 3 Hill 612 (1842).

121 Hutson v. City of New York, 9 N.Y. 163 (1853).

122 City of New York v. Furse, 3 Hill 612 (1842).

123 Hagadorn v. Raux, 72 N.Y. 583 (1878).

124 People ex rel. Conway v. Board of Supervisors of Livingston County, 68 N.Y. 114 (1877).


127 Id.

128 C.J.S. Statutes §374.


131 Barnes v. Gardner, 24 N.Y. 583 (1862).

132 Marchant v. Langworthy, 6 Hill 646 (1844).

133 Stone v. Pratt, 35 N.Y.S. 519 (1895); Gilmore v. City of Utica, 121.

134 Klink v. Pound, 163 N.Y.S. 1008 (1916).


136 People ex rel. Wohle v. Conner, 8 Hun 533 (1876).

137 Munro v. State, 223 N.Y. 208 (1918); In the Matter of Thurber, 162 N.Y. 244 (1900); In the Matter of Rutledge, 162 N.Y. 31 (1900); Speers v. City of New York; 72 N.Y. 442 (1878); People v. Batchelor, 53 N.Y. 128 (1873).

138 This constitutional provision is not self-executing, but expressly requires "general" laws implementing the design.

139 This article does not apply to New York City.

140 See also, county liability for losses to livestock from rabies and partial State reimbursement in Article 6-A.

141 Counties within New York City are excepted.

142 Letter from Thomas G. Conway, Counsel for the Department of Agriculture and Markets, September 24, 1974.

143 Id.

144 Id.


146 Id.

147 New York City requirements are different.

148 Letter from Morton H. Grusky, Deputy General Counsel for the Division of Criminal Justice Services, August 28, 1974.


150 Letter from Henry Spitz, General Counsel for the Division of Human Rights, July 31, 1974.


152 Id.

153 Id.

154 Letter from Walter J. Relihan, Jr., University Counsel and Vice Chancellor for Legal Affairs for the State University of New York, July 30, 1974.


156 There are exceptions, such as, (1) a city charter otherwise (2) towns and villages can have joint appointments or (3) a local health district within a county or part county health district.

157 Some cities have a department of health established by special law.

158 If there is a county health district and it is coterminous with the county, then the governing body of the county can abolish the board of managers and vest the powers and duties in the county board of health (§522(5)).

159 If none, then whatever analogous body exists in the jurisdiction.


163 Letter from Judd D. Gray, Deputy Industrial Commissioner for Legal Affairs for the Department of Labor, September 3, 1974.

164 Id.

165 Id.

166 NEW YORK STATE TEMPORARY COMMISSION ON THE POWERS OF LOCAL GOVERNMENT 56 (1973).

167 Letter from Judd D. Gray, Deputy Industrial Commissioner for Legal Affairs for the Department of Labor, September 3, 1974.

168 Letter from Thomas E. Joyner, Director of Research for the New York State Public Employment Relations Board, October 11, 1974.

169 Letter from Noel J. Cipriano, Co., JAGC, Legal Officer for the Division of Military and Naval Affairs, August 30, 1974.

170 Id.

171 If the county or city population is not over 100,000, the maximum is $5,000. If a county is over 100,000 in population (excluding cities therein which have a city agency), it may receive an additional amount.

172 Partial Federal funding is also available and the State reimbursement is post deduction of the Federal share.

173 Letter from Glen R. LeFebvre, Attorney trainee for the Department of Social Services, November 21, 1974.

163
Appendix A

"Permissive Grants"

County Law

THIS SECTION highlights the permissive provisions of the County Law. Various provisions give counties the authority to augment the structure of county government, while other provisions describe what the county can do within that structure.

**Structure.** The County Law provides authority for some county offices, the establishment of which are discretionary with the board. They are:

1. County comptroller (§575)
2. County auditor (§600)
3. County purchasing agent (§625)
4. Public defender (§716)
5. County service officer (§800)

**Other permissive administrative units.** The County Law also delegates to counties (through its board) the authority to establish and maintain certain districts, commissions, boards and the like, at local discretion. Such as:

1. Planning Board (§220)
2. Citizen's Advisory Committee (§235)
3. Water District (§250)
4. Sewer District (§250)
5. Drainage District (§250)
6. Refuse District (§250)
7. Water Agency (§§251, 252)
8. Sewer Agency (§§251, 252)
9. Drainage Agency (§§251, 252)
10. Refuse Agency (§§251, 252)
11. Agency for Hurricane; Erosion Control (§280-b)
12. Small Watershed Protection Districts (§299-m)
13. County Medical Assistance Clinics
14. Drug Control Authorities (§396-q)
15. Park Commission (§221)
16. County or Regional Extension Service Association (§224(8) (b))

---

174 *Id.*
175 *Id.*
176 Letter from Roger Jenkins, Attorney for the Department of Social Services, October 4, 1974.
177 *Id.* There also must be an appropriate source of care available.
178 Letter from Glen R. LeFebvre, Attorney trainee for the Department of Social Services, November 21, 1974; Social Services Law, §§26, 34(f).
180 Letter from Thomas F. McGrath, Counsel for the State Board of Equalization and Assessment, September 12, 1974.
181 *Id.*
182 *Id.*
183 In the matter of Miller, 9 App. Div. 260 (1896).
184 Letter from Barry L. Radin, Director of Legal Services for the Department of Transportation, August 29, 1974.
185 *Id.*
186 Letter from James P. Flynn, Staff Counsel for the Public Service Commission, August 30, 1974.
187 *Id.*
188 There are other condemnation provisions which may be applicable depending upon the circumstances. For example, the Highway Law controls procedure for the condemnation of realty for public use as a highway.
Powers of the Board. There are numerous other County Law provisions that delegate power or authority to the board of supervisors while at the same time leaving the exercise thereof to the discretion of the board. For example, the board may:

1. Fix the compensation of its members for services rendered to the county (§ 200); authorize reasonable mileage allowances for county officers and employees (§ 203(2)); and when the board is directed or empowered by law to appoint a commissioner or board, may provide for payment of actual and necessary expenses plus mileage (§ 203(3));

2. Fix the number of hours constituting a legal day's work for all classes of employees of the county (§ 206(1));

3. Direct printing in summarized or tabular form any county proceedings it determines to be in the public interest (§ 211(1)) and have copies of its proceedings printed for distribution among its members, county officers or other counties (§ 211(2));

4. Erect, alter, remodel or otherwise improve, maintain and keep in repair necessary buildings; acquire adequate insurance (and employ any needed custodians (§ 215));

5. Provide for the county, surrogate and family court judges (§ 218);

6. Meet requirements for satisfactory nonsecure detention facilities for juvenile delinquents and persons in need of supervision by continuing established facilities or by authorizing contracts with other counties for temporary accommodation, joint efforts and the like (§ 218-a);

7. Acquire lands for reforestation and the State will provide up to ½ the cost and supply trees for planting (§ 219(3));

8. Acquire burial plots or establish and maintain a county cemetery for members of the armed forces (§ 222);

9. Appropriate and spend to improve agriculture and the soil or to protect public and private property from floods, conserve soil from erosion and the like (§ 222(2)); appropriate up to $3,000 per year to effectuate the forest practice act (possible partial reimbursement from the State) (§ 223-a);

10. Allow officers to appoint deputies (§ 401);

11. Prescribe additional duties for county officers (§§ 501, 577, 750 et. al.);

12. Direct the county attorney to render advice to town boards and town officers (§ 501(4)); establish a secretary to the county attorney (§ 501(5));

13. Save harmless its county clerks as to pecuniary liability (§ 533);

14. Appropriate and spend to eliminate noxious weeds (§ 224-a);

15. Develop and maintain fire training and mutual aid programs (§ 225-a);

16. Contract for visiting nursing services and appropriate therefor (§ 225-b);

17. Appropriate and expend to erect, maintain and repair monuments and memorials (§ 226);

18. Appropriate and set aside sums for patriotic observances (§ 226-a);

19. Appropriate and expend for solid waste disposal (§ 226-b);

20. Legalize certain acts (§ 227);

21. Offer up to $5,000 as an award for the apprehension of alleged criminals (§ 230);

22. Pay the bills of peace officers injured in the line of duty (§ 231);

23. Pay sums to the county officers’ association (§ 232);

24. All County Law enabling provisions are in addition to other powers to act, to appropriate and expend found elsewhere in the State Legislative enactments (§ 234).

County contracting powers. The board can contract with non-profit organizations and other corporations, associations and agencies within the county or an adjacent county for the following objects and purposes: (§ 224)

1. Recognized patriotic observances
2. Commemorative programs of historic events of countywide interest and concern
3. Propagation of game, game birds and fish
4. Prevention of cruelty to children and animals
5. Agricultural improvements
6. Administrative expenses in aiding indigent blind
7. Elimination of noxious weeds, rodents and wild animals
8. For county extension services
9. Fire training schools for training firemen
10. Private legal aid bureau or society
11. Organizations that aid poor persons in the county (Erie County only)
12. Establishment or maintenance of public museum
13. Establishment or maintenance of a professional symphony
14. Educational television
15. Publicize the advantages of the county or region
16. Apply to Foreign Trade Zones Board to get such ones established (Erie County only)

**County funds and property.** The board of supervisors has the power to appropriate county funds and to permit the use of county property of all kinds, either alone or jointly with another county, for the following public benefit objects and purposes: ($225)

1. Propagation of game, game birds and fish
2. Eradication and prevention of infectious or communicable diseases affecting domestic animals or fowls
3. Publicizing the advantages of the county or region
4. Commemoration of historical events
5. Care of burial lots of the armed forces
6. Suppression of Japanese beetle infestations
7. Suppression and control of forest tree diseases
8. Establishment and maintenance of fire training schools for training firemen
9. Establishment and maintenance of a central fire alarm system
10. Destruction of certain animals (bobcats, wolves, etc.) in Hamilton, Essex, Saratoga, St. Lawrence and Warren counties
11. Conservation education
12. Establishment and maintenance of a county zoo
13. Eradication and control of the golden nematode infestation

**Certain counties.** There are scattered provisions throughout the County Law, applicable to only certain-named counties, which include grants of significant powers. For instance, Nassau County can pay annual sums to taxing jurisdictions for certain park lands in lieu of taxes in order to prevent an inequitable loss of revenue to the taxing jurisdiction ($233-b).

There is also an entire article (23) of the County Law (26 sections) devoted exclusively to provisions that are applicable to certain counties. For example, the funding of highway construction by local assessment is permitted in some counties ($828).

**New York City.** The County Law also contains an article with provisions applicable to New York City. The sections address the same types of grants and requirements found in the main portion of the County Law. Examples of the powers of authorities granted and exercisable at local discretion are: the clerk of each of the New York City counties may appoint a counsel ($911); a county district attorney may appoint assistants ($930) and New York and Kings Counties can appoint a medical examiner ($939).

**Town Law**

The following section highlights the permissive provisions of the Town Law. Some of the authority granted adds potential to the structure of town government while other provisions describe what the town can do within that structure.

**Structure.** The Town Law contains the authority for towns to permissively make "structural" changes in their town government. The more obvious of these provisions are included in the following:

1. Optional change of classification ($12)
2. If there is a town police department or if the town is part of a county police district, the town can appoint a maximum of 4 civil officers with the powers and duties of constables in civil actions and proceedings ($20(1) (a))
3. The town may provide as many town policemen and such other employees as necessary (i.e., even if not provided in the Town Law) ($20(1) (a))
4. If population is over 50,000, the town can have a third town justice; if population is over 75,000 the town can provide a third town justice or a third and fourth (both subject to referendum) ($20(1) (d))
5. Offices of town attorney and town engineer are permissive (§ 20(2)(a))
6. Office of town comptroller for first class or second class town with over 40,000 is permissive (§ 20(3)(b))
7. Office of deputy receiver of taxes and assessments for first class town is permissive (§ 20(3)(c))
8. Office of deputy comptroller is permissive (§ 20(3)(d))
9. Office of director of purchasing is permissive for first class towns and second class towns with a population of over 75,000 (§ 20(3)(e))
10. Towns may change the town clerk and/or superintendent of highways from appointive to elective (subject to the appropriate referendum requirements) and first class towns may do the same for the receiver of taxes and assessments (§ 20(6))
11. Towns with more than one assessor are permitted to establish the office of chairman of the board of assessors (§ 22-b)
12. Towns of the first class or any town having a population of 10,000 or more, and in which town the office of town superintendent of highways is an appointive office, may establish a department of public works (§ 64 (21-a))
13. Certain first class towns may be able to appoint a school district collector(s) (§ 38(2)).

General powers of Town Board. In general, the powers granted to all town boards by the Town Law concern the following areas:
1. Control of town finances
2. Acquisition and conveyance of real property
3. Management, custody and control of town property
4. Indemnity insurance
5. Vacancies
6. Award and execution of town contracts
7. Franchises
8. Naming and numbering streets, and providing street signs
9. Street profiles
10. Permits for filling or diversion of streams
11. Official newspapers
12. Drainage facilities
13. Publication of town board minutes
14. Central fire alarm system
15. Certain appropriation for patriotic observances and rooms for patriotic organizations
16. Publicity fund (with special provisions for some towns)
17. Posting notices
18. Appropriation for construction of conning towers
19. Purchase of fire prevention equipment
20. Traffic control, signals and standards
21. Citizens advisory committee on capital improvements
22. Historic places and cultural development
23. Control of white pine blister rust
24. Appropriation for deer food
25. Eradication or control of golden nematode
26. Contracts for lighting of certain improved highways and bridges
27. Appropriation for public health
28. Town medical and dental center
29. Psychiatric rehabilitation programs for mentally ill, mentally defective, epileptic and emotionally disordered persons
30. Contracts for physician services
31. Psychiatric clinics
32. Band concerts
33. Contract with dumping facilities
34. Combustible liquids
35. Town physician
36. Department of Public Works
37. Any additional powers "necessarily implied" from the specific grants
38. A 15% admission tax at all pari-mutuel tracks in such town, where such track is leased from a tax exempt organization (§ 64)

Other permissive powers. The Town Law also makes other grants of power to towns which are set off topically in the Town Law (with a mix of mandatory and permissive, procedural and substantive requirements which come into play once a town opts to exercise the permissive grant). In general, these other powers are:

1. The alteration of boundaries (Article 5)
2. The consolidation of towns (Article 5-B)
3. Establishment of a police department (Article 10)
4. Establishment, consolidation or extension of fire, fire alarm or fire protection districts (Article 11)
5. Establishment or extension of water storage and distribution district of sewage disposal district (Article 12)
6. Contracts by water districts or town water storage and distribution districts with water authorities (§197-a)
7. A long list of powers with respect to improvement districts (Article 12)
8. An alternative procedure for establishment or extension of improvement districts (Article 12-A)
9. Additional powers with respect to sewer or water improvements over and above those given with respect to other improvements (Article 12-C)
10. Certain stated powers with respect to “general improvements” (Article 14)
11. Certain zoning and planning (Article 16), for example, establishment of official maps (§270) or comprehensive master plans (§272-a)
12. Certain provisions regarding cemeteries (Article 17)
13. Certain provisions as to fences, strays and pounds (Article 18)

Suburban Town Law

A town of at least 25,000 or a town of at least 7,500 and within 15 miles of a city of at least 100,000 (and with a certain minimum rate of increase in population) may opt to come within the provisions of the Suburban Town Law. The law is divided into 8 titles as follows:

Title 1. Short title and application
   2. Town board
   3. Supervisor
   4. Town departments
   5. Special improvements
   6. Reserve funds
   7. Town-village cooperation
   8. Miscellaneous provisions

Structure. The more prominent of the permissive structural provisions include:
1. The choice to come within the Suburban Town Law in the first instance is permissive (§50-a)
2. The town board may, by local law, create, modify or discontinue departments of the town government in addition to those already authorized by law, but cannot discontinue or assign duties of any elective office (§53)
3. The creation of special improvement districts (Title 5)

Permissive powers. In general, the permissive grants of power and authority are:
1. The provision of “special improvements” (as defined) is permissive (Title 5)
2. Town-village cooperation under the Suburban Town Law is permissive (Title 7)
3. Other miscellaneous type provisions are permissive, for example, the dissolution of special improvement districts (§57)
4. General Powers of the Town Board
   a. Appointments of heads and deputies of appointive departments and the hearing and determination of charges brought for removal (§51(1))
   b. Approval of certain budget modifications and transfers (§51(2))
   c. Requiring certain reports from the town supervisors (§51(3))
   d. Make such studies and investigations as it deems to be in the best interests of the town (with subpoena power) (§51(4))
   e. The creation of non-compensated advisory boards
   f. Determination and provision for any matter of town government including matters involved in the transition to a suburban town (§51(6))
   g. Any powers necessarily incidental to the above powers and all these powers are in addition to those granted in other State Legislation

General City Law

The following section highlights the permissive provisions of the General City Law. The authority granted does not add potential to the structure of city government (as do the County, Town and Village...
laws) but it does describe some of what the city can
do within its structure.

**General grant of powers.** Under the General City
Law "... every city is granted power to regulate, man-
age and control its property and local affairs and is
granted all the rights, privileges and jurisdiction neces-
sary and proper for carrying such power into execu-
tion." (§ 19)105

**Specific grants of powers.** Subject to the Constitu-
tion and general laws of the State, every city is
empowered:

1. to contract and be contracted with
2. to institute, maintain and defend any action
   or proceeding in any court
3. To take, purchase, hold and lease real and per-
   sonal property within and without the city
   limits
4. to condemn land for certain purposes (and
   certain additional purposes for any city with a
   population of one million or more)
5. to lease real property owned by the city (with
   certain limitations)
6. to take by gift, grant, bequest or devise real or
   personal property within and without the
   limits of the city and upon such terms and
   conditions as may be prescribed by the
   grantor or donor
7. to levy and collect taxes on real and personal
   property for any public or municipal purpose
8. to spend for any public or municipal purpose
9. to pay or compromise claims equitably payable
   by the city (but not a legal obligation)
10. to establish and maintain sinking funds for the
    liquidation of principal and interest of
    any indebtedness
11. to spend for streets, sewers, drainage systems,
    water supply systems, lighting systems,
    markets, parks, playgrounds and other public
    places
12. to sell and convey the water supply and distri-
    bution system of the city or any part thereof
    to a water authority, a county water district
    or a joint water works system
13. to control and administer the waterfront and
    waterways of the city and to establish, main-
    tain and regulate docks, piers, wharves, ware-
    houses and all adjuncts and facilities
14. to provide by ordinance for control over the
    filling or diversion of streams and water-
    courses
15. to establish, construct and maintain, operate,
    alter and discontinue bridges, tunnels, ferries,
    and approaches thereto, whether or not the
    title to the bed thereof is in the state
16. to grant franchises or rights to use the streets,
    waters, waterfront, public ways and public
    places of the city
17. to construct and maintain public buildings,
    public works and public improvements, in-
    cluding local improvements, and assess and
    levy upon the property benefited thereby the
    cost, in whole or in part
18. to prevent and extinguish fires and to protect
    inhabitants and/or property from loss or
    damage by fire or other casualty
19. to maintain order, enforce the laws, protect
    property and preserve land care for the safety,
    health, comfort and general welfare of the
    city inhabitants and visitors thereto; and for
    any of said purposes to regulate and license
    occupations and business.106
20. to create, maintain and administer a system(s)
    for the enumeration, identification and/or
    registration of inhabitants or visitors of the
    city
21. to establish, maintain and administer
    hospitals, sanitariums, dispensaries, public baths,
    almshouses, workhouses, reformatories, jails
    and other charitable or correctional institu-
    tions
22. to relieve, instruct and care for children and
    poor, sick, infirm, defective, insane or in-
    erbrate persons; to provide for the burial of
    indigent persons; to contribute to and super-
    vise charitable, correctional and other institu-
    tions wholly or partly under private control
23. to establish and maintain such institutions
    and instrumentalities for the instruction, en-
    lightenment, improvement, entertainment,
    recreation and welfare of its inhabitants as it
    may deem appropriate or necessary for the
    public interest or advantage
24. to regulate and determine the number, mode
    of selection, terms of employment, qualifica-
    tions, powers and duties and compensation of
    all employees of the city

169
25. to create a municipal civil service and make the necessary rules therefor
26. to regulate the manner of transacting the city's business and affairs and the reporting of and accounting for all city transactions
27. Subject to Retirement and Social Security Law, art. 4, §113, to provide for pensions and annuities for retirement of city officers and employees, their widows and dependents
28. to investigate matters of concern to the city and to enforce attendance of witnesses by subpoena
29. to regulate by ordinance any matter within the powers of the city, and to provide penalties, forfeitures and imprisonment to punish violations thereof as well as court injunctions
30. to exercise all powers necessary and proper for carrying into execution the powers granted to the city
31. to regulate height, bulk and location of buildings, the area of yards, courts and other open spaces, density of population; such regulations to be uniform for each class of buildings throughout any district; but the regulations may differ from district to district
32. to also regulate and restrict the location of trades and industries and the like
33. to acquire real or personal property within the city which is being used for civic purposes and to maintain and lease or sell such property and at local discretion, to provide for the limitation or remission of taxes on such property
34. to establish by ordinance "sewer rents" and to prescribe the manner and time of payments in accordance with this subdivision
35. to use the alternative provisions for "sewer rents" provided in the General Municipal Law, art. 14-F
36. to enact ordinances: (1) to examine license and regulate master and special electricians (as defined); (2) to establish a board for such examination, licensing and regulation (3) to regulate the modification, suspension or revocation of any such licenses for cause after a hearing
37. to contract with any nonprofit institutions, in accordance with this section, for research and development into the control of diseases of importance to the public health
38. to contract, under certain stated conditions, for the purpose of furnishing certain medical and surgical services and hospital services to persons who contract for such services, i.e., certain municipal employees current or retired
39. to enact ordinances providing a lien for towing, storage and incidental expenses upon vehicles found stranded or parked in violation of ordinances
40. to permit the use of city-owned streets or highway machinery tools or equipment by other governmental units
41. to create a board, commission or department of traffic control, which has the stated jurisdiction
42. to authorize payments of reasonable mileage allowances to city officers or employees
43. to provide that certain tax deeds given by the city shall be presumptively regular and in accordance with law
44. to compel repair or removal of buildings or structures that endanger public health, safety or welfare
45. in cities under one million inhabitants, to lease for commercial or private use, the air rights over or the subsurface area under any property of the city acquired or to be acquired by street or highway purposes ($20) (Miscellaneous authority. A city's common council may appropriate and expend for:
1. maintenance of the conference of mayors and other city officials of the State of New York and any of its activities
2. publicity for the city (if city less than 50,000 people)
3. "dry" cities may provide moneys to replace revenues from excise taxes
4. expenses of meeting rooms for veteran's and other organizations (not over 200 per year for each post, camp or garrison)
5. moneys for maintaining the municipal electric utilities association of New York State and any of its activities
6. moneys for maintaining the New York State Assessor's Association and any of its activities
7. moneys for maintaining any state-wide, non-profit association of local officials whose activities are designated to improve local administration in this State

A city may also:

1. grant temporary permits for the erection of booths, stands, arches, overhead passageways, or flagstaffs (but not if purpose is business or commercial advertising purposes)

2. by local law, and pursuant to §18-b of the General City Law, license theaters for children’s movies

3. establish a special lighting district (cities, of 3d class only) to improve street lighting. A proportion of the cost is to be apportioned to the abutting property owners (article 2)

4. a city of 50,000 or more people may create a city drug control authority (§120) to have the powers expressly stated in the General City Law (§121)

5. to contract with any corporation(s) for a supply of gas (only first class cities and subject to other restrictions therein stated) (§130)

6. cities of the first class may, whenever its board of health deems it necessary, establish, equip and maintain, outside of the city limits a hospital(s) for the regular treatment of pulmonary tuberculosis (§140)

7. cities of the first and second classes may purchase works of art; first class cities cannot expend over $50,000 annually while second class cities cannot exceed $10,000 annually (§165)

Other miscellaneous powers. The general city law also delegates the following powers:

1. to create, establish and maintain a purchasing department or agency which has the stated powers and duties (§20-a) (NYC excepted)

2. to impose certain taxes on utilities (§20-b)

3. to temporarily invest certain city funds in obligations of the United States (§20-c)

4. to acquire property for state office buildings, etc. and make certain contracts with the commissioner of general services for such construction (§20-e)

5. to establish a blood credit system for city employees' families or dependents or any corporation, agency or institution receiving financial support from such city

The powers granted in Article 2-A of the General City Law are expressly stated to be in addition to any other powers, rights and privileges in any other existing laws. (§22)

**Official Maps and Planning Boards.** Official maps showing the streets, highways and parks theretofore laid out, may be established (§26). Master Plans for the development of the entire area of the city may also be prepared (§28-a). Planning boards can be created under the General City Law or in cases where a planning commission was established in accordance with the General Municipal Law, a city can provide that the commission also have the powers of a planning board under the General City Law (§27). The planning boards are given certain powers, such as, the power to approve plots.

**Building and use districts.** A city may appoint a board of appeals pursuant to the General City Law (§81). Some powers of the board are provided in the General City Law, for example, to grant zoning variances (§81) while other powers must be delegated to the board by the city, for example, special use exceptions.188

**Plumbing and drainage.** Existing boards for the examination of plumbers are continual (§40-a) with the powers and duties stated in the General City Law (§44).

**Plastering.** The supervision and regulation of plastering is provided in the General City Law. In general, the building department has jurisdiction.

**Village Law**

The following section highlights the permissive provisions of the Village Law. Some of the authority contained therein adds potential to the structure of Village government while the remaining provisions and the rest tell some of what the village can do within that structure.

**Incorporation.** Under the Village Law there are two possible avenues of incorporation. One requires a petition with a certain percent of population and the
other requires the petition of the owners of a certain amount of assessed real property valuation in the territory (§2-202). At the subsequent election to determine the question of incorporation, each resident in the territory qualified to vote for town officers may vote. (§2-216) The designated inspectors of the election (town clerks and town supervisors) are delegated the same powers conferred by law upon a board of inspectors of election at a town election, so far as the same are applicable (§2-220).

If a “district” (fire, water, etc.) is entirely within a village incorporated after March 31, 1965, then the district ceases to exist (§2-254(2)). For villages incorporated prior to April 1, 1965, the board may abolish the district in its discretion (§2-254(2-a)). When a district ceases, the village may continue the service and the board receives all the powers granted by law to village officials in connection with such service and any additional powers formerly held by the district necessary to continue the service (§2-254(6)). As stated, the village may discontinue the services or functions entirely, subject to a permissive referendum (§2-254(7)).

Reincorporation. A village which is functioning under a special charter from the legislature may be reincorporated under the Village Law by adopting a proposition therefor, to be submitted at an annual or special election (§16-1600).

Alterations and form of government. A village may change its name (§18-1800), diminish its boundaries (§18-1804), or consolidate with adjoining villages (§18-1806) upon the adoption of a proposition therefor.

A village may, as an alternative to the adoption of a local law establishing the position of village manager, adopt a local law providing for the creation of a commission to study and prepare a local law establishing the position of village manager and defining the duties and responsibilities thereof (§18-1802).

Dissolution. The board in any village may, and upon a petition of the electors of the village it must, adopt a resolution submitting a proposition for the dissolution of the village in accordance with most of the permissive referendum article of the Village Law (§19-1900).

Structure (Officers). Under the Village Law any village may have the following officers:

1. A village may establish or abolish the office of village justice by resolution or local law subject to permissive referendum. There can be no more than two village justices.

2. A village may have an assessor or assessors, provided, however, that the board of trustees by resolution or local law may consolidate the offices of clerk, treasurer and assessor or any two of such offices. The board may also determine that it is to act as the board of assessors or may appoint such board from its members.

3. Such other officers, including deputies, as the board of trustees shall determine (§3-301).

The Village Law states terms of office for the village officers and gives the board power to shift some terms from two to four years and vice versa, subject to permissive referendum, and the timing of general elections can be shifted accordingly (§3-302).

The board, subject to mandatory referendum, may change the matter of trustees (§3-304).

Separate boards of commissioners) The board of trustees may establish or abolish a board or boards of fire, water, light, sewer, park or cemetery commissioners or a single municipal board having the powers and duties of two or more such separate boards. The board may also establish or abolish a separate board of police commissioners.

Powers of incorporated village. Under the Village Law any village heretofore or hereafter incorporated shall have power:

1. To take, purchase, hold, lease, sell and convey such real and personal property as the purposes of the corporation may require;

2. To take my gift, grant, bequest or devise and hold real and personal estate absolutely or in trust for any purposes of the corporation or for any public use upon such terms or conditions as may be prescribed by the grantor or donor and accepted by said corporation and to provide for the proper administration of the same;

3. To take unconditionally by gift, grant, bequest or devise for any other purpose any real or personal property or estate or interest
therein, to hold same for only such time as is reasonably necessary to sell, convey or to dispose thereof, and to so sell, convey or dispose thereof notwithstanding that the holding of such property would not be for a purpose of the corporation or for a public use;

4. To make, have and use, and from time to time alter, a common seal;

5. To contract and be contracted with, to sue and be sued, to complain and defend and to institute, prosecute, maintain, defend and intervene in any action or proceeding in any court;

6. To have and exercise all the rights, privileges and jurisdiction essential to a proper exercise of its corporate function, including all that may be necessary incident to, or may be fairly implied from the powers specifically conferred upon such corporation;

7. To have and exercise all the rights, privileges, functions and powers prescribed and exercised by it under existing or subsequent laws and not inconsistent with the provisions of this chapter.

**Board of trustees.** In addition to all other powers conferred on villages, the board shall have management of village property and finances, and, in addition, the Village Law provides that the board may exercise general powers of local lawmakers (not inconsistent with the Constitution) which shall be deemed expedient or desirable for the:

1. good government of the village;
2. its management and business;
3. protection of its property;
4. safety, health, comfort and general welfare of its inhabitants;
5. protection of their property;
6. preservation of peace and good order;
7. suppression of vice;
8. benefit of trade;
9. preservation and protection of public works (§4-412(1))

The board may also create by resolution, offices, boards, agencies and commissions and delegate to them so much of its power as it shall deem necessary for effectuating or administering the board of trustees duties and functions (§4-412(1)).

In addition, the board is delegated powers in relation to:

1. the arresting and prevention of floods or erosion (by construction of drains, dams and the like)
2. the designation of banks or trust companies for the deposit of village monies and the like
3. the payment and compromise of claims
4. waste disposal
5. the sale of abandoned or lost property
6. franchises
7. acceptance of dedicated streets
8. public docks
9. fire protection or ambulance service

**Powers of officers.** There are few discretionary powers granted to the village officers, including:

1. The clerk may administer the oath of office to all village officers (§4-402(h))
2. The clerk or any member of the board of trustees may administer oaths and take affidavits upon any claim or account against the village. The village clerks may also do so upon matters in connection with village business (§4-404)
3. The treasurer may sign checks with the facsimile signature of the treasurer (§4-408(c))

**Finances.** The Village Law contains financial requirements, most of which are regulatory or designed to assure accountability. There are a few permissive sections, such as, the authority to set up petty cash accounts (§5-526) and to appropriate to maintain municipal conferences and associations (§5-528).

**Streets, sidewalks and public grounds.** Villages may assume responsibility for bridges wholly within its boundaries via resolution subject to permissive referendum (§6-606). If a village has exclusive control of a street or bridge it may change its grade (§6-616). Villages also may bear a portion of the cost for sidewalks (§6-620). The board is empowered to acquire lands for public parks, squares, athletic fields or playgrounds (§6-624). Villages may improve state highways in the village (§6-630). The use of sidewalks, stores, house and other building fronts may be regulated and the erection and construction of any
stoop, steps, platform, curb pumps, bay windows, stairs, cellar, area, areaway, descent to or ascent from any building or any projection from any building may be regulated or prohibited (§6-632).

Building Zones. Under the Village Law, there is a clear grant of power, by local law, to regulate and restrict the height, number of stories, size of buildings and so on. In other words, this is a police power grant over zoning and buildings (§7-700). The board may divide the village into districts, but the regulations must be uniform for each class or kind of building throughout each district (§7-702). The board can change its restrictions or modifications, but if there is a protest by a certain percent of property owners then the board needs a higher vote than majority to give the amendment effect (§7-708).

A board adopting a zoning ordinance pursuant to §4-412 and prior to May 21, 1923, automatically receives the powers conferred by these provisions. Any other village must appoint a zoning commission which is to make recommendations (§7-710).

The creation of a board of appeals is mandatory, but the mayor is empowered to remove any member, for cause and after public hearing (§7-712).

The board is authorized and empowered to establish a planning board, and the planning board receives the powers of a planning commission in the General Municipal Law as well as the powers granted in the Village Law (§7-718).

Police department. The board may establish a police department, appoint personnel and fix compensation, and it may, subject to permissive referendum, abolish such department (§8-800).

Fire department. The board may establish a fire department and may, subject to permissive referendum, abolish such department (§10-1020).

Water. The board may establish a system of water works (§11-1102), and it may contract for such services (§11-1100). The board is empowered to extend water mains outside of the village (§11-1122) and the board of water commissioners is empowered to sell water to a corporation, individual or water district outside the village (§11-1120).

Light. The board may establish a system for supplying light (§12-1202) and the board of light commissioners may contract in the name of the village for such services (§12-1200).

Self-Supporting Improvements. Self-supporting improvements are any recreational facilities and parking areas in connection therewith, established pursuant to Article 13 of the Village Law, from which revenues are obtained by the imposition and collection of rates, fees, tolls or admissions (§13-1300). The board may establish such improvements pursuant to the provisions of the Village Law (§13-1302).

Sewers. The board may upon its motion or shall upon a proper petition cause a map and plan to be prepared for a complete sewerage system for the village (§14-1400). The board may provide for extension beyond the village (§14-1402) and it may sell to a public or private corporation, or to an individual, the right to make connection with its sewer system (§14-1404). The board may construct as a general village charge, subject to permissive referendum (§14-1406) or it may establish or enlarge at joint expense of the village and the property benefited (§§14-1408, 14-1410).

The board of sewer commissioners may cause lateral sewers to private property owners to be constructed at the expense of the property owner (§14-1438).

Cemeteries. The board may create a board of cemetery commissioners which is empowered to accept lands in behalf of the village for cemetery purposes, and the board by resolution may provide for purchase or condemnation for cemeteries (§15-1500).

Orders, rules and regulations. Any order, rule or regulation which contains a penalty therein may be adopted by local law (§20-2000). Villages may enforce obedience to its ordinances adopted prior to September 1, 1974 by fines (not to exceed $250), by deeming breach to be a violation under the penal law or by using injunction (§20-2006).

Miscellaneous sections. The Village Law has provisions and delegations of powers which are of limited application or which don't appear to have the substantive impact of some of the grants already mentioned. For example, Article 17 of the Village Law
organizes provisions applicable to a village embracing the entire territory of a town. This article is obviously of crucial importance to those villages and towns, but, it is typical of the type of village law provision that may not show up in this report.

GENERAL MUNICIPAL LAW

This section reviews the permissive provisions of the General Municipal Law. Authority granted includes the establishment of councils, commissions and the like, which add potential to the structure of the local governments affected. Other provisions make grants of various powers to be exercised within the chosen structure.

Definitions. As used in the General Municipal Law, "municipal corporation" includes only a county, town, city and village, and "governing board" includes the board of supervisors of a county, the town board of a town, the common council of a city, and the board of trustees of a village (§2).

General municipal finances. The financial provisions of the General Municipal Law are, in the main, regulatory and not permissive. Of the permissive provisions, the governing boards of municipal corporations may establish a number of different reserve funds (§§6-c, 6-d, 6-e, 6-g, 6-h, 6-j) and certain temporary investments are allowed with public moneys (§11). A municipal corporation may contract with the bureau of census for a special census (§20). Any county may abolish the office of railroad commissioners and direct the transfer of such duties to the supervisor of the town, or the treasurer of the municipal corporation other than a town (§16).

Miscellaneous powers. There are powers delegated to municipal corporations which do not fall within any traditional subject heading. The following is a listing of these powers:

1. The acquisition and development of forest lands by counties, towns and villages (§72-a)
2. The acquisition of lands and erection of memorial buildings thereon by towns or villages (§72-b)
3. Municipal corporations may provide for the expenses of training schools for police and other peace officers (§72-c)
4. A municipal corporation or fire district may provide for the expenses of volunteer firemen attending training schools (§72-g)
5. Municipal corporations can acquire property for parking garages and parking spaces and a municipal corporation or an urban renewal agency may construct and operate such garages or spaces (§72-j)
6. Municipal corporations acting through their governing boards or other appropriate authorities may go into navigation and flood control improvements in cooperation with the federal government (§72-1)
7. Condemnation of real property by municipal corporations (§74)
8. Leases of public buildings to posts of veteran's organizations, organizations of volunteer firemen and child care agencies by municipal corporations.
9. Construction and maintenance of memorial buildings, parks or monuments by a county or a city (§77-a)
10. Provide expenses for conventions, conferences and the like by any "municipality" (defined as a city, county, town, village, school district, cooperative educational services district, improvement district, soil conservation district, public library, community college or fire district) (§77-b)
11. Insurance of public buildings by municipal corporations (§78)
12. Establish and maintain free public libraries by municipal corporations (§79)
13. First and second class cities may (and third class cities by proposition) provide for a band (§79-a)
14. All boards and officers authorized to appropriate and to raise money by taxation and to make payments therefrom, can do so for charitable and other institutions (§87)
15. Any city, county or village can establish a merit award board to award employees for suggestions contributing to efficient government (§88-a)
16. Municipal corporations or other civil divisions or political subdivisions of the State may provide overtime compensation to public employees (except elective officers and those officers otherwise excluded by law) (§90)
17. Offer rewards up to $1,000 each for information leading to detection, arrest and conviction of criminals by municipal corporations.

18. A county, city, town, village, school district, fire district, or other district, corporation or political subdivision may grant sick leave, vacations, etc. "...with or without pay." (§92)

19. A public corporation (defined as a municipal corporation, a district corporation, a school district, a consolidated health district and a county or town special district, a joint special district governed by a separate board of commissioners) may contract for hospital services or for insurance (§92-a).

20. A municipality (defined as second and third class cities, counties outside the city of New York a village, town or that part of a town not within a village) is authorized to establish youth agencies (§95).

21. Any county, city, town, village or school district is authorized to establish, maintain and operate programs for aging (§95-a).

22. Unimproved land may be used for garden purposes by municipal corporations (§96).

23. Neighborhood youth centers may be constructed by municipal corporations (§96-a).

24. Municipal corporations in addition to other grants of zoning powers, can provide by regulations, special conditions and restrictions for the protection of historical places or other places of a special character or aesthetic interest or value (§96-a).

25. A "municipality" (defined as a county not wholly within a city, a city with a population over 25,000 and under 1,000,000 and a town of the first class) may operate and maintain railroad passenger stations (§98).

26. Two or more cities, towns or villages in the same county or adjoining counties may jointly obtain or lease railroad facilities (§98-a).

27. Every city, village, town or county not wholly within a city may make grants of money or property to public authorities therein furnishing transportation services (§98-b).

28. A city, town or village may regulate open wells, cesspools, basins, or pumps (§99).

29. A municipal corporation, school district, or district corporation may authorize plans, surveys and the like, for capital improvements (§99-d).

30. Any municipal corporation may undertake the planning and execution of a capital program in accordance with the provisions in the General Municipal Law (§99-d).

31. A "municipal corporation" (defined for this section as county, city, town, village or school district or the board of education in New York City) can participate in federal programs and pay out the money necessary to do so (§99-h).

32. A "municipal corporation" (defined for this section as county, city, town, village or school district, or the board of education in New York City) can participate in programs to promote progress and scholarship in the humanities and the arts (§99-i).

33. A "municipal corporation" (or two or more jointly) may take such actions as are required for control of aquatic plant growth (§99-j).

The General Municipal Law is also the source of authority for many local projects, programs or extensive local involvement in certain public concerns. The following identifies these statutory grants of power to local governments.

1. Public health and safety
   (a) Contracting for purification of water and sewerage (cities, towns and villages) (§120).
   (b) Establish joint water district (towns and villages) (§120-a).
   (c) Certain mutual aid for water service as defined (§120-a).
   (d) Agreements for joint collection of garbage (town and village) (§120-v).
   (e) Contracts for disposition of refuse and garbage as defined (§120-w).
   (f) Establish and maintain free public baths (city, village or town) (§121).
   (g) Joint police department (town and village) (§121-a).
   (h) Provide a general ambulance service (county, city, town and village) (§122-b).
   (i) Erection and operation of life-saving apparatus (municipal corporations) (§122-b).
(j) Establish public general hospitals (municipal corporation) (§126)
(k) Establish joint hospitals (city, town and village) (§126-a)
(l) Establish public hospital for chronically ill (county and city) (§126-b)
(m) Establish school of nursing (board of any hospital) (§131)
(n) Provide a room for "suspected" insane (board of any hospital) (§132)
(o) Trusts for Parks and Libraries in Villages and Towns (article 7)
(p) Burial of veterans and their families (article 7-a)
(q) Provisions relating to cemeteries (article 8)
(r) Regulation and use of bicycles and similar vehicles (article 9)

2. Contracts for common water supplies (city, village, county on behalf of county water district and a town on behalf of water district or water storage and distribution district) (§111)

3. Develop supply of water for sale (city, village, county on behalf of county water district and a town on behalf of water district or water storage and distribution district) (§118)

4. Construct and develop excess sewage capacity (same subdivisions as #2 and 3) (§119)

5. Construct and develop excess drainage capacity (same subdivision as #2 and 3) (§119-c)

6. Common drainage facilities (city, village, county on behalf of county drainage district, a town and a town acting on behalf of a town drainage district) (§119-f)

7. Performance of municipal cooperative activities (municipal corporations, school and fire districts, certain county and town improvement districts) (§119-o) (also see article 5-J)

8. Projects relating to the use of atmospheric water resources (municipal corporations) (§119-p)

9. Local Laws as to mass transportation and airport and aviation facilities (city, town, village or county not wholly contained within a city) (§119-r)

10. Participation in federal and state assistance programs for mass transportation and airport and aviation projects (municipal corporations) (§119-s)

11. Extra work by police, fire, transit (§§208-d, 208-e)

12. Creation of planning commissions with the powers herein delegated (city and village) (article 12-A)

13. Creation of metropolitan, Regional or County Planning Boards (county, either alone or with cities, towns and villages) (article 12-B)

14. Creation of joint municipal survey committees (county outside the city of New York, city, town, village or school district or any combination thereof) (article 12-c)

15. Creation of commission on human rights (municipal corporations) (§239-o)

16. Creation of a narcotic guidance council (municipal corporations or community boards as defined in art. 52-A of the Education Law) (§239-a)

17. Creation of conservation advisory councils and conservation boards (city, town or village) (article 12-F)

18. Establishment and operation of playground and neighborhood recreation centers (2d and 3d class cities, counties outside the city of New York, towns and villages) (article 13)

19. Creation of recreation commission (same application as #18) (§243)

20. Establishment or extension of residential or recreational areas in the Lake George Park (village or town lying wholly or partly within the park) (§280)

21. Establish and maintain community facilities and programs for the elderly (municipal corporations) (article 13-D)

22. Establish and maintain airports and landing fields (municipal corporations) (Article 14)

23. Power to establish, own, operate and make local laws regarding certain public utility services (municipal corporations) (article 14-A)

24. Establishment of traffic violations bureaus (city, village, town, or county of Nassau may authorize the local judiciary to establish) (§370)
25. Certain revenue producing undertakings, such as, tunnels, highways, airports etc. (municipal corporations) (art. 14-C)

26. Establishment and maintenance of joint jails (counties outside of New York City, towns, city, village) (article 14-D)

27. Establish and impose sewer rents (city, village or county or town on behalf of a sewer district) (article 14-F)

28. Interlocal agreements with governmental units of other states (county, city, town, village, school district, improvement district or district corporation) (article 14-G)

29. Power to authorize the conduct of bingo games by authorized organizations within the municipality (city, town or village) (§477)

30. Plan and undertake one or more urban renewal projects (city, town, village) (article 15) (see article XV-A for urban renewal agencies created by special act of the legislature)

31. Municipal annexation (petition, hearing, election, etc. of the inhabitants) (article 17)

32. Seek special legislation creating an industrial development agency (municipal corporations) (article 18-A)
Vol 4, Summary
March 31, 1975
TEMPORARY STATE COMMISSION
ON STATE AND LOCAL FINANCES

John J. Feeney
CHAIRMAN

MEMBERS
Jeremiah Bloom
Richard L. Dunham
George Klein
John J. Marchi
Charles Merrill
Antonio Olivieri
Sal J. Prezioso
Albert B. Roberts
James H. Swanton
Caesar Trunzo
Richard A. Wiebe
Mary Wrenn

Richard F. Decker
EXECUTIVE DIRECTOR
NEW YORK STATE
TEMPORARY STATE COMMISSION ON STATE AND LOCAL FINANCES
BOX 7032, ALBANY, NEW YORK 12225

TO: Honorable Hugh Carey,
    Governor of the State of New York;

    Honorable Warren Anderson,
    President Pro Tem of the Senate;

    Honorable Stanley Steingut,
    Speaker of the Assembly;

    Honorable Members of the Legislature
    of the State of New York

This volume summarizes the recommendations and conclusions submitted in our previous reports.

During the past year, the Commission held public hearings in Albany, Binghamton, Buffalo, Farmingdale, Hornell, Kingston, Lake George, New York City, Rochester, Syracuse, Tarrytown and Watertown. The Commission received nearly 1,500 pages of testimony from 143 representatives of local governments and interested groups. A summary of these hearings is also contained in this volume.

The public response we have received, the dedication of the Commissioners, the untiring efforts of the staff and the complete cooperation of State agencies, local officials and private organizations enabled us to proceed in a very positive manner.

John J. Feeney
Chairman

March 31, 1975
STAFF

Richard F. Decker
Executive Director

William B. Eimicke
Director of Studies

Robert L. Beebe
Legal Consultant

James A. Unger
Associate Director of Studies

Thomas A. Smith, Information Systems Coordinator
James B. Ellsworth, Research Associate*
Brian T. Stenson, Research Associate
Timothy R. McGill, Research Assistant
Anne H. Pope, Research Assistant
Noel Watson, Research Assistant

Brian McArdle, Administrative Assistant
Gail D'Arcy, Executive Secretary

Rita DeBrino
Marcia Mahar
Rita Slay**

*Resigned 1/75
**Resigned 10/74
SUMMARY OF COMMISSION HEARINGS, REPORTS AND RECOMMENDATIONS
CONTENTS

Introduction ........................................... 5
Public Hearings ........................................ 6
Volume 1, STATE REVENUE SHARING ............. 9
Volume 2, THE REAL PROPERTY TAX ............ 15
Volume 3, STATE MANDATES ....................... 25
Other Reports ......................................... 31
Errata for Vols. 1–3 ................................. 32
INTRODUCTION

SELDOM HAS NEW YORK State and its local governments faced such urgent demands for solving such difficult problems – or had such opportunities for constructive action. Profound social and economic changes pose challenges to our governmental system which can only be met by determined leadership, executive and legislative alike.

After conducting twelve hearings across the state, the Commission selected those problems which it considered most crucial and set about analyzing them and proposing solutions within the very limited time available. The suggestions and recommendations of the Commission are contained in three separate volumes which are summarized in this document. In addition, two volumes containing staff reports and consultant reports were prepared to serve as a resource basis for future inquiries into the specific subjects treated.

We believe that the suggestions and recommendations of this Commission, if implemented, achieve the Commission’s goal.
PUBLIC HEARINGS

THE TEMPORARY STATE COMMISSION on State and Local Finances completed a series of twelve hearings held to obtain the views of local officials, private citizens and interest groups regarding fiscal relationships between the state government and its municipal corporations, the counties, cities, towns and villages of the state. Hearings were held in Albany, Binghamton, Buffalo, Farmingdale, Hornell, Kingston, Lake George, New York City, Rochester, Syracuse, Tarrytown and Watertown. The hearing notice requested that testimony be directed to six general topics:

1. The role of local assistance in local government finance.
2. The ability of local governments to finance their needs.
3. The use of current and alternative local government revenue sources.
4. The need for local government to provide essential local government services with attention to the distribution of functions among local governments.
5. Proposed standards for equitable distribution of general assistance among local government units.
6. Special urban and regional financial needs and proposed solutions to these problems.

The Commission took 1,471 pages of testimony from 143 witnesses. Testimony was recorded at each hearing and was subsequently transcribed into a written record. The staff analyzed this testimony and produced a comprehensive and detailed index to give easy access to the viewpoints expressed regarding state and local finances and other aspects of intergovernmental relations. Copies of each hearing transcript and the index are available for review at the Legislative Reference Library, State Library, State Education Building, Washington Avenue, Albany.

A summation of the major points of view offered at the hearing follows.

The Role of Local Assistance

Five roles for state fiscal assistance to localities were cited in the testimony:

1. to finance basic local government services;
2. to fund new or expanded programs on the local level;
3. to pay increased costs necessary in order to comply with state mandates;
4. to provide real property tax relief to local residents and business;
5. to augment the technical know-how, equipment pool and manpower available to local governments.

Witnesses cited roles for three types of state aid: categorical grants, state revenue sharing (per capita aid) and in-kind aid. Many witnesses complained that categorical grants distorted local priorities by encouraging expenditures for programs above and beyond basic community needs. However, most critics did not conclude that categorical aid programs should be cancelled, and several persons testified that categorical aid programs should be continued. Recreation and highway aid programs were strongly supported in the testimony, and it was further noted that other programs in the public interest would be discontinued without categorical aid to fund them.

A major role for state revenue sharing funds cited at the hearings was that of offsetting the cost to localities of providing the quantity and quality of services mandated by the state. Problems associated with state mandates were brought to the attention of the Commission at every hearing. Officials complained that the state had legislated minimum requirements to be met by localities in areas such as police and fire training, public employee pensions, electrical rates for street lighting, minimum hospital rates and storm and waste water treatment facilities without reference to local needs and desires and without providing state aid to meet the enormous fiscal burdens to localities.
resulting from compliance with state mandates. It was pointed out that another type of mandate — the real property tax exemption — has continuously been legislated by the state, resulting in the erosion of the major sources of local revenue. On one hand, the state has asked the localities to provide more and better services and, on the other hand, it has taken money away from the localities that could be used to provide those services.

Proposed solutions to the problem of mandates varied. Many officials felt that the state should finance the full cost of all mandated programs. Some officials asked that the State Legislature be required to seek local input before voting on bills containing local mandates, that realistic cost estimates for each mandate be included in each such bill, that effective dates of mandates be made to coincide with the beginning of the local fiscal year and that localities be given time to plan financing for the new expenses.

A new use for state aid favored by some officials was the establishment of an in-kind aid program to augment the technical know-how, equipment pool and manpower available to local governments. Where grant applications require technical studies, localities would use state consultants rather than expensive private consultants to carry out such studies. Similarly, idle state construction equipment would be loaned out to local governments who have limited use for additional or specialized equipment.

The Ability of Local Governments to Finance Their Needs

Most witnesses testified that localities lack a sufficient tax base to finance services needed and demanded by their citizens. Typically, localities have relied on intergovernmental transfers (state and federal aid) to provide the additional revenues necessary to finance public services. Local taxpayers were depicted as bearing heavy tax burdens and as being unable to withstand additional taxes. At the same time, inflation and state mandates are driving local government costs up. The resulting competition for tax sources produced some emotional testimony at the hearings. Several witnesses felt that the State and Federal levels of government have too large a share of the total tax base and that they have been keeping too large a share of the tax revenues that are collected from that base. Some towns and villages are also seeking a larger share of county sales tax revenues. All jurisdictions complained that the real property tax is too static to meet revenue needs in time of inflation and the local governments need access to sources of revenue that keep better pace with fluctuations in the economy.

The Use of Current and Alternative Local Government Revenue Sources

Funds are primarily available to localities from three sources: Federal aid, state aid and the taxing power of local government. Federal revenue sharing was hailed as an important new source of local revenue by witnesses from many localities. Generally, funds have been used to finance needed capital projects or to provide standard governmental services rather than to undertake new or vastly expanded programs. Concern that Federal revenue sharing could be discontinued has prompted localities to avoid making new financial commitments with these monies since such commitments could not be sustained without Federal aid. The impact of state revenue sharing has varied widely from one class of locality to another. Local officials testified that much of the state revenue sharing money is committed to funding ongoing governmental services but that present funding levels are not sufficient to provide for even the needed level of basic services.

In view of the static nature of the real property tax — the basic source of local revenue — localities are seeking larger shares of the yield of the income and sales taxes with the proviso that such taxes be levied at the prevailing rates. Some interest was expressed in authorizing localities to levy various user charges and in allowing each locality to determine the rates charged for such services. More interest was generated in requiring tax-exempt properties owned by the state, its authorities and by public and private educa-
tional facilities to make some sort of payment for the services local governments provide to them.

Many witnesses expressed a desire for more fiscal home rule. They felt that since local government was closest to the people, both in terms of knowing local needs and in terms of feeling citizens' wrath, it should have a larger voice in the raising and spending of local tax revenues. Officials felt that taxes raised locally should be spent to meet local needs rather than being shipped to Washington or Albany to be consumed in maintaining an expensive bureaucracy of grants administrators.

Some types of local services were viewed as hopelessly beyond the ability of local governments to finance, including education, pension payments and social services programs. Witnesses generally believed that such programs should be funded by the state but administered locally in order to keep human needs and local conditions in perspective. Additional borrowing power was sought by two witnesses who advocated liberalization of debt limits and the creation of a state-financed bonding authority to sell local capital construction bonds.

3. The state has failed to provide real incentives to local governments for carrying out consolidations.

As instances of these obstacles, towns were criticized by village representatives for collecting taxes from the villages within the town and for receiving state aid based on village population, while at the same time providing little or no services to the villages in return. On the other hand, some witnesses suggested that towns should absorb any villages that were not providing some standard level of services.

Proposed Standards for the Allocation of General Assistance

The largest number of witnesses testified regarding the need to change the State Revenue Sharing (Per Capita Aid) distribution formula. Witnesses advocated increasing the total amount of per capita aid from 18% to 21% of state income tax receipts, as the 1970 law provided. Several suggestions were made for distributing aid:

1. The aid distribution formula should incorporate measures of need, effort and capacity rather than class of municipality.
2. Aid should be tied to the provision of local services, and
3. Each locality should receive a fixed percentage of its budget as state aid.

Special Urban and Regional Financial Needs

Representatives of certain communities indicated special needs for state aid. Resort communities asked for a larger share of the state sales tax revenue in order to meet their need for waste treatment and water distribution facilities, police services and traffic systems to meet peak season demands. These transients place an undue burden on local property holders, many of whom do not financially benefit from the influx of visitors. Representatives of rural communities asked for aid to water and sewer systems, for aid to stimulate economic development and for aid to help developing areas provide the large volume of new services needed by rapidly expanding population.
THE NEW YORK STATE Revenue Sharing Program distributes a fixed proportion of the State's personal income tax revenues to the 1605 units of general purpose local government (counties, cities, towns and villages) on a formula basis. This program is designed to achieve the important goals of tax relief, fiscal stabilization and equalization at the local level, based on need, capacity and effort. Half of the funds are allocated only to cities as Special City Aid and, in addition, cities receive the largest share per person from the half of the income tax receipts distributed to all units through the Per Capita Aid formula. Towns receive the next largest share (p.c.), followed by villages, with the smallest per capita allocation going to counties.

The rationale of the present formula is that jurisdictional classification — county, city, town or village — is a reasonable surrogate for fiscal effort (expenditures compared to fiscal capacity) and fiscal need (the service responsibilities and demands placed on particular governmental units). There is also a formula modifier given to all units which is designed to compensate for low fiscal capacity (full value per capita).

The preeminence given jurisdictional classification in the formula and the range in the formula amounts evinces a belief that the different units vary greatly in the services they provide and the people to which those services are provided. Additionally, the present distribution implies that there is relative uniformity of demands made and services supplied within jurisdictional classes.

A number of inter-class comparisons, particularly cities to villages, indicate that many units in different classes have very similar need, capacity, and effort characteristics; yet they receive disparate per capita aid shares. The comparisons also suggest that there is perhaps as much dissimilarity among units in the same class as there is between classes.

When population, local government expenditures and per capita aid received are aggregated by county, there appears to be no significant relationship between services delivered and per capita aid received. For example, the Erie county-wide area gets a much larger share of per capita aid than its proportional share of the upstate population or local government expenditures while the Suffolk county-wide area receives only about half its share of expenditures (or population) in per capita aid. A primary explanation for this variation is the bias of the present formula toward cities. Those counties with cities receive significantly more per capita aid overall than similar counties without places classified as cities.

A comparative analysis of local government expenditures between 1958 and 1972 indicates that...

<table>
<thead>
<tr>
<th>ERIE CO.</th>
<th>SUFFOLK CO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>1,106,800</td>
</tr>
<tr>
<td>Aid per capita</td>
<td>$20.79</td>
</tr>
</tbody>
</table>
COUNTIES CITIES TOWNS VILL.

1958

0 20 40 60 80 100%

1972

LOCAL GOVERNMENT EXPENDITURES

county expenditures increased from 43% of the total in 1958 to 58% in 1972 while city, town and village shares declined to 19%, 16% and 7% respectively. Yet, county government shares of per capita aid are less than their shares of total local expenditures, and, cities and towns receive more than their share of aid relative to expenditures (the picture of villages is mixed). The formula is so biased against the county unit that subunits with one-tenth the population or expenditures receive more Per Capita Aid than the county units which supercede them.

A detailed intra-class study of counties, cities, towns and villages pointed out differences within classes which often exceeded the differences between classes. Aid to the county unit varies significantly, with some counties receiving the minimum formula allocation ($6.65 per capita) and others getting at least four times the formula amount; the difference is primarily a product of the fiscal capacity modifier.

Cities vary widely in fiscal capacity but not to the extent that counties differ; nor do all cities have relatively large populations, as some might expect. While 14 cities (23% of the total) exceed 50,000, 33 (54.3%) have populations of less than 25,000 and 7 (11.5%) have less than 10,000. Despite the great differences in city capacity and need, the amount of Per Capita Aid to the various cities is very similar on a per person basis, even when the impact of the capacity modifier is considered.

Towns are more diverse in capacity and population than either cities or counties. An analysis of distribution of aid to towns is complicated because aid is given for both the town population and the town outside-village population (given to the town government) and to town population within villages (to the village government). Overall, towns with villages receive more aid than towns without villages if town, TOV, and village aid is cumulated. If town and village governments are treated as separate entities, then towns with villages are penalized compared to towns without villages.

Villages are also very different in their relative capacities and populations. But the shares of village aid do not vary greatly; with the difference explained by the impact of the capacity modifier.

Counties, cities, villages and towns (for the town outside-village area only) currently receive low fiscal capacity modifier aid through the State's Per Capita Aid program. Cities, villages and towns receive $.05 per capita for every $100 (or part thereof) of full value per capita below $8,000. The only difference for counties is that their capacity is measured by an average of full value (p.c.) and weighted personal income (p.c.).

A detailed analysis of each jurisdictional class indicates that the modifier varies greatly in its impact, depending on the magnitude of the formula allocation for the given class. Modifier aid is relatively unimportant for cities while 54 of the 57 counties receive as much in modifier as they do in formula aid, and 45 receive twice as much. The modifier is somewhat less significant for towns and villages but additional aid still is a great deal more important than it is to cities, largely because the town and village formula shares are relatively small.

In addition, $8,000 per capita as the initiation level for fiscal capacity modifier aid has no substantive meaning based on the distribution of full values (p.c.) for all the eligible jurisdictions. The $8,000 level makes even less sense for counties, whose capacity is measured as an average of full value.
and personal income (p.c.). If the intent of the modifier is to provide more money to the units with less fiscal capacity, then major changes in the formula must be instituted.

The preponderance of tables, data, and analysis in Volume 2 make a strong case that the present State Revenue Sharing formula fails to distribute aid to New York's local governments equitably on the basis of fiscal need, capacity and effort. Among the more serious failures of the current formula are:

1. The overall analysis continually leads to the conclusion that jurisdictional classification is clearly invalid as the primary factor in distributing State Revenue Sharing. The extreme differences in amounts of aid received by the various municipal classifications under the present formula cannot be justified since there is no uniformity regarding fiscal need, capacity and effort within each jurisdictional class. Particularly, "Special City Aid" has so distorted the Revenue Sharing program that some cities receive disproportionately large shares of aid, regardless of need, capacity or effort, simply because of their legal classification.

2. The present formula fails to recognize the realities of jurisdictional overlap in New York State. Aid is currently given to counties, cities, towns and villages through completely independent formulas. This failure to account for jurisdictional overlap has resulted in county-wide areas with similar socio-economic characteristics receiving very different total amounts of aid, especially if one has a city and another does not. In the same vein, the present formula provides the smallest shares of aid to county governments, even though counties encompass cities, towns
and villages, and have assumed increasingly more responsibility for the funding and delivery of local government services.

3. Even though there is a low fiscal capacity modifier in the present formula, its impact differs substantially by jurisdictional classification. The $8,000 full value per capita initiation level for modifier aid has no substantive meaning based on the distribution of full values (p.c.) for all eligible jurisdictions. The $8,000 level makes even less sense for counties, whose capacity modifier is based on a weighted average of full value (p.c.) and personal income (p.c.). If the intent is to provide more money to the units with less fiscal capacity, then major changes in the capacity modifier should be instituted.

4. Every commission that has been assigned to review the State's Revenue Sharing program has recommended that a measure of fiscal effort be incorporated into the existing formula. These proposals were not very specific, however, and to date, no such factor has been included in the formula.

5. Although one of the expressed purposes of the State Revenue Sharing program is to stabilize local revenues and prevent wide fluctuations in their expenditures, the current program has failed to accomplish revenue stabilization and has not even attempted to deal with expenditures.

These five deficiencies have received major attention in the proposed revision of the Revenue Sharing formula. It is emphasized that care has been taken to make the formula as simple as possible, without sacrificing equity or accuracy. Population, a uniform input for all governments, is the base of the proposed formula as the primary indicator of fiscal need.* Measures of fiscal capacity — personal income (p.c.) at the county level and full value (p.c.) at the sub-county level — and fiscal effort — "all locally raised revenues" divided by personal income, and property taxes divided by full value — modify the population base. Weighted population is used to calculate shares of aid — the populations of jurisdictions with low capacities and/or high efforts are "increased" while those units with high capacities and/or low efforts have weighted populations that are lower than their actual populations.

The proposed new formula incorporates a number of important changes designed to overcome the aforementioned limitations of the present plan.* The proposed distribution encompasses four basic steps.

In Step One, the total amount of aid is divided between New York City and the 57 counties outside the City. The basis of the New York City/Rest of State distribution is consistent throughout the formula: population, modified by fiscal capacity (personal income p.c.) and fiscal effort ("all locally raised revenues" p.c. divided by personal income p.c.). New York City and the "Rest of State" are compared to the overall New York State averages of capacity and effort, and receive aid accordingly. The "Rest of State" share is divided among the 57 county areas outside New York City in Step Two. The mechanics of the formula, as well as the surrogates used for capacity and effort modifiers, are the same as in Step One. The only major difference is that in Step One, the base of comparison is the overall State average while the "Rest of State" average is used to calculate the 57 county area shares in Step Two.

The 57 county area shares are then divided between the county government and its municipal subunits in Step Three. Since the local sales tax is, in many senses, a locally shared tax, and since other local revenue sources are for special purposes, property tax revenues are used to calculate the county unit's share. Specifically, the county government's share of aid is equal to the proportion of the county unit's property tax revenues to all property tax revenues raised by the county and its subunits. To provide revenue stability and facilitate the pass-

---

*Commissioner Olivieri concurs with these recommendations but prefers a measure of need which would reflect a broader range of indicators.

*Commissioners Bloom and Marchi do not concur with these recommendations.
through of aid to the various municipal subunits, the county unit’s share is limited to one-third of the
countywide share (which corresponds to the state
shares of Federal Revenue Sharing).

In Step Four, the remainder of the overall
county share is distributed among the municipal sub-
units. The mechanics of the distribution remain the
same as in Steps One and Two but the components of
the capacity and effort modifiers change. Since per-
sonal income data are not available at the sub-county
level, and because a major objective of State Revenue
Sharing is to relieve the local property tax burden,
full value (p.c.) is used to measure capacity at the
sub-county level. To measure effort, “all property tax
revenues” (p.c.) are divided by full value (p.c.). At
the sub-county level, each of the subunits is com-
pared to the appropriate county average.

The Commission has determined that it is op-
posed to “saving harmless” if it distorts an equitable
formula. It would be disastrous to the integrity of the
proposed formula if a “save harmless” provision, as it
has been used in the past, were applied externally.
However, in the interest of revenue stability, modi-
ified forms of “saving harmless” have been included in
the proposed formula. Emphasis is placed on “saving harmless” at the municipal distribution level to avoid inter-regional distortions.

One form of “saving harmless” which is incorporated into the proposed formula is the use of limits on the population weighting factors. The need for constraints on population modification for both the inter-county and intra-county distributions are clear: a minimum limit provides a degree of revenue stability; the maximum limit is designed to discourage irresponsible spending.

The other form of “save harmless” used in the proposed formula operates only at the municipal level (Step Four) and is designed to protect those jurisdictions which might otherwise receive less aid under the proposed formula. County units could, in FY 1975-76, be required to share 75% of their increase in aid over their FY 1974-75 share, 50% the next year, and 25% in the third year, with its subunits that lose aid under the proposed plan. Only those subunits with need, effort and capacity factors totaling 1.0 or more, would be eligible and each could be assisted only to its FY 1974-75 level. Aid could be divided among eligible units based on weighted population with excess shares successively divided among those who remain losers. Any excess of "75%" left after all subunits were saved harmless would be given to the county unit.

The overall impact of the proposed formula is positive – the vast majority of jurisdictions receive an increase over their present formula shares. An analysis of the individual municipal classes indicates that on a relative basis, the county units receive the largest increases under the proposed formula, followed by villages, towns and cities. This is primarily an automatic response of the proposed formula to the inequities of the existing program.

An important final point is that the proposed formula (including the “save harmless” provisions) is designed to meet the general revenue needs of all municipalities in the State based on measures of need, capacity and effort common to all. No attempt is made to deal with numerous “special situations” and “unique problems” that characterize, rather than differente, local governments in New York State. Categorical aid programs are expressly designed to deal with special circumstances and other Commission reports will address the need for, and the nature of, any new categorical programs to aid local governments.

**Highlights of Recommendations on the State Revenue Sharing Program**

THESE RECOMMENDATIONS to the Governor and the Legislature are designed to achieve the important goals of tax relief, fiscal stabilization and equalization at the local level:

1. Jurisdiction classification is clearly invalid as the primary factor in distributing State Revenue Sharing.

2. The proposed formula distributes aid solely on the basis of fiscal need, modified by fiscal capacity, and effort.

3. Fiscal need is measured by the overall population of the particular jurisdiction.

4. Fiscal capacity is measured by personal income per capita or full value of real property per capita.

5. Fiscal effort is defined as locally raised revenues per capita, divided by personal income per capita or real property taxes divided by full value per capita.

6. Two intra-county forms of modified “saving harmless” are applied: (a) maximum and minimum limits are placed on the capacity/effort factors; and (b) county units, which gain substantially, would be required to share a proportion of their AID INCREASE with low capacity, high effort subunits which would otherwise receive less aid under the proposed formula.

Over ninety percent of the 1,605 local units would benefit under the proposed formula, and because county units gain the most, the overall impact on virtually every taxpayer in the State is positive.
THE REAL PROPERTY TAX system is the most important and oldest continuing source of local revenues in New York State. Originally used by towns, cities and villages, its application subsequently spread to school districts, counties and special districts. The structure, administration and application of the tax were nearly as varied as the number of governments which used it.

Except for the 1958 enactment of consolidated Real Property Tax Law and the 1970 Assessment Improvement Law, the statutes relating to real property taxation in New York have never been subjected to comprehensive revision. The financial pressures of modern times have strained the property tax to the breaking point and comprehensive revision is essential if the tax is to remain the economic foundation of local government in New York State.

Time and resource constraints prevented this Commission from conducting an analysis of the required scope and depth. This report identifies the major problem areas and presents alternatives for new direction in the structure and administration of the real property tax. The report is divided into two parts, each dealing with a major problem area: administration is first, followed by exemptions (the erosion of the tax base).

The central issue in the three chapters comprising Part I is equity in administration and the failure of the present structure to provide it. The concept and practice of assessment is introduced and explained. Local control of the assessment function has produced wide variations in assessments, within property tax classes and between local tax bases. Such variations necessitate a quantitative analysis of the nature and the degree of the believed inequities.

Statistical analyses of the assessment of real property in New York State document substantial inequities between and within different classes of property. Measurements of the relative accuracy of assessments are accomplished by the calculation of coefficients of dispersion, which estimate the degree that an individual assessment varies from the norm of market value. Since perfect equity is virtually impossible to achieve, the State Board of Equalization and Assessment has set ±10% as the acceptable limit of variation.

Vertical equity, the consistency of assessment between property classes, varies by county. A general pattern of undervaluation in residential parcels and overvaluation of commercial, industrial and utility properties is evident. Specifically, 50 of the 57
 counties are assessing residential properties at less than full value. Vacant land is underassessed in 32 counties, industrial land in 15 while only 2 counties underassess commercial and only ones underasseses utility property.

A sample of five counties was chosen to evaluate vertical equity among municipalities. Again, 48 of the 56 towns sampled are undervaluing residential properties and most consistently overassessing utilities. Although there is no legal classification of properties in New York, the de facto practice has led to vast inequities.

Regarding horizontal equity — the degree of variation in assessments within each property class — the Commission’s analysis revealed wide variation in the levels of assessment for residential properties statewide. The wide range is a product of administrative problems (too many parcels for the staff), poor data (limited sales information), policy decisions (classifications) and poor assessing (controllable under or over-assessments).

Permitting wide variations in residential assessments within counties distorts the application of the county tax levy, which is apportioned on full value to produce a uniform rate. Due to the variations in assessments, this apportionment effect is lost and high percentage differences in individual assessments result; variations of 400 percent in the effective residential tax rate were identified. Variations occur in underassessed and overassessed classes, regardless of implicit policy intent.

The inequities present in the property tax system have usually been attributed to poor administration, particularly the lack of full time, “professional” assessors. Thus, the main thrust of the Assessment Improvement Act of 1970 was to professionalize property tax assessment and administration. While much progress has been made toward “professionalization” (as defined by the 1970 Act), the data document that it has done little to improve the equity of property tax assessment statewide.

Detailed analysis indicates that the role of the State Board of Equalization and Assessment in local property tax administration has been largely confined to the setting of equalization rates. Regarding its role of monitoring the administration of local assessing, the State Board has interpreted its “advise and assist” charge to mean that its functions are purely advisory. As a result, the Board has not functioned as an advocate even of improved assessment administration.

If administration is to improve, there must be more active and direct State coordination and technical assistance in the local administration of the real property tax. Particularly, the State should promote the development and local implementation of a comprehensive assessment program.
puterized mass appraisal and administration system for real property assessment and taxation.

The Diminishing Local Tax Base: Origins and Responses

Exemption from taxation seems to be an inevitable consequence of the imposition of a tax. The granting of exemptions by the taxing authority necessarily reduces the base, which in turn affects either collections or the relative tax burden on the individual taxpayer. And it is probably safe to say that as exemptions increase in both number and size, the particular tax system becomes onerous to the non-exempt taxpayers and more subject to criticism grounded in theories of equity.

The New York State real property tax is no exception to these observations. It is in fact now solely a real property tax partially because the proliferation of exemptions to the personal property tax made that portion of the overall property tax system so unpalatable that the personal property tax was abolished. However, despite the abolition of the tax on personality and despite the steady growth in exemptions, the real property tax continues today to maintain its position as the most important source of revenue for the State’s local governments.

Increasingly during the last fifteen years, local governments and their official representatives have expressed severe criticism of the multiplicity of exemptions and sincere concern for the continued viability of this primary source of local revenue. That exemptions, most often imposed on local governments by the State, are in fact a serious local fiscal problem, is not to be doubted. Real property tax exemptions in New York exceed $23 billion, a 3000 percent increase of the total valuation of exempt properties in 1900. The purpose of this part of the report on the real property tax is to attempt to describe the origins of this problem and to analyze the responses which the State government has made to the diminishing local tax base.

In 1969, the New York State Legislature adopted a joint resolution establishing a Joint Legislative Committee to Study and Investigate Real Property Tax Exemptions. In its 1970 final report, this Committee reviewed the continuing efforts of the State to respond to the criticism concerning exemptions through the medium of a series of private and legislative committees and commissions. Thus, the Committee reported that study efforts began in 1917 with the report of the Committee of the New York State Tax Association on Exemptions of Real Property which recommended a series of measures designed to generate tax revenue from properties owned by New York State and by non-profit organizations. In 1919, the Special Joint Committee on Taxation and Retrenchment was created, and it subsequently issued two reports on real property tax exemptions, in 1922 and 1927. This Committee again stressed that attention be given to the status of properties owned by the State and by non-profit organizations, and it also recommended that no further mandated State exemptions be enacted and that only local option exemptions be enacted in the future.

The Taxation and Retrenchment Committee was essentially replaced in 1930 by the Temporary State Commission on Revision of the Tax Laws, which subsequently issued two more reports on property tax exemptions. In 1932, the Commission reaffirmed the recommendations of its predecessor and directed further attention to the taxable status of all publicly owned properties. And in 1935 the Temporary Commission reaffirmed its own earlier recommendations and, in addition, approved a recommendation of the Advisory Committee on Tax Exemptions and Tax Inequities that all exemptions in New York City be granted essentially by local option.
Despite the voluminous work of these study groups and despite subsequent similar materials developed by the Constitutional Commission and Constitutional Convention staffs of 1938, 1959 and 1967, real property tax exemptions have steadily increased in both number and value. In this regard, it is constructive to examine the first general law granting a property tax exemption in New York State:

1823 — Chapter 262, section III, Laws of 1823, page 391:

"And be it further enacted, That no real estate belonging to the United States or to this state, nor any college or incorporated academy, nor any building, for public worship, school-house, court-house, gaol, alms-house, house of industry, and all the real and personal property belonging thereto, nor the lot whereon the buildings of any college or incorporated academy, building for public worship, school-house, court-house, gaol, alms-house, nor the furniture belonging to either of them, nor the property belonging to any public library, or any personal property belonging to any minister of the gospel, or to any priest of any denomination, nor any real estate belonging to any such minister or priest, if occupied by him: Provided, such real and personal estate does not exceed in value one thousand five hundred dollars, shall be liable to taxation within this state: And provided further, That all property now exempted by law from execution shall not be liable to taxation."

Aside from the exemption of public properties, this statute basically provided for an exemption of buildings, the lot on which the buildings stood and the furniture of any college or incorporated academy, any building for public worship, schoolhouse, almshouse, jail, or house of industry. Since that relatively limited and straightforward statute, exemptions, as noted, have proliferated in an unbelievable fashion. The 1970 Legislative Committee reported that since 1900, approximately 107 laws have been enacted to create the present structure, and that at least 51 separate exemptions are granted by the Real Property Tax Law to particular classes of property. That this proliferation has diminished the potential local tax base is obvious; that it has generated vast discontent and concern is a matter of historical record. (See for example the summary of our public hearings.)

In describing the developments which have occurred since the report of the 1970 Committee (as well as several areas which that Committee did not consider), we have divided the subject into two principal and basic categories; namely, property which is wholly exempt from taxation and property which is partially exempt from taxation. Each portion of the statutory structure and each program of tax relief and state aid is susceptible to extensive historical, statistical and legal analysis. Unfortunately, the eight months time which the staff has had is insufficient to fully develop each of the several broad categories into which we have divided the entire subject.

Consequently, we have chosen to devote first attention and priority to certain exemptions which are complemented by local state aid programs. Secondary priority has been given to statutes which have recently been proposed or enacted for the purpose of generating additional local revenues from currently tax exempt properties. And, finally, tertiary priority has been given to the insidious problem of partial exemptions, a problem so complex and extensive that it must certainly be the subject of special study and analysis.

In the case of Federally-owned real property, the options open to the State are most clearly delineated. Because of the principle of sovereign immunity, there is nothing which the State can do to impose a tax or charge upon Federal property unless such action is in
conformance to Federal statute or judicial interpretation. The practical effect of this principle of law is that potential State action in imposing charges upon Federally-owned real property is limited to properties which are leased to private individuals or organizations.

Were it not for the overriding State interest in this entire question, it would seem appropriate to authorize local governments to make the decision to attempt to impose the tax liability on lessees of Federal property within their jurisdiction. However, the presence of these industries within New York State is a matter of State economic policy. Therefore, the State should determine the impact of these properties on both the local tax base and the State economy and then act to develop with the Federal government acceptable arrangements to address the particular impact of these properties on the local tax base.

State-owned real property presents the difficult problem of how to distribute the total burden of taxation between State taxpayers and local taxpayers. The practice of the payment of State aid to certain localities on the basis of assessed valuation of State-owned real property in those localities began in 1886 on Adirondack Forest Preserve lands. And just as the authorization to tax followed close on the heels of State ownership, so also did abuses of the power follow the grant of that power.

These abuses centered on extreme overassessments of State-owned properties. The acquisition and construction of State institutions contributed to the formulation and solidification of the policy of taxing specified State parcels for school tax purposes. By 1880, the State owned and operated only a limited number and variety of facilities, but in the two decades of 1880 to 1900, a period of great diversification and growth of State facilities occurred. The expansion of State government combined with the precedent of the taxation of Forest Preserve land was such that between 1907 and 1945 statutes were enacted to make State property subject to school taxes in over 80 school districts.

During the same period, taxation of certain State-owned lands for all purposes also continued.

General taxation was authorized based on the theory of a large State taking of land and the concomitant significant impact on the local tax base. The implicit justification remained constant: that the extensive State takings were intended for the benefit of the entire State and accordingly there should be State tax compensation.

A third type of authorization was enacted in 1929, providing for State payment of all local real property taxes (except county taxes) on reforestation areas of at least five hundred contiguous acres. However, from 1943 to the present, only two minor land areas and no new classes of property owned by the State became taxable.

However, the 1959 report of the Hill Committee established that these statutes applied selectively and that uniform tax treatment of similar types of State properties should apply statewide. The recommendations of the Committee which the Commission endorses would make the following properties exempt from taxation: (1) State properties widely distributed throughout the State (e.g., highways, canals and bridges); (2) State properties of less extensive acreage used for predominantly local purposes; (3) State properties that would be entitled to an exemption if privately owned; (4) improvements to State lands; and (5) State administrative buildings which are usually of general economic benefit to the community. The Commission feels the Hill Committee recommendation to exempt improvements to State-owned lands, including State administrative buildings, should be modified by the application of a revised service charge concept.

The only recommendation of the Committee which was adopted suggested the authorization of the minimum payment of taxes by the State in localities where a large State taking or a reduction in the assessed valuation of a State owned parcel causes a sudden diminution of the local tax base: the transition assessment. As originally enacted, after the first year of operation, transition payments were to taper out.

But when the reduction of State assessments became imminent, sentiment for a “save harmless” led to a freezing of transition assessment payments; in
other words, the taper was not permitted to take effect. To date, the freeze remains and it is the recommendation of the Commission that the taper originally enacted be permitted to take effect.

Other State payments to localities based upon the presence of State-owned real property are contained in the Public Lands Law, a 1964 authorization implemented by the South Mall contract and the various provisions authorizing payments "in lieu of taxes." Section 19 of the Public Lands Law authorizes the payment by the State of the appropriate share of the capital costs incurred by a special district containing State-owned land. The totally uneven and almost circumstantial application of Section 19 since its enactment makes it essential that the law be amended to relate State payments to the extent of actual State use of the proposed special district service.

The purpose of the South Mall contract was to compensate the City of Albany for the loss of a significant proportion of its tax base for State use and thereby facilitate the progress of several State programs, particularly the South Mall.

Section 19-A of the Public Lands Law, which to date has only applied to the City of Albany, authorizes State payments to cities of 75,000 or more where exempt State properties exceed 25% of the total taxable assessed valuation of that city and the application is approved by the State Director of the Budget. As with the South Mall contract, this program is quite unique and most limited in its application.

Finally, there is the entire area of "in lieu of tax" payments. The phrase is a very specific legal term of art which is generally based on formal agreements and the governmental entities involved have broad discretion in executing "in lieu" agreements. Also, the amount to be paid is generally established pursuant to a formula with several variables.

In order to properly develop the very tentative start which the Commission has made on this subject, there should be further detailed study as specified in the report.

Wholly exempt real property is granted its status for one of three basic reasons: (1) It is immune due to the nature of its ownership; (2) it is not practical to tax it because of the principle of inter-municipal economy, which states that two municipalities do not tax each other’s properties and then exchange the taxes collected; or (3) it is exempt on the grounds of public benefit. Real property which is wholly exempt from taxation includes both publicly and privately-owned properties. There are public exemptions in each of the three aforementioned exemption classes.

Regarding the State constitutional exemption from taxation of religious, charitable and educational property, a serious problem has developed because the constitutional exemption has merely been repeated in the statute over the years without legislative definition. As a result, the courts have been forced to determine the application of the statute on a case-by-case basis without any further guidance by the Legislature. The consequence to local governments has been an expansion of the scope of this exemption into properties traditionally associated with private, entrepreneurial activity which is subject to taxation. The mandatory exemption of these properties is both a fiscal liability to the community and a source of local irritation. At a minimum, there should be enacted statutory provisions to precisely define property exempt under the religious, charitable and educational classification.

Regarding the private and public wholly exempt real property, judicial interpretations indicate that while these properties are exempt from taxation, they are nevertheless subject to special charges now defined in Section 490 of the Real Property Tax Law. Specifically, wholly exempt properties are liable for charges levied for the costs of creation or enlargement of special district capital improvements.

Subsequently, the most potentially significant State response to the problem of wholly exempt real property is the so-called Service Charge Law (Chapter 417 of the Laws of 1971). Pursuant to this statute, various types of both publicly and privately-owned wholly exempt real property may be subjected to taxation for the following five specified items in a municipal budget: police protection, fire protection,
sanitation, water supply and street and highway construction, maintenance and lighting. Taxes for these items are designated as "service charges" and may be imposed by a county, city, town or village which acts by local legislation to adopt the provisions of the State law.

Administrative problems with the Service Charge Law are significant and as a result the effective date of the statute has been postponed by the Legislature for three consecutive years. The six most important problems are: (1) The current law has no statutory provision for State approval of local assessments of State lands chargeable under the law; (2) there is a potential of nearly unrestricted liability of all State properties under the current law; (3) the law is devoid of any guidelines or procedural requirements for implementation of the assessment, review, levy, payment and collection of the service charge; (4) no consideration has been given to the question of whether monies received pursuant to the Service Charge Law should affect the computations for State aid and for constitutional tax and debt limitations; (5) the law is devoid of any direction to municipal governments to include estimated service charge revenue in a computation of the municipal tax rate; it is computed after the tax rate is struck and will therefore be a "windfall" each year, in excess of what is required from the real property tax levy; and (6) no analysis has been conducted of the fiscal impact on the State.

Therefore, the Commission recommends that the current Service Charge Law be repealed and consideration given to the development of a Service Charge Law based on an administratively feasible formula.

Despite the fact that during the past fifty years, major State legislative commissions have repeatedly recommended that no further exemptions from real property taxation be enacted, there has been a continuous increase in the number of these statutes, particularly during the Sixties. These statutes primarily take the form of partial exemptions, a classification similar to the wholly exempt category.

The basic rationale for partial exemption is public benefit, relating to three principal theories: (1) A partial exemption may be authorized as an incentive for the creation or continuance of improved real property deemed essential to the public good, such as railroads or limited profit housing; (2) it may be granted as a reward to individuals who have rendered meritorious or essential services to the community, such as veterans, clergymen, volunteer firemen and aged homeowners living on limited incomes; and (3) partial exemptions may be used as an incentive to encourage, perpetuate or protect economic and/or socially-beneficial land use such as open spaces, farms or timber and forest reserves.

Legally, theoretically, administratively, fiscally and politically, partial exemptions are undoubtedly the most complex and difficult of the entire phenomenon of the diminishing local tax base. The analysis is intended to provide a broad review of the most critical of the problems which partial exemptions have now created. Most of the statutes which have been described are appropriate subjects of further intensive study and analysis, and the time for comprehensive attention to the subject is at hand.

The two primary issues which must be addressed are those of the theoretical basis for partial exemptions and the administration of such exemptions if and when they are authorized.

Theoretically, decisions should be made in regard to the use of this concept to implement social policy. The dilution of the local tax base, the inherent inequities present in many of the current and proposed statutes, and the potential extension of concepts to inappropriate beneficiaries are critical problems.
Specific attention is directed to attempts to protect allegedly “vested rights” by freezing exemptions at inequitable levels of assessment. Currently this is being proposed for the veterans and Fisher Act exemptions.

Additionally, the developing concept of partial exemptions grounded in land use should be of major concern. In its early activities with this concept, the State opted for the strong and certain concepts of restrictive agreements. More recently, use has been made of the preferential assessment concept, but statutes of this type exhibit a lack of certainty as to future land use and a particular propensity to be used inappropriately or inadequately (e.g., the forest commitment law and current proposals for the preferential assessment of country clubs and private recreational facilities). Developments in other states show a movement toward much stricter controls in return for preferred assessments, and studies in New York should be directed to these issues.

Administrative problems ultimately merge into the theoretical concerns. Local assessors, already overburdened by the responsibilities of equitable assessments, are now being directed to process and administer a host of complex partial exemptions. The necessity to devote substantial local resources to this new aspect of the tax structure is counterproductive to the long-time State program of upgrading the assessment function itself.

Finally, to come full circle, the partial exemptions are now financed at the local level, by the taxable properties within the local tax base. The questions of diminution of that base and the appropriateness of paying subsidies for social policy through tax exemptions are ripe for review. The circuit breaker concept initiates analysis in this area, and further study is most certainly warranted and essential.

**FINDINGS**

**THE REAL PROPERTY TAX is the financial backbone of local government in New York State. It is the most important and oldest continuing source of local revenue, with structure and administration (both by statute and custom) which can be traced back to the time when New York was a colony. The tax initially was a source of revenue for the towns, cities and villages of the State, and with the subsequent development of school districts, counties and special districts, its use and application was greatly expanded. However, this expansion often occurred along parallel lines, so that by the 20th century, the structure, administration and application of the tax were potentially as varied as the number of local governments which used it.**

In 1958, in an effort to consolidate various real property tax provisions taken from the Tax Law, Village Law, Education Law and other miscellaneous statutes, a single Real Property Tax Law was enacted. In approving this new consolidated statute, Governor Harriman described it as a “rearrangement of subject matter, simplification of language and the elimination of obsolete provisions...[to] provide a more useful tool for municipal officials and members of the public generally, in coping with the complicated real property tax system of this State.” Significantly, the Governor continued by stating: “It is hoped that the new code will serve as an impetus for reform in the substantive provisions governing real property taxation.”

Except for the 1958 recodification and the 1970 Assessment Improvement Law, the ancient statutes and customs relating to real property taxation in New York have not been subjected to comprehensive revision. However, the pressures of modern government have not waited for such a revision, and, as a result, many aspects of the real property tax system are now being strained to the breaking point. The system is truly at a critical juncture in its development, and it must receive comprehensive attention if it is to survive as the essential tax base of local government.

Within the time constraints faced by this Commission, a task of this magnitude obviously was not possible. What has been possible is an identification of many of the major problem areas (with some emphasis on those which relate to State aid) and a series of suggestions and recommendations for new direction in the structure and administration of this
unique source of revenue. These recommendations for alternatives to the present conditions are as follows:

PART I — Local and State Administration

1. Within the current statutory structure of Articles 2 and 15-A of the Real Property Tax Law, there should be an increased allocation or shift of State resources, or both, to permit more active and direct State coordination and technical assistance in the local administration of the real property tax.

2. There should be active State promotion of the development and local implementation of a computerized mass appraisal and administration system for real property assessment and taxation.

3. A definite State policy of data management should be developed with emphasis being placed upon the utilization of a formal structure designed to develop and maintain in a coordinated fashion all State data relevant to real property taxation.

PART II — The Diminishing Local Tax Base: Origins and Responses

CHAPTER 5 FEDERALLY-OWNED REAL PROPERTY

The State, acting as the coordinating agency with local governments, should determine the impact of leased Federally-owned properties on both the local tax base and the State economy. The State should then act to develop with the Federal government acceptable arrangements to address the particular impact of these properties on the local tax base.

CHAPTER 6 STATE-OWNED REAL PROPERTY

1. Title 2 of Article 5 of the Real Property Tax Law should be revised and amended in accordance with the 1959 and 1964 recommendations of the Joint Legislative Committees on the Assessment and Taxation of State-owned Lands. These recommendations would establish uniform taxable status for all similar State-owned properties regardless of location. The recommendation would subject to taxation larger State-owned tracts, concentrated within particular municipalities or regions, if the size of the tract is sufficient to justify the expense (i.e., State parks of 200 acres or more, and all reforestation and conservation projects).

The recommendation would make the following properties exempt from taxation:

a. State properties widely distributed throughout the State (e.g., highways, canals and bridges).

b. State properties of less extensive acreage, used for predominantly local purposes.

c. State properties that would be entitled to an exemption if privately owned.

d. Improvements to State-owned lands.

e. State administrative buildings, usually located in cities and usually of general economic benefit to the community.

The recommendations of the Hill Committee to exempt improvements to State-owned lands, including State administrative buildings, should be modified by the application of a revised service charge concept as recommended below.

2. In conjunction with increased State tax payments to affected local governments, as contained in other recommendations of this report, the intended reduction of State aid for reduced assessments of taxable State-owned lands paid pursuant to Real Property Tax Law, § 545, should be permitted to take effect. “Freeze provisions” contained in Chapter 348 and 604 of the Laws of 1973 should be repealed.

3. Section 19 of the Public Lands Law should be revised to permit the implementation of its intended purpose, that is, the levy and collection of taxes on State-owned lands for special ad valorem levies and special assessments for capital costs. Such revised statute should be coordinated with a workable Service Charge Law.
4. Lack of time and adequate data precludes the Commission from commenting on the current use of the in-lieu-of tax payment. A study should be made of this concept and its potential use as an element of State and local finances.

CHAPTER 7 STATE, MUNICIPAL AND PRIVATE WHOLLY EXEMPT REAL PROPERTY

1. There should be enacted statutory provisions to precisely define property exempt pursuant to paragraph (a) of subdivision 1 of § 421 (non-profit organizations) in order to limit this exemption to properties which are used strictly for the enumerated purposes.

2. There should be consideration of returning the class of property designated as “moral and mental improvement of women and children” to paragraph (b) of subdivision 1 of § 421 in order to permit localities to exercise the option to tax such properties.

3. The current Service Charge Law (Laws of 1971, Chapter 417) should be repealed and consideration should be given to the development of a Service Charge Law based upon an administratively feasible formula. One alternative which might be explored is a formula based upon the municipal parcel count.

CHAPTER 8 PARTIAL EXEMPTIONS

1. The original State aid formula set forth in § 54-b of the State Finance Law should be updated to take into account current economic conditions and to provide for a more efficient administration. Future application of the so-called M.T.A. formula to publicly-owned railroads should be analyzed.

2. The system of municipal guarantee of delinquent taxes should continue unless alternative State or Federal funding is substituted. However, counties should be considered as possible guarantors of city and village bankrupt delinquencies where need to spread the tax burden more equitably is indicated.

3. Local governments should be given the option to require each recipient of a partial exemption to submit an annual affidavit of continuing eligibility.

4. Real property entitled to a partial exemption pursuant to sections 458, 460 and 466 should be the actual residence of the owner.

5. There should be a review of the policy for the funding of State social and economic programs through the use of the local real property tax base (i.e., partial exemptions).

6. A complete fiscal review of the circuit breaker concept should be undertaken through the joint facilities of the appropriate State agencies.

7. The appropriateness of the application of the circuit breaker concept to all social purpose-type exemptions should be specifically considered.

8. The effective date of Real Property Tax Law, § 480-a should be amended to provide that the law shall take effect on July 1, 1976.
The Colonial Period traces local governmental development from the first settlement in 1609 to American independence in 1776. The essential finding is that during this period the phenomenon of localism predominated in New York. This phenomenon was marked by the absence of a strong central government within the colony and by the lack of a rational statewide plan for the development of local government. In essence, there was a random development of localized rule whose primary purpose was preservation of the individual settlement. At the time of the American Revolution, New York State’s local government system was notably less developed than comparable systems in other colonies.

The second chapter, Early Statehood, begins with the Revolution period in 1777 and traces the development through the Civil War era ending in 1865. During this period cities and towns were the principal forms of local government. However, cities and towns proved to be inadequate in meeting the demands for services in the burgeoning population centers, and as a result several new forms of local government were created. The origins of the village, special district and school district can be found in this era, and the early development of these new forms are traced in this chapter. During the same period, the county developed as an administrative arm of the State, rather than as a form of local government.

The Period of Consolidation, traces the development from the Civil War years to the end of World War II. During this era two principal phenomena are noted. First, in conjunction with a decrease in the number of town and city incorporations, there was a rapid increase in the number of villages and special districts. Such growth was essentially the response to higher demand for local services. At the same time, however, it created an underlying competition with the older established government forms — the towns and cities. This competition is partly responsible for the second phenomenon of this period, namely standardization and statutory consolidations of the various forms of local government within the State. Thus during this era the Legislature enacted several statutes, including the Village Law, the Town Law,
the General City Law, the County Law and the General Municipal Law. Each of these was a response to the practical problem of consolidating the multitude of statutes which had been enacted during the first hundred years of statehood. However, each consolidation can also be seen as an indication of the underlying competition among the various forms of local government to preserve their status and, in effect, to prevent development of newer forms.

The fourth chapter, The Modern Period, traces development from 1945. During this era, movement toward more centralized local government can be seen in the enactment of the Suburban Town Law, the continued growth of special districts and the attention which is currently being paid to the restructuring of county government. Rather than development in the direction of new forms, activity during this period had been one of restructuring of the old forms. Development of the Municipal Home Rule Law and increased attention to constitutional home rule provisions have also occurred.

Next, The Public Authority, traces the development of this very controversial quasi-governmental entity, which has come to play such an important role in local governmental finances. The essential theme is the striking difference between the origins of the public authority as a regional transportation facility and the somewhat amorphous entity which, because of hidden cost and complex finances, is almost unaccountable to the taxpayers of the State. The public authority would appear to be the sole attempt at a new form of local government in New York State.

The chapter, The Municipal Housing Authority, traces the origins and development of this almost ever-present adjunct to the State's local governments. It describes the long-standing and continuing problem of inadequate urban housing and the attempts which have been made to solve it. The complexities of the situation are evident, and the presence and effect of municipal housing authorities within local governments are clearly described. The subject is one which is appropriate for future study.

The Legal Structure of the State-Local Relationship

"The role and responsibility of the State in mandating expenditures and programs upon local governments" requires an understanding of several terms, the first of which is "local government." The next part provides a comprehensive description of what "local government" in New York means in the structural or institutional sense, and a perception of the variety and complexity which the term necessarily implies.

Knowledge of structure, however, is only the beginning of understanding, and it is at least as important here to know what powers local governments possess and what legal relationships exist between the State and its various political subdivisions. Inevitably, an analysis of this subject leads to the concept of "home rule." This report provides a review of that concept as it relates to so-called State mandates. Home rule, it should be noted, can be a somewhat amorphous concept; but as it relates to the charge of this Commission, and as it is popularly conceived by most people, home rule refers primarily to the right of State and local governments to enact laws governing the activities which occur within a municipality.

Home Rule as a Legal Concept, describes the essential function which sovereignty plays in the State-local relationship. As a result of the American Revolution, the United States and the several states which comprise the union are endowed with independent sovereignty. Local governments, however, do not have a concomitant independence; their very existence is a result of a grant from the sovereign state. Thus it is essential to recognize that home rule is a qualified grant from the State to the local government, and, by means of one action or another, the State may always supercede local legislation. In New York, constitutional home rule initially took the form of certain protections, such as the guarantee of local election of specified local officials. Eventually, constitutional home rule came to include grants of specific powers to local government.
In understanding that home rule ultimately stems from the sovereign, it is also necessary to understand that this grant can be either one which is protected by the Constitution or one which is given solely through legislation. A constitutional grant of home rule cannot be rescinded by simple legislative action but rather must take the form of a constitutional amendment. Accordingly, the constitutional grant is the firmest and most protected home rule power available to local government. In the alternative, the legislative grant of home rule may be rescinded or modified by simple legislative action.

The chapter entitled *Constitutional Home Rule*, traces the development of those home rule protections and grants which are contained within the Constitution. Initially, such power was solely in the form of the protection of certain local activities such as local selection of local officials. Near the end of the nineteenth century, additional provisions were adopted to restrict certain State legislative action in local affairs. The essential principle of "property, affairs of government" of local governments was derived during this period. Ultimately, in the early twentieth century, actual constitutional grants of power were adopted. As noted, these constitutional provisions are more than mere protections from State interference. Through such grants, local governments receive constitutional authorization to exercise various local activity, such as the police power.

*Statutory Home Rule* describes in some detail the protections and grants of home rule powers to local governments from the State Legislature. As has been stated, these grants are made solely through
State legislation and they can be rescinded or modified by the same means.

The authority of the State Legislature to enact legislation which affects local governments brings together both the concept of the grant of home rule power and the concept of the State-mandated program or expenditure. First, there is a large body of law which provides for the structure and duties of the various forms of local government within the State. These statutes relating to municipal law are at once both grants of home rule and mandated programs and expenditures. This report accumulates a listing of the various statutes which provide for home rule, both by municipal jurisdiction and by function.

State Mandates

There are three basic sources of State Law — statutes, court decisions and administrative rules and regulations. Throughout all of State law, as represented by these sources, are State mandates which require (i.e., mandate) local government expenditures. The mandates exist in varied form, and they have correspondingly varied supporting rationales.

Probably the most fundamental identification problem is the determination of which State laws are legal mandates which must be obeyed by local governments or their officials (and, consequently, which can be enforced by judicial action). As stated earlier in this report, it is possible to identify mandates in any general statute, as well as in many of the special laws enacted by the State legislature.

However, the process of identifying statutory "mandates" is a more delicate task than the casual observer might suppose. One reason for this is that words in a statute (such as "must," "shall" or "may") do not always mean what they apparently say.

There is no arbitrary rule for the construction of such language. However, in the absence of factors indicating to the contrary, words of command are construed as mandatory and words of discretion are treated as permissive. Therefore, as a basic proposition, it can be said that in a statute "may" usually means "may" and "shall" usually means "shall," but, as with any general rule, this one is subject to exception.

Legislative intent is the "...cardinal consideration in the construction of statutes and whether a particular provision is mandatory or...[permissive] is to be determined from the language used and the purpose in view." A basic rule of statutory construction is that the courts should be careful to avoid "judicial legislation." This means that the court cannot substitute its judgment for that of the Legislature. Therefore, if the Legislative intent is not clear, the court will use established rules of construction in an effort to uncover the true intent.

New York's highest court has stated that "it is a general, although not inflexible, rule that permissive words used in statutes conferring power and authority upon public officers or bodies will be held to be mandatory where the act authorized to be done concerns the public interest or the rights of individuals." Potter's Dravits on Statutes, using a slightly different rationale, states that "...where a statute directs the doing of a thing for the sake of justice, the word may means the same as the word shall." This canon of construction has been applied by the New York courts in ultimately defining legislation directed at public officials or bodies. What ostensibly reads as solely a delegation of authority to a public official or body could very well fit within the above line of cases. In the final analysis, such delegation may not only be construed to convey the power but also to mandate that it be exercised.

The key phrase is "public interest or the rights of individuals." For example, a statute with permissive
language as to the duty of New York City to keep the streets and sewers of the city in repair was construed as being mandatory due to the corresponding public interest in its being so. Also, a statute directed at the mayor, aldermen and commonalty to provide sewers, drains, vaults, and the like was construed as a duty even though the phraseology of the statute was permissive. And a statute couched in permissive terms as to the duty of a town auditor to bring an action in the name of the town was likewise construed as mandatory due to the public interest involved. In yet another case, a county was technically free from liability for the cost of certain bridge construction (the county "may" pay for the bridge), but the equities of the situation were such that the builder was entitled to be paid for the completed job. The protection of the "rights of individuals," as well as the "sake of justice," dictated that the legislation be construed as mandatory.

In another context, the use of the word "must" or "shall" by the Legislature does not necessarily require a mandatory effect to the statute. Rather, the statute may be construed as "directory" or as merely "permissive." Mandatory provisions prescribing a certain mode of procedure "...must be strictly pursued," and, if they are not, the entire action is void. Directory provisions are intended to be followed, but if disregarded, or if there is inexact compliance, the act is not rendered nugatory. This question will normally arise when the action of a public official or body is challenged because an allegedly mandatory provision was not followed.

This power of the courts to disregard statutory provisions because they are merely "directory" "...should be applied with great caution." Case law has isolated a number of factors which are relevant to such a determination, but, in general, it can be said that the less substantial or material the action "required" the more likely that it may receive the judicial stamp of "directory." For example, a statutory provision requiring the clerks of a town to give notice of the annual meeting was held to be directory, and, therefore, a meeting held without compliance with the statutory notice requirement was not void.

One also finds "mandatory" terms construed as permissive. For example, a statute empowering New York City to erect a court house was not construed as mandatory despite a subsequent provision that the building "shall be erected." In another situation, the Highway Law provided that the board of supervisors shall do a certain act "upon a majority vote." The court construed this to require approval by majority vote but not to require the actual consideration of the question. Here, as with the aforementioned construction problems, the courts will look at the entire act and surrounding circumstances to evince the Legislature's intended construction. It should be noted that the courts have been much more receptive to the argument that provisions are permissive when applied to statutorily dictated judicial duties than for statutorily dictated public duties.

The statutes are filled with mandatory and permissive wording. In the vast majority, these construction questions have not been litigated, and the legal practitioner or public official cannot know with certitude what the final construction will be. At the very least, however, he should know that it is possible for "shall" to be interpreted to mean "may" or vice versa.

There are also mandates which do not appear to directly affect local governments with their language but which, nevertheless, have a profound dollar impact. One of the most widely recognized examples of indirect mandates are State required real property tax
exemptions. Although tax exemption statutes are directed to property owners, their effect upon the local tax base can be substantial.

Other indirect mandates are less visible than the tax exemptions. For example, the lack of State enabling provisions is considered by some to mandate adverse fiscal conditions upon local governments. An oft-cited example of this type of "mandate" is the local dependence on the real property tax. Many local officials find the lack of alternative revenue sources to be as much of a mandate as some of the more "direct" types.

In addition, mandates can be identified in certain legislation which is permissive in form but which is accompanied by some type of "pressure." The clearest depictions of this classification are the permissive statutes wherein the State agrees to provide a portion of the funding. For example, "County Law" § 223 authorizes spending to improve agriculture and the soil, and the county can obtain some reimbursement from the State. Obviously, the greater the State reimbursement, the greater the pressure which may be brought to force the local government to act.

Finally, it must be noted that some mandates are also the source of local power to act, and one must be careful when analyzing this type of "mandate." The need for caution becomes clear when one contrasts the mandates that double as a source of power with those that do not. The latter types are truly mandates, in the sense that, prior to the State legislation, the local government had the power in question and elected not to exploit it. In the contra situations, where the mandate doubled as a source of local power, one must make a further inquiry as to whether the local government would have acted anyway if the legislation had been permissive. For example, counties must elect a sheriff. This is clearly a State mandate, but if a county would choose to elect a sheriff regardless of the legal requirement, the mandate would not be a bothersome one.

Thus, while the existence and multiplicity of State mandates is unquestioned, the identification of such statutes can require precise analysis. This chapter is intended to provide a broad overview of those mandates which the staff has been able to identify. Almost certainly, this will not be totally comprehensive, but the range and multiplicity of mandates in New York law should be apparent.

The identification of State mandates contained in the volume is intended as an inventory and not an exposition. The listing is intended to show the breadth and scope of the statutes which are, in fact, State mandates; and to show that mandates do emanate from the State Legislature, and that the programs which they encompass are very broad and sweeping in their scope. This is not to say that all mandates are unpopular with local governments. The mere fact of the existence of a State statutory mandate does not presuppose local resistance, and the question of the appropriateness of the mandate is an altogether different study from that which has been conducted.

The staff concludes in the Summation, that the role of the State in mandating programs and expenditures on local governments is virtually unrestricted in its potential. The use and imposition of this authority is a determination made in the first instance by the State Legislature. Retrenchment or restriction of any of the various mandated programs must likewise come from that forum. The Commission hearings and this report should serve as a beginning for the study and analysis of this complex subject.
Other Reports

Volume 5, Staff Reports

1. The Possibility of a Local Income Tax in New York State.

2. Analysis of New York State Sales Tax

3. Urbanaid: A Categorical Program Proposal

4. An Analysis of Debt Relief as a Basis for Categorical Aid

Volume 6, Consultant Reports

1. The New York State Personal Income Tax: Essays in Fiscal Analysis

2. Research on the Local Sales Tax in New York State

NOTE: Only limited reproduction was made of Volume 6, and no further copies are available for distribution. Reference copies, however, are located in the Legislative Reference Library, the New York State Library, State Education Building, Albany, New York.

Copies of Vol. 1-5 may be obtained by writing:

Temporary State Commission on State/Local Finances
Box 7032
Albany, New York 12225

or

Gifts and Exchange Section
New York State Library
State Education Building
Albany, New York 12234
ERRATA
for Volumes 1–3

Volume 1
State Revenue Sharing
Pg. 94 Table 58, City of N. Tonawanda's absolute loss should read $1,251

Pg. 116 Herkimer County Table, Villages of Cold Brook (pop. 413) and Poland (pop. 629) figures should be reversed

Pg. 121 Monroe County Table, Town of Rush factor should read 1.

Volume 2
The Real Property Tax
Pg. 8 2nd column, 2nd paragraph, line 4 should read “areas of at least five hundred contiguous acres. How —”

Pg. 122 2nd column, 1st paragraph, line 7 reference should read “(Real Property Law, Sect. 450)”

Pg. 126 1st column, 3rd paragraph, line 11 on should read Assessors of City of Little Falls, 348 N.Y.S. 2d 856, 1974; Syracuse v. Town of Onondaga, 362 N.Y.S. 2d 375, 1974), while a third found the property to be exempt (Genesee Hospital v. Wagner, 76 Misc. 2d 281, 1973).

Pg. 157 1st column, 2nd paragraph, line 5 should read “would appear that the following procedure will pre —”

Volume 3
State Mandates
Pg. 96 2nd column, 2nd paragraph, line 12 on — Chapter 2 should be, Chapter 3 should be 9, Chapter 4 should be 10, and Chapter 5 should be 11.
Vol 5, Staff Reports
March 31, 1975
TEMPORARY STATE COMMISSION
ON STATE AND LOCAL FINANCES

John J. Feeney
CHAIRMAN

MEMBERS
Jeremiah Bloom
Richard L. Dunham
George Klein
John J. Marchi
Charles Merrill
Antonio Olivieri
Sal J. Prezioso
Albert B. Roberts
James H. Swanton
Caesar Trunzo
Richard A. Wiebe
Mary Wrenn

Richard F. Decker
EXECUTIVE DIRECTOR
NEW YORK STATE
TEMPORARY STATE COMMISSION ON STATE AND LOCAL FINANCES
BOX 7032, ALBANY, NEW YORK 12222

NOTE

These are unofficial Commission reports that should be referred to as such. Their reproduction does not imply endorsement by the Temporary State Commission on State and Local Finances. The report should be viewed only as a resource basis for any future inquiries into the specific subjects treated.

John J. Feeney
Chairman

March 31, 1975
STAFF

Richard F. Decker
Executive Director

William B. Eimicke
Director of Studies

Robert L. Beebe
Legal Consultant

James A. Unger
Associate Director of Studies

Thomas A. Smith, Information Systems Coordinator

James B. Ellsworth, Research Associate*
Brian T. Stenson, Research Associate
Timothy R. McGill, Research Assistant
Anne H. Pope, Research Assistant
Noel Watson, Research Assistant

Brian McArkle, Administrative Assistant
Gail D'Arcy, Executive Secretary

Rita DeBrino
Marcia Mahar
Rita Sney**

*Resigned 1/75
**Resigned 10/74
STAFF REPORTS
CONTENTS

1 The Possibility of a Local Income Tax in New York State . . . 6

2 Analysis of New York State Local Sales Tax . . . . . . . . . 16
   Uniform Local Sales Tax Rate . . . . . . . . . . . . . . . . . . . 16
   Intra-county Distribution of Sales Tax Revenues . . . . . . . 25

3 Urbanaid: A Categorical Program Proposal . . . . . . . . . . 32

4 An Analysis of Debt Relief as a Basis for Categorical Aid . . 38
The Possibility of a Local Income Tax in New York State

The traditional method of financing local governments has been the real property tax. However, since the Depression there has been a significant trend in New York State (among others) toward authorization of various non-property taxes for use by municipalities. This trend has developed largely due to questions regarding the equity of the property tax, its burden on low and middle income residents and its revenue raising ability.

In New York State, this trend toward non-property oriented taxes has brought about a decreasing reliance on real property taxes as the major source of local government revenues. In 1962 over 61 percent of all locally-raised revenues of upstate counties, cities, towns and villages was derived from the real property tax. By 1972 the property tax accounted for only 50% of these revenues. This increased reliance on non-property taxes has produced growing criticism of them regarding their adequacy and equity.

Dissatisfaction with the real property tax and the various non-property taxes has led many local officials to advocate the authorization of a local income tax. This would enable local governments to tap the most progressive and equitable of all State taxes and would provide a high degree of flexibility. In 1973 the Temporary State Commission on the Powers of Local Government (the Wagner Commission) recommended that “...enabling legislation should be enacted which would give counties the option of imposing a county income tax.”

More recently, the Temporary State Commission on Constitutional Tax Limitations (the Bergen Commission) recommended in its final report that Buffalo, Rochester, Yonkers and Syracuse and the city school districts in cities of less than 125,000 (or the counties in which such municipalities are located) be authorized “…to impose a local income tax on residents and a franchise tax on corporations in the form of a surcharge on the State income and franchise taxes…” Given the Commission’s goal of providing a “solution” to the Hard v. City of Buffalo decision, (41 A.D. 2d, aff’d 34 N.Y. 2d 628, 1974) the proceeds of the tax (along with those of a proposed State real property tax) would not exceed the retirement and social security contributions of a municipality.

Authorization of a local income tax should be made only after a comprehensive review of all facets of local government finance. This Commission, in its one year of study, has been able to analyze only a small part of the local fiscal structure, primarily in relation to State revenue sharing, state mandates to local governments and the real property tax. This report is an analysis in response to increasing calls for a local income tax. Its purpose is to serve as a basis for further consideration and study.

Locally-Administered Taxes

Local income taxes have been imposed by over 3,500 units of local government in the United States, and are generally of two types: locally administered taxes and local supplements to State taxes. Each is discussed and compared below. There are three basic
types of locally-administered taxes. The first, commonly referred to as payroll tax, is levied at a flat rate on all earned income (wages, salaries, commissions, etc.) originating in the jurisdiction whether received by residents or non-residents. This type of tax is authorized by five states: Alabama, Kentucky, Ohio, Pennsylvania and Missouri. Except in the latter case, the rate is determined by the localities, subject to a maximum rate.

Michigan authorizes a locally-administered tax on earned as well as unearned income (dividends, interest, capital gains). The mandatory rate is one percent on residents and one-half of one percent with tax credit provisions for non-residents.

The third variation of this type of tax has been adopted by New York City and combines a broad base (earned and unearned income) with a graduated rate structure. The base of this tax for residents is similar to that of the State income tax; while the rate is graduated from 0.7 percent on taxable income under $1,000 to 3.5 percent on taxable income over $30,000. The flat non-resident rate is 0.45 percent for the self-employed and 0.65 percent for others, applied to incomes less a decreasing exemption.

Optional Local Supplements to State Income Taxes

There are three general characteristics of this type of local income tax, which is of relatively recent origin. First, imposition of the tax should be optional. A mandatory supplement is more logically considered a shared tax.

Also, a mandatory tax at some stated minimum level would lessen tax competition but not eliminate it. Since even the levy of a real property tax is a local option, there seems little legal justification for imposing a mandatory local income tax. However, if the goal of instituting a local income tax is to lessen, or for some minor jurisdictions perhaps eliminate the property tax, a mandatory local tax on income is one method of achieving such a goal.

A local supplement must, by definition, be administered by the State. Substantively, State administration would assure equitable enforcement and the exploitation of economies of scale. Also, State administration would establish a uniform base for all localities, using either the State taxable income or the State tax liability. (These criteria generally are met by the most prevalent local supplement, the general sales tax.)

Two states presently authorize local supplements to their income taxes. Maryland has a mandatory state-administered supplement of 20 percent of the state tax liability, with authorization to increase the rate to 50 percent. The law provides for a formula-based direct payment to incorporated municipalities in each county.

Indiana's local supplement plan is entirely optional. Since the authorization was enacted in 1973, approximately one-third of the counties in the state, and over 300 small municipalities have adopted the local supplement. The base of the local tax is state taxable income, and localities are authorized to enact rates of 0.5 percent to 2 percent on Indiana residents and 0.5 percent on others. In the case of commuters, the jurisdiction of residence takes precedence over that of employment.

While both the Wagner and the Bergen Commissions recommended a local supplement arrangement, the locally-administered tax is in far more common use nationwide.

Local Income Tax Policy Options

The generally-accepted criteria which may be used to appraise fiscal policy options are adequacy, equity, efficiency, predictability and responsibility.

Adequacy, or revenue sufficiency, implies a reasonable rate of revenue growth over time, as personal income rises. From the point of view of absolute adequacy of yield, there is little basis for preferring one of the options over the other since each could be designed to provide virtually any level of financing desired. However, the adequacy of the income elasticity of the revenue yield would depend on the elasticity of the revenue source involved. On this account, a considerable advantage would have to be ascribed to a supplement arrangement tied to the State personal income tax, as it would provide the
highest possible income elasticity of yield. Moreover, a flat-rate local supplement based on State income tax liability (as in Maryland) would have a higher income elasticity than a flat-rate supplement based on State taxable income (as in Indiana).

In terms of equity, if the option to impose the income tax were equally available to all units of a jurisdictional class (county governments), then there would be no grounds for preferring one option over the other. The incidence of the tax among individuals in unequal economic circumstances would depend on the design of the tax, and there is no objective basis for preferring one over the other. While each option could be structured to be non-capricious, the local supplement presumably would be more easily so structured.

Concerning minimization of administrative costs, the preference must be assigned to tax supplements, given the clear economies of scale associated with State administration. Locally-administered taxes are less efficient because of the costs involved in duplicating administration. As is done in Maryland, the State could debit each recipient municipalities' share to finance the operating costs of the program. This could be done on a prorated basis, using (for example) the number of returns or the total tax liability.

For many reasons, it is difficult, even under the best of circumstances, to project the yields of taxes. However, some degree of confidence is warranted for projections of State income tax yields, due to the close relationship between yields and personal income, and the ready availability of personal income projections for local areas (down to the county level). This suggests that a modest preference for predictability should be accorded supplements to the State income tax.

Both the tax supplement and the locally-administered tax alternatives could be structured to provide the same degree of local fiscal responsibility since the enactment would rest with the local governing body. To fully satisfy this criterion, the tax should be entirely optional.

On balance, as both the Wagner and the Bergen Commissions concluded, supplement arrangements emerge as decidedly superior to locally-administered taxes, primarily in terms of revenue adequacy and efficiency. Therefore, if it were determined that local governments should be authorized to tap personal income as a direct revenue source, the more desirable method would be through an optional supplement to the New York State personal income tax. Several critical issues must be resolved such as eligibility to impose the tax, distribution to other units of government, the tax base, and rates and the treatment of non-residents.

Eligible Jurisdictions

One of the more controversial points is the determination of which jurisdictions would be eligible to impose the income tax. New York's fragmented, confusing and overlapping local government structure would seem to preclude extending a blanket authorization to impose the tax to the over 1,600 units of general purpose local government and the over 700 school districts in the State. Such a broad authorization would likely be an administrative and compliance nightmare, if only because many New Yorkers are unaware of the legal jurisdiction in which they live.

There is some justification for authorizing large cities to adopt a local supplement. Large urban
centers are generally thought to require increased sources of revenue, to reduce their real property tax burden. In spite of the recent out-migration of business and residents, many large cities remain the economic and commercial center of the counties in which they are located. By imposing an income tax, the city would receive the direct financial support of commuters who presently receive the many benefits which the city has to offer for a negligible cost.

The Bergen Commission recommended authorizing the “Big Four” upstate cities, and all other city school districts (or alternatively, the county in which each is located), to adopt a local supplement. This proposal would alleviate the fiscal pressure brought about by the Hurd decision, but it is not the comprehensive approach which has been advocated by many experts. A city income tax would obviously produce additional revenue for the financially hard-pressed cities. However, there is some evidence that this would place the central cities in an even more disadvantageous position regarding residential, commercial and industrial locational decisions. Simply put, the long-term benefits might be jeopardized for short-term return.

The Wagner Commission rejected the city income tax approach, and strongly recommended limiting the taxing power to county governments. Such a restriction would avoid accentuating the already-fragmentary local revenue structure, and would recognize the increasingly regional nature of local governmental problems. The county already provides many services geared to low-income groups; a personal income tax would be a corresponding and logical partial revenue source for these programs. In light of these factors and compliance and administrative efficiency considerations, it appears that any local option income tax authorized should be restricted to county governments.

A related issue which the foregoing analysis raises is the distribution of the receipts from a county optional income tax between the county governmental unit and the cities, towns and villages within that county. Two options are available, both of which present considerable political difficulties.

First, complete discretion could be given to the county government as to the distribution of these funds. As demonstrated later in this analysis, the local income tax under consideration could generate considerable amounts of money. While it is difficult to predict local government fiscal behavior, it is likely that county officials will consider a significant portion of these revenues to be substantive in nature and, therefore, decrease existing county taxes. This would benefit all county residents: urban, suburban and rural.

Alternatively, distribution criteria of varying degrees could be established. One or more detailed formulas could be specified, based on fiscal need, fiscal capacity and fiscal effort. Distribution of a portion of these revenues could be mandated, on the basis of any or all of these three factors, stated either generally, or specifically. Special provisions and requirements could be made for large cities to ensure that these areas share equitably in this “new” revenue source.

On the basis of these analyses, and considering that reliable personal income data are not available for units of local government below the county level, the calculations which follow are based on a county supplement to the personal income tax.

Tax Base

The two alternatives for the base of the supplement — that amount to which the rate is applied — are State taxable income and State tax liability. For purposes of administrative feasibility, the local tax should involve a flat rate. Regarding vertical equity (the treatment of those in unequal economic circumstances), the choice between the two bases is between a moderately progressive tax resulting from a tax liability base, and a moderately regressive one, resulting from a taxable income base.

A study prepared for the Commission has determined that the personal income elasticity of the yield of a flat-rate tax based on State tax liability would be the same as that of the State tax, or 1.66, while that of the yield of a tax based on taxable income would be much lower, 1.28. In other words, a supplement based on tax liability would generate more revenue than would one based on taxable income.
<table>
<thead>
<tr>
<th>County</th>
<th>Estimated State Tax Liability</th>
<th>10% Supplement</th>
<th>20% Supplement</th>
<th>30% Supplement</th>
<th>40% Supplement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>$42,686,370</td>
<td>$4,268,537</td>
<td>$8,537,074</td>
<td>$12,805,611</td>
<td>$17,074,148</td>
</tr>
<tr>
<td>Allegany</td>
<td>3,626,620</td>
<td>362,662</td>
<td>725,324</td>
<td>1,087,986</td>
<td>1,450,648</td>
</tr>
<tr>
<td>Broome</td>
<td>27,982,185</td>
<td>2,798,218</td>
<td>5,596,437</td>
<td>8,394,655</td>
<td>11,192,874</td>
</tr>
<tr>
<td>Cattaraugus</td>
<td>6,736,028</td>
<td>673,503</td>
<td>1,347,006</td>
<td>2,020,508</td>
<td>2,694,011</td>
</tr>
<tr>
<td>Cayuga</td>
<td>7,304,953</td>
<td>730,495</td>
<td>1,460,991</td>
<td>2,191,496</td>
<td>2,921,981</td>
</tr>
<tr>
<td>Chautauqua</td>
<td>14,389,572</td>
<td>1,438,957</td>
<td>2,877,914</td>
<td>4,316,872</td>
<td>5,755,829</td>
</tr>
<tr>
<td>Chemung</td>
<td>10,924,619</td>
<td>1,092,462</td>
<td>2,184,924</td>
<td>3,277,386</td>
<td>4,309,848</td>
</tr>
<tr>
<td>Chenango</td>
<td>4,131,491</td>
<td>413,149</td>
<td>826,298</td>
<td>1,239,447</td>
<td>1,652,596</td>
</tr>
<tr>
<td>Clinton</td>
<td>5,480,952</td>
<td>548,095</td>
<td>1,096,190</td>
<td>1,644,286</td>
<td>2,192,381</td>
</tr>
<tr>
<td>Columbia</td>
<td>5,703,707</td>
<td>570,371</td>
<td>1,140,741</td>
<td>1,711,112</td>
<td>2,281,483</td>
</tr>
<tr>
<td>Cortland</td>
<td>4,280,178</td>
<td>428,018</td>
<td>856,036</td>
<td>1,284,053</td>
<td>1,712,071</td>
</tr>
<tr>
<td>Delaware</td>
<td>4,098,147</td>
<td>409,815</td>
<td>819,629</td>
<td>1,224,444</td>
<td>1,636,259</td>
</tr>
<tr>
<td>Dutchess</td>
<td>36,038,881</td>
<td>3,603,888</td>
<td>7,207,776</td>
<td>10,811,684</td>
<td>14,415,552</td>
</tr>
<tr>
<td>Erie</td>
<td>143,465,805</td>
<td>14,346,881</td>
<td>28,693,161</td>
<td>43,038,742</td>
<td>57,386,322</td>
</tr>
<tr>
<td>Essex</td>
<td>2,967,748</td>
<td>296,775</td>
<td>593,550</td>
<td>890,324</td>
<td>1,187,099</td>
</tr>
<tr>
<td>Franklin</td>
<td>2,975,480</td>
<td>297,548</td>
<td>595,096</td>
<td>892,844</td>
<td>1,190,192</td>
</tr>
<tr>
<td>Fulton</td>
<td>5,102,406</td>
<td>510,240</td>
<td>1,020,481</td>
<td>1,530,721</td>
<td>2,040,962</td>
</tr>
<tr>
<td>Genesee</td>
<td>6,771,124</td>
<td>677,112</td>
<td>1,354,225</td>
<td>2,031,337</td>
<td>2,706,450</td>
</tr>
<tr>
<td>Greene</td>
<td>3,519,665</td>
<td>351,966</td>
<td>703,933</td>
<td>1,058,899</td>
<td>1,407,886</td>
</tr>
<tr>
<td>Hamilton</td>
<td>486,200</td>
<td>48,620</td>
<td>97,040</td>
<td>146,560</td>
<td>194,080</td>
</tr>
<tr>
<td>Herkimer</td>
<td>5,289,121</td>
<td>528,912</td>
<td>1,067,824</td>
<td>1,586,738</td>
<td>2,116,648</td>
</tr>
<tr>
<td>Jefferson</td>
<td>7,404,122</td>
<td>740,412</td>
<td>1,480,824</td>
<td>2,221,236</td>
<td>2,961,649</td>
</tr>
<tr>
<td>Lewis</td>
<td>1,690,221</td>
<td>169,022</td>
<td>338,044</td>
<td>507,066</td>
<td>676,088</td>
</tr>
<tr>
<td>Livingston</td>
<td>5,629,755</td>
<td>562,975</td>
<td>1,125,951</td>
<td>1,686,927</td>
<td>2,251,902</td>
</tr>
<tr>
<td>Madison</td>
<td>6,290,774</td>
<td>629,077</td>
<td>1,258,155</td>
<td>1,887,232</td>
<td>2,516,310</td>
</tr>
<tr>
<td>Monroe</td>
<td>123,493,246</td>
<td>12,349,325</td>
<td>24,698,649</td>
<td>37,047,974</td>
<td>49,397,298</td>
</tr>
<tr>
<td>Montgomery</td>
<td>5,284,692</td>
<td>528,469</td>
<td>1,066,938</td>
<td>1,586,408</td>
<td>2,113,877</td>
</tr>
<tr>
<td>Nassau</td>
<td>380,697,574</td>
<td>38,069,757</td>
<td>76,139,515</td>
<td>114,200,272</td>
<td>152,278,030</td>
</tr>
<tr>
<td>Niagara</td>
<td>26,191,449</td>
<td>2,619,145</td>
<td>5,238,290</td>
<td>7,857,435</td>
<td>10,476,580</td>
</tr>
</tbody>
</table>

*Source: New York State Department of Taxation and Finance, Special Tabulation "New York Personal Income and Tax Liability for Income Year 1973 by County of Residence" (November 25, 1974).
<table>
<thead>
<tr>
<th>County</th>
<th>Estimated State Tax Liability</th>
<th>10% Supplement</th>
<th>20% Supplement</th>
<th>30% Supplement</th>
<th>40% Supplement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oneida</td>
<td>$26,803,344</td>
<td>$2,690,334</td>
<td>$5,360,669</td>
<td>$8,041,003</td>
<td>$10,721,338</td>
</tr>
<tr>
<td>Onondaga</td>
<td>61,579,772</td>
<td>6,157,977</td>
<td>12,315,954</td>
<td>18,473,932</td>
<td>24,631,909</td>
</tr>
<tr>
<td>Ontario</td>
<td>10,769,636</td>
<td>1,076,964</td>
<td>2,153,927</td>
<td>3,230,801</td>
<td>4,307,864</td>
</tr>
<tr>
<td>Orange</td>
<td>29,265,288</td>
<td>2,926,529</td>
<td>5,853,058</td>
<td>8,779,586</td>
<td>11,706,115</td>
</tr>
<tr>
<td>Orleans</td>
<td>4,113,096</td>
<td>411,310</td>
<td>822,619</td>
<td>1,233,929</td>
<td>1,645,238</td>
</tr>
<tr>
<td>Oswego</td>
<td>9,827,471</td>
<td>982,747</td>
<td>1,965,494</td>
<td>2,948,241</td>
<td>3,930,988</td>
</tr>
<tr>
<td>Otsego</td>
<td>5,221,548</td>
<td>522,155</td>
<td>1,044,310</td>
<td>1,566,464</td>
<td>2,088,619</td>
</tr>
<tr>
<td>Putnam</td>
<td>10,111,504</td>
<td>1,011,150</td>
<td>2,022,301</td>
<td>3,033,461</td>
<td>4,044,602</td>
</tr>
<tr>
<td>Rensselaer</td>
<td>16,530,641</td>
<td>1,653,064</td>
<td>3,306,128</td>
<td>4,959,192</td>
<td>6,612,256</td>
</tr>
<tr>
<td>Rockland</td>
<td>42,092,027</td>
<td>4,209,203</td>
<td>8,418,405</td>
<td>12,627,608</td>
<td>16,836,811</td>
</tr>
<tr>
<td>St. Lawrence</td>
<td>8,498,676</td>
<td>849,868</td>
<td>1,699,735</td>
<td>2,549,603</td>
<td>3,399,470</td>
</tr>
<tr>
<td>Saratoga</td>
<td>16,055,533</td>
<td>1,605,553</td>
<td>3,211,107</td>
<td>4,816,660</td>
<td>6,422,213</td>
</tr>
<tr>
<td>Schenectady</td>
<td>23,899,923</td>
<td>2,399,992</td>
<td>4,779,985</td>
<td>7,189,977</td>
<td>9,569,969</td>
</tr>
<tr>
<td>Schoharie</td>
<td>2,112,714</td>
<td>211,271</td>
<td>422,543</td>
<td>633,814</td>
<td>845,086</td>
</tr>
<tr>
<td>Schuyler</td>
<td>1,370,510</td>
<td>137,051</td>
<td>274,102</td>
<td>411,163</td>
<td>548,204</td>
</tr>
<tr>
<td>Seneca</td>
<td>3,262,451</td>
<td>326,245</td>
<td>652,490</td>
<td>978,735</td>
<td>1,304,980</td>
</tr>
<tr>
<td>Steuben</td>
<td>10,436,072</td>
<td>1,043,607</td>
<td>2,087,214</td>
<td>3,130,822</td>
<td>4,174,429</td>
</tr>
<tr>
<td>Suffolk</td>
<td>175,345,617</td>
<td>17,534,562</td>
<td>35,069,123</td>
<td>52,603,685</td>
<td>70,138,247</td>
</tr>
<tr>
<td>Sullivan</td>
<td>5,675,168</td>
<td>567,517</td>
<td>1,135,034</td>
<td>1,702,550</td>
<td>2,270,067</td>
</tr>
<tr>
<td>Tioga</td>
<td>5,260,267</td>
<td>526,027</td>
<td>1,052,053</td>
<td>1,578,060</td>
<td>2,104,107</td>
</tr>
<tr>
<td>Tompkins</td>
<td>9,236,827</td>
<td>923,683</td>
<td>1,847,365</td>
<td>2,771,048</td>
<td>3,694,731</td>
</tr>
<tr>
<td>Ulster</td>
<td>17,920,602</td>
<td>1,792,060</td>
<td>3,584,120</td>
<td>5,376,181</td>
<td>7,168,241</td>
</tr>
<tr>
<td>Warren</td>
<td>5,819,472</td>
<td>581,947</td>
<td>1,163,894</td>
<td>1,745,842</td>
<td>2,327,789</td>
</tr>
<tr>
<td>Washington</td>
<td>4,217,209</td>
<td>421,721</td>
<td>843,442</td>
<td>1,265,163</td>
<td>1,686,884</td>
</tr>
<tr>
<td>Wayne</td>
<td>9,357,585</td>
<td>935,758</td>
<td>1,871,517</td>
<td>2,007,275</td>
<td>3,743,034</td>
</tr>
<tr>
<td>Westchester</td>
<td>272,823,612</td>
<td>27,282,361</td>
<td>54,564,722</td>
<td>81,847,084</td>
<td>109,129,445</td>
</tr>
<tr>
<td>Wyoming</td>
<td>3,479,870</td>
<td>347,987</td>
<td>695,974</td>
<td>1,043,961</td>
<td>1,391,948</td>
</tr>
<tr>
<td>Yates</td>
<td>1,836,752</td>
<td>183,675</td>
<td>367,350</td>
<td>551,026</td>
<td>734,701</td>
</tr>
<tr>
<td><strong>Upstate Counties</strong></td>
<td><strong>$1,693,563,271</strong></td>
<td><strong>$169,356,327</strong></td>
<td><strong>$338,712,654</strong></td>
<td><strong>$508,068,981</strong></td>
<td><strong>$677,425,308</strong></td>
</tr>
</tbody>
</table>
Optional Rates

Considering the optional nature of the tax and New York's tradition of fiscal responsibility and home rule, authorization of optional tax rates would appear to be warranted. However, there is a consensus among fiscal experts that any authorization should include a maximum rate.

Maryland is the only other state with a similar program, and it has chosen a maximum rate of 50%. Since the average effective income tax rate in New York is roughly 30% higher than in Maryland, a 40% supplement rate ceiling in New York would be approximately equivalent to a 52% ceiling in Maryland. About 93% of the total State income tax liability is attributable to New York State residents or about $2.83 billion for income year 1973. An allocation of the resident share of the total liability is available by county. This allocation permits calculation of approximate yields of a local supplement in each county. On the assumption that the supplement option would allow local discretion in the establishment of rates, approximate yields are derived for rates of 10%, 20%, 30% and 40%, and are shown in Table 1.

The estimates treat the total liability of the residents of a given county as a proxy for the actual base of the supplement. Although this assumption is not absolutely accurate in the case of counties with large net inflows or outflows of commuters, the data on such flows are not available. In any event, the estimates are reasonable approximations for most counties; they are probably least accurate for the counties in the New York City area, where inter-county commutation is most pronounced.

In terms of the absolute revenue yield, the local option could provide up to $677 million at 40% in the 57 upstate counties. The impact of the tax on the existing revenue structure would vary greatly among counties, as illustrated in Table 2. The yield of a 40% local supplement is compared to the total locally-raised revenues of the county government and the cities, towns and villages within that county, and to the total real property taxes collected by these same units.

In four counties (Dutchess, Saratoga, Tioga and Westchester), the yield of a 40% supplement would exceed one-third of the locally-raised revenues. In 14 counties (generally the rural, less populous ones), the yield would not exceed 15% of the locally-raised revenues.

In Tioga county, the yield would be equivalent to over 80% of the total real property taxes and assessments collected by the county, city, towns and villages; in seven others, the yield would exceed 50% of this total. In 14 other counties, the yield would be less than one-third of the property tax collections. There is no doubt then that a locally-imposed supplement to the State income tax would have the ability to generate large sums of money and drastically alter the financing of local governments in New York State.

Treatment of Non-Residents

Many non-New Yorkers receive earned income from activities carried on in the State. If all such income were identifiable with a single local jurisdiction for each non-resident taxpayer, there would be no problem including such tax liability as might be involved in the tax base of the jurisdiction concerned. In the case of non-residents of the State who receive income from two taxing jurisdictions in New York, the only feasible solution would be to allocate all of the non-resident's New York State tax liability to the local jurisdiction of origin of the largest proportion of his income in a given tax year.

The problem of the State resident who resides in one jurisdiction and works in another is far more important, and cannot be resolved by such a simple expedient. When only one of the two jurisdictions opts for the supplement it seems reasonable to provide for the commuter to be liable to that jurisdiction, even though he may complain that the jurisdiction where he works has no business taking income from the room in his house that he rents to a border. As in the case of a non-State resident, an attempt to apportion income on a jurisdiction-of-origin basis would escalate administrative and compliance costs beyond any gains in equity that might be achieved.

When both jurisdictions — of residence and work — adopt the supplement, some other solution is obviously required. The general practice in State in-
TABLE 2 — YIELD OF 40% LOCAL SUPPLEMENT
as a percentage of local revenue and of
real property taxes and assessments

<table>
<thead>
<tr>
<th></th>
<th>Local Revenue</th>
<th>RPT &amp; Assess.</th>
<th>Local Revenue</th>
<th>RPT &amp; Assess.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>19.3%</td>
<td>45.4%</td>
<td>Oneida</td>
<td>18.1%</td>
</tr>
<tr>
<td>Allegany</td>
<td>10.8</td>
<td>37.2</td>
<td>Onondaga</td>
<td>18.1</td>
</tr>
<tr>
<td>Broome</td>
<td>15.9</td>
<td>39.8</td>
<td>Ontario</td>
<td>23.5</td>
</tr>
<tr>
<td>Cattaraugus</td>
<td>14.7</td>
<td>33.6</td>
<td>Orange</td>
<td>23.8</td>
</tr>
<tr>
<td>Cayuga</td>
<td>16.7</td>
<td>40.3</td>
<td>Orleans</td>
<td>21.2</td>
</tr>
<tr>
<td>Chautauqua</td>
<td>13.7</td>
<td>39.0</td>
<td>Oswego</td>
<td>17.1</td>
</tr>
<tr>
<td>Chemung</td>
<td>19.0</td>
<td>49.7</td>
<td>Otsego</td>
<td>22.4</td>
</tr>
<tr>
<td>Chenango</td>
<td>19.9</td>
<td>45.2</td>
<td>Putnam</td>
<td>28.1</td>
</tr>
<tr>
<td>Clinton</td>
<td>14.4</td>
<td>46.5</td>
<td>Rensselaer</td>
<td>22.2</td>
</tr>
<tr>
<td>Columbia</td>
<td>26.7</td>
<td>40.8</td>
<td>Rockland</td>
<td>27.3</td>
</tr>
<tr>
<td>Cortland</td>
<td>18.1</td>
<td>41.5</td>
<td>St. Lawrence</td>
<td>13.8</td>
</tr>
<tr>
<td>Delaware</td>
<td>17.0</td>
<td>25.1</td>
<td>Saratoga</td>
<td>36.4</td>
</tr>
<tr>
<td>Dutchess</td>
<td>36.3</td>
<td>50.5</td>
<td>Schenectady</td>
<td>27.8</td>
</tr>
<tr>
<td>Erie</td>
<td>17.3</td>
<td>30.9</td>
<td>Schoharie</td>
<td>18.5</td>
</tr>
<tr>
<td>Essex</td>
<td>10.2</td>
<td>25.0</td>
<td>Schuyler</td>
<td>15.4</td>
</tr>
<tr>
<td>Franklin</td>
<td>11.6</td>
<td>26.6</td>
<td>Seneca</td>
<td>17.7</td>
</tr>
<tr>
<td>Fulton</td>
<td>19.4</td>
<td>43.8</td>
<td>Steuben</td>
<td>22.4</td>
</tr>
<tr>
<td>Genesee</td>
<td>19.7</td>
<td>44.3</td>
<td>Suffolk</td>
<td>27.5</td>
</tr>
<tr>
<td>Greene</td>
<td>12.7</td>
<td>36.2</td>
<td>Sullivan</td>
<td>10.9</td>
</tr>
<tr>
<td>Hamilton</td>
<td>5.2</td>
<td>10.3</td>
<td>Tioga</td>
<td>36.9</td>
</tr>
<tr>
<td>Herkimer</td>
<td>12.8</td>
<td>27.9</td>
<td>Tompkins</td>
<td>16.0</td>
</tr>
<tr>
<td>Jefferson</td>
<td>15.3</td>
<td>41.0</td>
<td>Ulster</td>
<td>23.4</td>
</tr>
<tr>
<td>Lewis</td>
<td>10.8</td>
<td>21.3</td>
<td>Warren</td>
<td>14.4</td>
</tr>
<tr>
<td>Livingston</td>
<td>22.7</td>
<td>62.4</td>
<td>Washington</td>
<td>18.1</td>
</tr>
<tr>
<td>Madison</td>
<td>17.4</td>
<td>44.1</td>
<td>Wayne</td>
<td>23.3</td>
</tr>
<tr>
<td>Monroe</td>
<td>23.0</td>
<td>49.3</td>
<td>Westchester</td>
<td>33.5</td>
</tr>
<tr>
<td>Montgomery</td>
<td>19.8</td>
<td>46.5</td>
<td>Wyoming</td>
<td>12.4</td>
</tr>
<tr>
<td>Nassau</td>
<td>27.4</td>
<td>45.5</td>
<td>Yates</td>
<td>15.2</td>
</tr>
<tr>
<td>Niagara</td>
<td>15.7</td>
<td>35.7</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

come taxation is for preemption of precedence by the State where the income is earned, as it has the power to withhold the tax at the source. Local income taxes typically are confined to earned income and make the commuter liable for tax exclusively on earned income originating in the jurisdiction where he works.

In the State of Maryland, however, the supplement is applied only to residents of the taxing locality. No provision is made for a locality to tax any of the income of commuters, even if the jurisdiction where they live has not opted for a tax rate in excess of the mandatory 20 percent. As noted earlier, the Indiana resident is liable for the local tax supplement only to his jurisdiction of residence should the locality where he works also have adopted a supplement, even if the latter rate exceeds that adopted by his place of residence.

The Advisory Commission on Intergovernmental Relations recommends, in its suggested “Uniform Local Income Tax Law,” that

[Half] of the tax imposed by the jurisdiction of employment shall be credited by the State Tax Commissioner to the non-resident’s place of residence provided such jurisdiction also imposes the local income tax.6 [Bracketed word in the original.]

A division of the proceeds such as the Advisory Commission recommends is probably the simplest solution. However, provision could be made for the possibility of different supplement rates in the two jurisdictions by making the commuter liable for the tax of each on half his State liability. An attempt to apportion the State liability on an origin basis would probably not be worth the administrative and compliance costs involved.

A critical issue is whether the supplement option should replace the present New York City income tax, or whether the City should be permitted to exercise the option in addition to its income tax. In fiscal year 1972-73 the yield of the city tax was $439.6 million.7 The only available data that permit even a rough estimate of the supplement the city would have to elect to produce comparable revenue relate to the total State income tax liability incurred by residents of New York City in calendar year 1972. This figure is $1,083 million, which is surely an understatement of the potential supplement base, in light of commuting patterns. These figures imply that a supplement rate of no more than 40 percent of State liabilities would be sufficient for the city to break even. In the interests of minimization of the compliance costs of the taxpayer as well as the administrative costs to the government, the most efficient solution would be substitution of the supplement for the existing city income tax. But this may require authorization for New York City to levy a higher supplement than would be necessary for any other jurisdictions in the State if the city is to realize a net gain in revenue.

Unfortunately, the data relating to income earned in New York City by non-residents required to estimate an appropriate differential rate are not available, so an estimate cannot be provided.8 The maximum supplement rate authorized to all eligible jurisdictions could only be set at a higher rate, say 50%, which would provide the city with a gain in revenue.

In any event, some apportionment method would have to be provided for incomes of commuters. Assignment of the entire income of a commuter to either the jurisdiction of work or of income would be intolerable from the perspective of the disadvantaged jurisdiction. Allowing both municipalities to tax the same total income at the same rate would be intolerable from the point of view of the taxpayer.

The recommendation of the Advisory Council on Intergovernmental Relations again is probably the simplest and may prove to be the most feasible.
NOTES


4 All information pertaining to the experience in other states, as well as certain background data, were taken from a report prepared for the Commission by Robert W. Rufus, Jr. *The New York State Personal Income Tax: Essays in Fiscal Analysis*, (1974), pp. 69-122.

5 Ibid., pp. 7-15.


8 The Department of Financial Administration of the City of New York estimates that roughly 11 percent of the total yield of the City income tax in fiscal 1971-72 was attributable to non-residents. [Reported in The Metropolitan and Regional Research Center, Maxwell School of Citizenship and Public Affairs, Syracuse University; New York City: Economic Base and Fiscal Capacity, (Syracuse University Research Corporation, 1973), p. II-90.] However, since the tax on residents is different from that on commuter income earned in the City and since no allocation of this figure is available by county of residence, its implications for the present analysis cannot be adduced.
Analysis of New York State Local Sales Tax

THERE IS BOTH a State sales and use tax and an optional local sales tax. The State tax was enacted in 1965 at the rate of 2 percent and has since been increased to the current 4 percent. Local governments can add to an additional 3 percent, making the combined maximum rate equal to 7 percent. The only exception is New York City which has temporary power to levy a 4 percent local tax (8 percent combined), effective from July 1, 1974 to June 30, 1975.

Although discussions of sales tax reform in the State have encompassed questions of incidence, the impact on economic activity and exporting, the issues receiving the most attention currently are the revenue impact of a uniform Statewide tax rate and in-county distribution of the local sales tax revenues. Uniformity in rates and distribution have immediate appeal as rational, but in each case major changes in present program would be required. Nonetheless, the potential benefits from each program make them worthy of detailed consideration.

UNIFORM LOCAL SALES TAX RATE

The three major systems which have been widely considered for the State’s local sales tax system are:

1. the present system of county (or city) adoption at whole-percentage rates up to three percent according to local choice;
2. a system of uniform rates and Statewide adoption with revenues returned to the site of collection; and
3. a system of uniform rates and Statewide adoption with an equal per capita revenue distribution. Other formulae are obviously possible but options chosen are comprehensive, easily understood and each has some legislative support.

Under the present system, the base is broad and uniform. The tax applies to receipts from sales and use of most tangible personal property; restaurant meal charges; admissions charges; hotel and motel occupancy charges; utility service billings; and charges for specified services. Rent, food for home consumption, drugs, medical services and public transportation services are exempt to minimize the impact of the sales tax on the poor. The same uniformity does hold for local sales tax rates.

As Table 1 indicates, rates range from 0 to 3% in the 57 counties outside New York City (which has a 4% local tax, and mentioned previously). Nearly one-fourth of the counties have no local countywide tax but more than half of the counties (31, 54.4%) levy the maximum 3%. It is also indicated in the table that 21 municipalities in 15 counties levy an independent sales tax.

<table>
<thead>
<tr>
<th>TABLE 1 – COUNTYWIDE LOCAL SALES TAX RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>3%</td>
</tr>
<tr>
<td>2%</td>
</tr>
<tr>
<td>1%</td>
</tr>
<tr>
<td>No Countywide tax</td>
</tr>
</tbody>
</table>

Independent Municipal Tax (21 Municipalities) 15

*There are municipal sales taxes in 3 of the 14 counties.
A detailed analysis of the particular counties at each of the local rates is presented in Table 2. The table illustrates that there are urban (and rural counties) with no sales tax and urban counties levying a 3% local tax; independent municipal taxes are levied in counties at each of the four rates; and, the two largest groups of counties are those with a 3% tax and those with no sales tax. It should be noted that nearly 75% (41 counties) of the counties levy at least a 2 percent local sales tax.

An important issue in an era where localities, particularly urban units, are emphasizing the critical need for Federal and State aid, is the extent these areas are making use of the sales taxing power available to them. Overall, Tables 1 and 2 document that nearly half of the Upstate counties (26, 45.6%) are not utilizing the full 3% local tax available to them.

Urban counties1 (and their subunits) have been in the forefront of the movement for additional State aid to urban areas. A major claim of these counties is that they have to meet major demands for services

---

1Using the definition established by the HUD Committee (1970), an urban county has a population of 200,000 (or more) or a density of 200 per square mile (or more).

---

<table>
<thead>
<tr>
<th>TABLE 3 -- COUNTYWIDE SALES TAX RATES in urban counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Sales Tax 1% Tax 2% Tax 3% Tax</td>
</tr>
<tr>
<td>Dutchess* Westchester* Rensselaer* Albany*</td>
</tr>
<tr>
<td>Oneida* Broome* Chemung*</td>
</tr>
<tr>
<td>Orange* Erie*</td>
</tr>
<tr>
<td>Putnam* Monroe*</td>
</tr>
<tr>
<td>Rockland* Nassau*</td>
</tr>
<tr>
<td>Schenectady* Niagara*</td>
</tr>
<tr>
<td>Schenectady* Onondaga*</td>
</tr>
<tr>
<td>Schoharie* Schuyler*</td>
</tr>
<tr>
<td>Seneca* Suffolk*</td>
</tr>
<tr>
<td>Wyoming* Yates*</td>
</tr>
</tbody>
</table>

*There is an independent municipal sales tax in the county, while their local taxing power is exhausted. Yet, nearly half of the urban counties (8 of 17) are not making full use of their sales taxing power. Table 3 illustrates that while 9 urban counties are levying the full 3% local tax, Rensselaer has a 2% tax countywide; Westchester's countywide rate is only 1%, and 6 urban counties have no countywide tax.

It has often been postulated that the less affluent counties have inadequate property tax bases and must thereby be more dependent on the optional local sales tax. In fact, the pattern for the less affluent counties is very similar to the rate distribution for

---

<table>
<thead>
<tr>
<th>TABLE 2 -- COUNTYWIDE SALES TAX RATES in individual counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Sales Tax 1% Tax 2% Tax 3% Tax</td>
</tr>
<tr>
<td>Delaware* Ulster*</td>
</tr>
<tr>
<td>Dutchess* Westchester*</td>
</tr>
<tr>
<td>Herkimer*</td>
</tr>
<tr>
<td>Lewis*</td>
</tr>
<tr>
<td>Oneida*</td>
</tr>
<tr>
<td>Orange*</td>
</tr>
<tr>
<td>Oswego*</td>
</tr>
<tr>
<td>Putnam*</td>
</tr>
<tr>
<td>Rockland*</td>
</tr>
<tr>
<td>Saratoga*</td>
</tr>
<tr>
<td>Schenectady*</td>
</tr>
<tr>
<td>Schoharie*</td>
</tr>
<tr>
<td>Seneca*</td>
</tr>
<tr>
<td>Wyoming*</td>
</tr>
<tr>
<td>Albany*</td>
</tr>
<tr>
<td>Allegany*</td>
</tr>
<tr>
<td>Chenango*</td>
</tr>
<tr>
<td>Columbia*</td>
</tr>
<tr>
<td>Genesee*</td>
</tr>
<tr>
<td>Greene*</td>
</tr>
<tr>
<td>Madison*</td>
</tr>
<tr>
<td>Otsego*</td>
</tr>
<tr>
<td>Rensselaer*</td>
</tr>
<tr>
<td>Sullivan*</td>
</tr>
<tr>
<td>Tioga*</td>
</tr>
<tr>
<td>Montgomery*</td>
</tr>
<tr>
<td>Broome*</td>
</tr>
<tr>
<td>Cattaraugus*</td>
</tr>
<tr>
<td>Cayuga*</td>
</tr>
<tr>
<td>Chautauqua*</td>
</tr>
<tr>
<td>Chenango*</td>
</tr>
<tr>
<td>Clinton*</td>
</tr>
<tr>
<td>Cortland*</td>
</tr>
<tr>
<td>Erie*</td>
</tr>
<tr>
<td>Essex*</td>
</tr>
<tr>
<td>Franklin*</td>
</tr>
<tr>
<td>Fulton*</td>
</tr>
<tr>
<td>Hamilton*</td>
</tr>
<tr>
<td>Jefferson*</td>
</tr>
<tr>
<td>Livingston*</td>
</tr>
<tr>
<td>Monroe*</td>
</tr>
<tr>
<td>Montgomery*</td>
</tr>
<tr>
<td>Nassau*</td>
</tr>
<tr>
<td>Niagara*</td>
</tr>
<tr>
<td>Onondaga*</td>
</tr>
<tr>
<td>Ontario*</td>
</tr>
<tr>
<td>Orleans*</td>
</tr>
<tr>
<td>St. Lawrence*</td>
</tr>
<tr>
<td>Schuyler*</td>
</tr>
<tr>
<td>Steuben*</td>
</tr>
<tr>
<td>Suffolk*</td>
</tr>
<tr>
<td>Tompkins*</td>
</tr>
<tr>
<td>Warren*</td>
</tr>
<tr>
<td>Washington*</td>
</tr>
<tr>
<td>Wayne*</td>
</tr>
<tr>
<td>Yates*</td>
</tr>
</tbody>
</table>

*There is an independent municipal sales tax in the county.
TABLE 4 — COUNTYWIDE SALES TAX RATES
in less affluent counties*

<table>
<thead>
<tr>
<th></th>
<th>1% Tax</th>
<th>2% Tax</th>
<th>3% Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delaware</td>
<td>Allegany</td>
<td>Clinton</td>
<td></td>
</tr>
<tr>
<td>Lewis</td>
<td>Madison**</td>
<td>Essex</td>
<td></td>
</tr>
<tr>
<td>Oswego**</td>
<td>Otsego</td>
<td>Franklin</td>
<td></td>
</tr>
<tr>
<td>Schoharie</td>
<td></td>
<td>Jefferson</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>St. Lawrence**</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Schuyler</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington</td>
<td></td>
</tr>
</tbody>
</table>

*Less affluent is defined as being in the lower quartile of counties by personal income per capita (1972).
*There is an independent municipal sales tax in the county.

urban counties and for all upstate counties as Table 4 displays. Approximately half (7) of the less affluent counties levy the full 3% local tax and about one-quarter (4) of them have no countywide local sales tax.

Is Uniformity Desirable?

It should be clear that there is wide variation in the local sales tax rates, regardless of the socioeconomic characteristics of the 57 upstate counties. The majority of counties levy the full 3% local option, and discussions of Statewide uniformity have centered on a 7% uniform sales tax: 4% for State purposes and 3% for distribution to localities, either on the basis of site of collection or a per capita allocation. Thus, this analysis will focus on 3% as the most likely possibility if Statewide uniformity were achieved.

Institution of a uniform 3% local rate would increase the overall importance of the sales tax in New York local government finance and hence the desirability of greater dependence must be considered. The sales and use tax is second only to the property tax as a source of locally-raised revenues. This question of expanding sales taxation is particularly critical in view of frequent attacks on the tax as regressive.

Although it is surely not as progressive as the State income tax, the State sales tax is not regressive. Studies indicate that the New York sales tax base produces effective rates which are generally proportional for most citizens. In view of the widespread demands for reduced property taxes and the geographical distributional problems of a local income tax, expansion of a proportional sales tax becomes an attractive alternative.

A second question concerning uniformity involves the impact of the present local sales tax variation on economic activity. Any tax rate differential has the potential to discourage economic activity. In the present case, some New York localities have adopted local sales taxes; other counties have not imposed the tax. These conditions mean that adjacent areas can have a difference in sales tax rates of as much as three percentage points, as is the case in the Capital District area: Schenectady County has no local sales tax, Rensselaer has a 2% local rate, and Albany County levies the full 3% rate. Such a difference may induce certain economic activity to locate in the low tax areas and to avoid the high tax areas. Retailing is one activity that is particularly likely to avoid the higher sales tax areas, although other activities may be influenced as well.

Economic studies by Dr. John Mikesell of Indiana University have examined the extent of the effect on retail sales. One study focuses on the influence of sales tax rate differences between a central city and its suburbs. This study concludes:

"After allowing for differences in the relative population of cities, geographic region, per capita income and geographic area, a sales tax rate differential exerts a significant negative influence on per capita city retail sales: central cities facing an adverse sales tax rate differential have lower retail sales per capita." Under the present local option system, the cities of Fulton, Kingston, Mechanicville, Oswego, Poughkeepsie, Saratoga Springs and Yonkers are in exactly


4 John L. Mikesell, "Central Cities and Sales Tax Rate Differentials: The Border City Problem," National Tax Journal, XXIII (June 1970), p. 213. The results indicate that a 1 percent rate differential is associated with lower per capita sales of 6.33 percent.
that disadvantageous position. Only a uniform local rate can eliminate this problem.

County exporting percentages range from almost fifty percent of tax paid to just over five percent of tax paid.\(^5\) Through exporting, a county can capture tax base from outside its borders and may relieve its residents of a portion of the tax burden. Exporting through a local sales tax thus represents a way in which less affluent counties can reduce relative taxes for their residents. Although precise statements cannot be made about the regions to which burdens are exported, evidence available indicates that sales tax exporting does relieve the relative tax burdens of less affluent counties. Hence, the local sales tax produces interjurisdictional burdens that are generally regressive.

Finally, the possible benefits of the State of New York assuming responsibility for administration and collection of the optional local sales tax must be considered. The relatively uniform base, together with broader coverage, would reduce local tax avoidance and evasion and thereby increase local tax yields. Additional administrative savings and compliance effectiveness could be attained by making the local and State sales tax bases identical. This goal could be attained by simply regularizing the treatment of energy purchases, and through the use of the vendor rule, rather than the delivery rule, in establishing liability.

The case for uniform rates seems beyond disagreement, particularly when the use of the countywide sales tax at the maximum rate is as widespread as it is in New York. However, acceptance of the concept of a uniform local rate leaves the question of distribution.

**Site-of-Collection Vs. Per Capita Redistribution**

With the establishment of uniform local rates, site of collection is no longer the only available basis for distributing local sales tax receipts. Although there are numerous options, this analysis will be limited to site-of-collection versus an equal, per capita allocation as the best method of distributing the tax receipts. A site-of-collection distribution is obligatory under the present local option system. This would not be essential if local rates were uniform.

Those in favor of a site-of-collection distribution argue that those who pay the tax should receive the revenues gained from its levy. Those opposed argue that this ignores our system's goal of equity, that those better off should bear a relatively greater share of supporting public services than the poor. Opponents are supported by the fact that there is no demonstrable link between fiscal need and the level of retail activity in a particular community.\(^6\)

Also, sales tax revenues raised in a county do not reflect the tax effort of county residents alone. Commuters (and others) from suburban counties surrounding a central city spend money and thereby pay sales tax to a county and/or municipality where they do not reside. A good example is the residents of Rensselaer, Saratoga and Schenectady counties who work and shop and so pay sales tax in Albany County.

Of even greater relative significance is the exporting of the sales tax burden by rural resort counties to tourists. During the summer and winter recreation seasons, counties such as Essex and Warren receive much of their sales tax revenues from vacationers. Not only do they benefit from the tax revenues, their residents are also credited with making tax effort far above what they are actually paying themselves.

Although economy, efficiency and equity seem to be better served by a per capita distribution, approval of any reform will require a comparison of sales tax receipts by county under the present system and at a uniform 3% rate, using both site-of-collection and per capita distributions. This analysis is presented in Table 5.

Comparison of site-of-collection receipts under the proposed uniform 3% rate to the present local option system reveals the obvious: counties already at the 3% maximum receive the same amount; those now levying a rate less than 3% would receive addi-
<table>
<thead>
<tr>
<th>Countywide Rate</th>
<th>New York State TOTAL:</th>
<th>Total County and Municipal Sales Taxes Actual Collections State FY 1973-74</th>
<th>Collections 3% Uniform for FY 1973-74 Site-of-Collection</th>
<th>Equal Per Capita Distribution of 3% Uniform Receipts FY 1973-74</th>
<th>Difference: Equal P.C. 3% Minus Site of Collection 3%</th>
<th>Difference: Equal P.C. 3% Minus Site of Collection Present Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>3%</td>
<td>Albany</td>
<td>$27,242,504</td>
<td>$27,242,504</td>
<td>$22,200,713</td>
<td>$(-5,041,791)</td>
<td>$(-5,041,791)</td>
</tr>
<tr>
<td>2%</td>
<td>Allegany</td>
<td>$2,673,666</td>
<td>$3,566,964</td>
<td>$1,826,376</td>
<td>$1,826,376</td>
<td>$1,826,376</td>
</tr>
<tr>
<td>2%</td>
<td>Broome</td>
<td>$16,875,069</td>
<td>$17,040,713</td>
<td>$1,167,677</td>
<td>$1,167,677</td>
<td>$1,167,677</td>
</tr>
<tr>
<td>3%</td>
<td>Cattaraugus</td>
<td>$5,645,371</td>
<td>$6,187,107</td>
<td>$5,631,830</td>
<td>$5,631,830</td>
<td>$5,631,830</td>
</tr>
<tr>
<td>3%</td>
<td>Cayuga</td>
<td>$4,629,857</td>
<td>$5,866,430</td>
<td>$1,236,573</td>
<td>$1,236,573</td>
<td>$1,236,573</td>
</tr>
<tr>
<td>3%</td>
<td>Chautauqua</td>
<td>$10,329,261</td>
<td>$11,404,942</td>
<td>$1,075,681</td>
<td>$1,075,681</td>
<td>$1,075,681</td>
</tr>
<tr>
<td>3%</td>
<td>Chemung</td>
<td>$8,880,539</td>
<td>$7,752,620</td>
<td>$(-1,127,919)</td>
<td>$(-1,127,919)</td>
<td>$(-1,127,919)</td>
</tr>
<tr>
<td>2%</td>
<td>Chemung</td>
<td>$2,003,216</td>
<td>$3,570,563</td>
<td>$1,567,247</td>
<td>$1,567,247</td>
<td>$1,567,247</td>
</tr>
<tr>
<td>3%</td>
<td>Clinton</td>
<td>$4,790,862</td>
<td>$5,460,637</td>
<td>$689,775</td>
<td>$689,775</td>
<td>$689,775</td>
</tr>
<tr>
<td>2%</td>
<td>Columbia</td>
<td>$2,516,006</td>
<td>$3,967,748</td>
<td>$1,451,742</td>
<td>$1,451,742</td>
<td>$1,451,742</td>
</tr>
<tr>
<td>3%</td>
<td>Cortland</td>
<td>$3,496,630</td>
<td>$3,553,297</td>
<td>$56,667</td>
<td>$56,667</td>
<td>$56,667</td>
</tr>
<tr>
<td>0%</td>
<td>Delaware</td>
<td>$2,800,000</td>
<td>$3,458,530</td>
<td>$658,530</td>
<td>$658,530</td>
<td>$658,530</td>
</tr>
<tr>
<td>0%</td>
<td>Dutchess</td>
<td>$1,678,828</td>
<td>$16,067,081</td>
<td>$1,408,193</td>
<td>$1,408,193</td>
<td>$1,408,193</td>
</tr>
<tr>
<td>3%</td>
<td>Erie</td>
<td>$79,226,283</td>
<td>$86,899,631</td>
<td>$7,673,348</td>
<td>$7,673,348</td>
<td>$7,673,348</td>
</tr>
<tr>
<td>3%</td>
<td>Essex</td>
<td>$2,864,672</td>
<td>$2,661,271</td>
<td>$(-183,401)</td>
<td>$(-183,401)</td>
<td>$(-183,401)</td>
</tr>
<tr>
<td>3%</td>
<td>Franklin</td>
<td>$2,540,512</td>
<td>$3,243,369</td>
<td>$702,857</td>
<td>$702,857</td>
<td>$702,857</td>
</tr>
<tr>
<td>3%</td>
<td>Fulton</td>
<td>$3,417,461</td>
<td>$4,067,470</td>
<td>$650,009</td>
<td>$650,009</td>
<td>$650,009</td>
</tr>
<tr>
<td>3%</td>
<td>Genesee</td>
<td>$3,056,600</td>
<td>$4,930,709</td>
<td>$1,874,109</td>
<td>$1,874,109</td>
<td>$1,874,109</td>
</tr>
<tr>
<td>2%</td>
<td>Greene</td>
<td>$2,306,445</td>
<td>$2,528,048</td>
<td>$219,603</td>
<td>$219,603</td>
<td>$219,603</td>
</tr>
<tr>
<td>3%</td>
<td>Hamilton</td>
<td>$462,850</td>
<td>$364,977</td>
<td>$97,873</td>
<td>$97,873</td>
<td>$97,873</td>
</tr>
<tr>
<td>0%</td>
<td>Herkimer</td>
<td>$0</td>
<td>$3,600,000*</td>
<td>$1,632,624</td>
<td>$1,632,624</td>
<td>$1,632,624</td>
</tr>
<tr>
<td>3%</td>
<td>Jefferson</td>
<td>$6,888,138</td>
<td>$6,882,643</td>
<td>$104,505</td>
<td>$104,505</td>
<td>$104,505</td>
</tr>
<tr>
<td>0%</td>
<td>Lewis</td>
<td>$0</td>
<td>$1,300,000*</td>
<td>$5,608,193</td>
<td>$5,608,193</td>
<td>$5,608,193</td>
</tr>
<tr>
<td>3%</td>
<td>Livingston</td>
<td>$3,273,418</td>
<td>$4,057,095</td>
<td>$783,677</td>
<td>$783,677</td>
<td>$783,677</td>
</tr>
<tr>
<td>3%</td>
<td>Madison</td>
<td>$2,774,406</td>
<td>$4,858,821</td>
<td>$995,988</td>
<td>$995,988</td>
<td>$995,988</td>
</tr>
<tr>
<td>3%</td>
<td>Monroe</td>
<td>$59,584,213</td>
<td>$54,873,408</td>
<td>$(-4,710,806)</td>
<td>$(-4,710,806)</td>
<td>$(-4,710,806)</td>
</tr>
<tr>
<td>3%</td>
<td>Montgomery</td>
<td>$3,460,195</td>
<td>$4,326,685</td>
<td>$866,490</td>
<td>$866,490</td>
<td>$866,490</td>
</tr>
<tr>
<td>3%</td>
<td>Nassau</td>
<td>$122,413,463</td>
<td>$110,662,635</td>
<td>$(-12,350,828)</td>
<td>$(-12,350,828)</td>
<td>$(-12,350,828)</td>
</tr>
<tr>
<td>3%</td>
<td>Niagara</td>
<td>$15,672,123</td>
<td>$15,672,123</td>
<td>$2,490,136</td>
<td>$2,490,136</td>
<td>$2,490,136</td>
</tr>
<tr>
<td>0%</td>
<td>Onondaga</td>
<td>$16,200,000*</td>
<td>$20,527,425</td>
<td>$4,327,425</td>
<td>$4,327,425</td>
<td>$4,327,425</td>
</tr>
</tbody>
</table>

TABLE 5 — COMPARISON OF VARIOUS LOCAL SALES TAX DISTRIBUTION
<table>
<thead>
<tr>
<th>County</th>
<th>3%</th>
<th>6%</th>
<th>9%</th>
<th>12%</th>
<th>15%</th>
<th>18%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Onondaga</td>
<td>38,497,391</td>
<td>38,497,391</td>
<td>36,518,810</td>
<td>[-1,978,581]</td>
<td>[-1,978,581]</td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td>7,090,204</td>
<td>7,090,204</td>
<td>6,103,721</td>
<td>[-986,483]</td>
<td>[-986,483]</td>
<td></td>
</tr>
<tr>
<td>Orange</td>
<td>0</td>
<td>16,500,000</td>
<td>16,855,282</td>
<td>+356,282</td>
<td>+16,855,282</td>
<td></td>
</tr>
<tr>
<td>Orleans</td>
<td>2,139,602</td>
<td>2,139,602</td>
<td>2,863,192</td>
<td>+743,500</td>
<td>+743,500</td>
<td></td>
</tr>
<tr>
<td>Oswego</td>
<td>0</td>
<td>5,100,000</td>
<td>7,811,849</td>
<td>+2,711,849</td>
<td>+2,711,849</td>
<td></td>
</tr>
<tr>
<td>Otsego</td>
<td>2,579,318</td>
<td>3,869,727</td>
<td>4,349,758</td>
<td>+480,031</td>
<td>+1,769,940</td>
<td></td>
</tr>
<tr>
<td>Pulten</td>
<td>0</td>
<td>4,000,000*</td>
<td>4,389,631</td>
<td>+359,631</td>
<td>+4,389,631</td>
<td></td>
</tr>
<tr>
<td>Rensselaer</td>
<td>0</td>
<td>8,355,871*</td>
<td>11,891,586</td>
<td>+3,465,714</td>
<td>+4,983,964</td>
<td></td>
</tr>
<tr>
<td>Rockland</td>
<td>0</td>
<td>14,800,000*</td>
<td>17,132,538</td>
<td>+2,332,538</td>
<td>+17,132,538</td>
<td></td>
</tr>
<tr>
<td>St. Lawrence</td>
<td>3%</td>
<td>7,038,483</td>
<td>8,576,882</td>
<td>+1,532,190</td>
<td>+1,532,190</td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td>0</td>
<td>8,000,000*</td>
<td>9,397,183</td>
<td>+1,397,183</td>
<td>+7,720,570</td>
<td></td>
</tr>
<tr>
<td>Schenectady</td>
<td>0</td>
<td>11,000,000*</td>
<td>12,471,303</td>
<td>+1,471,303</td>
<td>+12,471,303</td>
<td></td>
</tr>
<tr>
<td>Schoharie</td>
<td>0%</td>
<td>1,000,000*</td>
<td>1,908,856</td>
<td>+608,856</td>
<td>+1,908,856</td>
<td></td>
</tr>
<tr>
<td>Schuyler</td>
<td>3%</td>
<td>1,026,266</td>
<td>1,289,419</td>
<td>+263,153</td>
<td>+263,153</td>
<td></td>
</tr>
<tr>
<td>Seneca</td>
<td>0%</td>
<td>1,800,000*</td>
<td>2,544,949</td>
<td>+744,849</td>
<td>+2,544,849</td>
<td></td>
</tr>
<tr>
<td>Steuben</td>
<td>3%</td>
<td>7,733,611</td>
<td>7,297,250</td>
<td>[-26,361]</td>
<td>[-26,361]</td>
<td></td>
</tr>
<tr>
<td>Suffolk</td>
<td>3%</td>
<td>90,548,082</td>
<td>85,540,641</td>
<td>[-5,007,441]</td>
<td>[-5,007,441]</td>
<td></td>
</tr>
<tr>
<td>Sullivan</td>
<td>2%</td>
<td>4,833,137</td>
<td>4,020,628</td>
<td>[-812,509]</td>
<td>[-812,509]</td>
<td></td>
</tr>
<tr>
<td>Tioga</td>
<td>2%</td>
<td>1,861,436</td>
<td>3,901,223</td>
<td>+309,070</td>
<td>+1,739,788</td>
<td></td>
</tr>
<tr>
<td>Tompkins</td>
<td>3%</td>
<td>5,646,547</td>
<td>5,966,603</td>
<td>+320,066</td>
<td>+320,066</td>
<td></td>
</tr>
<tr>
<td>Ulster</td>
<td>1%</td>
<td>5,503,045</td>
<td>12,084,258</td>
<td>-1,238,086</td>
<td>+5,343,128</td>
<td></td>
</tr>
<tr>
<td>Warren</td>
<td>3%</td>
<td>6,015,131</td>
<td>3,824,900</td>
<td>[-2,190,231]</td>
<td>[-2,190,231]</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>3%</td>
<td>2,581,499</td>
<td>3,990,433</td>
<td>+1,408,934</td>
<td>+1,408,934</td>
<td></td>
</tr>
<tr>
<td>Wayne</td>
<td>3%</td>
<td>5,217,582</td>
<td>5,966,913</td>
<td>+749,330</td>
<td>+749,330</td>
<td></td>
</tr>
<tr>
<td>Westchester</td>
<td>1%</td>
<td>37,526,757</td>
<td>69,137,774</td>
<td>+31,611,017</td>
<td>+31,611,017</td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>0%</td>
<td>1,600,000*</td>
<td>2,760,785</td>
<td>+1,160,785</td>
<td>+2,760,785</td>
<td></td>
</tr>
<tr>
<td>Yates</td>
<td>3%</td>
<td>1,272,658</td>
<td>1,535,395</td>
<td>+262,737</td>
<td>+262,737</td>
<td></td>
</tr>
</tbody>
</table>

Upstate Population TOTAL: 10,249,959
P.C. Amount: $77,424

tional funds. However, when the 3% uniform receipts are redistributed on per capita basis, many counties would have received more than their actual FY 1973-74 collections and some would have received less.

Overall, 45 counties would receive more money under the 3% per capita distribution than under the present plan. Table 6 lists the twelve greatest beneficiaries of the proposed change. Nine of these counties are urban counties, which indicates that the plan would distribute money to those with high service demands. It should be noted that only one of 12 is presently taxing at the maximum 3% rate.

The 12 counties which would receive less under a 3% per capita redistribution are examined in Table 7. All are presently at the maximum 3% rate. Six of the counties are relatively affluent urban counties. The rest are basically resort counties which receive a large percent of their current sales tax revenues from non-residents. The losses, particularly for the urban counties, are relatively small.

To provide a complete picture of the advisability of the proposed per capita redistribution, the redistribution shares for each county are compared to their shares of a uniform 3% tax, distributed on the basis of site-of-collection. The number of counties receiving more under a per capita distribution remains large: 4 of the 57 counties receive more than they would under a uniform 3% site-of-collection plan. Sixteen counties, an increase of four, would receive less under the per capita plan.

The counties receiving the greatest benefit from redistribution are arrayed in Table 8. Six of them are urban counties with Erie County receiving the largest absolute increase. Most of the other counties listed are among the more populous counties in the State.

The sixteen counties who would not benefit from a per capita distribution include the 12 counties listed in Table 7 which compared a uniform per capita distribution to current receipts (see Table 9). The four additions - Genesee, Greene, Ulster and Westchester - are not presently levying the full 3% local tax permitted, and each is relatively affluent. Eleven of the 16 counties are already levying the 3% local maximum tax.

### Table 6 - Largest Absolute Revenue Increases: Uniform Redistribution versus Present Rates

<table>
<thead>
<tr>
<th>County</th>
<th>Present Rate</th>
<th>Gain</th>
<th>Percentage Gain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Westchester*</td>
<td>1%**</td>
<td>$31,611,017</td>
<td>64.2%</td>
</tr>
<tr>
<td>Oneida</td>
<td>0%</td>
<td>20,527,425</td>
<td></td>
</tr>
<tr>
<td>Rockland</td>
<td>0%</td>
<td>17,132,538</td>
<td></td>
</tr>
<tr>
<td>Orange</td>
<td>0%</td>
<td>16,866,282</td>
<td></td>
</tr>
<tr>
<td>Dutchess</td>
<td>0%**</td>
<td>14,408,193</td>
<td>86.2%</td>
</tr>
<tr>
<td>Schenectady*</td>
<td>0%</td>
<td>12,471,303</td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td>0%**</td>
<td>7,720,570</td>
<td>460.5%</td>
</tr>
<tr>
<td>Erie</td>
<td>3%</td>
<td>6,463,248</td>
<td>8.2%</td>
</tr>
<tr>
<td>Broome</td>
<td>2%</td>
<td>5,802,667</td>
<td>51.8%</td>
</tr>
<tr>
<td>Ulster</td>
<td>1%**</td>
<td>5,343,128</td>
<td>97.1%</td>
</tr>
<tr>
<td>Herkimer</td>
<td>0%</td>
<td>5,232,824</td>
<td></td>
</tr>
<tr>
<td>Rensselaer*</td>
<td>2%**</td>
<td>4,983,964</td>
<td>73.1%</td>
</tr>
</tbody>
</table>

*Urban county.
**There is also an independent municipal tax.

### Table 7 - Counties Losing Revenue: 3% Uniform P.C. Redistribution versus Present Rates

<table>
<thead>
<tr>
<th>County</th>
<th>Present Rate</th>
<th>Loss</th>
<th>Percentage Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>3%</td>
<td>$5,041,791</td>
<td>18.5%</td>
</tr>
<tr>
<td>Chemung</td>
<td>3%**</td>
<td>1,127,919</td>
<td>12.7%</td>
</tr>
<tr>
<td>Essex</td>
<td>3%</td>
<td>183,401</td>
<td>6.4%</td>
</tr>
<tr>
<td>Hamilton</td>
<td>3%</td>
<td>97,873</td>
<td>21.1%</td>
</tr>
<tr>
<td>Monroe</td>
<td>3%</td>
<td>4,710,806</td>
<td>7.9%</td>
</tr>
<tr>
<td>Nassau</td>
<td>3%</td>
<td>12,350,828</td>
<td>10.1%</td>
</tr>
<tr>
<td>Onondaga*</td>
<td>3%</td>
<td>1,978,581</td>
<td>5.1%</td>
</tr>
<tr>
<td>Ontario</td>
<td>3%**</td>
<td>986,483</td>
<td>13.9%</td>
</tr>
<tr>
<td>Steuben</td>
<td>3%**</td>
<td>26,361</td>
<td>0.3%</td>
</tr>
<tr>
<td>Suffolk</td>
<td>3%</td>
<td>5,007,441</td>
<td>5.5%</td>
</tr>
<tr>
<td>Sullivan</td>
<td>3%</td>
<td>812,509</td>
<td>16.8%</td>
</tr>
<tr>
<td>Warren</td>
<td>3%**</td>
<td>2,190,231</td>
<td>36.4%</td>
</tr>
</tbody>
</table>

*Urban county.
**There is also an independent municipal tax.
TABLE 8 – LARGEST ABSOLUTE REVENUE INCREASES:
3% uniform p.c. redistribution versus 3% uniform site-of-collection

<table>
<thead>
<tr>
<th>County</th>
<th>Present Rate</th>
<th>Gain</th>
<th>Percentage Gain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Erie</td>
<td>3%</td>
<td>$6,463,248</td>
<td>8.2%</td>
</tr>
<tr>
<td>Oneida</td>
<td>0%</td>
<td>4,327,425</td>
<td>26.7%</td>
</tr>
<tr>
<td>Rensselaer</td>
<td>2%**</td>
<td>3,466,714</td>
<td>41.6%</td>
</tr>
<tr>
<td>Oswego</td>
<td>0%**</td>
<td>2,711,849</td>
<td>53.2%</td>
</tr>
<tr>
<td>Niagara</td>
<td>3%</td>
<td>2,490,136</td>
<td>15.9%</td>
</tr>
<tr>
<td>Rockland</td>
<td>0%</td>
<td>2,332,538</td>
<td>15.8%</td>
</tr>
<tr>
<td>Herkimer</td>
<td>0%</td>
<td>1,632,624</td>
<td>45.4%</td>
</tr>
<tr>
<td>St. Lawrence</td>
<td>3%***</td>
<td>1,532,199</td>
<td>21.8%</td>
</tr>
<tr>
<td>Schenectady</td>
<td>0%**</td>
<td>1,471,303</td>
<td>13.4%</td>
</tr>
<tr>
<td>Washington</td>
<td>3%</td>
<td>1,408,934</td>
<td>54.6%</td>
</tr>
<tr>
<td>Saratoga</td>
<td>0%**</td>
<td>1,397,183</td>
<td>17.5%</td>
</tr>
<tr>
<td>Cayuga</td>
<td>3%</td>
<td>1,238,773</td>
<td>26.8%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>0%</td>
<td>1,160,785</td>
<td>72.6%</td>
</tr>
<tr>
<td>Madison</td>
<td>2%**</td>
<td>995,988</td>
<td>25.8%</td>
</tr>
<tr>
<td>Allegheny</td>
<td>2%</td>
<td>923,298</td>
<td>34.5%</td>
</tr>
</tbody>
</table>

*Urban county.
**Also, there is a municipal sales tax.

TABLE 9 – COUNTIES LOSING REVENUE:
3% uniform p.c. redistribution versus 3% uniform site-of-collection

<table>
<thead>
<tr>
<th>County</th>
<th>Present Rate</th>
<th>Loss</th>
<th>Percentage Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>3%</td>
<td>$5,041,791</td>
<td>18.5%</td>
</tr>
<tr>
<td>Chemung</td>
<td>3%**</td>
<td>1,127,919</td>
<td>12.7%</td>
</tr>
<tr>
<td>Essex</td>
<td>3%</td>
<td>183,401</td>
<td>6.4%</td>
</tr>
<tr>
<td>Genessee</td>
<td>2%</td>
<td>76,191</td>
<td>1.7%</td>
</tr>
<tr>
<td>Greene</td>
<td>2%</td>
<td>934,620</td>
<td>27.0%</td>
</tr>
<tr>
<td>Hamilton</td>
<td>3%</td>
<td>97,873</td>
<td>21.1%</td>
</tr>
<tr>
<td>Monroe</td>
<td>3%</td>
<td>4,710,805</td>
<td>7.9%</td>
</tr>
<tr>
<td>Nassau</td>
<td>3%</td>
<td>12,350,828</td>
<td>10.1%</td>
</tr>
<tr>
<td>Onondaga</td>
<td>3%</td>
<td>1,978,581</td>
<td>5.1%</td>
</tr>
<tr>
<td>Ontario</td>
<td>3%**</td>
<td>986,483</td>
<td>13.9%</td>
</tr>
<tr>
<td>Steuben</td>
<td>3%**</td>
<td>26,361</td>
<td>0.3%</td>
</tr>
<tr>
<td>Suffolk</td>
<td>3%</td>
<td>5,007,441</td>
<td>5.5%</td>
</tr>
<tr>
<td>Sullivan</td>
<td>2%</td>
<td>3,229,078</td>
<td>44.5%</td>
</tr>
<tr>
<td>Ulster</td>
<td>1%**</td>
<td>1,238,085</td>
<td>10.3%</td>
</tr>
<tr>
<td>Warren</td>
<td>3%**</td>
<td>2,190,231</td>
<td>36.4%</td>
</tr>
<tr>
<td>Westchester</td>
<td>1%**</td>
<td>9,060,539</td>
<td>11.6%</td>
</tr>
</tbody>
</table>

*Urban county.
**Also, there is a municipal sales tax.
TABLE 10 – Methods of Distributing
County Sales Tax Revenues
(Authorized by State Tax Law, Section 1262)

I. Alternative distributions which could be chosen by county legislative body:
   A. If a city exercised its “prior right” to levy — and retain — a (maximum) 1.5% sales tax, then the county had to distribute the “parallel” sales tax collected in the remainder of the county among the cities (if any), towns, and villages comprising such “remainder.” This distribution had to be based on the proportion of full value of taxable property in each jurisdiction.
   B. The county legislative body could elect to retain from 0% to 100% of any sales tax receipts collected from the entire county. The portion, if any, not retained by the county had to be distributed according to one of the following apportionments:
      1. All to school districts, or
      2. All to cities, towns, and villages, or
      3. Part (percentage of receipts or fixed dollar amount) to school districts, and remainder to cities, towns, and villages.

II. Frequency of distribution:
   A. Quarterly.
   B. Oftener, if the county and cities agreed. Example: monthly.

III. Basis of distribution:
   A. To school districts — distribution to all school districts with territory in the county on the basis of average daily attendance (ADA) of public school pupils resident in the county. Exception: Monroe County used pupil enrollment rather than ADA.
   B. To cities, towns and villages —
      1. Between the city (or cities) as one unit, and all towns and villages, as the other unit (either a or b);
         a. Population —
            (1) 1970 Federal census, or
            (2) Special Federal county-wide census.
         b. Any other basis agreed upon by the elective governing bodies of the county and each city, and the State Comptroller. Examples —
            (1) Full valuation of taxable real property.
            (2) Fixed percentages.
   2. Among the towns (including their villages) (either a or b);
      a. Full valuation of taxable real property.
      b. Population —
         (1) 1970 Federal census, or
         (2) Special Federal county-wide census.
   3. Between the town and any village(s) located therein: Full valuation of taxable real property, except in Monroe County where the county may authorize not more than half of the distribution to be based on population.

IV. Types of distribution:
   A. Cash. Mandatory for school districts. Optional for cities, towns and villages.
   B. Credit. Optional for cities, towns and villages. Prohibited for school districts. The county retains the net collections and credits each unit with its allocated share. This is done by reducing county and town real property taxes to be levied in the unit by the amount of the allocated share. First, the county taxes are reduced.

   If the allocated share exceeds the county taxes, the excess is used to reduce general town taxes. Any excess remaining is paid to the cities and villages and to the towns without villages in cash. In towns with villages the excess is applied to reduce taxes levied for part-town activities; and any remaining balance is paid to the towns in cash to be used only for part-town activities.
   C. City, town and village options. Cities, towns and villages may elect, by local law, ordinance or resolution, to receive their allocated share in cash, rather than as a credit, except in Nassau County (Chapters 1190 and 1191, Laws of 1971, effective September 1, 1971).
Uniform Rates: Conclusion

To advance the goals of equity, efficiency and reduction of the local property tax burden, the preceding analysis indicates that a uniform 3% local sales tax rate is preferable to the present local option system. In addition to the substantive benefits of a uniform rate, no bureaucracy is needed; avoidance and evasion would be reduced, and, thereby, local yields would be higher.

Regarding the allocation of the uniform local tax revenues, a per capita aid redistribution proved preferable to the current site-of-collection procedure. A per capita redistribution is more likely to match resources and needs, and at a uniform 3% rate more than 75% of the upstate counties would receive more sales tax revenues than under the present system. About the same percentage (72%) would receive more from the per capita redistribution than the site-of-collection plan at the same uniform 3% local rate. A major issue remains unaddressed: how should the county shares be divided between the county government and the cities, towns and villages within it?

<table>
<thead>
<tr>
<th>By County</th>
<th>No. of Counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribution</td>
<td>12</td>
</tr>
<tr>
<td>County Only</td>
<td>12</td>
</tr>
<tr>
<td>County and Cities</td>
<td>0</td>
</tr>
<tr>
<td>County and Towns</td>
<td>11</td>
</tr>
<tr>
<td>County and School Districts</td>
<td>1</td>
</tr>
<tr>
<td>County, Cities and Towns</td>
<td>14</td>
</tr>
<tr>
<td>County, Cities, Towns and School Districts</td>
<td>2</td>
</tr>
<tr>
<td>County, Towns and School Districts</td>
<td>3</td>
</tr>
<tr>
<td>(No Local Sales Tax)</td>
<td>14</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>57</strong></td>
</tr>
</tbody>
</table>

INTRA-COUNTY DISTRIBUTION OF SALES TAX REVENUES

Under the present local sales tax law, counties which choose to levy the tax have a number of options, specified in law, as to how the revenues raised are distributed. Table 10 describes the specifics of the distribution options; any deviations must be approved by the State Comptroller. Review of the table indicates that there is rather wide discretion accorded to the county legislatures in this area. The wide range of plans actually in operation is detailed in Table 11.

Even a cursory analysis of Table 11 indicates that tax rates, county shares and distribution recipients differ greatly among the counties. Some counties keep all the sales tax revenues while others keep only one-third or less. Several counties share revenues with only towns, one shares only with school districts; some share with cities and towns, some with towns and school districts; and others with cities, towns and school districts. The proportional shares allocated to each class, and the basis of distribution among the individual units also vary widely. The distribution pattern is further confused by the presence of an independent municipal sales tax in a number of counties.

So much information is contained in Table 11 that it all becomes difficult to comprehend. Therefore, some brief, single topic tables have been prepared to better illustrate some major points. Table 12 is a frequency distribution of the counties using various methods of distributing sales tax revenues.

As the table suggests, there are six different distribution plans in use, ignoring the question of percentage shares.

Since the county legislatures have considerable discretion in the distribution of sales tax revenues, it is not surprising that the county units' shares are relatively large. As Table 13 illustrates, only 8 of the 43 counties with a local sales tax retain less than 50% of the receipts for county government purposes; more than one-quarter of the counties with a local tax keep 100%.
<table>
<thead>
<tr>
<th>County</th>
<th>Countywide Rate</th>
<th>Percent Retained by County</th>
<th>% to Cities</th>
<th>% to Towns</th>
<th>% to School Districts</th>
<th>Municipal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City</td>
<td>4%</td>
<td></td>
<td>100% to City Govt.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Albany</td>
<td>3%</td>
<td>66-2/3</td>
<td>33-1/3% to cities and towns by population.</td>
<td>33-1/3% to towns and cities by population.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allegany</td>
<td>2%</td>
<td>100</td>
<td>50% to cities and towns by population.</td>
<td>50% to towns and cities by population.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Broome</td>
<td>3%</td>
<td>50</td>
<td>50% to towns and cities by population.</td>
<td>50% to towns and cities by population.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cattaraugus</td>
<td>3%</td>
<td>50*</td>
<td>50% (1-1/2%) to towns by full value.</td>
<td></td>
<td></td>
<td>1-1/2% in Salamanca (c) and Olean (c).</td>
</tr>
<tr>
<td>Cayuga</td>
<td>3%</td>
<td>5.3% of first $3.8M; 1/3 of excess over $3.8M.</td>
<td>47% of first $3.6M; 1/3 of excess over $3.8M; by 70% population, 30% full value.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chautauqua</td>
<td>3%</td>
<td>50</td>
<td>50% among cities and towns by population.</td>
<td>town share of 50% divided by population (50%) and full value (50%).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chemung</td>
<td>3%</td>
<td>50*</td>
<td>50% (1-1/2% rate) to towns on full value basis.</td>
<td></td>
<td></td>
<td>1-1/2% in Elmira (c).</td>
</tr>
<tr>
<td>Chenango(1)</td>
<td>2%</td>
<td>100</td>
<td>Plattsburgh gets 28%.</td>
<td>22% divided by full value.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clinton</td>
<td>3%</td>
<td>50</td>
<td>25% to city (Hudson) and towns by population (50% and full value (50%))</td>
<td>25% to towns and city by population (50%) and full value (50%).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Columbia</td>
<td>2%</td>
<td>75</td>
<td>50% to city (Cortland) and towns on basis of full value.</td>
<td>50% to towns and city on basis of full value.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cortland</td>
<td>3%</td>
<td>50</td>
<td>50% to city (Cortland) and towns on basis of full value.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dutchess</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2% in City of Poughkeepsie.</td>
</tr>
<tr>
<td>County</td>
<td>Countywide Rate</td>
<td>Percent Retained by County</td>
<td>% to Cities</td>
<td>% to Towns</td>
<td>% to School Districts</td>
<td>Independent Municipal Tax</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------</td>
<td>----------------------------</td>
<td>-------------------------------------------------</td>
<td>------------------------------------------------</td>
<td>-----------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Erie</td>
<td>3%</td>
<td>31-2/3</td>
<td>13.65% to cities by population; 28.65% to cities and towns by population.</td>
<td>26.68% to towns and cities by population; town share divided by full value (50%) and population (50%).</td>
<td>29% by average daily attendance.</td>
<td>--</td>
</tr>
<tr>
<td>Essex</td>
<td>3%</td>
<td>100</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Franklin</td>
<td>3%</td>
<td>100</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Fulton</td>
<td>3%</td>
<td>50</td>
<td>23% to Gloversville; 16-1/2% to Johnstown.</td>
<td>10-1/2% to towns on basis of full value.</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Genesee</td>
<td>2%</td>
<td>27.70</td>
<td>42.83% to Batavia.</td>
<td>29.38% to towns on basis of population.</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Greene</td>
<td>2%</td>
<td>100</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Hamilton</td>
<td>3%</td>
<td>100</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Herkimer</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Jefferson</td>
<td>3%</td>
<td>38.6</td>
<td>28% to Watertown.</td>
<td>33.4% to towns on basis of full value.</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Lewis</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Livingston</td>
<td>3%</td>
<td>60</td>
<td>--</td>
<td>--</td>
<td>33-1/3% by average daily attendance.</td>
<td>--</td>
</tr>
<tr>
<td>Madison</td>
<td>2%</td>
<td>75**</td>
<td>--</td>
<td>25% divided on basis of full value.</td>
<td>--</td>
<td>1-1/2% in City of Oneida.</td>
</tr>
<tr>
<td>Monroe</td>
<td>3%</td>
<td>25</td>
<td>75% divided between Rochester and towns by population.</td>
<td>56-2/3% to towns on basis of full value (50%) and population (50%).</td>
<td>--</td>
<td>1-1/2% City of Amsterdam.</td>
</tr>
<tr>
<td>Montgomery</td>
<td>3%</td>
<td>50</td>
<td>--</td>
<td>--</td>
<td>90% (1-1/2% rate) divided among towns based on full value.</td>
<td>--</td>
</tr>
<tr>
<td>Nassau(2)</td>
<td>3%</td>
<td>100</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Niagara</td>
<td>3%</td>
<td>40</td>
<td>60% divided among 3 cities and towns by full value.</td>
<td>60% divided among towns and cities by full value.</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Oneida</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Onondaga</td>
<td>3%</td>
<td>34</td>
<td>39% to City of Syracuse.</td>
<td>27% divided by population.</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>County</td>
<td>Retained by County</td>
<td>% to Cities</td>
<td>% to Towns</td>
<td>% to School Districts</td>
<td>Independent Municipal Tax</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------</td>
<td>-------------</td>
<td>-----------------------------</td>
<td>-----------------------</td>
<td>---------------------------</td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td>3%</td>
<td>50*</td>
<td>50% (1-1/2% rate) divided by full value.</td>
<td>---</td>
<td>1-1/2% in Canandaigua and Geneva.</td>
<td></td>
</tr>
<tr>
<td>Orange</td>
<td></td>
<td></td>
<td></td>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orleans</td>
<td>3%</td>
<td>66.67</td>
<td>22.22% on population basis.</td>
<td>11.11% based on average daily attendance.</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Oswego</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3% in Cities of Fulton and Oswego.</td>
<td></td>
</tr>
<tr>
<td>Otsego(3)</td>
<td>2%</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Putnam</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rensselaer</td>
<td>2%</td>
<td>75**</td>
<td>25% divided between Rensselaer and towns based on full value.</td>
<td>25% divided between towns and Rensselaer based on full value.</td>
<td>1-1/2% in City of Troy.</td>
<td></td>
</tr>
<tr>
<td>Rockland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Lawrence</td>
<td>3%</td>
<td>50*</td>
<td>50% (1-1/2% rate) divided by full value.</td>
<td></td>
<td>1-1/2% in City of Ogdensburg.</td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schenectady</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schoharie</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schuyler</td>
<td>3%</td>
<td>66-2/3%</td>
<td>33-1/3% among towns on full value basis.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seneca</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Steuben</td>
<td>3%</td>
<td>50*</td>
<td>50% (1-1/2% rate) divided on full value.</td>
<td></td>
<td>1-1/2% in Cities of Corning and Hornell</td>
<td></td>
</tr>
<tr>
<td>Suffolk</td>
<td>3%</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>County</td>
<td>Countywide Rate</td>
<td>Percent Retained by County</td>
<td>% to Cities</td>
<td>% to Towns</td>
<td>% to School Districts</td>
<td>Independent Municipal Tax</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------</td>
<td>---------------------------</td>
<td>-------------</td>
<td>-----------</td>
<td>-----------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Sullivan</td>
<td>2%</td>
<td>86***</td>
<td></td>
<td></td>
<td></td>
<td>Remainder, based on average daily attendance</td>
</tr>
<tr>
<td>Tioga</td>
<td>2%</td>
<td>50</td>
<td></td>
<td></td>
<td>50% divided based on population</td>
<td>1-1/2% in City of Ithaca</td>
</tr>
<tr>
<td>Tompkins</td>
<td>3%</td>
<td>50*</td>
<td></td>
<td></td>
<td>50% (1-1/2% rate) divided based on population</td>
<td>1-1/2% in City of Kingston</td>
</tr>
<tr>
<td>Ulster</td>
<td>1%</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td>2% in City of Kingston</td>
</tr>
<tr>
<td>Warren</td>
<td>3%</td>
<td>50*</td>
<td></td>
<td></td>
<td>50% (1-1/2% rate) divided based on full value</td>
<td>1-1/2% in City of Glens Falls</td>
</tr>
<tr>
<td>Washington</td>
<td>3%</td>
<td>100</td>
<td></td>
<td></td>
<td>16-2/3% to towns on basis of population</td>
<td>33-1/3% on basis of average daily attendance</td>
</tr>
<tr>
<td>Wayne</td>
<td>3%</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westchester</td>
<td>1%</td>
<td>0%</td>
<td>Yonkers receives amount collected in City.</td>
<td></td>
<td>Other cities and towns share based on full value</td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>--</td>
<td>--</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yates</td>
<td>3%</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTES:
1. Because the City of Norwich has exercised its prerogative to impose a 3% tax on restaurant meals and consumer utility billings, the county sales tax is not imposed on these items in this city.
2. Because the City of Long Beach has exercised its prerogative to impose a 3% tax on restaurant meals and hotel room occupancy, the county sales tax is not imposed on these items in this city.
3. Because the City of Oneonta has exercised its prerogative to impose a 3% consumer utility tax, the county sales tax is not imposed on that item in this city.

*Actually, the county keeps 100% of the 1-1/2% tax imposed countywide and the towns share in the additional 1-1/2% effective only in the towns.
**Actually, the county keeps 100% of the 1-1/2% tax imposed countywide and the towns share in the additional 1/2% effective only in the towns.
***The county retains 86% or $3.2 million, whichever is greater. Any excess is divided among the school districts.
TABLE 13 — County Government Shares of the local sales tax distribution

<table>
<thead>
<tr>
<th>County Unit Share</th>
<th>No. of Counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 50%</td>
<td>8</td>
</tr>
<tr>
<td>50%</td>
<td>15</td>
</tr>
<tr>
<td>Greater than 50%</td>
<td></td>
</tr>
<tr>
<td>but Less than 100%</td>
<td>8</td>
</tr>
<tr>
<td>100%</td>
<td>12</td>
</tr>
<tr>
<td>(No Sales Tax)</td>
<td>14</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>57</strong></td>
</tr>
</tbody>
</table>

Additional points which must be emphasized include:

1. A growing number of counties are choosing to retain 100% of the proceeds of the countywide sales tax.
2. On an actual collection basis, counties are retaining a larger percentage of the local sales tax revenues. Relative declines have been heaviest for cities.
3. The distribution of sales tax revenues between counties, cities, towns and school districts has changed substantially in recent years; and there may be some question whether current patterns completely match the original legislative intent.

The Independent Municipal Sales Tax

Concerning declining city sales tax shares, a number of cities have protected their interests by exercising their option to impose an independent municipal tax, to a maximum of 3%.* Presently, 21 cities in 15 counties are levying their own sales tax. Table 14 compares city rates with the overall countywide rate and the county government's share of the county tax.

There does not appear to be any particular pattern regarding the presence of independent municipal taxes. Counties with no local tax and 1, 2 and 3 percent countywide taxes encompass independent municipal taxes. County government shares range from 0 to 100%, and the independent taxes include 1, 1-1/2, 2 and 3 percent rates. The independent municipal tax adds an additional factor to an already complicated situation. The widespread use of the independent tax by cities is a result of the increasing tendency of county governments to reserve larger proportions of the countywide tax for their own use.

Mechanics of the Distributions

As has been cited, 31 of the 43 counties who levy a countywide local sales tax share the receipts of that tax with their appropriate sub-county units. Despite the fact that the alternative methods of distribution are strictly specified in law, there is wide variation in the proportion shared and the basis of that sharing.

In most cases, the percentage of tax revenues to be shared with cities and towns is divided by simple per capita or full value distribution. The sixteen cities (in the twelve counties with countywide local sales tax) that preempt a certain proportion of the sales

**TABLE 14 — Independent Municipal Taxes, respective countywide rates and county shares**

<table>
<thead>
<tr>
<th>County</th>
<th>County Rate</th>
<th>County Unit Share</th>
<th>City Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cattaraugus 3%</td>
<td>50%</td>
<td>1-1/2%*</td>
<td></td>
</tr>
<tr>
<td>2. Chemung 3%</td>
<td>50%</td>
<td>1-1/2%</td>
<td></td>
</tr>
<tr>
<td>3. Dutchess 0%</td>
<td>—</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>4. Madison 2%</td>
<td>75%</td>
<td>1-1/2%</td>
<td></td>
</tr>
<tr>
<td>5. Montgomery 3%</td>
<td>50%</td>
<td>1-1/2%</td>
<td></td>
</tr>
<tr>
<td>6. Ontario 3%</td>
<td>50%</td>
<td>1-1/2%*</td>
<td></td>
</tr>
<tr>
<td>7. Oswego 0%</td>
<td>—</td>
<td>3%*</td>
<td></td>
</tr>
<tr>
<td>8. Rensselaer 2%</td>
<td>75%</td>
<td>1-1/2%</td>
<td></td>
</tr>
<tr>
<td>9. St. Lawrence 3%</td>
<td>50%</td>
<td>1-1/2%</td>
<td></td>
</tr>
<tr>
<td>10. Saratoga 0%</td>
<td>—</td>
<td>2%*</td>
<td></td>
</tr>
<tr>
<td>11. Steuben 3%</td>
<td>50%</td>
<td>1-1/2%*</td>
<td></td>
</tr>
<tr>
<td>12. Tompkins 3%</td>
<td>50%</td>
<td>1-1/2%</td>
<td></td>
</tr>
<tr>
<td>13. Ulster 1%</td>
<td>100%</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>14. Warren 3%</td>
<td>50%</td>
<td>1-1/2%</td>
<td></td>
</tr>
<tr>
<td>15. Westchester 1%</td>
<td>0%</td>
<td>1%&amp;2%</td>
<td></td>
</tr>
</tbody>
</table>

*City can levy only 1-1/2% when there is a 3% countywide tax.
*Two cities.
tax revenues raised within their borders do not share in the countywide tax, with one exception.*

Fifteen counties with a countywide sales tax share revenues with their cities. Six counties — Cayuga, Clinton, Fulton, Genesee, Jefferson and Onondaga — provide a specific percentage of revenues to each city (e.g., Syracuse receives 39% of the local sales tax revenues collected by Onondaga County). The other nine counties (Albany, Broome, Chautauqua, Columbia, Cortland, Erie, Monroe, Niagara and Rensselaer) divide a percentage of the tax revenues between all cities, towns, and sometimes school districts on the basis of population, full value or both. The vast differences in the percentage shared and the basis of the distribution indicates that a major factor in determining relative shares might well be simple political compromise.

With the exception of Sullivan County, every county which shares its sales tax revenues shares with its towns. The bases of the distribution are population, full value, or a combination of the two. The proportion of revenues shared also varies, but all towns within each county are treated alike; there are no specified percentages for individual towns in any county. The six counties that share sales tax revenues with school districts use average daily attendance of county residents for each school district as the basis for distribution. Again, all school districts within each county are treated alike. More specific information on the distributions in each county can be obtained by referring back to Table 11.

Conclusion

The major conclusion of this analysis of the intra-county distribution of sales tax revenues is that the present system is complex and confusing, and, any relationship between the current distribution and a distribution based on fiscal need is purely coincidental. Population as a basis for distribution has merit but modifiers for low capacity and high effort would greatly improve it. Using straight full value as a basis simply gives more money to those jurisdictions with greater capacity, whether they need it or not. Special

*Yonkers receives all revenues collected in the City from the 1% countywide tax, in addition to its 2% independent tax.

treatment of larger urban places — those with populations of over 25,000 and densities of 5,000 per square mile (or more) — should be considered.

The recent tendency of the county governments to retain large percentages (often 100%) of local sales tax receipts requires further study. Whether counties need all these revenues is an open question but it is known that cities, towns and villages are almost totally dependent on the property tax; a tax that is subject to greater and greater taxpayer resistance.

Consideration of a uniform, statewide 3% local sales tax and increased sharing of those revenues by the county with its subunits takes on additional significance in light of a recent Advisory Commission on Intergovernmental Relations (A.C.I.R.) Bulletin (No. 745, June, 1974). The A.C.I.R. reported a change in its policy regarding local taxation and recommended State encouragement of greater use of the local sales and income tax to finance local governments.

The Commission's new policy is based on five important facts:

1. There is compelling evidence that local taxpayers prefer sales taxation over higher property taxes. A recent Urban Observatory Survey of citizens in ten large United States cities revealed a 3 to 1 preference for a local sales tax over higher property taxes (See also, New York Times, 7/2/74, "8% Sales Tax Makes Calm Debut.")

2. There is continuing growth of local sales tax receipts as a proportion of local government revenues.

3. The local sales tax is more responsive to natural economic growth and inflation than is the property tax.

4. While critics of the local sales tax have justly criticized site-of-collection systems on the basis of fiscal disparities, the uniform State-wide rate, combined with a per capita redistribution of receipts would overcome the problem.

5. Despite the growing use of the local sales tax, the property tax is still providing a disproportionate share of the local tax load. Nationally, property taxes account for twice the revenues raised by state and local governments through the sales tax.
UrbanAid:
A Categorical Program Proposal

Introduction

A MAJOR CONCERN of Federal policy and, to a lesser extent, State policy throughout the Sixties was "urban blight" and the "flight from the city." Social and economic problems seemed to abound in the nation's urban centers, as has been documented in numerous academic studies and widely-read newspaper and magazine articles. While it is true that urban centers have no monopoly on poverty, crime, pollution, inadequate housing, and a deteriorating physical plant, the overall pattern exhibited by these problems and related difficulties indicates a definite urban concentration.

The Federal government first responded to the problems of urban areas with Urban Renewal, a "bulldozer" approach which, it is generally agreed, did little to meet the economic and social needs of urban residents. Programs of the Department of Health, Education and Welfare (HEW) became increasingly urban directed throughout the Sixties and the Department of Housing and Urban Development (HUD) and Transportation (DOT) were conceived as "urban agencies." Despite the major effort by the national government, it was generally recognized by the mid-1960's that the problems of urban centers could not be met unless the Federal effort was coupled with an innovative State program directed at the unique characteristics of its localities.

New York was one of the first states to mount a package of programs designed to revitalize its urban areas. New York maintains the largest state-local assistance program, which includes categorical aid for education, social services and public health needs in urban centers. More specifically, the Special City Aid portion of the State's Revenue Sharing Program attempts met urban problems directly through the distribution of large amounts of discretionary aid to the State's 62 "cities" only.

Unfortunately, the central criteria of Special City Aid, legal classification as a city (by New York State law) bears little, if any, relation to the urban problems and needs that have been mentioned. In fact, the extensive analysis presented in this Commission's report, "An Analysis of New York State Revenue Sharing" documents that a number of cities are not at all "urban" in their socio-economic or physical makeup. And, although many of those jurisdictions classified as cities are indeed urban centers, there are a number of towns and villages which exhibit the same characteristics.

Generally accepted stereotypes of local government include the belief that cities are extremely dense areas with unique problems such as high crime rates, poor housing and a high demand for expenditures in other public health, safety and welfare areas. Towns are considered rural units of government with a justice of the peace, a highway department, and little else. Villages bring to mind the sleepy country hamlet. The most visible county services were provided by the clerk, the sheriff and the district attorney.

Population shifts and development pressures, particularly since 1950, have exerted a levelling influence upon urban and rural areas. In many cases, cities, villages and unincorporated areas run together with no perceptible differences between them.
Comparisons between cities and villages are commonly used to point out the changing face of local government in New York State. The 556 villages range in population from 24 (Dering Harbor in Suffolk County) to 40,413 (Valley Stream in Nassau County) while the 61 upstate cities range from 462,768 (Buffalo) to 2,986 (Sherill in Oneida County). The following examples serve to further illustrate this overlap:

- The two largest villages are more populous than 47 cities;
- 173 villages, almost one-third of the total, have a greater population than the smallest city;
- Eight villages are larger than the median city (Middletown, Orange County);
- Seven cities have fewer than 10,000 people, 33 villages have more;
- Population densities vary greatly, from 532 to 17,751 people per square mile for cities and from 80 to 15,256 for villages.

These data inevitably lead to the conclusion that the traditional concept of a city-village dichotomy is inaccurate and more closely resembles a continuum.

<table>
<thead>
<tr>
<th>Class</th>
<th>No. in Class</th>
<th>Overall Population</th>
<th>Largest in Class</th>
<th>Smallest in Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>County</td>
<td>57</td>
<td>10,345,703</td>
<td>1,428,838</td>
<td>4,714</td>
</tr>
<tr>
<td>City</td>
<td>61</td>
<td>2,813,293</td>
<td>462,768</td>
<td>2,986</td>
</tr>
<tr>
<td>Town</td>
<td>930</td>
<td>7,525,775</td>
<td>801,592</td>
<td>58</td>
</tr>
<tr>
<td>Village</td>
<td>556</td>
<td>1,843,641</td>
<td>40,413</td>
<td>24</td>
</tr>
</tbody>
</table>

Specifically, Table 1 illustrates that there are some villages that are more populous than counties, and that the largest town (Hempstead) has more people than the largest upstate city (Buffalo). The pattern of extensive overlap is well documented.

<table>
<thead>
<tr>
<th>RANGE OF POPULATION SIZE</th>
<th>CITIES 14 (excl. NYC)</th>
<th>CITIES 40</th>
<th>CITIES 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 50,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10,000-50,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VILLAGES 33</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOWNS 19</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOWNS 102</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOWNS 523</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VILLAGES 523</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOWNS 809</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 10,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

33
Table 2 simply illustrates the overlapping pattern of local governments in more detail. Although the majority of towns and villages are small — less than 10,000 people — some towns and a few villages are more populous than a majority of the cities and about 10% of the counties in the State. The number of local governments, and the range of populations is presented pictorially in Chart I.

An Illustrative Comparison: Cities and Villages

This confusion regarding local governments in New York State has been heightened by the State Revenue Sharing formula. Since the formula treats similar legal jurisdictions alike, there is little compensation for different conditions. Given the high degree of overlap and the many similarities between classes (particularly between certain cities and villages), a great deal of criticism of the existing Revenue Sharing formula has arisen.

Examination of specific cities and villages illustrates the extent to which similar units receive vastly different amounts of aid. The characteristics chosen for comparison describe the unit in terms of size, urbanism, comparative wealth and real property tax levies.

The pairings are arranged primarily according to population. Full value per capita data are employed to indicate fiscal capacity. The third column compares each individual unit’s capacity with that of the entire county in which it is located. If the ratio exceeds 1.0, then that unit is relatively more wealthy than the average unit in that county. A widely held belief is that cities have a relatively lower property tax base and therefore need additional State aid. In seven of the ten cases outlined in Table 3, the cities are relatively more wealthy than the villages vis-a-vis the county in which each is located.

Similarly, many assume that all are denser than villages and consequently all are faced with those problems commonly associated with dense urban living. As indicated by the table, of the ten pairings, the villages are actually denser in seven cases.

Real property tax levies give an indication of the scope of the services provided by each unit. Inter-governmental transfers and non-property taxes are excluded to achieve uniformity. In four of the cases the village collects more property tax than does the city.

The last column contains the total State Revenue Sharing money received by each jurisdiction for the State fiscal year ending March 31, 1975. In each case, the city receives at least four and a half times what the village receives. Regardless then of the fact that the traditionally clear cut differences between all cities and all villages no longer exist, cities continue to receive a vastly disproportionate amount of aid as compared to villages.

A Proposal for “Urbanaid”

The incorporation of a measure of urbanness into the proposed Revenue Sharing formula would result in a severe distortion of the very nature of general revenue sharing. Population, as used in the proposed formula, is a primary indicator of the fiscal need of a local government for discretionary State aid. Many secondary indicators were examined but were excluded to keep the formula simple, as well as equitable. Any attempt to recognize the “unique needs” of certain municipalities would result in distortions and demands by other governments for recognition of their own “unique needs.” For example, inclusion of population density in a general purpose aid formula would justify the use of other secondary indicators that are equally important but equally inappropriate and unworkable if the “general” aspect of the program is to be maintained.

Nevertheless, the Commission recognizes and accepts both the tradition of, and the necessity for, the State to provide special aid to meet the unique, severe social, economic and physical needs of its urban centers. Given the undesirability of incorporating specific measures of urbanism in the Revenue Sharing formula, New York State’s commitment to meeting urban needs could be addressed more effectively through the establishment of a general purpose aid program for its urban centers. This simple concept masks three major questions that must be answered if a categorical program for urban areas is to come to fruition:
TABLE 2 – Local Government Population by Class, 1970

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Under 10,000</th>
<th>10,000-24,999</th>
<th>25,000-49,999</th>
<th>50,000-99,999</th>
<th>100,000-499,999</th>
<th>500,000 &amp; Above</th>
</tr>
</thead>
<tbody>
<tr>
<td>County</td>
<td>0.2%</td>
<td>8.6%</td>
<td>21.1%</td>
<td>33.3%</td>
<td>28.0%</td>
<td>8.8%</td>
</tr>
<tr>
<td>City</td>
<td>11.5%</td>
<td>42.7%</td>
<td>23.0%</td>
<td>14.8%</td>
<td>8.2%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Town</td>
<td>82.4%</td>
<td>12.8%</td>
<td>2.8%</td>
<td>1.0%</td>
<td>0.9%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Village</td>
<td>89.1%</td>
<td>9.6%</td>
<td>1.3%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

TABLE 3 – COMPARISON OF SELECT CITIES AND VILLAGES

<table>
<thead>
<tr>
<th>Unit</th>
<th>County</th>
<th>Pop.</th>
<th>FVPC</th>
<th>Co. Avg</th>
<th>Density</th>
<th>RPT Levy</th>
<th>Per Capita Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lynbrook</td>
<td>Nassau</td>
<td>23,776</td>
<td>7155</td>
<td>1.0127</td>
<td>2.614</td>
<td>1,494,258</td>
<td>$150,741</td>
</tr>
<tr>
<td>Oswego</td>
<td>c Oswego</td>
<td>23,844</td>
<td>4955</td>
<td>0.1958</td>
<td>5.614</td>
<td>1,494,258</td>
<td>925,971</td>
</tr>
<tr>
<td>Massapequa Park</td>
<td>Nassau</td>
<td>22,112</td>
<td>5566</td>
<td>1.1152</td>
<td>2.541</td>
<td>1,640,911</td>
<td>125,101</td>
</tr>
<tr>
<td>Tonawanda</td>
<td>c Erie</td>
<td>21,888</td>
<td>4495</td>
<td>1.0127</td>
<td>2.614</td>
<td>1,494,258</td>
<td>976,387</td>
</tr>
<tr>
<td>Endicott</td>
<td>c Broome</td>
<td>16,556</td>
<td>5039</td>
<td>1.1152</td>
<td>2.541</td>
<td>1,640,911</td>
<td>125,101</td>
</tr>
<tr>
<td>Geneva</td>
<td>c Ontario</td>
<td>16,739</td>
<td>3772</td>
<td>0.7811</td>
<td>4.419</td>
<td>636,064</td>
<td>765,741</td>
</tr>
<tr>
<td>Massena</td>
<td>c St. Lawrence</td>
<td>14,042</td>
<td>3832</td>
<td>0.9111</td>
<td>3.510</td>
<td>628,678</td>
<td>128,680</td>
</tr>
<tr>
<td>Fulton</td>
<td>c Oswego</td>
<td>14,003</td>
<td>4534</td>
<td>1.2351</td>
<td>3.890</td>
<td>716,872</td>
<td>624,518</td>
</tr>
<tr>
<td>Lancaster</td>
<td>c Erie</td>
<td>13,365</td>
<td>4472</td>
<td>0.8266</td>
<td>4.950</td>
<td>735,638</td>
<td>116,030</td>
</tr>
<tr>
<td>Beacon</td>
<td>c Dutchess</td>
<td>13,255</td>
<td>4891</td>
<td>0.8471</td>
<td>2.501</td>
<td>1,221,941</td>
<td>528,211</td>
</tr>
<tr>
<td>Newark</td>
<td>c Wayne</td>
<td>11,644</td>
<td>4876</td>
<td>0.9945</td>
<td>2.283</td>
<td>1,037,615</td>
<td>77,940</td>
</tr>
<tr>
<td>Oneida</td>
<td>c Madison</td>
<td>11,655</td>
<td>4458</td>
<td>1.0614</td>
<td>5.32</td>
<td>501,585</td>
<td>520,870</td>
</tr>
<tr>
<td>Hamburg</td>
<td>c Erie</td>
<td>10,215</td>
<td>6019</td>
<td>1.1126</td>
<td>4.643</td>
<td>706,944</td>
<td>77,045</td>
</tr>
<tr>
<td>Rensselaer</td>
<td>c Rensselaer</td>
<td>10,136</td>
<td>4114</td>
<td>1.2310</td>
<td>3.620</td>
<td>1,031,129</td>
<td>455,312</td>
</tr>
<tr>
<td>Herkimer</td>
<td>c Herkimer</td>
<td>8,990</td>
<td>4104</td>
<td>0.9144</td>
<td>3.200</td>
<td>793,263</td>
<td>79,707</td>
</tr>
<tr>
<td>Hudson</td>
<td>c Columbia</td>
<td>8,940</td>
<td>3376</td>
<td>0.6922</td>
<td>3.725</td>
<td>554,133</td>
<td>397,085</td>
</tr>
<tr>
<td>Brockport</td>
<td>c Monroe</td>
<td>7,878</td>
<td>4524</td>
<td>0.6806</td>
<td>3.939</td>
<td>356,244</td>
<td>67,760</td>
</tr>
<tr>
<td>Salamanca</td>
<td>c Cattaraugus</td>
<td>7,877</td>
<td>2846</td>
<td>0.7198</td>
<td>1.515</td>
<td>394,584</td>
<td>362,069</td>
</tr>
<tr>
<td>Baldwinsville</td>
<td>Ontario</td>
<td>6,298</td>
<td>4018</td>
<td>0.7316</td>
<td>2.738</td>
<td>155,026</td>
<td>56,700</td>
</tr>
<tr>
<td>Mechanicville</td>
<td>Saratoga</td>
<td>6,247</td>
<td>2763</td>
<td>0.7097</td>
<td>6.941</td>
<td>323,042</td>
<td>287,647</td>
</tr>
</tbody>
</table>

(1) What is an “urban center?”
(2) How much money is to be distributed?
(3) By what method will funds be allocated?

The question of how much money should be distributed is so entwined with the “politics of necessity,” particularly the limits on the citizen’s ability to pay higher State taxes, that a detailed analysis of the question would be futile. It can generally be assumed that the State will never be able to provide enough funds to meet the needs of its localities, as the inhabitants perceive those needs. So, rather than a labor the point, $50,000,000 has been somewhat arbitrarily chosen for the purpose of illustrating the Urbanaid proposal. The figure has some meaning in that it corresponds to the amount used to illustrate the proposed Debt-Aid program and it is a rather modest sum which the State government might be able to fund, even under “stagnation” conditions.

Regarding the criteria used to identify urban centers, it has been illustrated on numerous occasions that there is no definition of an urban place which has garnered support of even a majority of urban analysts and practitioners. Yet, quantifiable indicators are essential if an urban assistance program is to be operationalized and so two of the most accurate and widely-used statistics have been selected. With
### COMPARATIVE DENSITIES

**ROME:**
- Total population: 50,000
- Density: 660/sq. mile

**MECHANICVILLE:**
- Proposed minimums for "URBANAID":
  - Pop. 6000
  - Density: 7000/sq. mile

### TABLE 4 — Urban Centers in New York State

<table>
<thead>
<tr>
<th>Unit</th>
<th>County</th>
<th>Population</th>
<th>Density</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City</td>
<td></td>
<td>7,878,442</td>
<td>26,003</td>
</tr>
<tr>
<td>Hempstead-T</td>
<td>Nassau</td>
<td>801,592</td>
<td>6,454</td>
</tr>
<tr>
<td>Buffalo-C</td>
<td>Erie</td>
<td>460,776</td>
<td>11,896</td>
</tr>
<tr>
<td>Rochester-C</td>
<td>Monroe</td>
<td>294,297</td>
<td>8,085</td>
</tr>
<tr>
<td>Yonkers-C</td>
<td>Westchester</td>
<td>204,297</td>
<td>11,164</td>
</tr>
<tr>
<td>Syracuse-C</td>
<td>Onondaga</td>
<td>166,995</td>
<td>7,880</td>
</tr>
<tr>
<td>Albany-C</td>
<td>Albany</td>
<td>115,781</td>
<td>6,093</td>
</tr>
<tr>
<td>Tonawanda-T</td>
<td>Erie</td>
<td>107,282</td>
<td>5,418</td>
</tr>
<tr>
<td>Utica-C</td>
<td>Oneida</td>
<td>89,949</td>
<td>5,291</td>
</tr>
<tr>
<td>Niagara Falls-C</td>
<td>Niagara</td>
<td>86,615</td>
<td>6,342</td>
</tr>
<tr>
<td>Schenectady-C</td>
<td>Schenectady</td>
<td>77,965</td>
<td>7,699</td>
</tr>
<tr>
<td>New Rochelle-C</td>
<td>Westchester</td>
<td>76,356</td>
<td>7,046</td>
</tr>
<tr>
<td>Mount Vernon-C</td>
<td>Westchester</td>
<td>72,778</td>
<td>17,751</td>
</tr>
<tr>
<td>Troy-C</td>
<td>Hannibal</td>
<td>62,918</td>
<td>6,765</td>
</tr>
<tr>
<td>Binghamton-C</td>
<td>Broome</td>
<td>62,404</td>
<td>5,725</td>
</tr>
<tr>
<td>White Plains-C</td>
<td>Westchester</td>
<td>50,346</td>
<td>5,355</td>
</tr>
<tr>
<td>Rye-C</td>
<td>Westchester</td>
<td>42,334</td>
<td>5,333</td>
</tr>
<tr>
<td>Valley Stream-V</td>
<td>Nassau</td>
<td>40,413</td>
<td>11,226</td>
</tr>
<tr>
<td>Freeport-V</td>
<td>Nassau</td>
<td>40,374</td>
<td>6,777</td>
</tr>
<tr>
<td>Hempstead-V</td>
<td>Nassau</td>
<td>39,411</td>
<td>10,371</td>
</tr>
<tr>
<td>Elmira-C</td>
<td>Chenung</td>
<td>38,540</td>
<td>5,606</td>
</tr>
<tr>
<td>Eastchester-T</td>
<td>Westchester</td>
<td>36,860</td>
<td>6,546</td>
</tr>
<tr>
<td>Long Beach-C</td>
<td>Nassau</td>
<td>33,127</td>
<td>15,775</td>
</tr>
<tr>
<td>Poughkeepsie-C</td>
<td>Dutchess</td>
<td>32,029</td>
<td>6,673</td>
</tr>
<tr>
<td>Lackawanna-C</td>
<td>Erie</td>
<td>28,657</td>
<td>5,027</td>
</tr>
<tr>
<td>Lindenhurst-V</td>
<td>Suffolk</td>
<td>28,359</td>
<td>8,594</td>
</tr>
<tr>
<td>Rockville-Centre-V</td>
<td>Nassau</td>
<td>27,444</td>
<td>8,316</td>
</tr>
<tr>
<td>Newburgh-C</td>
<td>Orange</td>
<td>26,219</td>
<td>7,086</td>
</tr>
<tr>
<td>Port Chester-V</td>
<td>Westchester</td>
<td>25,803</td>
<td>11,219</td>
</tr>
</tbody>
</table>

**TOTAL**
- 11,077,085

### TABLE 5 — Proposed Urbanaid Amounts

<table>
<thead>
<tr>
<th>Unit</th>
<th>Population</th>
<th>Share of Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City</td>
<td>7,878,442</td>
<td>$36,563,287</td>
</tr>
<tr>
<td>Hempstead-T</td>
<td>801,592</td>
<td>3,616,386</td>
</tr>
<tr>
<td>Buffalo-C</td>
<td>460,776</td>
<td>2,076,543</td>
</tr>
<tr>
<td>Rochester-C</td>
<td>294,297</td>
<td>1,328,457</td>
</tr>
<tr>
<td>Yonkers-C</td>
<td>204,297</td>
<td>922,197</td>
</tr>
<tr>
<td>Syracuse-C</td>
<td>166,995</td>
<td>888,236</td>
</tr>
<tr>
<td>Albany-C</td>
<td>115,781</td>
<td>522,625</td>
</tr>
<tr>
<td>Tonawanda-T</td>
<td>107,282</td>
<td>484,271</td>
</tr>
<tr>
<td>Utica-C</td>
<td>89,949</td>
<td>406,030</td>
</tr>
<tr>
<td>Niagara Falls-C</td>
<td>86,615</td>
<td>386,466</td>
</tr>
<tr>
<td>Schenectady-C</td>
<td>77,965</td>
<td>351,902</td>
</tr>
<tr>
<td>New Rochelle-C</td>
<td>76,356</td>
<td>340,298</td>
</tr>
<tr>
<td>Mount Vernon-C</td>
<td>72,778</td>
<td>328,520</td>
</tr>
<tr>
<td>Troy-C</td>
<td>62,918</td>
<td>234,012</td>
</tr>
<tr>
<td>Binghamton-C</td>
<td>62,404</td>
<td>281,692</td>
</tr>
<tr>
<td>White Plains-C</td>
<td>50,346</td>
<td>227,262</td>
</tr>
<tr>
<td>Rye-C</td>
<td>42,334</td>
<td>196,158</td>
</tr>
<tr>
<td>Valley Stream-V</td>
<td>40,413</td>
<td>182,424</td>
</tr>
<tr>
<td>Freeport-V</td>
<td>40,374</td>
<td>192,248</td>
</tr>
<tr>
<td>Hempstead-V</td>
<td>39,411</td>
<td>177,901</td>
</tr>
<tr>
<td>Elmira-C</td>
<td>38,540</td>
<td>173,970</td>
</tr>
<tr>
<td>Eastchester-T</td>
<td>36,860</td>
<td>166,493</td>
</tr>
<tr>
<td>Long Beach-C</td>
<td>33,127</td>
<td>149,533</td>
</tr>
<tr>
<td>Poughkeepsie-C</td>
<td>32,029</td>
<td>144,879</td>
</tr>
<tr>
<td>Lackawanna-C</td>
<td>28,657</td>
<td>129,388</td>
</tr>
<tr>
<td>Lindenhurst-V</td>
<td>28,359</td>
<td>128,013</td>
</tr>
<tr>
<td>Rockville-Centre-V</td>
<td>27,444</td>
<td>123,882</td>
</tr>
<tr>
<td>Newburgh-C</td>
<td>26,219</td>
<td>118,353</td>
</tr>
<tr>
<td>Port Chester-V</td>
<td>25,803</td>
<td>116,475</td>
</tr>
</tbody>
</table>
full realization of their limitations, population and population density have been chosen to define urban centers for the purposes of Urban Aid.

To maintain consistency with the proposed Revenue Sharing formula, a population of 25,000 was chosen as the minimum level for an urban place. A population of 25,000 is approximately the median of the State's 62 cities yet such a limit does not exclude a number of larger, urbanized towns and villages. Population magnitude alone does not identify an urban place, however. It must be combined with an indicator of population concentration - density.

Identification of minimum "urban density" is difficult since there are no definitive academic or governmental studies that quantitatively define the impact of increasing population density on the cost and quality of public services. Assuming, as most experts do, that a relatively high density is required to produce significant urban dysfunctions, a density of 5,000 or more persons per square mile was chosen as the minimum density criteria. The 5,000 level is inclusive and yet discriminating: there are cities, towns and villages that meet the criteria but only 23 of 62 cities, 5 of the 930 towns, and 55 of 556 villages have densities at or above 5,000 per square mile.

To insure that assistance to the larger, more troubled urban centers is maximized, eligibility for Urban Aid is contingent on meeting both criteria: to receive aid, the jurisdiction must have a population of 25,000 or more and a population density of 5,000 or more per square mile. The necessity of meeting both criteria results from the fact that New York State contains a number of high density jurisdictions with very small populations - the City of Mechanicville has a density of 6,941 per square mile but only 6,247 people - and a number of high population, low density units - the City of Rome has a population of 30,148 but its density is only 650 per square mile.

Based on 1970 United States Census figures, 19 cities, 4 towns and 6 villages meet the dual criteria for Urban Aid eligibility; 29 units in all. These units, which are listed in Table 4, represent approximately 11,000,000 people or about 60 percent of the State's population.*

The simplest and perhaps the most logical manner of allocating aid to these municipalities under the program as it has been defined is on the basis of population. Using $50,000,000 as the base, this method produced an amount of $4.514 per capita for each eligible unit. The individual shares are enumerated in Table Five which follows.

CONCLUSION

The overriding goal of the Urban Aid proposal is clear: to provide a simple mechanism to identify New York's urban centers and provide assistance to meet their "unique" problems (which cannot be met through the State Revenue Sharing program, as the Special City Aid fiasco illustrates).

Utilizing population and population density as criteria, the well-documented limitations of jurisdictional classification as an indicator of urbanism have been avoided. Perhaps the best justification of the legitimacy of the proposed criteria is that the list of jurisdictions includes not only the larger cities in the State but also a number of the larger villages and towns which have decried their exclusion from the Special City Aid program.

*The 11,000,000 figure is slightly exaggerated since the population of two towns and five of the villages overlap.
An Analysis of Debt Relief as a Basis for Categorical Aid

Introduction

ANY EXAMINATION of the fiscal structure of local governments would be incomplete without due consideration of debt. Debt implies the use of revenues from outside the current tax structure, the annual payment of principal and interest, the encumbering of credit and anticipated revenues, and the assumption of long term liabilities in return for long term benefits. Analysis of debt is frequently avoided because of its complexity, its dynamic nature, and the long term economic effects which makes forecasting difficult and evaluation, beyond currently available data, dangerous. Nevertheless, any substantial change in the fiscal structure of local government, particularly the increase of state aid, must consider debt as an aspect of the governmental economic structure to be affected.

The objective of this paper is to examine the characteristics of municipal debt as presented by the most current data (1972) and to determine whether special considerations present themselves in relation to any particular group of municipalities. The analysis includes a general profile of municipal debt and the particular statutory or structural differences which differentiate certain classes or groups of municipalities.

Although there are various ways of viewing these differences, they are categorized here as: (1) aggregates of individual or unique cases, where variations are not related to the inherent nature of the municipality but are primarily outgrowths of its fiscal history, and (2) systemic, where the debt posture is dictated in whole or in part by exogeneous factors affecting the jurisdiction. Usually, these latter factors originate in statutory or jurisdictional differences and, therefore, are less subject to the control of the municipal entity in question.

This distinction is not immediately clear. For example, debt limits are common (or endemic) to all municipalities but they are set at different levels. These different levels do not produce differences of a systemic nature because they are coupled to a moving five year average of full value that varies tremendously among jurisdictions. On the other hand, debt overlaps (which are caused by the jurisdictional structure) are systemic differences because they are caused ultimately by the historic process of jurisdictional formation which is now beyond the power of the municipality to change. Furthermore, the jurisdictional structure causes one municipality to affect the other’s credit rating because of the fixed structural relationship.

Ultimately, the systemic differences are more basic to the causes of distortions in the local economy caused by debt and its consequences. The analysis will return to these factors and their policy implications in the latter portion of this paper after considering the general picture of debt and its functions.

The Function of Debt

Debt represents the loan of money for purposes which cannot be financed out of current revenues because: (1) those revenues are too small; (2) the
uncommitted balance of the revenues is too small, or 
(3) the extended cost of principal repayment and in- 
terest are preferred to the resulting tax consequences 
of immediate financing from the real property tax.

Long term debt, secured by bonds, is customarily incurred for large capital construction purposes or 
other substantial expenditures. Short term debt, 
secured by notes, tax anticipation notes or bond 
anticipation notes, is customarily incurred in anticipation 
of repayment within a short period (two to three 
years) or as interim financing prior to issuance of 
bonds for long term debt.

Municipal debt may be a mix of all of these types 
of debt with each bond or note bearing interest at a 
different rate with different debt service conse- 
quences. In addition, the financial rating of each 
municipality will also affect debt costs. Accordingly, 
the debt posture of each municipal corporation is 
unique and, in an absolute sense, not subject to direct 
comparison.

For example, in New York City (where the debt 
structure has reached its most complicated develop- 
ment) there are several general debt instruments in 
use. In addition to general purpose bonds, there are 
bond anticipation notes (BAN's), tax anticipation 
notes (TAN's), revenue anticipation notes (RAN's), 
capital notes (CN's) which are similar to serial bonds, 
urban renewal notes (URN's) which anticipate receipt 
of state or federal aid or the proceeds of property 
sales, and budget notes which anticipate subsequent 
budgetary appropriations. Many, but not all, of these 
instruments are in use in other large municipalities.

$19,809,825,098. Debt service (the combined cost of 
principal and interest) represented 12.39% of all 
expenditures.

The following tables show the distribution of this 
debt among municipalities in gross dollars, per capita 
debt, by percentage of the total debt, and as a per- 
cent of total expenditures. The unusual position of 
New York City is readily apparent from these figures. 
The “Big Four” cities - those over 125,000 population 
- represent a substantial portion of total city 
debt and rank substantially higher in the amount of 
per capita debt. The impact of debt would appear to 
be highest in New York City, the “Big Four” cities 
and school districts, even though debt service itself is 
fairly uniform as a percentage of expenditures.

The figures suggest the effects of continuing 
urbanization of counties and towns which have been 
pioneered and provide services involving capital facilities 
to new residents emigrating from urban or rural areas 
into their jurisdictions. This pattern may also result 
from the fact that increased current operating costs 
and corresponding increases in tax rates may have 
driven physical development costs previously paid for 
from current revenues, into long term financing in the 
form of debt.

In absolute terms, per capita debt in each munici- 
pal group has risen consistently throughout the last 
decade in the following fashion: 
The degree of change in counties, particularly com- 
pared to villages (which are at a par in 1962), is illustrative of the effect of urbanization, as is the shift of 
counties over villages in the general rank order of per 
capita debt.

A Profile of Gross and Per Capita 
Debt in Municipalities

The absolute magnitude of municipal debt is sub- 
stancial compared to other fiscal indicators. In 1972, 
total indebtedness reached $15,934,765,986 and re- 
quired the payment of $1,855,656,879 in principal 
and $599,141,112 in interest. By comparison, total 
revenues from all sources was $17,135,564,632 and 
total expenditures for all purposes was 

Debt Limits

Limits on debt were imposed in the early 1880's 
as a result of financial abuses (particularly in New 
York City), ill-considered capital investments, and the 
Depression of 1873. The limit is presently established 
at a percentage (7, 9 or 10%) of the average of the 
last five years full value within the municipality. This 
represents a very conservative limit and would appear
TABLE 1 – Gross Debt and Per Capita Debt in Municipal Corporations by Class, 1972

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Gross Debt ($000)</th>
<th>Per Capita Debt (1970 Census)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counties</td>
<td>$2,477,818</td>
<td>$239.50</td>
</tr>
<tr>
<td>Cities 1</td>
<td>1,039,679</td>
<td>368.14</td>
</tr>
<tr>
<td>Towns</td>
<td>939,456</td>
<td>124.43</td>
</tr>
<tr>
<td>Villages</td>
<td>336,083</td>
<td>182.28</td>
</tr>
<tr>
<td>School Dists.</td>
<td>3,242,626</td>
<td>n.a.</td>
</tr>
<tr>
<td>New York City</td>
<td>7,866,309</td>
<td>986.29</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$15,894,831</td>
<td>$571.37</td>
</tr>
</tbody>
</table>

1 Includes all “upstate” cities, excludes N.Y. City. The “Big 4” cities represent $519,513 gross debt ($000); $447.63 per capita debt.
2 Accurate population figures for school districts are not available.
3 Does not include fire districts.

TABLE 2 – Distribution of Gross Debt and Debt Service as a percent of total municipal expenditures, 1972

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Percent Distribution Gross Debt</th>
<th>Debt Service as a Percent of Expend.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counties</td>
<td>15.59%</td>
<td>13.57%</td>
</tr>
<tr>
<td>Cities 1</td>
<td>6.52%</td>
<td>22.99%</td>
</tr>
<tr>
<td>Towns</td>
<td>5.89%</td>
<td>22.62%</td>
</tr>
<tr>
<td>Villages</td>
<td>2.11%</td>
<td>21.76%</td>
</tr>
<tr>
<td>School Dists.</td>
<td>20.40%</td>
<td>14.47%</td>
</tr>
<tr>
<td>New York City</td>
<td>49.49%</td>
<td>9.25%</td>
</tr>
</tbody>
</table>

1 Includes all “upstate” cities, excludes N.Y. City.

TABLE 3 – Percentage Changes in Per Capita and Gross Debt (1962 and 1972).

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Percent change in Per Capita Debt</th>
<th>Percent change in Gross Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counties</td>
<td>187.42%</td>
<td>197.42%</td>
</tr>
<tr>
<td>Cities 1</td>
<td>93.37%</td>
<td>81.70%</td>
</tr>
<tr>
<td>Towns</td>
<td>132.61%</td>
<td>177.61%</td>
</tr>
<tr>
<td>Villages</td>
<td>68.04%</td>
<td>81.80%</td>
</tr>
<tr>
<td>New York City</td>
<td>60.84%</td>
<td>63.23%</td>
</tr>
</tbody>
</table>

1 Includes all “upstate” cities, excludes N.Y. City. “Big 4” cities show 77.42 percent change in per capita debt and 48.38 percent change in gross debt.


<table>
<thead>
<tr>
<th>Municipality</th>
<th>1962 Debt Per Capita</th>
<th>1972 Debt Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counties</td>
<td>$49.44</td>
<td>$122.21</td>
</tr>
<tr>
<td>Cities 1</td>
<td>$126.37</td>
<td>$244.36</td>
</tr>
<tr>
<td>Towns</td>
<td>$30.30</td>
<td>$70.46</td>
</tr>
<tr>
<td>Villages</td>
<td>$49.62</td>
<td>$83.38</td>
</tr>
<tr>
<td>New York City</td>
<td>$271.12</td>
<td>$436.07</td>
</tr>
</tbody>
</table>


The effect of debt limits has been modified by the establishment of exclusions; some have comprehensive application, others apply to particular municipal classes or individual municipalities. The creation of public authorities also permits avoidance of debt directly attributable to municipalities. As a result, it is frequently very difficult to measure the actual debt posture of the municipality, particularly debt incurred from items such as land and contract liabilities, judgments, claims and awards and housing and urban renewal loans.

Finally, in New York City, provisions for “phantom debt” (the exclusion of taxes to be levied for capital improvements or the exclusion of short term notes from the tax limit with the inclusion of an equal amount within the debt limit) also modifies debt postures. This is particularly confusing when the debt is secured by short term notes—redeemed within one or two years—while the “phantom debt” is reduced at an amortized rate over a period of years (e.g., 30). The purpose of this provision is simpler than its operation since it seeks to restrict increases in borrowing power for capital improvements where the initial amount is raised outside the tax limit. It has not applied to counties, cities or villages since 1951.

The debt limit is important to the profile because it represents a ceiling on the amount of debt each municipality can incur which, and when reached or
TABLE 6 — Percentage of Debt Limit in Use
in selected villages and towns (1969 and 1972). 1

<table>
<thead>
<tr>
<th>Towns</th>
<th>Percent of Debt Limit 1969</th>
<th>1972</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poughkeepsie</td>
<td>101.5%</td>
<td>24.4%</td>
</tr>
<tr>
<td>Brasher</td>
<td>91.7</td>
<td>64.3</td>
</tr>
<tr>
<td>Semonorius</td>
<td>83.3</td>
<td>60.3</td>
</tr>
<tr>
<td>Ciao</td>
<td>76.5</td>
<td>60.5</td>
</tr>
<tr>
<td>Madrid</td>
<td>76.0</td>
<td>68.9</td>
</tr>
<tr>
<td>Clay</td>
<td>70.5</td>
<td>62.5</td>
</tr>
<tr>
<td>New Windsor</td>
<td>70.4</td>
<td>46.0</td>
</tr>
<tr>
<td>Grand Isl.</td>
<td>67.6</td>
<td>26.0</td>
</tr>
<tr>
<td>Linclleam</td>
<td>63.6</td>
<td>10.5</td>
</tr>
<tr>
<td>Decatur</td>
<td>61.5</td>
<td>16.0</td>
</tr>
<tr>
<td>Freetown</td>
<td>56.9</td>
<td>16.5</td>
</tr>
<tr>
<td>Erwin</td>
<td>53.1</td>
<td>17.9</td>
</tr>
<tr>
<td>Rockland</td>
<td>52.4</td>
<td>44.2</td>
</tr>
<tr>
<td>Ithaca</td>
<td>51.6</td>
<td>43.3</td>
</tr>
<tr>
<td>Vestal</td>
<td>51.2</td>
<td>32.1</td>
</tr>
<tr>
<td>Orchard Pk.</td>
<td>51.0</td>
<td>64.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Villages</th>
<th>Percent of Debt Limit 1969</th>
<th>1972</th>
</tr>
</thead>
<tbody>
<tr>
<td>E. Bloomfield</td>
<td>174.4%</td>
<td>134.1%</td>
</tr>
<tr>
<td>Holcomb</td>
<td>156.5</td>
<td>464.1</td>
</tr>
<tr>
<td>Trumanstburg</td>
<td>153.1</td>
<td>464.1</td>
</tr>
<tr>
<td>Phelps</td>
<td>110.8</td>
<td>90.2</td>
</tr>
<tr>
<td>Central Sq.</td>
<td>109.6</td>
<td>0.0</td>
</tr>
<tr>
<td>Mayville</td>
<td>105.0</td>
<td>62.1</td>
</tr>
<tr>
<td>Spencerport</td>
<td>93.6</td>
<td>47.5</td>
</tr>
<tr>
<td>Alexandria Bay</td>
<td>97.0</td>
<td>48.6</td>
</tr>
<tr>
<td>Altamont</td>
<td>86.4</td>
<td>47.7</td>
</tr>
<tr>
<td>Sacketts Harbor</td>
<td>85.0</td>
<td>54.9</td>
</tr>
<tr>
<td>Wellsveille</td>
<td>80.4</td>
<td>77.2</td>
</tr>
<tr>
<td>Marcellus</td>
<td>79.3</td>
<td>66.7</td>
</tr>
<tr>
<td>Dannemora</td>
<td>74.7</td>
<td>85.0</td>
</tr>
<tr>
<td>Nework</td>
<td>73.2</td>
<td>68.6</td>
</tr>
<tr>
<td>Oriskany</td>
<td>69.3</td>
<td>49.5</td>
</tr>
<tr>
<td>Interlaken</td>
<td>68.5</td>
<td>50.9</td>
</tr>
</tbody>
</table>

1 This selection, and the 1969 data, was derived from tables in the Wagner Commission Reports (Vol. 2, Fiscal Study Background Papers, (1971-1972), p. 162-163) and represents towns and villages having the highest percentage of debt limit in use in 1969.

TABLE 5 — Top Twenty Counties and Cities
ranked in descending order of debt limit in use in 1972

<table>
<thead>
<tr>
<th>County</th>
<th>Percent In Use</th>
<th>City</th>
<th>Percent In Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>60.28</td>
<td>Buffalo</td>
<td>93.89</td>
</tr>
<tr>
<td>Jefferson</td>
<td>48.28</td>
<td>Poughkeepsie</td>
<td>91.03</td>
</tr>
<tr>
<td>Lewis</td>
<td>45.11</td>
<td>Albany</td>
<td>88.91</td>
</tr>
<tr>
<td>Nassau</td>
<td>44.93</td>
<td>Fulton</td>
<td>84.73</td>
</tr>
<tr>
<td>Chemung</td>
<td>40.99</td>
<td>Long Beach</td>
<td>84.12</td>
</tr>
<tr>
<td>Renee</td>
<td>39.89</td>
<td>Jamestown</td>
<td>81.29</td>
</tr>
<tr>
<td>Greene</td>
<td>39.67</td>
<td>Binghamton</td>
<td>80.83</td>
</tr>
<tr>
<td>Broome</td>
<td>34.70</td>
<td>Elmira</td>
<td>76.69</td>
</tr>
<tr>
<td>Onondaga</td>
<td>34.11</td>
<td>Peekskill</td>
<td>74.38</td>
</tr>
<tr>
<td>Erie</td>
<td>33.85</td>
<td>Cohoes</td>
<td>73.53</td>
</tr>
<tr>
<td>Orange</td>
<td>32.22</td>
<td>Canandaigua</td>
<td>72.05</td>
</tr>
<tr>
<td>Montgomery</td>
<td>30.65</td>
<td>Utica</td>
<td>71.09</td>
</tr>
<tr>
<td>Monroe</td>
<td>28.26</td>
<td>Hornell</td>
<td>70.88</td>
</tr>
<tr>
<td>Sullivan</td>
<td>28.82</td>
<td>Oneida</td>
<td>70.81</td>
</tr>
<tr>
<td>Genesee</td>
<td>26.69</td>
<td>Oswego</td>
<td>64.59</td>
</tr>
<tr>
<td>Suffolk</td>
<td>24.98</td>
<td>Amsterdam</td>
<td>59.91</td>
</tr>
<tr>
<td>Rockland</td>
<td>24.05</td>
<td>Niagara Falls</td>
<td>58.43</td>
</tr>
<tr>
<td>Onaida</td>
<td>22.49</td>
<td>Yonkers</td>
<td>57.51</td>
</tr>
<tr>
<td>Duchess</td>
<td>19.81</td>
<td>Syracuse</td>
<td>56.30</td>
</tr>
<tr>
<td>Madison</td>
<td>15.87</td>
<td>Rochester</td>
<td>56.15</td>
</tr>
</tbody>
</table>

Note: New York City utilized 58.74% of its debt limit in 1972 but that figure is not truly comparable here because of numerous special exclusions.

approached, could result in a higher level of current expenditures. Analysis of debt incurred within the limit (which avoids variations due to special exclusions) in counties and cities presented in Table 5 illustrates a sharp divergence between the two municipal classes not suggested by the per capita figures.

Most notably, the lowest city (Rochester) is utilizing 5.87% more of its debt limit than the highest county. Furthermore, six counties were maintaining no debt whatsoever in 1972 while the lowest city level was 4.01% (in Saratoga Springs). It is evident that the future debt capacity of cities is seriously limited in comparison to counties.

When towns and villages are considered, this picture changes somewhat. The selected municipalities presented in Table 6 all had ratios of total debt as a percentage of their debt limit exceeding fifty (50) percent in 1969. Calculating the percentage of debt limit in actual use in 1972 shows many with ratios higher than the cities presented in Table 5.

41
Six of the towns in this sample exceed the level of the five lowest cities including Yonkers, Syracuse, and Rochester. On the other hand, six of the towns have limits in use of 25 percent or lower which suggests: (1) the ability of towns to incur debt for their principal obligations outside the debt limit; and (2) the ability of towns to reduce their aggregate indebtedness (due to its smaller size) based on changes in current revenue.

Villages illustrate the same patterns but with even greater variance. Seven towns exceed 50% while one has liquidated all its debts since 1969. Three villages exceed the debt limit and one (Holcomb) has jumped from total debt at 155% of the debt limit in 1969 to debt within the limit at 464% of the limit in 1972. Aside from the abuse of the principle of a limit, these figures suggest an astounding flexibility in the debt picture of smaller municipalities.

One of the principal reasons for this flexibility is the effect of intergovernmental revenues (grants of aid), particularly federal revenue sharing. Since these funds constituted a “windfall” (outside of revenues normally budgeted by municipalities in the first year of the program), they could be used for debt reduction by application to capital purchases and fund transfers. This use of the money would have a proportionally greater effect in municipalities with smaller absolute debts. Therefore, a comparative analysis of absolute debt within the debt limit completes this portion of the profile.

As Table 7 suggests, there is a rather uniform scale in the amount of debt within the limit running from counties to cities, to towns, to villages. When the amount and the percentage of debt limits in use are compared, the major cities clearly surpass all other municipal corporations, as Table 8 suggests. The sole exception to this pattern is Albany County which shares many capital development costs with the City of Albany.

### Debt Service

This indicates the close relationship between debt and taxes embodied in debt service. The larger the debt, the larger the financing cost, the majority of which comes from the real property tax. This affects real property taxes levied to pay the principal and

---

**TABLE 7 — Amounts of Debt Within the Debt Limit for municipalities discussed in the preceding analysis.**

<table>
<thead>
<tr>
<th>Counties</th>
<th>Debt (000)</th>
<th>Cities</th>
<th>Debt (000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nassau</td>
<td>$546,435</td>
<td>N.Y. City</td>
<td>$3,443,017</td>
</tr>
<tr>
<td>Erie</td>
<td>142,994</td>
<td>Buffalo</td>
<td>164,458</td>
</tr>
<tr>
<td>Suffolk</td>
<td>135,322</td>
<td>Rochester</td>
<td>93,344</td>
</tr>
<tr>
<td>Monroe</td>
<td>96,119</td>
<td>Yonkers</td>
<td>79,391</td>
</tr>
<tr>
<td>Onondaga</td>
<td>62,797</td>
<td>Syracuse</td>
<td>60,767</td>
</tr>
<tr>
<td>Albany</td>
<td>58,477</td>
<td>Albany</td>
<td>39,863</td>
</tr>
<tr>
<td>Dutchess</td>
<td>35,004</td>
<td>New Rochelle</td>
<td>23,114</td>
</tr>
<tr>
<td>Brooms</td>
<td>28,886</td>
<td>Binghamton</td>
<td>13,763</td>
</tr>
<tr>
<td>Orange</td>
<td>28,044</td>
<td>White Plains</td>
<td>19,477</td>
</tr>
<tr>
<td>Rockland</td>
<td>25,926</td>
<td>Utica</td>
<td>17,983</td>
</tr>
</tbody>
</table>

**TABLE 8 — Municipalities Ranked by Amount of Debt with debt limit in use compared (1972)**

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Debt Limit In Use</th>
<th>Amount of Debt (000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York</td>
<td>58.74%</td>
<td>$867,460</td>
</tr>
<tr>
<td>Nassau Cty.</td>
<td>44.93</td>
<td>646,435</td>
</tr>
<tr>
<td>Buffalo (c)</td>
<td>93.89</td>
<td>164,446</td>
</tr>
<tr>
<td>Erie Cty.</td>
<td>33.86</td>
<td>142,854</td>
</tr>
<tr>
<td>Suffolk Cty.</td>
<td>24.98</td>
<td>135,322</td>
</tr>
<tr>
<td>Monroe Cty.</td>
<td>28.28</td>
<td>96,119</td>
</tr>
<tr>
<td>Rochester (e)</td>
<td>66.15</td>
<td>93,344</td>
</tr>
<tr>
<td>Yonkers</td>
<td>57.61</td>
<td>79,381</td>
</tr>
<tr>
<td>Onondaga Cty.</td>
<td>34.11</td>
<td>62,767</td>
</tr>
<tr>
<td>Albany Cty.</td>
<td>60.28</td>
<td>56,477</td>
</tr>
<tr>
<td>Syracuse (c)</td>
<td>56.30</td>
<td>50,577</td>
</tr>
<tr>
<td>Albany (e)</td>
<td>88.91</td>
<td>30,863</td>
</tr>
<tr>
<td>Dutchess Cty.</td>
<td>19.81</td>
<td>35,004</td>
</tr>
<tr>
<td>Broome Cty.</td>
<td>34.70</td>
<td>28,886</td>
</tr>
<tr>
<td>Orange Cty.</td>
<td>32.22</td>
<td>28,444</td>
</tr>
<tr>
<td>Rockland Cty.</td>
<td>24.05</td>
<td>25,926</td>
</tr>
<tr>
<td>New Rochelle (c)</td>
<td>53.04</td>
<td>23,114</td>
</tr>
<tr>
<td>Binghamton</td>
<td>80.83</td>
<td>19,763</td>
</tr>
<tr>
<td>White Plains (c)</td>
<td>47.12</td>
<td>19,477</td>
</tr>
<tr>
<td>Utica (c)</td>
<td>71.09</td>
<td>17,983</td>
</tr>
</tbody>
</table>
interest on local indebtedness (because they are excluded from the tax limit). Debt limits indirectly control the amount of real property taxes levied outside the tax limit and can encourage the use of debt financing for projects which might otherwise be financed from current revenues (in municipalities where the tax limit has been reached by levies for current operations).

This relationship has been further intensified by the recent ruling in the case of *Hurd v. the City of Buffalo* which held that certain items financed from the real property tax could not be excluded from the municipal tax limit as previously provided by statute. The decision had its principal effect in Buffalo, Rochester and Yonkers where tax limits are now substantially exceeded by the reincurrence of these items in the tax limit. This could encourage intensive use of debt financing as suggested above.

Unfortunately, an analysis of debt service reveals no particular pattern among municipalities. The larger municipalities pay the larger amounts of debt service, ranging from $677 million dollars (in New York City) to zero in several rural counties (Allegany, Delaware, St. Lawrence and Tioga). Generally, the cost of debt service outside New York City was highest in school districts ($645 million), followed by counties ($425 million), cities ($234 million), towns ($199 million) and villages ($81 million).

As a percent of total expenditures, debt service also showed no particular pattern; ranging from a high of 43.08% for villages (in Steuben County) to a low of 0.63% (for Oswego County, with the exception of the four counties named above which were zero). The average ratios for each municipal class suggested that debt service is a function of total budgetary capacity and that the majority of cases show costs that are well controlled. Large ratios are probably explained by the need for substantial capital improvements imposed on municipalities with customarily small budgets (villages).

The picture is further complicated by the fact that the full faith and credit and the income and capital assets of each corporation pledged against the debt are also encumbered by the debt of any superior or geographically “overlapping” municipality. For example, city assets are felt to secure county debt in proportion to the city share of countywide full value; as well as their own city debt. The application of this concept has resulted in a reduced rating (e.g., from Aaa to Aa) for certain major New York cities by the bond rating services.

Unfortunately, this effect is viewed as operating principally in one direction (i.e., downward) and little consideration is given to the reciprocal effect of city debt encumbering county credit. This is primarily a result of the superior credit position of counties relative to their urban areas. In the future, the effect of increasing debt in certain towns may result in similar strictures. For the present, however, the negative effects of overlapping debt are felt primarily by the major cities of the state.

Analysis of overlapping debt is thwarted by the lumping of special district debt with town debt in the Comptroller’s Special Municipal Report. Thus, it is not possible to disaggregate special district debt, which is not attributable to the villages within the town, so that its application is limited to the “town-outside-village” portion of the town. Accordingly, while county and city overlaps can be computed, town and village overlaps cannot, and a complete cross-municipal analysis cannot be accomplished.

**Economic Impacts**

The ultimate test of the effect of debt is the impact it has on income groups in the municipality. The immediate impact is present in the cost of debt service imposed on real property, preferably measured by the interest cost (which is related to the total amount of debt). The absolute measure is the cost of repaying the debt, even though that contingency would not occur under the majority of circumstances.
<table>
<thead>
<tr>
<th>County</th>
<th>Total</th>
<th>County</th>
<th>Cities</th>
<th>Towns</th>
<th>Villages</th>
<th>School Dists.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>19.67</td>
<td>12.65</td>
<td>26.02</td>
<td>33.11</td>
<td>12.01</td>
<td>15.90%</td>
</tr>
<tr>
<td>Allegany</td>
<td>8.05</td>
<td>0.0</td>
<td>---</td>
<td>13.53</td>
<td>21.69</td>
<td>4.83</td>
</tr>
<tr>
<td>Broome</td>
<td>12.32</td>
<td>8.43</td>
<td>19.79</td>
<td>18.44</td>
<td>12.28</td>
<td>7.49</td>
</tr>
<tr>
<td>Cattaraugus</td>
<td>7.72</td>
<td>1.28</td>
<td>17.10</td>
<td>10.29</td>
<td>8.58</td>
<td>8.97</td>
</tr>
<tr>
<td>Cayuga</td>
<td>15.60</td>
<td>16.49</td>
<td>7.27</td>
<td>17.70</td>
<td>34.24</td>
<td>17.26</td>
</tr>
<tr>
<td>Chautauqua</td>
<td>10.61</td>
<td>2.65</td>
<td>12.57</td>
<td>5.49</td>
<td>38.41</td>
<td>9.11</td>
</tr>
<tr>
<td>Chemung</td>
<td>8.00</td>
<td>6.86</td>
<td>8.60</td>
<td>5.54</td>
<td>4.75</td>
<td>8.86</td>
</tr>
<tr>
<td>Chenango</td>
<td>8.21</td>
<td>0.66</td>
<td>8.44</td>
<td>12.17</td>
<td>30.22</td>
<td>10.64</td>
</tr>
<tr>
<td>Clinton</td>
<td>8.10</td>
<td>0.49</td>
<td>11.15</td>
<td>11.04</td>
<td>30.40</td>
<td>8.45</td>
</tr>
<tr>
<td>Columbia</td>
<td>7.43</td>
<td>2.77</td>
<td>11.54</td>
<td>9.42</td>
<td>17.97</td>
<td>8.26</td>
</tr>
<tr>
<td>Cortland</td>
<td>5.44</td>
<td>0.42</td>
<td>12.51</td>
<td>8.76</td>
<td>4.04</td>
<td>6.95</td>
</tr>
<tr>
<td>Delaware</td>
<td>4.43</td>
<td>0.0</td>
<td>---</td>
<td>4.55</td>
<td>6.81</td>
<td>6.73</td>
</tr>
<tr>
<td>Dutchess</td>
<td>16.39</td>
<td>7.50</td>
<td>10.52</td>
<td>---</td>
<td>8.56</td>
<td>27.90</td>
</tr>
<tr>
<td>Erie</td>
<td>16.31</td>
<td>6.34</td>
<td>33.30</td>
<td>19.45</td>
<td>21.63</td>
<td>15.26</td>
</tr>
<tr>
<td>Essex</td>
<td>16.81</td>
<td>3.87</td>
<td>---</td>
<td>5.56</td>
<td>27.90</td>
<td>26.41</td>
</tr>
<tr>
<td>Franklin</td>
<td>10.24</td>
<td>3.34</td>
<td>---</td>
<td>12.12</td>
<td>9.51</td>
<td>9.66</td>
</tr>
<tr>
<td>Fulton</td>
<td>11.98</td>
<td>1.71</td>
<td>18.52</td>
<td>8.33</td>
<td>6.76</td>
<td>15.31</td>
</tr>
<tr>
<td>Genesee</td>
<td>25.95</td>
<td>33.61</td>
<td>26.96</td>
<td>12.54</td>
<td>28.85</td>
<td>21.50</td>
</tr>
<tr>
<td>Greene</td>
<td>17.15</td>
<td>25.46</td>
<td>---</td>
<td>6.32</td>
<td>22.43</td>
<td>6.27</td>
</tr>
<tr>
<td>Hamilton</td>
<td>10.98</td>
<td>1.14</td>
<td>---</td>
<td>25.39</td>
<td>10.50</td>
<td>7.79</td>
</tr>
<tr>
<td>Herkimer</td>
<td>11.40</td>
<td>15.32</td>
<td>16.82</td>
<td>8.33</td>
<td>17.34</td>
<td>6.64</td>
</tr>
<tr>
<td>Jefferson</td>
<td>12.40</td>
<td>11.73</td>
<td>16.42</td>
<td>12.70</td>
<td>15.83</td>
<td>11.80</td>
</tr>
<tr>
<td>Lewis</td>
<td>14.52</td>
<td>19.63</td>
<td>---</td>
<td>6.98</td>
<td>24.46</td>
<td>10.14</td>
</tr>
<tr>
<td>Livingston</td>
<td>23.23</td>
<td>28.24</td>
<td>---</td>
<td>11.31</td>
<td>17.09</td>
<td>22.36</td>
</tr>
<tr>
<td>Madison</td>
<td>11.29</td>
<td>3.26</td>
<td>32.83</td>
<td>12.21</td>
<td>20.95</td>
<td>6.63</td>
</tr>
<tr>
<td>Monroe</td>
<td>17.59</td>
<td>9.43</td>
<td>22.07</td>
<td>19.40</td>
<td>24.27</td>
<td>22.19</td>
</tr>
<tr>
<td>Montgomery</td>
<td>12.70</td>
<td>12.43</td>
<td>---</td>
<td>7.09</td>
<td>11.73</td>
<td>13.07</td>
</tr>
<tr>
<td>Nassau</td>
<td>18.75</td>
<td>25.00</td>
<td>30.60</td>
<td>26.12</td>
<td>23.87</td>
<td>8.75</td>
</tr>
<tr>
<td>Niagara</td>
<td>12.47</td>
<td>4.07</td>
<td>11.27</td>
<td>38.22</td>
<td>27.19</td>
<td>14.27</td>
</tr>
<tr>
<td>Oneida</td>
<td>21.34</td>
<td>30.28</td>
<td>17.94</td>
<td>39.87</td>
<td>17.83</td>
<td>10.23</td>
</tr>
<tr>
<td>Onondaga</td>
<td>16.85</td>
<td>15.07</td>
<td>20.62</td>
<td>30.64</td>
<td>29.68</td>
<td>12.86</td>
</tr>
<tr>
<td>Ontario</td>
<td>13.08</td>
<td>3.31</td>
<td>14.78</td>
<td>25.31</td>
<td>32.57</td>
<td>13.01</td>
</tr>
<tr>
<td>Orange</td>
<td>13.73</td>
<td>5.56</td>
<td>9.31</td>
<td>26.33</td>
<td>21.30</td>
<td>15.67</td>
</tr>
<tr>
<td>Orleans</td>
<td>14.26</td>
<td>6.28</td>
<td>---</td>
<td>6.27</td>
<td>11.71</td>
<td>19.23</td>
</tr>
<tr>
<td>Oswego</td>
<td>13.52</td>
<td>3.63</td>
<td>34.89</td>
<td>9.77</td>
<td>22.74</td>
<td>9.11</td>
</tr>
<tr>
<td>Otsego</td>
<td>23.67</td>
<td>2.06</td>
<td>23.60</td>
<td>11.41</td>
<td>11.77</td>
<td>30.48</td>
</tr>
<tr>
<td>Orleans</td>
<td>9.79</td>
<td>7.16</td>
<td>---</td>
<td>8.58</td>
<td>4.50</td>
<td>10.64</td>
</tr>
<tr>
<td>Rensselaer</td>
<td>11.88</td>
<td>2.94</td>
<td>26.92</td>
<td>20.70</td>
<td>28.69</td>
<td>10.61</td>
</tr>
<tr>
<td>Rockland</td>
<td>19.72</td>
<td>13.75</td>
<td>---</td>
<td>32.42</td>
<td>23.14</td>
<td>18.81</td>
</tr>
<tr>
<td>St. Lawrence</td>
<td>14.19</td>
<td>0.0</td>
<td>13.82</td>
<td>17.05</td>
<td>43.13</td>
<td>14.41</td>
</tr>
<tr>
<td>Saratoga</td>
<td>15.76</td>
<td>16.32</td>
<td>7.20</td>
<td>5.66</td>
<td>16.88</td>
<td>17.10</td>
</tr>
<tr>
<td>Schenectady</td>
<td>12.38</td>
<td>2.86</td>
<td>21.89</td>
<td>21.18</td>
<td>11.74</td>
<td>8.16</td>
</tr>
<tr>
<td>Schoharie</td>
<td>8.14</td>
<td>1.39</td>
<td>---</td>
<td>12.46</td>
<td>40.09</td>
<td>5.25</td>
</tr>
<tr>
<td>Schuyler</td>
<td>9.24</td>
<td>1.68</td>
<td>---</td>
<td>7.18</td>
<td>20.27</td>
<td>11.97</td>
</tr>
<tr>
<td>Seneca</td>
<td>16.39</td>
<td>1.98</td>
<td>---</td>
<td>4.72</td>
<td>35.92</td>
<td>17.52</td>
</tr>
<tr>
<td>Steuben</td>
<td>15.85</td>
<td>0.46</td>
<td>44.44</td>
<td>6.66</td>
<td>45.08</td>
<td>5.78</td>
</tr>
<tr>
<td>Suffolk</td>
<td>17.05</td>
<td>8.85</td>
<td>---</td>
<td>21.18</td>
<td>17.69</td>
<td>20.17</td>
</tr>
<tr>
<td>Sullivan</td>
<td>9.83</td>
<td>6.43</td>
<td>---</td>
<td>19.97</td>
<td>23.63</td>
<td>6.80</td>
</tr>
<tr>
<td>Tioga</td>
<td>18.22</td>
<td>0.0</td>
<td>---</td>
<td>27.23</td>
<td>12.83</td>
<td>21.78</td>
</tr>
<tr>
<td>Tompkins</td>
<td>9.35</td>
<td>5.33</td>
<td>9.77</td>
<td>18.19</td>
<td>17.38</td>
<td>11.34</td>
</tr>
<tr>
<td>Ulster</td>
<td>2.56</td>
<td>9.06</td>
<td>7.17</td>
<td>13.65</td>
<td>21.68</td>
<td>9.72</td>
</tr>
<tr>
<td>Warren</td>
<td>15.41</td>
<td>3.28</td>
<td>7.00</td>
<td>9.76</td>
<td>44.39</td>
<td>22.80</td>
</tr>
<tr>
<td>Washington</td>
<td>16.60</td>
<td>1.79</td>
<td>---</td>
<td>9.80</td>
<td>18.52</td>
<td>23.57</td>
</tr>
<tr>
<td>Wayne</td>
<td>15.80</td>
<td>2.50</td>
<td>---</td>
<td>11.56</td>
<td>36.83</td>
<td>16.62</td>
</tr>
<tr>
<td>Westchester</td>
<td>16.81</td>
<td>13.19</td>
<td>26.64</td>
<td>23.85</td>
<td>11.91</td>
<td>13.00</td>
</tr>
<tr>
<td>Wyoming</td>
<td>4.27</td>
<td>0.37</td>
<td>---</td>
<td>10.86</td>
<td>7.36</td>
<td>5.27</td>
</tr>
<tr>
<td>Yates</td>
<td>5.43</td>
<td>2.05</td>
<td>---</td>
<td>5.86</td>
<td>18.61</td>
<td>3.97</td>
</tr>
</tbody>
</table>
TABLE 10 — Interest Costs Per $1000 of Full Value
for municipal corporations by county (1972)

<table>
<thead>
<tr>
<th>County</th>
<th>County</th>
<th>Cities</th>
<th>Towns</th>
<th>Villages</th>
<th>School Dists.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>$0.44</td>
<td>$2.95</td>
<td>$1.22</td>
<td>$0.96</td>
<td>$1.60</td>
</tr>
<tr>
<td>Allegany</td>
<td>0.00</td>
<td>—</td>
<td>0.54</td>
<td>2.77</td>
<td>0.80</td>
</tr>
<tr>
<td>Broome</td>
<td>0.40</td>
<td>6.55</td>
<td>0.76</td>
<td>2.87</td>
<td>1.64</td>
</tr>
<tr>
<td>Cayuga</td>
<td>0.38</td>
<td>2.37</td>
<td>0.12</td>
<td>0.66</td>
<td>1.33</td>
</tr>
<tr>
<td>Chautauqua</td>
<td>0.06</td>
<td>3.55</td>
<td>0.08</td>
<td>2.06</td>
<td>1.64</td>
</tr>
<tr>
<td>Chenango</td>
<td>0.86</td>
<td>2.27</td>
<td>0.06</td>
<td>0.17</td>
<td>1.90</td>
</tr>
<tr>
<td>Chittenango</td>
<td>0.05</td>
<td>0.28</td>
<td>0.11</td>
<td>3.06</td>
<td>3.29</td>
</tr>
<tr>
<td>Clinton</td>
<td>0.05</td>
<td>0.92</td>
<td>0.21</td>
<td>3.05</td>
<td>3.06</td>
</tr>
<tr>
<td>Columbia</td>
<td>0.03</td>
<td>1.44</td>
<td>0.23</td>
<td>1.71</td>
<td>2.47</td>
</tr>
<tr>
<td>Cortland</td>
<td>*</td>
<td>1.06</td>
<td>0.13</td>
<td>0.28</td>
<td>1.57</td>
</tr>
<tr>
<td>Delaware</td>
<td>0.00</td>
<td>—</td>
<td>0.06</td>
<td>0.86</td>
<td>1.14</td>
</tr>
<tr>
<td>Dutchess</td>
<td>0.37</td>
<td>2.65</td>
<td>0.69</td>
<td>1.02</td>
<td>1.48</td>
</tr>
<tr>
<td>Erie</td>
<td>0.06</td>
<td>—</td>
<td>0.28</td>
<td>3.03</td>
<td>1.99</td>
</tr>
<tr>
<td>Franklin</td>
<td>0.15</td>
<td>—</td>
<td>0.28</td>
<td>1.61</td>
<td>4.34</td>
</tr>
<tr>
<td>Fulton</td>
<td>0.19</td>
<td>2.49</td>
<td>0.08</td>
<td>0.27</td>
<td>2.05</td>
</tr>
<tr>
<td>Genesee</td>
<td>0.83</td>
<td>1.11</td>
<td>0.20</td>
<td>1.96</td>
<td>1.40</td>
</tr>
<tr>
<td>Greene</td>
<td>0.19</td>
<td>—</td>
<td>0.06</td>
<td>3.81</td>
<td>1.16</td>
</tr>
<tr>
<td>Hamilton</td>
<td>0.04</td>
<td>—</td>
<td>0.49</td>
<td>0.76</td>
<td>0.51</td>
</tr>
<tr>
<td>Herkimer</td>
<td>0.36</td>
<td>2.72</td>
<td>0.23</td>
<td>1.57</td>
<td>1.42</td>
</tr>
<tr>
<td>Jefferson</td>
<td>0.04</td>
<td>1.77</td>
<td>0.15</td>
<td>1.62</td>
<td>2.29</td>
</tr>
<tr>
<td>Lewis</td>
<td>0.66</td>
<td>—</td>
<td>0.12</td>
<td>0.69</td>
<td>2.01</td>
</tr>
<tr>
<td>Livingston</td>
<td>0.47</td>
<td>1.17</td>
<td>1.17</td>
<td>1.43</td>
<td>2.73</td>
</tr>
<tr>
<td>Madison</td>
<td>0.45</td>
<td>2.49</td>
<td>0.42</td>
<td>2.31</td>
<td>1.86</td>
</tr>
<tr>
<td>Monroe</td>
<td>1.04</td>
<td>2.22</td>
<td>0.55</td>
<td>1.95</td>
<td>1.72</td>
</tr>
<tr>
<td>Montgomery</td>
<td>0.98</td>
<td>1.51</td>
<td>0.10</td>
<td>0.79</td>
<td>1.65</td>
</tr>
<tr>
<td>Nassau</td>
<td>1.50</td>
<td>3.95</td>
<td>0.56</td>
<td>0.48</td>
<td>1.39</td>
</tr>
<tr>
<td>Niagara</td>
<td>0.18</td>
<td>1.86</td>
<td>1.02</td>
<td>1.34</td>
<td>1.61</td>
</tr>
<tr>
<td>Oneida</td>
<td>1.45</td>
<td>2.22</td>
<td>0.71</td>
<td>0.86</td>
<td>1.86</td>
</tr>
<tr>
<td>Onondaga</td>
<td>1.40</td>
<td>1.21</td>
<td>1.10</td>
<td>2.10</td>
<td>1.84</td>
</tr>
<tr>
<td>Ontario</td>
<td>0.97</td>
<td>3.62</td>
<td>0.76</td>
<td>1.41</td>
<td>1.45</td>
</tr>
<tr>
<td>Orange</td>
<td>0.46</td>
<td>1.57</td>
<td>0.47</td>
<td>0.84</td>
<td>2.23</td>
</tr>
<tr>
<td>Orleans</td>
<td>0.09</td>
<td>—</td>
<td>0.11</td>
<td>1.41</td>
<td>3.13</td>
</tr>
<tr>
<td>Oswego</td>
<td>0.03</td>
<td>4.20</td>
<td>0.11</td>
<td>1.17</td>
<td>2.07</td>
</tr>
<tr>
<td>Otsego</td>
<td>0.17</td>
<td>1.50</td>
<td>0.13</td>
<td>0.83</td>
<td>2.64</td>
</tr>
<tr>
<td>Putnam</td>
<td>0.95</td>
<td>—</td>
<td>0.22</td>
<td>0.09</td>
<td>2.19</td>
</tr>
<tr>
<td>Rensselaer</td>
<td>0.38</td>
<td>3.75</td>
<td>0.70</td>
<td>2.06</td>
<td>2.47</td>
</tr>
<tr>
<td>Rockland</td>
<td>0.72</td>
<td>—</td>
<td>1.43</td>
<td>0.08</td>
<td>3.18</td>
</tr>
<tr>
<td>St. Lawrence</td>
<td>0.00</td>
<td>2.19</td>
<td>0.30</td>
<td>2.32</td>
<td>2.72</td>
</tr>
<tr>
<td>Saratoga</td>
<td>0.27</td>
<td>1.16</td>
<td>0.17</td>
<td>0.70</td>
<td>3.62</td>
</tr>
<tr>
<td>Schenectady</td>
<td>0.22</td>
<td>1.32</td>
<td>0.72</td>
<td>0.41</td>
<td>1.83</td>
</tr>
<tr>
<td>Schoharie</td>
<td>0.13</td>
<td>—</td>
<td>0.19</td>
<td>1.16</td>
<td>0.85</td>
</tr>
<tr>
<td>Schuyler</td>
<td>0.16</td>
<td>—</td>
<td>0.07</td>
<td>1.95</td>
<td>4.69</td>
</tr>
<tr>
<td>Seneca</td>
<td>0.23</td>
<td>—</td>
<td>0.20</td>
<td>3.28</td>
<td>2.42</td>
</tr>
<tr>
<td>Steuben</td>
<td>0.06</td>
<td>0.79</td>
<td>0.17</td>
<td>0.63</td>
<td>1.79</td>
</tr>
<tr>
<td>Suffolk</td>
<td>0.55</td>
<td>—</td>
<td>0.53</td>
<td>0.40</td>
<td>3.73</td>
</tr>
<tr>
<td>Sullivan</td>
<td>0.83</td>
<td>—</td>
<td>0.35</td>
<td>0.89</td>
<td>0.84</td>
</tr>
<tr>
<td>Tioga</td>
<td>0.00</td>
<td>—</td>
<td>0.45</td>
<td>0.89</td>
<td>5.61</td>
</tr>
<tr>
<td>Tompkins</td>
<td>0.43</td>
<td>1.82</td>
<td>0.65</td>
<td>1.84</td>
<td>2.32</td>
</tr>
<tr>
<td>Ulster</td>
<td>0.25</td>
<td>0.75</td>
<td>0.19</td>
<td>1.28</td>
<td>1.49</td>
</tr>
<tr>
<td>Warren</td>
<td>0.19</td>
<td>0.62</td>
<td>0.42</td>
<td>1.84</td>
<td>1.47</td>
</tr>
<tr>
<td>Washington</td>
<td>0.04</td>
<td>—</td>
<td>0.08</td>
<td>1.04</td>
<td>3.42</td>
</tr>
<tr>
<td>Wayne</td>
<td>0.06</td>
<td>—</td>
<td>0.40</td>
<td>3.14</td>
<td>3.17</td>
</tr>
<tr>
<td>Westchester</td>
<td>0.32</td>
<td>1.15</td>
<td>0.22</td>
<td>0.35</td>
<td>1.22</td>
</tr>
<tr>
<td>Wyoming</td>
<td>0.06</td>
<td>—</td>
<td>0.11</td>
<td>1.09</td>
<td>1.37</td>
</tr>
<tr>
<td>Yates</td>
<td>0.19</td>
<td>—</td>
<td>0.20</td>
<td>2.77</td>
<td>0.62</td>
</tr>
</tbody>
</table>

*less than one cent per thousand.
Table 10 presents the cost of interest on debt measured in dollars per $1000 of full value for each municipal class within each county. A wide variance is evident with cities and school districts having the higher costs. The high is $6.55 for cities in Broome County and the low is $0.005 in Cortland County. Some municipalities have no debt and thus pay no interest.

The more significant figures in this group are for the metropolitan counties and their cities, which have the higher costs for the general purpose governments examined, within those counties. Outside metropolitan areas, villages show cost levels similar to those of the cities, apparently through a substitutional effect in the provision of central services.

**Fiscally Dependent School Districts**

The existence of fiscally dependent school districts in major cities (New York City, Buffalo, Rochester, Syracuse and Yonkers) represents a relationship that is unique among New York State's municipalities. Under this system, there is a complete merger of the fiscal systems of the school district and the city. The individual debt limits (10% for New York City and 9% for the other four) are somewhat higher than those of other municipalities (generally 7%). However, both general purpose and school district debt must be covered by the debt limit in the five cities with fiscally dependent school districts. The Comptroller's Special Report shows that school district debt represents about thirty percent of total debt in these cities, as illustrated by Table 11.

This suggests that there are two ways of viewing debt in these cities: (1) in terms of the city incurred debt only or (2) in terms of the combined debt. In the latter case, it must be remembered that both amounts are limited by one debt limit.

It follows that the major cities are substantially burdened with debt responsibilities that no other municipality carries. However, the data in Table 5 illustrate that, with the exception of Buffalo, the Big Five cities have each exhausted less than 60 percent of their respective debt limits. Thus, there appears to be little justification for State financial relief of these cities based solely on debt limits.

**Overlapping Debt and Full Value by Jurisdiction**

Large cities in metropolitan areas represent a major portion of the "wealth" (i.e., full value) of the area and thus assume a major portion of the overlapping debt. In New York City, the city has assumed the responsibility for normal county functions. Therefore, the debt load is proportionally higher but the city does not suffer from the threat of an impaired financial rating because of the overlap. This creates a dual distortion, both relating to overlapping debt: one impairing a critical situation in New York City, and the other impairing the position of the other large cities.

**Property Tax Limits**

The property tax raising ability of the Big Five cities is similarly impaired vis-a-vis other municipalities. Cities under 125,000 population, and all villages, have a property tax limit of two percent of the average full valuation of taxable real property. This tax limit, of course, pertains to general city or village purposes, respectively. Upstate counties are authorized to increase their individual tax limits from one and one-half to two percent, for county purposes. Towns have no tax limits.

The five cities with fiscally dependent school districts must support general city as well as school district purposes within one comprehensive limit: two and one-half percent for New York City and two percent for Buffalo, Rochester, Yonkers and Syracuse.