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### The Regional Approach to Planning

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## THE REGIONAL APPROACH TO PLANNING

Suffice it to say that the designation "metropolitan problem" has principally come to serve as a synonym for the proliferation of ineffectual units of local government which, either co-existing side by side or overlapping each other with limited territorial jurisdiction, are pitifully inadequate to the task of rendering functions that peremptorily demand area-wide jurisdiction and control.<sup>1</sup>

The inability of the fragmented governmental structure to meet efficiently and effectively the demands upon it is a problem faced by local governments in both metropolitan and nonmetropolitan areas. This inadequacy largely arises out of the inability or unwillingness of the units to seek and institute unified solutions to common problems. One alternative which has been widely adopted to cope with the challenge of urbanization and community growth is the concept of regional planning. This solution is less drastic than other proposed alternatives in that it permits the preservation of each unit's integrity. This Note will consider the various state regional planning enabling acts in light of the objectives they are called upon to accomplish. Attention will be focused upon provisions for the establishment of and participation in regional planning activity and on means adopted in delegating authority to achieve a solution to the "metropolitan problem."

### I. REGIONAL PLANNING GENERALLY

The problems of urbanization are not new, but they have been rapidly increasing in number and intensity. The difficulties requiring solution, including the development of effective and efficient methods for providing municipal services and controlling land use, present a significant challenge to government at all levels, especially to the state and local units.<sup>2</sup> This challenge exists not only in the great metropolitan areas, but in all areas of urban growth,<sup>3</sup> and the implications of these problems extend to virtually all parts of the nation.

The achievement of satisfactory solutions in this area is complicated by the fact that the present governmental structure is not equal to the demands placed upon it. First, authority is fragmented among municipalities, counties, and countless types of special districts<sup>4</sup> which have

<sup>1</sup> POCK, *INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS* 1 (1962).

<sup>2</sup> Land-use control is needed to provide desirable residential neighborhoods, adequate commercial areas, recreational facilities, and industrial development which will contribute to the economic resources of the community. Physical development, including public works projects, urban renewal, subdivision, and annexation, is another important concern. Furthermore, providing municipal services, such as sanitation, water supply, and public transportation, has placed substantial burdens on public authorities. See generally JONES, *METROPOLITAN GOVERNMENT* 52-84 (1942); TABLEMAN, *GOVERNMENTAL ORGANIZATION IN METROPOLITAN AREAS* 3-10 (1951); Fisher, *For Tomorrow's City*, 50 *NATIONAL CIVIC REV.* 12 (1961).

<sup>3</sup> See Humphrey, *To Aid the Small City*, 50 *NATIONAL CIVIC REV.* 582 (1961).

<sup>4</sup> In 1962 there were 35,141 cities, towns, and villages; 3,043 counties; and 53,001 special districts, including 34,678 school districts, in the United States. U.S. BUREAU OF THE CENSUS, *DEPT OF COMMERCE, 1 CENSUS OF GOVERNMENTS* 1 (1962). In the New York metropolitan area alone there were 555 separate, independent governmental units in 1962. *Id.* at 156.

been created in an attempt to solve the problems involved.<sup>5</sup> New governmental units continue to multiply, with school districts constituting the only governmental units showing a significant declining trend in number.<sup>6</sup> Second, the independence of the various units hinders the solution of problems common to all units and those resulting from the effect of one unit upon another.<sup>7</sup> Third, the existing municipal structure is not capable of satisfactorily meeting its responsibilities because the problems often extend beyond or across jurisdictional boundaries.<sup>8</sup> Thus, subdivision which will significantly affect the city may take place just outside the corporate limits. Similarly, industrial development which conforms to one city's zoning plan may border residential sections in a neighboring community.<sup>9</sup>

In order to solve the problem of multiple, inadequate local units, the governmental structure must be more closely aligned with the demands placed upon it.<sup>10</sup> One of the means adopted has been the annexation of adjoining territory in order that its growth might be more strictly controlled in line with the interests of the entire community. However, the utility of this device would seem to vary inversely with the state of development of the area, for where all the territory is incorporated there can usually be no annexation.<sup>11</sup> A second solution may lie in consolidation of governmental bodies.<sup>12</sup> The more comprehensive this is and, therefore, the more closely it approaches solution of the ultimate difficulty, the more resistance such a proposal is likely to engender.<sup>13</sup> City-county consolidation has been approved in a few situations, but governmental consolidation encompassing an en-

<sup>5</sup> See POCK, *op. cit. supra* note 1, at 1.

<sup>6</sup> In the ten-year period of 1952-1962 the number of school districts in the United States was reduced by 32,677. U.S. BUREAU OF THE CENSUS, *op. cit. supra* note 4, at 1.

<sup>7</sup> Such problems may arise in so-called "federally impacted" areas where a federal installation has a significant effect on the local units. The problems which thus develop have been recognized, and federal planning aid is available for such situations. Housing Act of 1957, § 606, 71 Stat. 305, 40 U.S.C. § 461(a) (4) (Supp. V, 1964).

<sup>8</sup> See SENGSTOCK, *EXTRATERRITORIAL POWERS IN METROPOLITAN AREAS* 2-3 (1962).

<sup>9</sup> An analogous situation arose in *Borough of Cresskill v. Borough of Dumont*, 28 N.J. Super. 26, 43, 100 A.2d 182, 191 (L. 1953), *aff'd*, 15 N.J. 238, 104 A.2d 441 (1954), where rezoning of a block bordering on three communities from residential to business use was overturned because of the effect on the neighboring municipalities.

<sup>10</sup> See JONES, *op. cit. supra* note 2, at xx-xxii.

<sup>11</sup> See TABLEMAN, *op. cit. supra* note 2, at 11-14.

<sup>12</sup> Major city-county consolidation has been adopted in the city and county of Honolulu, Nashville-Davidson County, and Miami-Dade County. See Honolulu, Hawaii, Charter art. I, §§ 1-101, -102 (HAWAII REV. LAWS (Supp. app. 1963)); Grubbs, *Legal Aspects of City-County Consolidation in Tennessee*, 30 TENN. L. REV. 499 (1963); *The Urban County: A Study of New Approaches to Local Government in Metropolitan Areas*, 73 HARV. L. REV. 526, 529-45 (1960).

<sup>13</sup> See POOLEY, *PLANNING AND ZONING IN THE UNITED STATES* 2 (1961); TABLEMAN, *op. cit. supra* note 2, at 14; Kean, *Consolidation That Works*, 45 NAT'L MUNIC. REV. 478, 480-81 (1956).

tire region has never been accomplished.<sup>14</sup> Consolidation has been applied to units performing the same function, but this may fail to take proper account of the interrelationships among the functional areas. A third approach to the problem has been the use of extraterritorial powers in certain functional areas.<sup>15</sup> This means, too, is often limited to adjoining unincorporated territory.<sup>16</sup> Furthermore, unless proper provision is made in the enabling legislation, this arrangement may lead to dual control over an area with no provision for the resolution of conflicting objectives.<sup>17</sup> Finally, an alternative which is undoubtedly frequently utilized is informal cooperation.<sup>18</sup> If no provision is made for formal relationships the complexity of the situation would seem to demand informal consultation among responsible officials. Unfortunately, such arrangements are handicapped by the absence of legal powers, except insofar as those of the constituents may be utilized.

A device which has gained in favor as a means of relating governmental organization to its responsibilities is the regional planning authority. For the purposes of this Note, a regional planning authority is an agency which exercises a planning function<sup>19</sup> over territory in

<sup>14</sup> For discussions of this extreme proposal, see JONES, *op. cit. supra* note 2, at 151-54; TABLEMAN, *op. cit. supra* note 2, at 16-17.

<sup>15</sup> In Iowa, for example, the city plan commission must approve the plat of any subdivision within one mile of the city limits. IOWA CODE § 409.14 (1962). For similar provisions, see, e.g., ALASKA COMP. LAWS ANN. § 16-1-35 (Supp. 1958) (sewage service); MASS. ANN. LAWS ch. 164, § 46 (1959) (electric service); NEV. REV. STAT. § 266.330 (Supp. 1961) (health regulations). See generally SENGSTOCK, *op. cit. supra* note 8.

<sup>16</sup> See, e.g., IND. ANN. STAT. § 53-734 (Supp. 1964); MINN. STAT. § 471.29 (1961); N.M. STAT. ANN. § 14-2-23 (1953).

<sup>17</sup> Extraterritorial regulatory power is given in many states with no provision to prevent jurisdictional conflicts. See, e.g., FLA. STAT. § 180.02 (1959); S.D. CODE § 45.0201(24) (1939); TENN. CODE ANN. § 6-609 (1955). Other statutes limit extraterritorial jurisdiction when municipalities are in close proximity. See, e.g., DEL. CODE ANN. tit. 16, § 310(a) (1953); MINN. STAT. § 411.40(57) (1961); N.C. GEN. STAT. § 160-203 (1964). However, there is no recognition given in these statutes to possible difficulties arising out of concurrent county and municipal exercise of the police power.

<sup>18</sup> See Jones, *Cooperation Pattern*, 51 NATIONAL CIVIC REV. 302 (1962).

<sup>19</sup> The nature of modern civic planning has been judicially defined as follows:

The statute [authorizing municipal planning] has in view the physical development of a community and its environs in relation to its social and economic well-being for the fulfillment of the rightful common destiny, according to a "master plan" based on careful and comprehensive studies and surveys and studies of present conditions and the prospects of future growth of the municipality and embodying scientific teachings and creative experience. *Levin v. Township of Livingston*, 62 N.J. Super. 395, 400, 163 A.2d 221, 223 (L. 1960).

Also see DELAFONS, *LAND-USE CONTROLS IN THE UNITED STATES* 31-34 (1962); WALKER, *THE PLANNING FUNCTION IN URBAN GOVERNMENT* 106-13 (2d ed. 1950). For a discussion of the differences between planning and zoning see *Ferndale Dairy, Inc. v. Zoning Comm'n*, 148 Conn. 172, 176, 169 A.2d 268, 270-71 (1961); *State ex rel. Kearns v. Ohio Power Co.*, 163 Ohio St. 451, 460, 127 N.E.2d 394, 399 (1955).

the primary jurisdiction of more than one governmental unit.<sup>20</sup> Although there are innumerable forms of organization, one feature common to all such plans is the maintenance of existing units while centralizing, to some degree, facilities for research, recommendations, and controls on the multitude of public and private matters which concern the governmental units. As such, they combine political acceptability with the power to formulate interjurisdictional approaches to the common problems of the constituents.

The variety of governmental units and the multiple urban problems in large metropolitan areas make the desirability of this approach apparent for those regions. Moreover, better transportation and communication have also contributed to the obsolescence of jurisdictional lines outside metropolitan areas. Nonmetropolitan governments must also provide land-use control in order to attract new industry or to prevent encroachment of undesirable commercial development into residential or agricultural areas. Therefore, such problems as subdivision and providing municipal services must be solved by growing communities everywhere.<sup>21</sup> Regional planning activities provide one basis for effective cooperative governmental action in these areas. The regional approach also facilitates coordination in the efficient utilization of resources.<sup>22</sup> Finally, regional planning may work to the advantage of nonmetropolitan areas by providing local planning services economically unavailable to individual communities.

## II. REGIONAL PLANNING ENABLING ACTS

### A. *Interjurisdictional Arrangements Created*

Since civic planning is an exercise of the police power residing in the state, secondary governmental units may exercise it only after it has been delegated to them by the state.<sup>23</sup> Such delegation takes many forms,<sup>24</sup> but the majority of metropolitan regional planning is under the authority of a general state enabling act.<sup>25</sup> Such legislation has proliferated since 1951 when twenty-seven states had regional plan-

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<sup>20</sup> See U.S. HOUSING AND HOME FINANCE AGENCY, COMPARATIVE DIGEST OF THE PRINCIPAL PROVISIONS OF STATE PLANNING LAWS iv-v (1951).

<sup>21</sup> See Humphrey, *supra* note 3, at 584-86.

<sup>22</sup> Providing adequate recreational facilities is an example of a benefit of this nature. A regional recreation plan could more effectively utilize the resources necessary to meet the enhanced need for such facilities. See COLLEGE OF AGRICULTURE, PA. STATE UNIVERSITY, RURAL LAND USE PLANNING 11, 19.

<sup>23</sup> See, e.g., *Ayres v. City Council*, 191 P.2d 546, 553 (Cal. Dist. Ct. App. 1948), *aff'd*, 34 Cal. 2d 31, 207 P.2d 1 (1949); *St. Louis County v. City of Manchester*, 360 S.W.2d 638, 640 (Mo. 1962); *Mansfield & Swett v. Town of West Orange*, 120 N.J.L. 145, 149-51, 198 Atl. 225, 228-29 (Sup. Ct. 1938).

<sup>24</sup> These include special state acts, joint-exercise-of-power statutes, municipal and county charters, interstate compacts, and state constitutional amendments. See U.S. HOUSING AND HOME FINANCE AGENCY FOR SUBCOMM. ON INTERGOVERNMENTAL RELATIONS, SENATE COMM. ON GOVERNMENT OPERATIONS, 88th Cong., 1st Sess., NATIONAL SURVEY OF METROPOLITAN PLANNING pt. II, at 2, 10, 58, 82, 90 (Comm. Print 1963) [hereinafter cited as 1963 SURVEY].

<sup>25</sup> *Id.* at pt. I, at 4.

ning enabling legislation.<sup>26</sup> Today there is statutory authority for regional planning in forty-seven states and the District of Columbia.<sup>27</sup> The expansion of the need for coordinated solutions and the availability of federal planning assistance<sup>28</sup> have undoubtedly contributed to this growth. These statutes might best be characterized as diverse, for in only a few instances are there easily recognizable similarities.<sup>29</sup> This phenomenon is to be expected, of course, when the historically independent spirit of the state legislature is faced with problems which are relatively new, rapidly increasing in importance, and which require significant changes in present procedures. Thus, the authorities established under the acts vary widely in the manner of their creation, the bodies authorized to participate, and the powers and duties of such authorities.

The diversity in this area is illustrated by the fact that interjurisdictional planning may originate in a number of different ways. First, public authorities may be consolidated and the planning functions formerly exercised by each of the old bodies transferred to the new.<sup>30</sup> This approach more closely aligns the governmental structure with its responsibilities, but political opposition has limited its application.<sup>31</sup>

<sup>26</sup> U.S. HOUSING AND HOME FINANCE AGENCY, *op. cit. supra* note 20, at frontispiece.

<sup>27</sup> See *Hearings Before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations*, 88th Cong., 1st Sess. 20 (1963), which lists Arizona, South Dakota, and Wyoming as having no authorizing legislation. However, the existence of statutory authority for regional planning in Arizona is unclear. Both Phoenix and Tucson do have planning existing under authority of a state enabling act. Phoenix has a county planning and zoning commission representing both the county and city and apparently exercising jurisdiction in both under a state enabling act. ARIZ. REV. STAT. ANN. §§ 11-801 to -830 (1956). Also see 1963 SURVEY pt. II, at 74-76. This authorization sets the jurisdiction of the county planning and zoning commission as including all territory in the county outside corporate limits, although one of the three commissioners from each supervisorial district may be a resident of an incorporated municipality. ARIZ. REV. STAT. ANN. §§ 11-801, -803(A) (1956). The Tucson City-County Planning Department derives authority from "initiation of Tucson Regional Plan, Inc., by mutual agreement, under state enabling act . . . [ARIZ. REV. STAT. ANN. §§ 11-801 to -830 (1956)]." 1963 SURVEY pt. II, at 98. Although lacking an enabling act for regional planning, Wyoming's municipal planning law has extraterritorial effect. WYO. STAT. ANN. § 15-628.6 (Supp. 1963).

<sup>28</sup> Federal planning assistance has come primarily through grants to planning agencies in jurisdictions with fewer than 50,000 population and regional planning agencies in larger areas. Housing Act of 1954, ch. 649, § 701, 68 Stat. 640, 40 U.S.C. § 461 (Supp. V, 1964).

<sup>29</sup> For examples of such similarities, compare ARK. STAT. ANN. §§ 19-2820 to -2824 (1956), with KAN. GEN. STAT. ANN. §§ 12-716 to -720 (Supp. 1961); and compare IND. ANN. STAT. § 53-1036 (Supp. 1964), with MONT. REV. CODES ANN. § 11-3831 (Supp. 1963).

<sup>30</sup> Regional planning is practiced under consolidated government in the city and county of Honolulu, Miami-Dade County, and Nashville-Davidson County. 1963 SURVEY pt. II, at 34, 58, 66; note 12 *supra*.

<sup>31</sup> See BOOTH, *METROPOLITICS: THE NASHVILLE CONSOLIDATION* 7 (1963); POOLEY, *op. cit. supra* note 13, at 2; *The Urban County: A Study of New Approaches to Local Government in Metropolitan Areas*, *supra* note 12, at 529-32.

Second, one governmental unit may delegate its planning power to another.<sup>32</sup> As usually applied between a city and a county, this method places planning under unified leadership. However, the effectiveness of this approach may be lessened by the fact that incorporated areas outside the major city may not be included. Regional planning may also be accomplished under statutes authorizing the joint exercise of any power held in common by two or more governmental units.<sup>33</sup> A statute of this nature provides a legal basis for interjurisdictional planning, but it does not give clear expression to the necessary objectives and procedures of regional planning.<sup>34</sup> Under the most common approach, the local units are authorized to cooperate in the creation of a joint body.<sup>35</sup> The territory included under this type of arrangement depends upon the willingness of the local authorities to cooperate, rather than on the extent of the common problems.<sup>36</sup> The most unique of the enabling acts are those under which a regional planning agency is established by a special mandatory act of the legislature.<sup>37</sup> Under a similar arrangement, the responsibility for creating a regional planning agency may lie with an outside authority, such as the state planning board or the governor.<sup>38</sup> Under this method, the need is usually recognized locally<sup>39</sup> and the resulting activity is local, but determina-

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<sup>32</sup> In some jurisdictions delegation of planning authority is the sole means to a regional approach. See S.C. CODE §§ 14-348, -359 (1962); UTAH CODE ANN. § 10-9-27 (1962); W. VA. CODE ANN. § 523 (1961). In others delegation of the planning power by local authorities to the joint body is an alternative method of joining. See, e.g., IND. ANN. STAT. § 53-725 (1951); KAN. GEN. STAT. ANN. § 12-720 (Supp. 1961); Iowa Acts 1963, ch. 110, § 7.

<sup>33</sup> See, e.g., CAL. GOV'T CODE § 6502; MO. REV. STAT. § 70.220 (1959); NEB. REV. STAT. § 15-751 (1962). California regional planning agencies are operating under both joint-exercise and regional planning statutes. 1963 SURVEY pt. II, at 90.

<sup>34</sup> This problem is present, in varying degrees, in most of the regional planning legislation. See Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515, 519 (1957).

<sup>35</sup> See, e.g., COLO. REV. STAT. ANN. § 106-2-4 (1953); MONT. REV. CODES ANN. § 11-3801 (1957); Iowa Acts 1963, ch. 110, § 1.

<sup>36</sup> Connecticut requires that 60% of the municipalities in the region defined by the state development commission agree before a regional agency may be established. CONN. GEN. STAT. REV. § 8-31a (Supp. 1963).

<sup>37</sup> See, e.g., DEL. CODE ANN. tit. 9, §§ 2501-14 (1953); ILL. ANN. STAT. ch. 34, §§ 3091.1-39 (Smith-Hurd Supp. 1963); S.C. CODE §§ 14-400.31-.36 (1962). Since these statutes are created with the intention of particularized application, they will not be considered in this Note.

<sup>38</sup> See, e.g., KY. REV. STAT. § 147.130 (Supp. 1956) (governor); TENN. CODE ANN. § 13-201 (1955) (state planning commission); WIS. STAT. § 66.945(2) (1959) (governor, state agency, or other official). A variation of this method exists in Massachusetts, where each regional planning unit established by cooperation of the participants must be approved by the state planning agency. See MASS. ANN. LAWS ch. 40B, § 3 (1961).

<sup>39</sup> Compare NATIONAL MUNICIPAL LEAGUE, MODEL STATE AND REGIONAL PLANNING LAW § 12 (1955) [hereinafter cited as MODEL PLANNING LAW], where the director of state planning can recommend the establishment of regional planning areas on his own initiative or at the request of local representatives. Under previous Cali-

tion of the proper territory to be covered is made by an authority which is deemed to have a broader view. Finally, interjurisdictional planning may be authorized by giving one unit extraterritorial powers.<sup>40</sup> As usually practiced, with the city having jurisdiction over unincorporated territory within a certain distance of its corporate limits,<sup>41</sup> this method is of limited utility in developed areas.<sup>42</sup>

It would seem that the objective of aligning the governmental structure with its responsibilities would best be accomplished by having some outside authority set the limits of the region. Of the arrangements discussed, delegating this power to the state planning agency would seem more desirable than giving the power to the governor or legislature. Since the state agency possesses familiarity in this area and professional competence, it can better determine how the regional organization would conform to the needs and programs of the state.<sup>43</sup> The extraterritorial approach is probably least desirable because it is usually the most restrictive in regard to participation, excluding all incorporated territory outside the city exercising the power.

It is noteworthy that very few statutes creating regional planning programs also provide for withdrawal of the participants.<sup>44</sup> This may indicate optimism regarding the effectiveness and continued desirability of membership in the regional agency or pessimism as to its continued future need. More likely, however, it is a result of legislative oversight or a fear of making the arrangements too restrictive on the participants.

### *B. Extent of Participation*

More important, perhaps, than the form in which regional planning comes into being is the breadth of the act in regard to what governmental units may participate. Limitations in this area are twofold: exclusion of classes within a type of unit and exclusion of types of governmental units. Within the first group, a few acts are limited to governments of a certain class or size.<sup>45</sup> Similarly, the enabling act

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fornia law, the state planning commission established the regional planning districts, and a regional commission was mandatory in each. See Cal. Stats. 1947, ch. 807, §§ 30-31. The present law provides that the regional districts may not transact any business or exercise any powers until two-thirds of the cities and two-thirds of the counties agree to the need for such an agency. CAL. GOV'T CODE § 65061.3. Also see Haar, *supra* note 34, at 517.

<sup>40</sup> See, e.g., GA. CODE ANN. § 69-1203 (1957); N.M. STAT. ANN. § 14-2-23 (1953); WYO. STAT. ANN. § 15-628.6 (Supp. 1963).

<sup>41</sup> The converse is true in Missouri, where the county provides plans for any city in a second- or third-class county which does not have its own municipal planning commission. MO. REV. STAT. § 64.510 (1959).

<sup>42</sup> See POOLEY, *op. cit. supra* note 13, at 23. For a general discussion of extraterritorial planning, see SENGSTOCK, *op. cit. supra* note 8, at 61-63.

<sup>43</sup> See MODEL PLANNING LAW 22-24.

<sup>44</sup> For jurisdictions which do so provide, see, e.g., CONN. GEN. STAT. REV. § 8-36a (Supp. 1963) (six months notice required); N.C. GEN. STAT. § 153-276 (1964) (two years notice); WIS. STAT. ANN. § 66.945(16) (Supp. 1964) (six months notice).

<sup>45</sup> See, e.g., NEB. REV. STAT. § 15-751 (Supp. 1962) (cities of 40,000-200,000 popu-



may be specifically directed toward one particular county by name,<sup>46</sup> or a specific area may be singled out for coverage by definition.<sup>47</sup> The effect of each of these limitations is to restrict, to a greater or lesser degree, adoption of the regional approach in areas which may be in need of it. For example, Minnesota has three areas classified as Standard Metropolitan Statistical Areas.<sup>48</sup> However, only the Twin Cities area has regional planning<sup>49</sup> since the Minnesota statute is limited to areas with contiguous cities, each having over 100,000 population.<sup>50</sup> The most effective procedure where there are special metropolitan conditions would seem to be that of Illinois, which has special acts for its two major metropolitan areas<sup>51</sup> and a general enabling act available to any county.<sup>52</sup>

Another limitation by class is to municipalities which already have a plan commission.<sup>53</sup> The effect of this provision depends in large part upon the coverage of the statutes authorizing municipal and county planning. However, even if the statutes are fairly broad,<sup>54</sup> essential participants may be excluded. These would include school districts, special districts, and other governmental agencies which exert a significant influence on community patterns and would make a valuable contribution to the work of a regional body, but lack planning jurisdiction in the usual sense.

More common than class limitations are restrictions of the regional planning acts to specified types of governmental units. In the narrowest of these provisions, the power to establish the regional agency rests solely with the local planning commissions of the area.<sup>55</sup> Similar to class limitations, this may leave a rather significant group of governmental units without a voice or contribution in regional policy. The same may be said for the statutes which mention only municipal governing bodies in the formation of regional planning units.<sup>56</sup>

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lation); OKLA. STAT. tit. 19, § 866.1 (1961) (counties containing cities of 5,000-100,000 population); S.C. CODE § 14-351 (Supp. 1963) (counties containing cities of 23,000 population).

<sup>46</sup> See DEL. CODE ANN. tit. 9, § 2502 (1953); S.C. CODE §§ 14-400.71-.116 (1962).

<sup>47</sup> See OKLA. STAT. tit. 19, § 863.2 (Supp. 1963) (definition limits application to Oklahoma City and Tulsa).

<sup>48</sup> U.S. BUREAU OF THE BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, STANDARD METROPOLITAN STATISTICAL AREAS 52 (1964).

<sup>49</sup> 1963 SURVEY pt. II, at 117.

<sup>50</sup> MINN. STAT. §§ 473.02-.03 (1961).

<sup>51</sup> ILL. REV. STAT. ch. 34, §§ 3051-89 (1961) (Northeastern Illinois Metropolitan Area); ILL. ANN. STAT. ch. 34, §§ 3091.1-.39 (Smith-Hurd Supp. 1963) (Southwestern Illinois Metropolitan Area).

<sup>52</sup> ILL. REV. STAT. ch. 34, §§ 3001-07 (1961).

<sup>53</sup> N.H. REV. STAT. ANN. § 36:38 (Supp. 1963).

<sup>54</sup> In New Hampshire, for example, any municipality may establish a planning board. N.H. REV. STAT. ANN. § 36:2 (1955). Furthermore, in any county having a regional planning commission, the county itself may participate in the regional body upon resolution of the board of county commissioners. N.H. REV. STAT. ANN. § 36:38 (Supp. 1963).

<sup>55</sup> See N.D. CENT. CODE § 54-34.1-10 (Supp. 1963).

<sup>56</sup> See, e.g., R.I. GEN. LAWS ANN. § 45-22.1-2 (Supp. 1963); TEX. REV. CIV. STAT. ANN. art. 1011i (1963); VT. STAT. ANN. tit. 24 § 2919 (1959).

The most common provision limiting the types of units which may participate contemplates some union of municipalities and counties.<sup>57</sup> Since all of the territory in the county is under the planning jurisdiction of one or the other, inclusion of these two units is certainly the minimum requirement for effective regional planning. Where participation is limited to the central city and the county, this minimum standard is not met and significant affected territory may be excluded.<sup>58</sup> Participation by governmental units other than counties and municipalities is provided for in a number of states. Most of the provisions enumerate various types of special districts for inclusion, while the Arkansas act applies to "any . . . public authority or agency which operates within, wholly or in part," the area covered by the joint planning commission.<sup>59</sup> Where other agencies are included, it may be under a joint-exercise-of-power statute where the jurisdiction also has a separate regional planning statute which enumerates only counties and municipalities.<sup>60</sup> In such cases, the statute which should serve as the basis for regional planning is still deficient. This deficiency may lead to confusion and an ultimate limitation on the scope of regional planning.

The difficulties which may arise because of these limitations are not present in two states in which the regional commissions do not represent local units. Under the Oregon statute, a metropolitan study commission may be created by the county court in any area having a city of at least 25,000.<sup>61</sup> Representatives to the commission are appointed by the state legislators from the legislative districts of the tentative metropolitan area.<sup>62</sup> The territorial jurisdiction of the commission is

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<sup>57</sup> See, e.g., ALA. CODE tit. 37, §§ 814(1)-(2) (Supp. 1963); ME. REV. STAT. ANN. ch. 90-A, §§ 64(I)A, 65 (Supp. 1963); PA. STAT. ANN. tit. 53, §§ 492, 494 (1957). This category includes unions by delegation and joint-exercise, as well as cooperative ventures. See, e.g., NEB. REV. STAT. § 15-751 (Supp. 1962) (joint-exercise); S.C. CODE § 14-358 (1962) (delegation); W. VA. CODE ANN. § 523 (1961) (delegation).

<sup>58</sup> See OKLA. STAT. tit. 19, § 863.2 (Supp. 1963). Since the basic problems of this area often extend beyond county borders, a significant limitation may also exist where there is no provision for including territory in adjoining counties. See, e.g., MISS. CODE ANN. § 2890.5(2) (Supp. 1962); MONT. REV. CODES ANN. § 11-3801 (Supp. 1963); N.H. REV. STAT. ANN. § 36:38 (Supp. 1963). For other public agencies included in the general enabling acts, see, e.g., MD. ANN. CODE art. 66B, § 10 (Supp. 1963) (sanitary districts); MICH. STAT. ANN. § 5.3008(1) (1958) (school districts and special authorities); Iowa Acts 1963, ch. 110, § 1 (school, benefited water, benefited fire, sanitary, or other similar districts).

<sup>59</sup> ARK. STAT. ANN. § 19-2820 (1956). Also see KAN. GEN. STAT. ANN. § 12-716 (Supp. 1961), for similar language. A provision of this nature would be particularly desirable in a federally impacted area or similar community where a governmental agency, such as a state university, has a significant effect.

<sup>60</sup> See, e.g., CAL. GOV'T CODE §§ 6502, 65061.3; IND. ANN. STAT. §§ 53-1004, -1104 (Supp. 1964); NEV. REV. STAT. §§ 277.010 (Supp. 1959), 278.090 (Supp. 1963).

<sup>61</sup> ORE. REV. STAT. § 199.140 (Supp. 1963). The county court, consisting of the county judge and two elected commissioners, is the county legislative body. ORE. REV. STAT. § 203.110 (Supp. 1963).

<sup>62</sup> ORE. REV. STAT. § 199.150 (Supp. 1963). There is a possibility that appointment by the legislators might conflict with the state constitutional separation of powers

set by the commission itself and is related to the area in which metropolitan services would be desirable.<sup>63</sup> In Tennessee the jurisdiction of the regional commission is set by the state planning commission, and the members are selected by the state commission without regard to place of residence or official position.<sup>64</sup>

A final aspect of the problem of coverage by the enabling acts is the provision for interstate joinder.<sup>65</sup> Four jurisdictions expressly provide for interstate participation in their regional planning enabling acts.<sup>66</sup> Participation to this extent is also included in some of the joint-exercise statutes.<sup>67</sup> Alabama explicitly provides for planning across state lines but does not include participation in interstate planning bodies.<sup>68</sup> Lack of a provision including interstate participation in the enabling act could be remedied by interstate compact.<sup>69</sup>

An analysis of the enabling acts leads to the conclusion that in most cases they exclude from participation one or more categories of participants whose presence would be desirable if the objectives of regional planning are to be effectively attained. As the possibility of interstate compacts illustrates, these same goals may be achieved outside the provisions of the enabling acts.<sup>70</sup> When there is no statutory provision, some jurisdictions have resorted to informal procedures to meet the needs of regional planning.<sup>71</sup> This type of arrangement pro-

doctrine. *Compare* *Sibert v. Garrett*, 197 Ky. 17, 246 S.W. 455 (1922), *with* *Craig v. O'Rear*, 199 Ky. 553, 251 S.W. 831 (1923).

<sup>63</sup> ORE. REV. STAT. § 199.210 (Supp. 1963).

<sup>64</sup> TENN. CODE ANN. § 13-201 (1955). The state commission may appoint members from county courts or municipal legislative bodies as long as they comprise less than a majority of the regional commission. *Ibid.* Alabama has an act similar to that of Tennessee, with the governor exercising the power, and another provision wherein municipalities and counties may jointly create a regional planning commission. *Compare* ALA. CODE tit. 37, § 809 (1958), *with* ALA. CODE tit. 37, § 814(2) (Supp. 1963). Under the general enabling act of Illinois, the county board defines the boundaries and provides for the appointment of members of the regional planning commissions. ILL. REV. STAT. ch. 34, § 3001 (1961).

<sup>65</sup> This is particularly important in light of the fact that there are twenty-six two-state Standard Metropolitan Statistical Areas and four three-state SMSA's. U.S. BUREAU OF THE BUDGET, *op. cit. supra* note 48, at 4-42.

<sup>66</sup> D.C. CODE ANN. § 1-1003 (1961); PA. STAT. ANN. tit. 53, § 498 (1957); R.I. GEN. LAWS ANN. § 45-22.1-6 (Supp. 1963); Iowa Acts 1963, ch. 110, § 1.

<sup>67</sup> *E.g.*, CAL. GOV'T CODE § 6502; IND. ANN. STAT. § 53-1104 (Supp. 1964); NEV. REV. STAT. § 277.010 (Supp. 1959).

<sup>68</sup> ALA. CODE tit. 37, § 814(4) (Supp. 1963).

<sup>69</sup> See MASS. ACTS 1963, ch. 448; 1963 SURVEY pt. II, at 82 (St. Louis area). Congress gave its consent to interstate compacts for planning purposes in the Housing Act of 1961, § 310(a)(4), 75 Stat. 170, 40 U.S.C. § 461 (Supp. V, 1964).

<sup>70</sup> Action under a joint-exercise-of-power statute might also come within this class.

<sup>71</sup> In the Denver metropolitan planning agency special districts hold associate memberships not provided for in the statute. *Compare* 1963 SURVEY pt. II, at 26-28, *with* COLO. REV. STAT. ANN. § 106-2-4 (1953). Similarly, the Waterbury, Connecticut, agency includes fire districts, although they are not covered in the enabling act. *Compare* 1963 SURVEY pt. II, at 106-08, *with* CONN. GEN. STAT. REV. § 8-31a

notes regional cooperation, but the legality of participation by agencies not included under the act remains in doubt.

### *C. Powers and Duties Delegated*

The most important provisions in the enabling acts are those delegating powers and duties to the regional planning unit. These not only determine what the agency is by law authorized to do, but also indicate what accomplishments are expected of it and the legal and practical framework within which it will operate. In large measure, it is the strength or weakness of these provisions which determines whether regional planning is to be an effective means of attaining desirable objectives or whether it will merely be a "pleasant intellectual hobby."<sup>72</sup>

Aside from provisions relating to the internal administration<sup>73</sup> of the regional planning commission,<sup>74</sup> the statutory framework consists of three parts. The first part is usually a statement of the general objectives of the regional planning program. Protection and advancement of the public health, safety, and welfare, as well as economy and efficiency in government, are frequently mentioned under this heading.<sup>75</sup> Some statutes, however, go beyond such comprehensive expressions

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(Supp. 1963). Likewise, the State University of Iowa is represented on the Metropolitan Planning Commission of Iowa City, although there is no provision for such participation in the statute. Compare Iowa City Press-Citizen, July 30, 1964, p. 1, col. 1, with Iowa Acts 1963, ch. 110, § 1.

<sup>72</sup> Haar, *supra* note 34, at 522.

<sup>73</sup> See, e.g., ARK. STAT. ANN. § 19-2822 (1956); LA. REV. STAT. ANN. § 33:134 (Supp. 1963); WIS. STAT. ANN. §§ 66.945(5), (8) (Supp. 1964). A provision closely related to the internal administration of the commission is the grant of access to maps, plats, surveys, existing plans, and other such raw material for regional planning which might be in the hands of participating units or other public officials. See, e.g., OKLA. STAT. tit. 19, § 866.9 (1961); TENN. CODE ANN. § 13-208 (1955); VT. STAT. ANN. tit. 24 § 2922 (1959).

<sup>74</sup> Separate commissions specifically for regional planning are created under the statutes in thirty-nine states and the District of Columbia. This figure does not include South Dakota; nor does it include Arizona, where the statutory basis for regional planning is in doubt. See note 27 *supra*. Also excluded are the states in which the planning function is exercised only by delegation, extraterritorial power, or under a joint-exercise statute. See MO. REV. STAT. §§ 64.510, 70.220 (1959) (extraterritorial, joint-exercise); NEB. REV. STAT. § 15-751 (1962) (joint-exercise); N.M. STAT. ANN. § 14-2-23 (1953) (extraterritorial); S.C. CODE §§ 14-358, -359 (1962) (delegation); UTAH CODE ANN. § 10-9-27 (1962) (delegation); W. VA. CODE ANN. § 523 (1961) (delegation); WYO. STAT. ANN. § 15-628.6 (Supp. 1963) (extraterritorial). Regional planning activity in Alaska is under the authority of the State Department of Natural Resources. ALASKA COMP. LAWS ANN. § 47-1B-11(10) (Supp. 1959). In Hawaii regional planning is exercised by both the state planning office and the planning department of the city and county of Honolulu. See HAWAII REV. LAWS §§ 98F-1 to -7 (Supp. 1963); Honolulu, Hawaii, Charter art. V, §§ 5-501 to -515 (HAWAII REV. LAWS (Supp. app. 1963)).

<sup>75</sup> See, e.g., ILL. REV. STAT. ch. 34, § 3001 (1961); PA. STAT. ANN. tit. 53, § 493 (1957); R.I. GEN. LAWS ANN. § 45-22.1-1 (Supp. 1963). See generally note 23 *supra* and accompanying text.

and enumerate particular areas of emphasis.<sup>76</sup> The framework is also constructed of two types of generalized grants of power. When serving as the sole basis for the commission's activities, as in North Dakota, a general authorization to exercise any or all of the powers and functions given by law to any or all of the participants may be given to the commission.<sup>77</sup> However, such a provision takes no note of, and certainly provides no guidance in dealing with, any conditions peculiar to regional planning.<sup>78</sup> On the other hand, a general grant may be used to provide necessary and desirable flexibility by authorizing, at the end of an extensive list of specific powers and duties, the exercise of "all other powers necessary and proper for the discharge of its duties."<sup>79</sup>

Finally, a planning commission is normally given certain enumerated powers and duties to exercise. Primary among these is creation of the comprehensive master plan,<sup>80</sup> provided for in all but three of the jurisdictions which authorize a separate agency specifically for regional planning.<sup>81</sup> The importance of the comprehensive plan to the general notion of regional planning is seen in the fact that only six jurisdictions make it permissive,<sup>82</sup> while in several statutes its creation is the only activity required of the regional planning authority.<sup>83</sup>

The "master plan" concept covers a wide range of concerns which are specifically enumerated in the statutes. The relationship between planning and zoning is apparent from the fact that a large majority of the statutes specify recommendations for land-use controls as elements

<sup>76</sup> See, e.g., DEL. CODE ANN. tit. 9, § 2502 (1953); IND. ANN. STAT. § 53-1001 (Supp. 1964); N.H. REV. STAT. ANN. § 36:37 (Supp. 1963).

<sup>77</sup> N.D. CENT. CODE § 54-34.1-11 (Supp. 1963). This provision is unusual in that it specifically authorizes the joint planning commission to establish and enforce zoning regulations. Compare ALA. CODE tit. 37, § 814(1) (5) (Supp. 1963).

<sup>78</sup> See Haar, *supra* note 34, at 519-20, 522.

<sup>79</sup> LA. REV. STAT. ANN. § 33:135(10) (Supp. 1963).

<sup>80</sup> This plan goes by a variety of names. See, e.g., CONN. GEN. STAT. REV. § 8-35a (Supp. 1963) ("plan of development"); GA. CODE ANN. § 69-1203 (1957) ("master plan"); IND. ANN. STAT. § 53-1035 (Supp. 1964) ("comprehensive plan"). Also see Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROB. 353, 354 n.4 (1955).

<sup>81</sup> Florida provides for advising constituents on matters which are usually part of such a plan, including highways, recreation areas, sanitation, and urban redevelopment, but nothing is said about a coordinated plan containing these elements. FLA. STAT. § 160.02(10) (1959). The North Dakota statute states only that the regional plan commission may be given all the powers of its members. N.D. CENT. CODE § 54-34.1-11 (Supp. 1963). There is, however, a provision in North Dakota authorizing a municipal master plan. N.D. CENT. CODE § 40-48-02 (1960). The regional planning commission in Washington is primarily a research arm of the state planning council. However, mention is made of its power to prepare plans for the conservation, utilization, and development of resources. See WASH. REV. CODE ANN. § 35.63.070 (1963).

<sup>82</sup> CAL. GOV'T CODE § 65065.1(a); D.C. CODE ANN. § 1-1003(d) (1961); KY. REV. STAT. § 147.150 (Supp. 1956); MICH. STAT. ANN. § 5.3008(9) (1958); MISS. CODE ANN. § 2890.5(2) (Supp. 1962); R.I. GEN. LAWS ANN. § 45-22.1-4 (Supp. 1963).

<sup>83</sup> See, e.g., ARK. STAT. ANN. § 19-2821 (1956); ME. REV. STAT. ANN. ch. 90-A, § 64 (Supp. 1963); N.H. REV. STAT. ANN. §§ 36:39, :42-:44 (Supp. 1963).

to be included.<sup>84</sup> Public buildings and facilities<sup>85</sup> and highways, streets, and bridges<sup>86</sup> are also enumerated in a large number of statutes. Public transportation and communication,<sup>87</sup> along with parks, forests, and open spaces,<sup>88</sup> are additional noteworthy elements of comprehensive master planning. The wide range of items enumerated in the statutes<sup>89</sup> is indicative of the extent of coverage which can be achieved through regional planning.<sup>90</sup> However, the variety of activities mentioned does not provide an accurate indication of the scope of comprehensive planning which is proposed by the enabling acts. Of the eighteen most frequently mentioned categories, an average of only about seven are included in each act. This can be accounted for by the wide variance in the specificity of the statutes. While Iowa, for example, mentions items in fourteen categories,<sup>91</sup> as well as a statement of general purpose for the comprehensive plan,<sup>92</sup> New Jersey directs its regional planning commissioners to include in the master plan "all the elements of physical development that may be locally important and desirable."<sup>93</sup> A

<sup>84</sup> *E.g.*, CONN. GEN. STAT. REV. § 8-35a (Supp. 1963); MD. ANN. CODE art. 66B, § 15 (1957); N.C. GEN. STAT. § 153-280(1)b (1964).

<sup>85</sup> *E.g.*, GA. CODE ANN. § 69-1206 (1957); MASS. ANN. LAWS ch. 40B, § 5 (1961); N.H. REV. STAT. ANN. § 36:39 (Supp. 1963).

<sup>86</sup> *E.g.*, COLO. REV. STAT. ANN. § 106-2-5 (1953); IND. ANN. STAT. § 53-1036(2) (f) (Supp. 1964); N.Y. MUNIC. LAW § 239-d.

<sup>87</sup> *E.g.*, GA. CODE ANN. § 69-1206 (1957); LA. REV. STAT. ANN. § 33:135(1) (c) (Supp. 1963); WIS. STAT. § 66.945(9) (1959).

<sup>88</sup> *E.g.*, MONT. REV. CODES ANN. § 11-3831(2) (l) (1957); OHIO REV. CODE ANN. § 713.23 (Page Supp. 1963); Iowa Acts 1963, ch. 110, § 4. In addition, studies and recommendations concerning public utilities are deemed essential in many of the statutes. *E.g.*, ARK. STAT. ANN. § 19-2821 (1956); KY. REV. STAT. § 147.150 (Supp. 1956); NEV. REV. STAT. § 278.160(g) (Supp. 1959). A somewhat smaller proportion of the acts specifically mention water supply and sanitation as special concerns in preparing the comprehensive plan. *E.g.*, GA. CODE ANN. § 69-1206 (1957); OHIO REV. CODE ANN. § 713.23 (Page Supp. 1963); VA. CODE ANN. § 15-962.2(c) (Supp. 1962).

<sup>89</sup> Other items which are frequently given specific mention in the enabling acts include urban renewal plans, conservation, schools, drainage, suggested subdivision controls, housing, pollution and flood control, and civil defense planning. See, *e.g.*, IND. ANN. STAT. § 53-1036 (Supp. 1964); N.C. GEN. STAT. § 153-280 (1964); Iowa Acts 1963, ch. 110, § 4.

<sup>90</sup> This is further demonstrated by the fact that the specific enumerations often follow a clause which would allow an extension into other areas where advantageous. *E.g.*, ALA. CODE tit. 37, § 814(1) (Supp. 1963) ("may include, but is not limited to"); KAN. GEN. STAT. ANN. § 12-717 (Supp. 1961) ("may include, but shall not be limited to"); OKLA. STAT. tit. 19, § 863.7 (1961) ("may include, among other things"). Such a provision, although providing desired flexibility, does not contribute to the commission's understanding of its task.

<sup>91</sup> These categories are: highways, streets, and bridges; transportation; parks and recreation areas; schools; public buildings and facilities; public utilities; land use; water; sanitation; drainage; flood control; urban redevelopment; time and priority schedules and cost estimates; and housing. Iowa Acts 1963, ch. 110, § 4.

<sup>92</sup> *Ibid.*

<sup>93</sup> N.J. STAT. ANN. § 40:27-10 (1940).

provision such as the latter seems to be unrealistic when a majority of the members of the commission will be citizens who hold no public office except as an appointive member of a planning authority.<sup>94</sup> It provides very little guidance to people who are likely to qualify only because of their sense of civic responsibility. Needless to say, professionals will be counted on to do much of the technical work, but this type of statute does not provide the commission with a method of evaluating the end product.<sup>95</sup> Certainly this is an extreme case, but the problem of inadequate expression of the objectives and procedures of regional planning by the statute is quite prevalent.<sup>96</sup> A related difficulty may arise where a fairly limited list of specific elements following a general authorization is construed as confining the board's authority. Thus, where the statute lists specifically only items involving public works,<sup>97</sup> it might be narrowly construed to apply only to the class of items specified<sup>98</sup> and, therefore, preclude the development of a land-use program.

The legal effect of the comprehensive plan also varies widely. Many of the statutes specifically provide that the regional planning commission's powers are purely advisory.<sup>99</sup> However, a number of these states also provide that the governing bodies of the constituting authorities may adopt the regional plan, in whole or in part, as the local plan, with all the legal effect of one prepared by the local authority.<sup>100</sup> After a comprehensive plan has been adopted, the commission may be given the power to require that certain matters, such as proposed subdivisions, be submitted to the commission for recommendations before the responsible local authority may act on them.<sup>101</sup> Finally, some stat-

<sup>94</sup> N.J. STAT. ANN. § 40:27-9 (1940).

<sup>95</sup> See Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515, 522 (1957).

<sup>96</sup> E.g., CAL. GOV'T CODE § 65060.7; ILL. REV. STAT. ch. 34, § 3001 (1961); PA. STAT. ANN. tit. 53, § 496 (1957). Also see Haar, *Regionalism and Realism in Land-Use Planning*, *supra* note 95, at 519-20. Compare MODEL PLANNING LAW § 14.

<sup>97</sup> ARK. STAT. ANN. § 19-2821 (1956); KAN. GEN. STAT. ANN. § 12-717 (Supp. 1961).

<sup>98</sup> The *ejusdem generis* rule of construction provides that in the absence of contrary legislative intent, where specific terms are followed by a general term, the general will be limited to items of the same class or nature as those specifically mentioned. See, e.g., *Petty v. Tennessee-Missouri Bridge Comm'n*, 153 F. Supp. 512 (E.D. Mo. 1957); *Webb v. Board of Trustees of Webb School*, 38 Tenn. App. 173, 198, 271 S.W.2d 6, 17-18 (1954); *East Coast Freight Lines v. City of Richmond*, 194 Va. 517, 525, 74 S.E.2d 283, 288 (1953); BLACK, CONSTRUCTION AND INTERPRETATION OF THE LAWS 203 (2d ed. 1911). In the comprehensive plan where the specifics follow a broader authorization, a somewhat similar construction could limit the plan to the enumerated items.

<sup>99</sup> E.g., CAL. GOV'T CODE § 65060.8; ME. REV. STAT. ANN. ch. 90-A, § 64(III)A (Supp. 1963); R.I. GEN. LAWS ANN. § 45-22.1-4 (Supp. 1963). The Wisconsin statute makes the advisory nature of regional planning abundantly clear by so stating three times. WIS. STAT. ANN. §§ 66.945(8), (10), (11) (Supp. 1964).

<sup>100</sup> E.g., ALA. CODE tit. 37, § 813 (1958); ILL. REV. STAT. ch. 34, § 3004 (1961); ME. REV. STAT. ANN. ch. 90-A, § 64(III)D (Supp. 1963).

<sup>101</sup> See, e.g., GA. CODE ANN. § 69-1210 (1957) (zoning changes); IDAHO CODE

utes require that the commission approve certain proposed projects before they are authorized.<sup>102</sup> Although the decision of the commission may be overruled by the responsible authority,<sup>103</sup> such control does allow direct application of some aspects of the planners' work.

Closely associated with the preparation of a comprehensive master plan is the frequent requirement that the commission prepare plans and recommend regulations for specific areas, either separately or as part of the comprehensive plan.<sup>104</sup> In most cases such recommendations have no effect unless they are adopted by the local authorities. However, the Indiana statute provides that a recommended zoning ordinance will take effect sixty days after it is certified by the commission to the local legislative body.<sup>105</sup> Furthermore, if the legislative body rejects or amends the recommended ordinance and the commission disapproves of the amendment or rejection, the action of the legislative body will stand only if confirmed by a constitutional majority vote of the local body.<sup>106</sup> This is probably the broadest authority given a regional plan commission except where the authority to plan is delegated, contracted, or extraterritorial. Under these circumstances, authority would be under municipal acts which are generally broader than the state enabling acts. Fortunately, the Indiana statute is also one of the most explicit. Through clear, specific criteria and statements of general purposes,<sup>107</sup> it provides the commission with guidelines for the exercise of its power. This statute seems to be one of the best for satisfying the need of effective comprehensive regional planning.

An additional power delegated in many of the acts authorizes the regional planning commission to accept and utilize funds and other assistance from a variety of sources.<sup>108</sup> Frequent mention of the federal government and its agencies by name indicates the influence of federal

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ANN. § 50-2707 (1957) (maps, plats, and replats); MONT. REV. CODES ANN. § 11-3842 (Supp. 1963) (subdivision plats).

<sup>102</sup> *E.g.*, OKLA. STAT. § 863.8 (1961) (improvements of types embraced within master plan); TENN. CODE ANN. § 13-302 (1955) (subdivisions); VA. CODE ANN. § 15-962.4 (Supp. 1962) (public works projects).

<sup>103</sup> *E.g.*, KY. REV. STAT. § 147.180 (Supp. 1956); NEV. REV. STAT. § 278.240 (Supp. 1959); OHIO REV. CODE ANN. § 713.25 (Page 1953).

<sup>104</sup> See, *e.g.*, GA. CODE ANN. § 69-1203 (1957) (zoning, subdivision, and public works projects); MISS. CODE ANN. § 2890.5(2) (Supp. 1962) (zoning ordinance, subdivision regulations, building and setback lines along roads); WASH. REV. CODE ANN. § 35.63.080 (1963) (land-use, building, setback, and subdivision regulations).

The comprehensive master plan under the New Hampshire statute is to include recommendations for "the development of programs for the modernization and coordination of building, housing, zoning and subdivision regulations of municipalities and their enforcement on a coordinated and unified basis." N.H. REV. STAT. ANN. § 36:39 (Supp. 1963). This unique provision would appear worthy of widespread adoption if the overall aims of regional planning are to be accomplished.

<sup>105</sup> IND. ANN. STAT. § 53-1049 (Supp. 1964).

<sup>106</sup> IND. ANN. STAT. § 53-1050 (Supp. 1964).

<sup>107</sup> See IND. ANN. STAT. §§ 53-1001, -1036 (Supp. 1964).

<sup>108</sup> *E.g.*, FLA. STAT. § 160.02(9) (1959); MICH. STAT. ANN. § 5.3008(13) (1958); N.D. CENT. CODE § 54-34.1-15 (Supp. 1963).



activities in the planning area.<sup>109</sup> Since all of the commission's powers must be delegated, failure to mention the authority to receive and use funds and services may prevent it from adequately performing its function.

Another item which receives specific mention in many statutes is providing nonregional planning services. Under some statutes the commission is authorized to assist its constituents in the preparation of local plans.<sup>110</sup> In others, it may provide such services to nonmember governmental units.<sup>111</sup> Planning services are also extended to semipublic or civic agencies under some statutes.<sup>112</sup> The extreme case seems to be Idaho, where the enabling act provides that the commission shall give "suggestions and advice to individuals concerning landscaping or location of buildings, structures of works to be erected, constructed or altered by or for such individual."<sup>113</sup> Whether such a provision is consistent with the idea of regional planning with regard to broad-range development and is realistic in view of the limited resources generally available to such agencies<sup>114</sup> is certainly open to serious question.

Finally, many of the statutes provide that the regional planning commission shall serve as a coordinating agency.<sup>115</sup> Statutory ambiguity is at least as prevalent in this area as any other. For example, one act states that the agency may assist in finding "common or cooperative solutions to problems,"<sup>116</sup> and several mention that the regional commission "may assist a member in carrying out any regional plan."<sup>117</sup> The most frequent weakness lies in the fact that the procedures for accomplishing this objective are absent. In addition, the only coordinating the regional body may do is often through its powers of persuasion, for the power to enforce a uniform plan for the area is generally absent.<sup>118</sup> Nevertheless, the commission may accomplish its purpose of coordination in most cases. First, it is often the source of in-

<sup>109</sup> The Housing and Home Finance Agency requires citation to statutes authorizing a planning agency to receive and expend federal funds and to contract with the federal government for that purpose before an application for a grant will be considered. U.S. URBAN RENEWAL ADMINISTRATION, HOUSING AND HOME FINANCE AGENCY, URBAN PLANNING PROGRAM GUIDE ch. 3, § 2 (1963).

<sup>110</sup> *E.g.*, ARK. STAT. ANN. § 19-2821 (1956); FLA. STAT. § 160.02(10) (1959); KAN. GEN. STAT. ANN. § 12-717 (Supp. 1961).

<sup>111</sup> *E.g.*, ME. REV. STAT. ANN. ch. 90-A, § 64(III)D (Supp. 1963); N.H. REV. STAT. ANN. § 36:39 (Supp. 1963); Iowa Acts 1963, ch. 110, § 4.

<sup>112</sup> *E.g.*, LA. REV. STAT. ANN. §§ 33:135(4)-(5) (Supp. 1963); MICH. STAT. ANN. § 5.3008(9) (1958); N.C. GEN. STAT. §§ 153-280(4)-(5) (1964).

<sup>113</sup> IDAHO CODE ANN. § 50-2705 (1957).

<sup>114</sup> See generally 1963 SURVEY pt. I, at 7-13.

<sup>115</sup> *E.g.*, PA. STAT. ANN. tit. 53, § 497 (1957); TENN. CODE ANN. § 13-208 (1955); WIS. STAT. ANN. § 66.945(8) (Supp. 1964).

<sup>116</sup> CAL. GOV'T CODE § 65065.1(c).

<sup>117</sup> ME. REV. STAT. ANN. ch. 90-A, § 64(III)C(6) (Supp. 1963). For similar provisions, see, *e.g.*, KAN. GEN. STAT. ANN. § 12-717 (Supp. 1961); MASS. ANN. LAWS ch. 40B, § 5 (1961); N.H. REV. STAT. ANN. § 36:42 (Supp. 1963).

<sup>118</sup> This power does exist in certain limited areas, such as public works. See note 102 *supra* and accompanying text. It might also be present where the regional

formation upon which the local unit will base a decision, giving it great influence in the decision-making process. Second, since most of these bodies are formed by the action of the local units themselves, the participants will have a generally cooperative outlook regarding the commission's decisions. Thus, although the statutory provisions may be deficient in guiding the activities of the agencies toward the objective, they are not a practical barrier to its accomplishment, and they may well serve to remind the commissions of this very important function.<sup>119</sup>

### III. CONCLUSION

Analysis of the enabling acts indicates widespread deficiencies in three aspects of accomplishing effective governmental solution of urban problems. In many instances the coverage of the acts is too narrowly restricted, and certain classes of governmental units whose participation would be desirable are precluded from taking advantage of the statute.<sup>120</sup> Another recognized weakness of the present enabling acts is that they inadequately define what is expected of the commissions or significantly limit the scope of regional activity.<sup>121</sup> Finally, the regional commissions lack sufficient effective powers to accomplish their purposes. By and large, they depend upon the constituent units to define their jurisdiction, provide their financing, and put their plans into effect. Even where some effective power is delegated, the commission is always subject to being overruled by some elected body.

Strengthening the present acts is the most obvious among the solutions which may be proposed to meet these deficiencies. Widespread experimentation in this area has resulted in a number of statutory provisions which may be profitably adopted or used as models. Sufficiently broad application and participation may be achieved by adopting provisions extending to all public agencies, including those in other states, which operate in the region. Comprehensive statements of objectives and enumerations of powers and duties which are found in some of the existing statutes would be satisfactory models for amending those acts which presently provide insufficient guidance to commission activity. Although improvements in these areas can be accomplished without any damage to the present legislative philosophy, difficulties may arise in giving the commission additional power to effectuate its plans. It is this difficulty of reconciling the competing de-

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planning agency is created through the delegation of planning authority by one governmental unit to another.

<sup>119</sup> The Louisiana act gives significant emphasis to cooperation and coordination in both the preparation of the plan and the activities of the commission. See LA. REV. STAT. ANN. §§ 33:135(1), (4) (Supp. 1963).

<sup>120</sup> Although it may not be the sole reason, this fact may explain why only two-thirds of the nation's 212 Standard Metropolitan Statistical Areas had metropolitan planning in 1963, and in thirty-six of these the territory of the planning agency with the largest areal jurisdiction did not include the entire SMSA. 1963 SURVEY pt. II.

<sup>121</sup> See Haar, *Regionalism and Realism in Land-Use Planning*, *supra* note 95, at 518-23.

mands for civic planning and elective control which the system of appointive planning commissions must ultimately face.<sup>122</sup>

Oregon may have found an escape from this dilemma in a second alternative. Under its statute a metropolitan study commission may be established, to terminate not later than 1969, for any area including and within ten miles of any city of 25,000 or more.<sup>123</sup> This commission determines the boundaries, not necessarily concurrent with its own, within which it is desirable that one or more metropolitan services be provided.<sup>124</sup> Thus, since the members of the commission do not represent any particular local units, no significant territory or unit need be excluded. The commission is directed to prepare a comprehensive plan for providing the services. Rather than exercise powers of its own to effectuate the plan, it may submit to a referendum recommended plans for reorganizing the various elective local units which, in its judgment, would best meet the particular needs.<sup>125</sup> With an appointive body organized to study and make recommendations regarding urban problems and elective bodies structured to solve them effectively, this act may serve as a forerunner to an effective solution of the problems with which regional planning is faced.

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<sup>122</sup> One authority contends that it is the structure adopted by the civic planning movement, rather than just the statutory provisions, which makes this problem so difficult. He argues that the semiautonomous citizen planning board is generally neither qualified nor equipped to prepare and implement comprehensive plans and other planning activities. WALKER, *THE PLANNING FUNCTION IN URBAN GOVERNMENT* 143-65 (2d ed. 1950). Under his thesis planning is to be an administrative activity, integrated into the executive and legislative branches of government. *Id.* at 166-84. Such a concept has only limited applicability in the areas where regional planning is desirable, because there are multiple governments requiring unified planning. However, there may be merit in removing regional planning from citizen commissions and placing it closer to official bodies, as is done by the Southwestern Illinois Metropolitan Area Planning Act. See ILL. STAT. ANN. ch. 34, § 3091.5 (Smith-Hurd Supp. 1963).

<sup>123</sup> ORE. REV. STAT. §§ 199.120-150 (Supp. 1963).

<sup>124</sup> ORE. REV. STAT. § 199.210 (Supp. 1963). These metropolitan services include planning and zoning, sewage disposal, water supply, parks and recreation, public transportation, and fire protection. ORE. REV. STAT. § 199.120(6) (Supp. 1963).

<sup>125</sup> ORE. REV. STAT. § 199.270 (Supp. 1963). The recommendations may include consolidation of cities, cities and counties, or special districts; annexation of unincorporated territory; creation of a federation of local units, or of new special districts; performance of services by existing units; consolidation of services by transfer of functions, creation of joint administrative agencies, or contractual agreements; or creation of a permanent urban council of the existing units. ORE. REV. STAT. § 199.230 (Supp. 1963).