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REPORT OF THE LEGISLATIVE COMMISSION  
ON METROPOLITAN GOVERNANCE

I. THE WORK OF THE COMMISSION

Here would appear a short institutional summary: the creation of the Commission, its charge, its membership, and a list of hearings.

II. EXTERNAL ACCOUNTABILITY OF METROPOLITAN AGENCIES

If one subject predominated, in all of the Commission's hearings, it was that of accountability. A preponderance of the testimony heard by the Commission, and of the discussion among Commission members, addressed itself in one way or another to this matter of accountability and the companion principle of responsiveness. Some attention was given to accountability between metropolitan agencies, but much greater concern seemed to focus on external accountability: that is, on the accountability and responsiveness of the metropolitan agencies to the many parties who are outside of metropolitan government but interested in its activities.

Although the Commission listened to much thoughtful advice on the subject of external accountability, it nonetheless failed to detect any unity of opinion. The proposals for reform were as multilateral as the parties in interest. The lines of external responsibility now run from the metropolitan agencies in many different directions: to the people of the metropolitan area, to the great diversity of local governments variously situated in the metropolitan area, to many places in the state executive branch, to the state Legislature, and to the federal government. In the course of its work, the Commission received recommendations that each of

these several and diverging lines of accountability should be strengthened, and that this should be accomplished through a great variety of means: the eligibility and appointment of members, internal staff reorganizations, improved agency administrative procedures, legislative reorganization, outside evaluation and review, better budgeting, etc. In short, focus of subject was offset by disparity of recommendation.

This should be a source neither of surprise nor dismay. There is in fact a lesson in this diversity, which appears to flow naturally and inevitably from the tension among the many people, groups, and governmental entities properly interested in the course of metropolitan affairs. The Commission recommends that the Legislature take heed not to rupture a network of accountability which appears so accurately to reflect the complexity and interdependence of interest and involvement in metropolitan government.

This is not to say that the Commission has concluded that the existing arrangements are perfect. They are not. Indeed, there seems to be a consensus that nearly all the important lines of external accountability are weak and that, as a result, the metropolitan agencies increasingly take on one of the distinguishing characteristics of special districts: insularity. The Commission believes that accountability can and should be improved, if due care is given to preserve the necessary balance of influences. The Commission therefore recommends that the Legislature strengthen and clarify the lines of external accountability of the metropolitan agencies, with a view to improving their responsiveness to the various interested parties and agencies of government. All of the recommendations that follow in the Report bear directly on the goal of

improving the external accountability of metropolitan agencies by one or another method. Thus, the prevailing concern voiced in the testimony before the Commission becomes now the integrating theme in the Commission's Report.

### III. APPOINTMENT OF MEMBERSHIP ON METROPOLITAN AGENCIES

Many persons who spoke before the Commission stressed the need to continue to find qualified candidates and select dedicated members of metropolitan agencies. The importance of the goal is universally attested to. The testimony before the Commission, however, yielded a consensus on only one point: the process of choice should be more visible to the public and should be designed to encourage attention to the substantive issues of metropolitan policies and programs. The Commission concurs with this view and recommends that the Legislature improve the selection and appointment process so that it makes a more important contribution than it now does to the public learning process--among citizens, public officials at all levels of government, the press, the candidates, and the agencies themselves.

Various means have been suggested to achieve this object: elections, nominations lists, candidates forums, recruitment advisory committees, public hearings, and so on. The Commission recommends that the Legislature, in considering these and other methods of improving the appointment process, seek to preserve a balance between the need for openness in appointments and the need to attract qualified candidates who may not wish to "campaign" for appointed office.

The Commission also reemphasizes here its view that the Legislature should preserve what must, in justice, be a carefully constructed and intricately balanced network of accountability to diverse interests at all levels of government. The appointment process is an important element in establishing responsiveness. All naturally want to preserve or enhance their influence in that process. But to strengthen the influence of one is to weaken the influence of another. Hence the Commission believes that great care must be exercised, in altering the selection and appointment process, to ensure a fair balance of influence among all the parties whose interests and responsibilities are affected by the decisions of metropolitan agencies.

These reservations, however, do not weaken the Commission's belief that the appointment of members of metropolitan agencies can and should be made to enhance the public learning process, which, after all, remains perhaps the most important purpose of metropolitan planning agencies.

#### IV. POLICY AND PROGRAM EVALUATION

All government agencies, policies, and programs should be subject to regular and systematic external review to assess their need, reasonableness, and effectiveness. This is particularly important during periods of rapid change in government programs and responsibilities.

Testimony before the Commission was united in suggesting that systematic metropolitan policy and program evaluation is not as strong as it should be. To help remedy this deficiency, the Commission recommends that the Legislature improve its own oversight of the metropolitan agencies and

their policies and programs. Although some of the metropolitan agency programs are not subject to intensive legislative scrutiny, there is no systematic or regular external evaluation of many others. The only generally applicable reporting requirement, the formal annual report of each agency to the Legislature, will not serve as an evaluation document.

Members of the Legislature will be aware of the various means of improving oversight. After considering the alternatives, the Commission has concluded that the problem cannot be remedied indirectly, by changing the procedure or structure of either the agencies or the Legislature. The problem should be addressed more directly, by correcting what appears to be a gradual decline and fragmentation in substantive communication between the metropolitan agencies and the Legislature.

The Commission therefore recommends that the Legislature require the Council and the other metropolitan agencies to reexamine and justify their plans, their activities, and their priorities at specified intervals (perhaps every four years). This policy and program evaluation should take the form of a single unified report to the Legislature, prepared either by the Council and the agencies or by some other agency (such as the Legislative Auditor or a citizens advisory committee). In order that this report should not become a mere formality, another empty ritual of government, the Commission recommends that the Legislature, through its duly constituted committees, direct the quadrennial evaluation toward agencies, policies, or programs of particular concern at the time.

There is now in the statutes a precedent for this recommendation. It is found in the requirement for regular biennial reevaluation of the metropolitan significance regulations by the Council and an advisory metropolitan land use committee, followed by a report and recommendations to the Legislature. (M.S. 473.176, Subd. 6) Although the application in that case seems a bit rigid, the idea has possibilities. The Commission's recommendation is that a similar, but less frequent and more generic, evaluation be required of all metropolitan agencies and that relevance and flexibility of subject matter be ensured by placing this periodic policy and program evaluation under the direction of the appropriate legislative committees.

#### V. METROPOLITAN-LOCAL DISPUTES

The Commission believes that occasional disputes between metropolitan agencies and local authorities are inevitable, given the reality of interdependence in the metropolitan area. Indeed, we find that the disputes are frequently not between the metropolitan and local levels so much as they are inter-local, taking on a metropolitan cast because the metropolitan agencies have been given the unpleasant task of choice. The metropolitan agencies, and especially the Council, must therefore be understood in part to be the unwilling and undeserving recipients of frustrations created by modern interdependency in a metropolis.

Local resentment about these conflicts is nonetheless very real and deserving of attention, because it is damaging to the metropolitan comity, the furtherance of which is perhaps the Council's primary reason for being. The Commission therefore has taken the evidence of metropolitan-local

conflict very seriously indeed and has sought, within the limitations of the situation, to discover better means of reducing its occurrence and resolving it when it appears.

In order to reduce the occurrence of conflict, the Legislature should take care to limit the intrusiveness of metropolitan functions to the minimum level necessitated by interdependency. That is the overwhelming recommendation made in testimony to the Commission, and the Commission concurs in it. It has not been the Commission's purpose to evaluate whether the proper boundary of metropolitan interest has been transgressed in each of the multitude of metropolitan agency activities. Yet the testimony alleging transgressions is too strong and too widespread to discount. Therefore the Commission recommends that the first external review and evaluation of metropolitan agencies (recommended elsewhere in this Report) pay particular attention to finding and eliminating such transgressions, so as to reduce the occurrence of conflict which is not endemic to the metropolitan situation.

When disputes do arise, as they inevitably will, better mechanisms for resolving them are needed. Three governmental alternatives exist: judicial review, administrative procedure, and legislative review. The Commission has examined and heard testimony on all three. The Commission is persuaded that court proceedings are not the best means of settling most intergovernmental disputes. It therefore gave its greatest attention to the alternatives.

Proposals to deal with metropolitan-local disputes through a more elaborate administrative process have been advanced in the Legislature since the early-1970s and were once again advanced in testimony before the Commission. The idea is that due process can be obtained in metropolitan affairs simply by extending the state Administrative Procedures Act (APA) to the metropolitan agencies or by creating a separate metropolitan APA. For a decade the Legislature has consistently rejected the idea. The Commission concurs in this judgment.

The Commission believes that elaborate administrative proceedings, either of the rule-making or contested case variety, are hardly better suited to the needs of governmental adversaries than courtroom proceedings. It appears to the Commission that these quasi-judicial, legalistic processes are inconsistent with the primary function of the Council—which all agree should be planning, the furtherance of public learning and political consensus, and intergovernmental coordination, not the adjudication of the rights and liabilities of others. Introducing an administrative court into the quest for a metropolitan perspective would create a great inconsistency between process and purpose. This would be unwise, in the Commission's judgment, for in such matters it is not always substance that wins. Experience elsewhere suggests that the administrative court would encourage what we seek to avoid: the arrogance and power of staff experts, attention to legal nicety and technical detail in decision-making, formality, strict separation of fact-finding and decision-making functions, an adversarial interest in burden of proof, the transfer of agency discretion to administrative judges, a greater role for state staff agencies such as the Office of Administrative Hearings and the Attorney General, and the



isolation of agency boards from the public. Therefore, the Commission rejects procedural elaboration, on the grounds that it might well promote the problem rather than the solution.

This is not to say that administrative process is always inappropriate. Indeed, on a few occasions, the Legislature has applied the APA to the metropolitan agencies. The most important example is the application of the APA to certain disputes under the Land Planning Act (M.S., 473.857, 473.866). The Commission concedes that from time to time, for certain types of decisions, such limited applications of the APA may be justified.

But it is the Commission's judgment that APA proceedings are not generally appropriate to the types of functions performed by metropolitan agencies and that therefore the Legislature should apply the APA process only on a case-by-case basis and after careful consideration of the untoward consequences.

If these two governmental forums--the judiciary and the administrative court--are generally inappropriate to metropolitan-local disputes, it is upon the third forum, the Legislature, that we must primarily rely. And so, in fact, we have: the prevailing practical method of settling these disputes over the years has been to bring the issue to the Legislature for resolution. On the whole, it has worked. The examples of this are legion; taken together, they strongly suggest that the mechanism is as effective as any other that might be devised, and surely in most cases a more appropriate venue than the administrative or judicial tribunal. The

Commission therefore concludes that the Legislature should consider means of improving, legitimating, and regularizing access to the legislative forum for disputes which cannot properly be resolved at the metropolitan level.

The Commission believes that the regular program evaluation report recommended elsewhere, if conducted under the supervision of some outside authority, is a promising method of exposing and resolving the policy issues which give rise to many of these disputes.

The Commission also recommends that the Legislature consider expanding the application of one device now in the statutes for resolving planning disputes between the Council and metropolitan commissions, boards, and agencies. The relevant provision reads as follows: "If the council and the affected commission, board, or agency are unable to agree as to an adjustment of the plan, so that it may receive the council's approval, then a record of the disagreeing positions of the metropolitan council and the affected commission, board, or agency shall be made and the metropolitan council shall prepare a recommendation in connection therewith for consideration and disposition by the next regular session of the legislature." (M.S. 473.165) The Legislature should consider some variation of this provision for disputes between metropolitan agencies and local governments.

Of course the Legislature cannot and should not allow itself to become the routine and customary court of appeals from decisions of the Council, by this or any other means. A nice discrimination must be maintained between

disputes which should be resolved by the agencies involved and disputes which raise policy issues requiring legislative resolution. The Commission concedes that the Legislature has not yet distinguished itself by its discrimination in such matters. That, in fact, is part of the problem. Subject to appropriate limits, the Commission believes that much can be gained in fairness, legitimacy, and peace--not only in the metropolis but in the Legislature itself--by effecting regular access to the legislative forum for issues which now reach it almost certainly but by devious and random routes.

#### VI. METROPOLITAN FINANCE

The testimony before the Commission revealed a consensus that metropolitan financial planning, revenue-raising, and expenditure decisions are unnecessarily and excessively fragmented. Metropolitan plans and capital improvement programs are not as well integrated one with another as they might be; and the plans are not adequately translated into the spending and revenue-raising decisions of the metropolitan agencies, or, for that matter, the Legislature. In short, we do not have a fiscal system in metropolitan government. As a consequence, one of the goals of metropolitan governance--coherence and comprehensiveness--is still somewhat beyond our reach, and will remain so until we discover a method of integrating financial decisions, of attending to financial priorities, costs and benefits, and effectiveness of the policies, programs, and spending decisions of all the metropolitan agencies considered together. The existing arrangements--the wholly separate metropolitan agency budget processes, the partial and negative capital spending reviews by the

Council, and the fragmented consideration by the Legislature--are not sufficient to this purpose.

Some believe that the fragmentation should be remedied by increasing the power of the Metropolitan Council over the capital and operating budgets of the metropolitan agencies. The Commission does not subscribe to this view. The Council's attention to high issues of policy is difficult enough to maintain without giving it direct authority over the financial affairs of the metropolitan functional agencies. The Commission concludes that some other means must be found to bring financing closer to planning and to encourage--indeed, to allow--the various functional plans and capital and operating budgets to be considered together as well as individually.

The Commission believes that the regular program evaluation process recommended elsewhere will help to bring this about. But the Commission does not think that this will be enough to ensure the careful scrutiny of functional priorities and weighing of program costs and benefits that is required to budget scarce resources. Therefore, the Commission has two further recommendations on metropolitan finance.

First, the Council and the metropolitan agencies should be required by statute to prepare long-range budget projections, in addition to the existing requirement of annual or biennial operating budgets and five-year capital improvements budgets. These new long-range projections should estimate revenues and expenditures for ten years in capital programs and four years in operations.

Secondly, and more importantly, the Commission recommends that the Council be placed in charge of assembling and consolidating the separate agency budgets (both annual and long-range) into a single budget document. This document, composed of all of the separate metropolitan agency budgets, should show revenue sources and expenditures for capital development and operations for each agency. The Council would assemble the separate budgets; prepare summary and overview documents showing the aggregate results; hold hearings on the document as a whole; and make a report to the Legislature on the hearings, the changes that the Council will require in capital budgets under its existing review authority, and any changes in operating budgets that the Council might recommend for consideration by the Legislature.

The process recommended here would not result in a single, unified metropolitan budget, and the Council would be granted no approval authority beyond what it now possesses. Each agency, as now, would continue to have financial independence, subject only to existing Council approval authority and, of course, legislative decisions. The process recommended is intended merely to assemble all budgets together and create coherence in metropolitan fiscal summaries so as to encourage a more integrated understanding and consideration of all metropolitan revenue-raising and spending decisions. In short, the process is one in which the Council will assist the Legislature and others to comprehend metropolitan affairs; it is therefore wholly consistent with the Council's basic function.