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METROPOLITAN GOVERNANCE PROJECT

Working Papers

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## EXECUTIVE SUMMARY

### WORKING PAPER #1: TOWARD A DEFINITION OF THE PROBLEM

Three problems or issues predominate in recent criticism of metropolitan governance in the Twin Cities:

- insufficient public accountability of metropolitan agencies;
- inadequate political and policy leadership at the metropolitan level; and
- inadequate planning and management of the major metropolitan facility systems.

The first of these problems--insufficient public accountability--is a consequence of the legal form of metropolitan agencies: most are special districts governed by separate, appointed boards. The public accountability problem can be mitigated but never eliminated, so long as the legal structure is retained.

The other two problems point to deficiencies in the performance of the two chief functions of metropolitan governmental institutions:

- political and policy leadership, or success in identifying and developing solutions to emerging metropolitan problems; and
- systems planning and management, or the coordinated and effective governance of major public facility systems at the regional level.

For a decade or more, the last of these deficiencies--inadequate systems planning and management--has preoccupied the Legislature and the Metropolitan Council. This preoccupation has produced a familiar pattern of legislation: an increasing reliance on the Council to supervise the activities of implementing agencies through administrative regulation, together with regular attempts at direct management of metropolitan agencies by the Legislature. Current proposals for reform of metropolitan governmental institutions, in their preoccupation with the systems management problem and in their preference for administrative regulation by the Council as the preferred solution, follow a decade-long trend.

The effort to improve systems management has not, by most accounts, improved the performance of the other major function of metropolitan governmental institutions--political and policy leadership. The capacity of the Council for problem solving and policy leadership has clearly declined in recent years.

Some observers believe that the decline in leadership is partly a consequence of the Council's increasing attention to supervising the activities of metropolitan

implementing agencies. If this belief is correct, the issue for the Legislature becomes: how to improve metropolitan systems management without further enmeshing the Council in management activities that detract from its capacity for policy leadership and problem solving. Putting the matter in reverse, the issue becomes: how to renew the Council's capacity for policy leadership and problem solving without removing the Council from activities that are required to assure the execution of its policies by implementing agencies.

WORKING PAPER #2: IMPROVING ACCOUNTABILITY THROUGH PROCEDURES FOR APPOINTING MEMBERS OF GOVERNING BOARDS

Changes in the way members of metropolitan agency boards are appointed may be intended to address two perceived deficiencies in metropolitan governance:

- a deficiency in interagency accountability--the accountability of the implementing agencies to the Metropolitan Council and each other; and
- a deficiency in public accountability--the accountability of all agencies, including the Council, to the various publics outside of metropolitan agencies.

For at least the last decade, most legislative reforms of the appointment process have dealt with the first of these deficiencies. By enhancing the Council's power in the appointment process, these reforms have sought to increase the accountability of implementing agencies to the Council and so improve metropolitan systems planning and management. Current proposals continue this line of development by proposing to invest additional appointment authority in the Council.

By attempting to strengthen the lines of authority among metropolitan agencies, however, the Legislature may have exacerbated the other deficiency--the inadequate accountability of metropolitan agencies to the public outside of the metropolitan structure.

The accountability of metropolitan agencies to metropolitan public interests may be fostered through the appointments process in two ways:

- indirectly, through the medium of elected state officials (the governor and metropolitan legislators) who participate in the appointment of metropolitan officials; or
- directly, through participation of metropolitan public interests in the appointments process.

The Legislature has generally favored the first of these. Public accountability is one of the principal justifications for the present system of appointing key metropolitan agency officials by gubernatorial action leavened with legislative consultation and confirmation.

Various techniques for increasing the accountability of metropolitan agencies directly to metropolitan-level publics, rather than to the Council or to state

officials, have been proposed by local governments and other observers. Among them are the following:

- increased notification and consultation requirements;
- statutory standards on qualification for office;
- changes in the representational basis of agencies, including
  - required party balance on agency boards,
  - redefinition of agency districts by natural metropolitan subregions rather than state legislative districts,
  - increased representation of local elected officials,
  - increased numbers of members on implementing agency boards;
- procedures allowing direct participation in the appointments process by metropolitan public interests, including
  - various levels of participation (appointment, nomination, confirmation, or veto),
  - participation by a screening committee of metropolitan citizens and local officials,
  - participation by local governments weighted by population.

These proposals for increasing the accountability of metropolitan agencies to metropolitan-level publics do not enjoy much prominence in current discussions of reform in the appointments process.

### WORKING PAPER #3: IMPROVING PUBLIC ACCOUNTABILITY THROUGH CHANGES IN ADMINISTRATIVE PROCEDURES

The natural insularity of metropolitan special districts, as they are now structured, gives rise to charges that the agencies are not accountable to the public for their actions.

One method of improving the accountability of appointed government officials to the outside public is through procedural requirements governing the way that the officials must deal with the public. Typical of these are the requirements found in the state's Administrative Procedures Act (APA), which contains fairly intricate provisions governing agency notice, publication, consultation with the public, and decision-making hearings. APA processes are generally formal, legalistic, and adversarial.

The Legislature has been consistently averse to applying APA-type requirements to the metropolitan agencies as a method for increasing their accountability to

the public. After examination of the issue, legislative bodies have tended to conclude that quasi-judicial, legalistic procedures are generally out of keeping with the function and purpose of metropolitan agencies.

Opportunities exist, however, for selective application of certain APA concepts to metropolitan agency procedures for two purposes:

- to improve public notice of agency actions, and
- to increase opportunities for adversely affected parties to challenge proposed agency actions.

The first of these two purposes would be served by legislation consolidating notice and publication functions for all metropolitan agencies, in a fashion similar to that used by state agencies. Examples of consolidation include the following:

- a manual of metropolitan agency policies and procedures, similar to the state code of agency rules;
- a guidebook to metropolitan agencies similar to the state's guide to state agency services;
- a metropolitan "register" for all official notices of metropolitan agencies, either as part of or separate from the register used by state agencies;
- a central metropolitan office where the public could file for notice from all metropolitan agencies;
- a single metropolitan repository for the public documents of all metropolitan agencies.

The second purpose would be served by decision-making procedures designed to improve the "standing" of persons who are adversely affected by a decision of a metropolitan agency. These more formal procedures could be required in certain cases (e.g., those that are "regulatory" in effect). Examples of such requirements include the following:

- uniform hearing procedures for all metropolitan agencies;
- a requirement that metropolitan agencies make affirmative presentations of reasonableness and necessity for proposed actions;
- enhanced procedural opportunities for challenging agencies, through petition, rehearing requirements, etc.;
- the use of independent hearing examiners;
- the establishment of a metropolitan appeals board.

WORKING PAPER #4: IMPROVING SYSTEMS MANAGEMENT THROUGH THE STRUCTURE OF  
GOVERNING BOARDS

The legal separation and autonomy of metropolitan agencies inhibits effective planning, management, and coordination of the metropolitan facility systems and services.

There are five strategies for addressing this problem.

1. Consolidation

Thus far the Legislature has not been willing to solve the problem of governmental fragmentation directly, by changing the legal status of the metropolitan agencies as freestanding governmental institutions with separate governing boards.

2. Appoint-and-regulate

The Legislature has favored this strategy, intended to bring the implementing agencies partially under the control of the Council, by investing the Council with certain powers of appointment and of administrative supervision or regulation. Current reform proposals are extensions and elaborations of this strategy.

3. Agency-of-the-Council

In establishing one implementing agency, the Legislature created a separate agency board but made it an "agency" of the Council. This arrangement--employed for the Metropolitan Parks and Open Space Commission (MPOSC)--means that the implementing agency is wholly appointed and staffed by the Council and acts, with statutory authority, as an advisor to the Council and the executor of Council policies.

This agency-of-the-Council structure could be extended to certain other metropolitan agencies and functions, notably:

- the Regional Transit Board (RTB), which performs functions that are almost identical to those of the MPOSC (planning and grants administration);
- the "governmental" functions of operating agencies (i.e., the finance, legal, and planning--as distinguished from operating--functions); and
- programmatic functions of this nature that are now performed directly by the Council, in housing and solid waste.

4. Interlocking directorates

This strategy--of overlapping the membership on metropolitan agency boards--is now employed in the statutes only in the "liaison" system, whereby members of the Council serve as ex officio, nonvoting members of the boards of implementing agencies.

In very recent years, however, the interlocking directorate has surfaced in administrative arrangements like the governor's regional subcabinet, the

council's recommendation for a regional "executive council," and the council's recommendation for a consolidated, interagency process for goal setting, performance review, and financial reporting.

The Legislature could allow these administrative arrangements to continue their development through administrative action of the Governor and the Council, or the Legislature could choose to install them statutorily.

#### 5. Systems management advisory board

All four of the strategies outlined above are designed to put the Council more firmly and directly in charge of metropolitan agency affairs, on the grounds that systems management is or should be part of the Council's policy setting and problem solving responsibility.

There is an alternative premise, however: that systems management is more of an executive or administrative function than a policy making one, and therefore is inappropriately placed in the Council and actually detracts from the Council's performance of its policy making and problem solving responsibilities. This premise leads to an entirely different strategy, one designed to free the Council from direct responsibility for systems management by transferring this activity to another board, advisory to the Council.

### WORKING PAPER #5: FINANCIAL PLANNING AND MANAGEMENT

Criticism of metropolitan financial governance is relatively immature, compared to the extensive analysis existing on other issues. The recent criticism of financial governance appears to arise from concern about the high operating costs and large debt of metropolitan agencies, their increasing reliance on state and local revenue sources, their natural insularity from external oversight, and a heightened awareness of internal agency management problems.

Deficiencies are currently being recognized in existing statutory arrangements for: (a) financial planning, and (b) financial management.

The statutory contributions to deficiencies in financial planning include the following:

- Weak capital planning. The statutes do not require long-range capital investment planning and do not support the Council's efforts to institute it.
- Fragmented capital programming. Mid-range (five year) capital development programs, when they are required, are prepared by each agency separately and subject only to weak central coordination and control by Council veto.
- Lack of operations planning. With one exception, there is no statute requiring the metropolitan agencies, either singly or in combination, to have plans for financing operating costs.



- Planning as rule-making. Allocation of authority among agencies, and the financial decision making procedures prescribed by the statutes, combine to produce an adversarial, quasi-regulatory relationship between the Council and the implementing agencies, which inhibits financial planning and focuses excessive attention on current projects.

These statutory deficiencies suggest various possibilities for legislative action to improve financial planning and reduce interagency squabbling over budgetary and project-level decisions.

- The Legislature could require long-range capital investment planning, either by the implementing agencies separately or in a consolidated fashion by the Council and the agencies together.
- The Legislature could require more effective mid-range capital development programming, by increasing the Council's authority to consolidate, coordinate, and control the capital programs of the implementing agencies.
- The Legislature could require metropolitan agencies, including the Council, to have mid-range (three to five year) financial plans for operating expenditure, similar to that newly required in transit. The Legislature could also authorize the Council to consolidate, coordinate, and control the mid-range financing plans of implementing agencies.
- While strengthening the Council's authority over financial policy and financial planning, the Legislature could reduce the existing opportunity and incentive, provided by the statutes, for the Council to intrude regularly in annual capital budgets and project-level decisions of the implementing agencies.
- The Legislature could substitute joint, interagency planning procedures for the existing procedures that foster the concept and the practice of planning as rule-making.

The statutory contributions to deficiencies in current financial management are similar to those in financial planning. Primarily they are the following:

- Lack of accountability. The Council and the metropolitan implementing agencies are too free of external constraint in making financial decisions.
- Financial fragmentation. Current financial decisions are made by each agency separately, with little integration or consideration of the aggregate effect.

These statutory deficiencies suggest possibilities for legislative action to improve metropolitan financial management in three areas:

#### 1. Revenue raising

- The Legislature could require external administrative review of user fees charged by metropolitan agencies. This review power could be lodged either at the Council or a state agency.

- The Legislature could increase its own scrutiny of metropolitan agency fees and property taxes, by various methods intended to force these revenue raising decisions up for periodic legislative review.
- The Legislature could require the agencies to follow procedures designed to encourage participation and effective oversight by outside public interests at the metropolitan level.

## 2. Financial reporting

- The Legislature could make the statutory requirements for agency financial reports more rigorous and more uniform.
- The Legislature could require consolidated financial reporting from metropolitan agencies.
- The Legislature could improve government auditing of metropolitan agencies by:
  - increasing the intensity and focus of auditing by state government, or
  - establishing a more independent government auditing capability at the metropolitan level, either within each agency or in a separate metropolitan auditing office.

## 3. Budgeting for operations

- The Legislature could increase the Council's supervision of annual operations finance. It could do so by authorizing the Council to (a) approve agency budgets, (b) review and comment on them, or (c) consolidate, analyze, and report on them.
- The Legislature could increase state control by requiring each agency to present budgets to the Legislature for review and approval just as state agencies do, perhaps as part of the state budget.
- The Legislature could enhance the accountability of metropolitan agencies to metropolitan publics and public officials by establishing annual budgeting procedures that:
  - promote early identification of financial issues to permit time and opportunity for full public discussion;
  - increase the attention given to mid-range planning for operations finance and to financial trends;
  - increase the linkage between financial plans and current financial actions;
  - focus attention on the financial affairs of the metropolitan agencies as a group rather than only individually; and
  - focus the Council on financial policy analysis rather than annual operating budgets.

In all of these alternatives for changing metropolitan financial management, the Legislature is presented essentially with only three choices of strategy:

- To enhance the supervisory powers of the Council.
- To increase supervision by state government.
- To create new financial decision-making procedures that will increase supervision by metropolitan citizens and local officials.

With rare exceptions the Legislature has generally favored the first two of these three strategies.







**METROPOLITAN GOVERNANCE PROJECT**  
**Toward a Definition of the Problem**  
**Working Paper #1**

**October, 1985**





## OUTLINE OF CONTENTS

- **Executive Summary**
- **The New Criticism of the 1980s**
  - Three Problems
  - The Importance of Distinguishing Problems
- **Public Accountability**
- **Political Leadership and Systems Planning**
  - The Distinction Between Leadership and Planning
  - The Era of Leadership: 1967-1975
  - The Inadequacy of Management
  - The Ascendancy of Systems Planning: 1975-1985
  - The Decline of Leadership

## EXECUTIVE SUMMARY

Recent criticism of metropolitan governance in the Twin Cities identifies three issues or problems: (1) insufficient public accountability of metropolitan agencies; (2) inadequate political and policy leadership at the metropolitan level; and (3) inadequate oversight, planning, and management of the major metropolitan facility systems.

The first of these issues--insufficient public accountability--is in large part an inevitable consequence of the legal form of metropolitan agencies: most of them are special districts run by appointed boards. Although this problem cannot be eliminated, it can be mitigated somewhat, mostly by changes in the appointments process and the statutory rules governing the way agencies behave.

The other two issues point to deficiencies in the performance of the two chief functions of metropolitan governmental institutions: first, political and policy leadership, or success in identifying and developing solutions to emerging metropolitan problems; and second, systems planning and management, the coordinated and effective governance of major public facility systems at the metropolitan level. These two functions--leadership and management--are often confused in the metropolitan debate; but it is vital to keep them distinct in order to understand both the development of metropolitan governance in the Twin Cities and the current proposals for change.

The metropolitan governance structure was designed primarily for the first of these functions--for leadership, for problem-solving. By all reports, it performed quite adequately in that capacity for years. As the metropolitan public facility systems began to develop in the 1970s, however, the existing structure acquired a new responsibility: integrating, coordinating, and managing the metropolitan systems. The governance structure was not designed or suited for this new management responsibility. The Legislature has contrived various quasi-regulatory and administrative devices to fill the gap between the inherent capabilities of the governance structure and its new systems management responsibilities. The current set of reform proposals are mostly extensions of these contrivances. Their continued currency, despite years of legislative tinkering, indicates that the desire for better systems management is still unsatisfied.

Meanwhile, as the Legislature groped for improved metropolitan systems management, the other purpose of metropolitan institutions--to provide political leadership and problem-solving at the metropolitan level--fell on hard times. By most accounts, the capacity for leadership withered as the burdens of systems management increased, giving rise to fears that by adding administrative apparatus in the service of better management, the Legislature was inadvertently eroding metropolitan leadership and problem-solving capabilities.

The larger issue presented by these developments is the apparent trade-off between the two goals. The question is not whether the Legislature can devise methods to achieve one or the other of these two objectives--either leadership or management--but whether the Legislature can have the one without thereby impairing the other. Assuming that the Legislature wishes to improve the performance of both the functions, the challenge or conundrum becomes: first, how to improve metropolitan systems management without further immersing the Council in activities that appear to detract from its capacity for leadership and problem-solving; and second, how to foster policy leadership and problem-solving at the metropolitan level without removing the Council from activities that are required to assure execution of its policies.

### THE NEW CRITICISM OF THE 1980s

During the first half of the 1980s, metropolitan governance in the Twin Cities became the subject of renewed study and evaluation. Opinion in the eighties was more critical than in the seventies, when the Council and the other metropolitan agencies enjoyed favorable reviews at least from those who supported the idea of metropolitan governance.

#### Three Problems

The variety of the problems and potential reforms identified in this new criticism of the early 1980s requires some grouping of the issues. For the purposes of this series of working papers on metropolitan governance, the problems are grouped into three categories:

- First, insufficient public accountability. Critics accuse the metropolitan agencies of being insufficiently accountable and responsive to the various publics outside of the metropolitan governance system (e.g., citizens, local governments). According to this criticism, the agencies are not directly subject to the disciplines of the ballot box, and they are too free of administrative controls designed and overseen by people who are.
- Second, inadequate leadership. Critics accuse the metropolitan agencies, and the Council in particular, of failing to perform one of the principal functions of metropolitan governmental institutions: the exercise of political and policy leadership in and for the metropolitan area. This criticism is expressed in various ways: the lack of "policy development" work by the Council; the lack of "vision" or "creativity;" the failure of the Council and implementing agencies to practice "strategic planning;" the inability of the Council and other agencies to foster "public learning," to identify issues and define problems in a metropolitan perspective and to propose politically acceptable solutions. Critics of the Council's leadership and problem-solving capacities point to the tendency, in recent years, of the Legislature to move out in front of the Council in facing emerging metropolitan issues and of the state executive to by-pass the metropolitan agencies in major metropolitan decisions.

- Third, inadequate systems planning and management. Critics claim that there should be more effective and integrated management of the major metropolitan physical facility systems--airports, ground transportation, sewers, regional parks, and solid waste facilities. The Council and the regional and county implementing agencies are accused of a failure to conform actions with policies, inability to coordinate the several metropolitan agencies and systems, and poor management and oversight of operations. Critics of metropolitan systems planning and management point, for example: to the inability of these institutions of governance to develop and implement a consistent metropolitan transit plan; to bitter and ongoing interagency conflicts; to inconsistencies among various metropolitan systems plans; and to unsatisfactory service, performance, and financial planning.

### The Importance of Distinguishing Problems

It is important to distinguish among these three issues. The various reforms that are advanced each presume a certain definition of the problem that needs to be solved. But there is no agreement on the relative weight to be given to each of the three problems, and what is worse, many solutions that are being confidently advanced to deal with one problem will almost certainly exacerbate the others. Therefore a sound evaluation of reform proposals depends upon recognizing and distinguishing the specific problems they are intended to address.

### PUBLIC ACCOUNTABILITY

The first of these three problems--the insufficiency of public accountability--requires little further definition, although its solution is none the easier for that.

The Legislature has steadfastly refused to transform the Council into a representative assembly through election. As a consequence, all members of the governing boards of metropolitan agencies are at least once, sometimes twice, and even three times removed from the discipline of the ballot.

At the same time, in establishing the metropolitan agencies, the Legislature has preferred the legal form of independent special districts, each a separate public corporation and political subdivision of the state. For this reason, most metropolitan agencies, although governed by appointed boards, are free of many administrative controls that apply to appointed government officials at the state and local level.

The problem of public accountability arises, at least in theory, from these characteristics of metropolitan agencies. So long as the Legislature retains the form--independent special districts governed by appointed boards--the problem must be addressed indirectly, through changes in the way members of governing boards are appointed and in the rules that govern the way each agency makes critical decisions and communicates and deals with citizens outside the metropolitan governance structure.

The other two problems--insufficient political leadership and inadequate systems planning and management--require more extended definition.

## POLITICAL LEADERSHIP AND SYSTEMS PLANNING

In analyzing the contemporary understanding of the problem of metropolitan governance, it is crucial to keep clear the distinction between failures of leadership and failures in systems planning. This is so, first, because political leadership and systems planning and management are the two chief functions of metropolitan institutions; second, because the two are often confused; and third, because it may be very difficult to correct one of these failures without exacerbating the other.

### The Distinction Between Leadership and Planning

The terms leadership and planning express in summary fashion a variety of distinctions drawn by professional planners and policy analysts--e.g., the differences between policy analysis and planning, incremental and synoptic methods, public learning and deductive rationalism, and substantive and procedural orientations. Some of these distinctions are relatively new in the professional literature and virtually unknown outside of it. But together they form a picture of two different orientations that may take possession of a governmental organization. The two orientations are briefly contrasted on page 6.

## THE DIFFERENCE BETWEEN PLANNING AND LEADERSHIP

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### PLANNING

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#### Interest in systems design

- goal driven
- use of long-term policy plans
- "synoptic" and "comprehensive"
- quest for order and harmony
- unified strategy

#### Rational

- emphasis on applying knowledge
- correctness of decision
- attention to "facts"
- dominance of specialists
- reliance on technical expertise

#### Preference for "reviewer" role

- goal: coordination
- top down management
- reactive: preference for reviewing the initiatives of others
- legalistic: orientation to regulation control, compliance, enforcement

#### Emphasis on process

- attention to procedure
- interest in tactics

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### LEADERSHIP

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#### Interest in problem solving

- problem driven
- incremental approach
- focused, limited agenda
- acceptance of conflict
- multiple, competing strategies

#### Political

- emphasis on learning situations
- appropriateness, saleability
- attention to people, values, attitudes
- dominance of generalists
- reliance on ad hoc analysis

#### Preference for "initiator" role

- goal: invention
- bottom up experimentation
- entrepreneurial: preference for initiating new proposals
- opportunistic

#### Emphasis on project

- attention to results
- interest in strategy

### The Era of Leadership: 1967-1975

History suggests that in the late 1960s and early 1970s, in what some regard as the golden years of metropolitan government, the Council exercised great creative political and policy leadership. In those days, by most reports, the Council's style of work was, in the current lexicon, "strategic" rather than "comprehensive."

- The Council was issue-oriented. It gave its attention to probing certain matters in great depth (e.g., sewers, a new airport, heavy rail transit), and then looked for new and emerging issues. It had a fairly limited, highly focused agenda that shifted from year to year. There was no "comprehensive plan" for the metropolitan area.
- The Council was a policy developer, intent on creating solutions to identified problems. It acted in an analytic, problem-solving style, rather than as a plan-maker and plan-enforcer.
- In its internal administrative life, the Council was light on staff specialists. It was oriented more toward results than procedure. It attended to strategy as much as technique and the outside public more than the internal experts.
- In the external environment, the Council was attentive to building viable political coalitions, and to forging a metropolitan consensus on new policies or solutions that could be "sold" at the state level if necessary.

### The Inadequacy of Management

The governmental structure that the Legislature developed during the era of leadership--the very one that is still with us in the mid-1980s--may have been suited to this style of strategic leadership. But it was not, and still is not, well-suited to planning and managing metropolitan systems--the big, complex set of metropolitan facilities that grew out of the strategic decisions of the founding era. The metropolitan governmental structure does not appear to be designed with much concern for effective systems management, as a few of its key characteristics will illustrate.

- Federalism. The metropolitan statutes do not set out a neat hierarchical arrangement, in which long-range policy goals are expected to dictate operations by means of management controls exercised by central planners. The Legislature created instead a federal form of government, in which actions appear to emerge from an on-going dialogue between "center" and "periphery"--that is, between long-range visions and the practical requirements of operations. It is a decentralized system of dispersed power, of checks and balances, a system based on the presumption that regional and local implementing agencies have a perspective and a function as worthy of attention and empowerment as the comprehensive planning agency.

- Institutional separation In this federal structure, each metropolitan agency proceeds with its plans and activities quite independently. Between the Council and each agency, and among the various agencies, coordination must be achieved--if achieved at all--largely by means of an arms length hearing and review procedure, a process that gives the Council a small leverage over other agencies, through its "negative" review power (its power to veto certain agency plans), and through its power to appoint some members of some other agencies. Besides these weak management devices, legal processes and structures for controlling the agencies from the center are remarkably absent in the metropolitan governance structure. As a consequence, the Council simply is not a strong systems manager; it has neither the responsibility nor the power. The law pays no more attention to devices for interagency cooperation than it does to central controls. The statutes do not establish or recognize any formal institutions for interagency coordination and joint planning (with the single exception of the Transportation Advisory Board, which was imposed not by the state but by federal requirements for coordination in metropolitan transportation planning). Such extreme, almost atomic institutional fragmentation is not a necessary condition of federal systems; it is at least partly the consequence of a deliberate and sustained legislative decision not to establish strong legal processes and structures for control and coordination.
- Capital investment focus. A third characteristic of the structure inherited from the founding era is the focus on capital investment strategy. The weak management devices that exist are concerned mostly with controlling physical construction. As a consequence, the governance system is preoccupied with these capital projects, and management matters of equal or greater importance--the planning and coordination of services and operations, operations finance, and performance evaluation--go unprovided for.

It is no wonder that this structure is criticized for bad systems management. The governmental structure that may have served well in an era of innovation, development, and leadership exhibits certain deficiencies when called upon to manage the huge facility systems that subsequently emerged.

#### The Ascendancy of Systems Planning: 1975-1985

The mismatch between the original structure and the new responsibility did not go unnoticed. The history of metropolitan affairs in the Twin Cities, at least since about 1975, has been largely a story of an increasing preoccupation at the Council and in the Legislature with the need for better systems planning and management. Partly from necessity and partly by its own preference, the Council gradually shifted its orientation from leadership to systems planning and management. Likewise, metropolitan legislation in the last ten years (with the single exception of the Surface Water Management Act of 1982) has been concerned almost exclusively with strengthening systems management at the metropolitan level.

At the same time, the Legislature has refused to abandon or significantly transform, adapt, or add to the structure of government inherited from the earlier era--a structure that is not particularly suited to effective,



integrated systems management. Instead the Legislature has superimposed upon the existing structure an ever-thickening facade of regulatory controls. In the service of better management--to bring about some level of conformance with the Council's metropolitan systems plans--the Legislature has resorted, grudgingly, to giving the Council more and more tools to regulate the activities of others. The Council has acquired the power to make more appointments, to administer and broker large state and federal grant programs, to approve more of the plans and projects of others, and sometimes to operate extensive programs (e.g., in housing and solid waste). The intended result of this gradual empowerment of the Council is that these quasi-regulatory and administrative powers will improve systems management in this decentralized federal system, by increasing the influence that policy has over action and bringing behavior into alignment with plans.

This decade long drift of regional governance in the Twin Cities into systems planning and management finds new expression in the current crop of reform proposals, including the so-called "governance bill" now before the Legislature.

### The Decline of Leadership

By most accounts, the Council's capacity for policy and political leadership went into a noticeable decline during the same decade that systems planning came into ascendancy. Is this a coincidence? Or is it that the burdens imposed, and the attitude and work styles created, by the responsibility for managing gigantic metropolitan facility systems, especially by means of rather weak regulatory and administrative devices, necessarily suppresses problem-solving appetites and capabilities?

There is an emerging school of thought among professional planners and policy analysts that suggests the latter conclusion is the correct one--that the quest for control and comprehensiveness represented by systems planning and management is fundamentally and necessarily at odds with the capacity to identify and solve new problems creatively. If that were true--if it were true that it is at some point impossible for one institution, the Council, to improve its performance in systems management while at the same time retaining its capacity for leadership--then it will be necessary for the Legislature to decide what the Council should become: a developer of metropolitan policy or a manager of metropolitan systems.

That is why, in evaluating reform proposals, it is essential to keep these two problems--of insufficient leadership and inadequate systems management--distinct. For it may be that current efforts to correct the latter deficiency by extending the systems management powers of the Council will exacerbate the deficiency of leadership. Alternatively, it may not be possible to renew the Council's capacity for leadership while simultaneously requiring it also to become a better manager of metropolitan systems. Assuming that the Legislature wishes to improve the performance of both the functions, the challenge or conundrum, once again, becomes: first, how to improve metropolitan systems management without further immersing the Council in activities that appear to detract from its capacity for leadership and problem-solving; and second, how to foster policy leadership and problem-solving at the metropolitan level without removing the Council from activities that are required to assure execution of its policies.







**METROPOLITAN GOVERNANCE PROJECT**

**Improving Accountability through Procedures  
for Appointing Members of Governing Boards**

**Working Paper #2**

**October, 1985**



## OUTLINE OF CONTENTS

- **Executive Summary**
- **Competing objectives:**
  - Accountability to the Council
  - Accountability to the public
- **Improving Accountability to the Council**
  - Existing appointment powers of the Council
  - MWCC and RTB chairs
  - Other agencies
  - Terms of office
  - Elimination of boards
- **Improving Accountability to the Public**
  - Appointment by state elected officials
  - Notification and consultation procedures
  - Appointment criteria
  - Representational basis
  - Direct appointment by metropolitan publics
- **Appendix: The composition of metropolitan agencies**

## EXECUTIVE SUMMARY

Proposals are continually surfacing in the Legislature to change the process for appointing people to serve on metropolitan agencies. These reform proposals are intended to address two perceived deficiencies in metropolitan governance:

- a deficiency in interagency accountability--the accountability of the implementing agencies to the Metropolitan Council and each other; and
- a deficiency in public accountability--the accountability of all agencies, including the Council, to the various publics outside of metropolitan agencies.

Accountability of agencies to the Council is generally improved by increasing the Council's power in the appointments process. Accountability to the outside public, on the other hand, may be increased either: (a) by increasing the role of state elected officials in appointments, or (b) by giving metropolitan publics a more influential role in the appointment process.

The reform proposals prominent at this time are mostly designed to improve agency accountability to the Council, by transferring some authority for appointments from state elected officials to the Council. In this they follow an historical trend begun in the 1970s of increasing the Council's authority over other metropolitan agencies in order to foster better metropolitan systems management.

These proposals to increase agency accountability to the Council by transferring appointments to the Council may reduce the accountability of the agencies to the public that is at least theoretically served by the present involvement of state elected officials.

Appointment procedures designed to increase the accountability of all metropolitan agencies directly to metropolitan-level publics, rather than to the Council or to state officials, have been proposed by local governments and other observers but do not currently seem to enjoy much prominence in the policy debate.

## COMPETING OBJECTIVES

Proposals to alter the method of choosing members of the metropolitan agencies serve two purposes: to increase the accountability of implementing agencies to the Council, and to increase the accountability of all metropolitan agencies, including the Council, to the outside public.

The distinction is important, because some changes in the appointments process better serve one than the other of these objectives, and because some changes in the service of one goal may actually impair achievement of the other goal. For



example, the method that the Legislature has commonly chosen to maintain the public accountability of metropolitan commissions may very well adversely affect interagency accountability. Appointment of commissioners or commission chairs by elected state officials (the governor with the advice and sometimes the consent of legislators) may foster public accountability; but it also creates strong lines of accountability running upward from the metropolitan agencies to the state rather than the Metropolitan Council. The proposal currently embodied in the Knickerbocker bill (H.F. 272), to transfer the power to appoint certain commission chairs from the governor to the Council is intended to be a method of improving interagency accountability. But if there is validity to the reason generally cited for the existing method of appointment by state officials, we should expect that such a transfer of power, at the same time that it strengthens the authority of the Council, would weaken the public accountability of metropolitan agencies.

In order to keep these often competing goals in mind, it is helpful for analytical purposes to place proposals to change the method of appointing members of metropolitan agencies into two categories, according to the problem proposed to be addressed: either (a) a deficiency in interagency accountability, or (b) a deficiency in public accountability.

### IMPROVING ACCOUNTABILITY TO THE COUNCIL

Changes in the appointments process can be designed to improve the accountability of the metropolitan implementing agencies to the Council.

#### Existing Appointment Powers of the Council

The Legislature has attempted to increase the responsiveness of the metropolitan implementing agencies to the Council's directions by transferring from the governor to the Council some of the authority to appoint members of other agencies. The table in the Appendix displays the current method of appointment of metropolitan agencies.

In an effort to further increase agency responsiveness to the Council, the Legislature could follow the historical trend by extending the appointment powers of the Council.

#### MWCC and RTB Chairs

The Council's appointment power could be extended to include the chairs of the Metropolitan Waste Control Commission (MWCC) and the Regional Transit Board (RTB), now appointed by the governor. This is proposed in the Knickerbocker bill.

Several alternatives exist for structuring an enhanced role for the Council in these appointments to the MWCC and RTB chairs. They are listed below, generally in order of increasing involvement by the Council in the appointment:

- Election from within each commission, by members who have in turn been appointed by the Council. This alternative, suggested by some

observers, is in use only for the Metropolitan Transit Commission (MTC) chair. It poses some practical problems for some agencies: the even number of commission districts, the need for a chair representing the metropolitan area at large, and the need for a full-time chair. (A full-time chair has, incidentally, been recommended also for the MWCC, by the Governor's Commission to Review the MWCC--the "Boland Commission".)

- Nomination by the Council, appointment by the governor. This alternative is partially effected by the 1984 transit reorganization law. This law requires the Council to submit a list of nominees for the RTB chair to the governor but does not require the governor to appoint from that list. If the governor were required to appoint from the Council's list of nominees, the Council would then function as a binding screening or nominating committee.
- Appointment by the Council, confirmation by the governor or legislature.
- Appointment by the chair of the Council.
- Appointment by the chair, confirmation by the full Council. The Knickerbocker bill proposes this alternative as the means for appointing the chairs of the MWCC and RTB.
- Nomination by the chair, appointment by the full Council.
- Appointment by the full Council. Under existing law, the only model for appointing commission chairs through the Council is the Metropolitan Parks and Open Space Commission (MPOSC). The chair of the MPOSC is appointed by the full Council.

#### Other Agencies

Of course, a similar set of options is available to improve the accountability of other metropolitan agencies to the Council. For example the Council now has no role in appointing members of the Metropolitan Airports Commission (MAC). So, if the arguments used to support Council appointments to the MWCC and RTB were extended to the MAC, the law could call for increased involvement of the Council in the appointment of some or all members, or the chair, of the MAC.

#### Terms of Office

The accountability of metropolitan agencies to the Council could be improved by altering the terms of members as well as their source of appointment.

- Terms on implementing agencies could be shortened, so that the terms of agency members are less than the terms of the Council members. This could increase the authority of the Council over the other agencies.
- Chairs or members of the implementing agencies could serve at the pleasure of the Council rather than for a term of years. This provision is now in the law for the chair of the MPOSC, and the Knickerbocker bill would extend it to the chairs of the MWCC and the RTB.

Existing law on terms of office is summarized in the Appendix.

### Elimination of Boards

Another method of increasing agency accountability to the Council would be to replace some of the implementing agency boards with a chief administrator appointed directly by the Council. This was a minority position in the recent Citizen's League report on metropolitan governance (The Metro Council: Narrowing the Agenda and Raising the Stakes, 1984).

## IMPROVING PUBLIC ACCOUNTABILITY THROUGH THE APPOINTMENTS PROCESS

Persons interested in improving public accountability may resist these proposals to strengthen the Council's hand in appointments and argue instead for other appointments procedures designed to strengthen the hand of outsiders.

### Appointment by State Elected Officials

One way of ensuring the accountability of appointed officials to the outside public is to require that the appointment be made by elected officials, who may in turn be held to account by the ballot box. The Legislature's insistence that appointments to key positions on metropolitan agencies be made by state elected officials--the Governor with participation by the Legislature--has been defended in the Legislature on exactly these grounds.

According to this principle, the Legislature could choose to increase the accountability of metropolitan agencies to the outside public by increasing the role of elected state officials in the appointment process rather than by reducing it as proposed in the Knickerbocker bill. The "Boland Commission" Report on the MWCC chose exactly this route by recommending legislative confirmation of appointed agency members.

This method of furthering public accountability is not in favor these days. One reason, obviously, is that it would reduce the authority of the Metropolitan Council in appointments and therefore, presumably, reduce agency accountability to the Council, which is also perceived in some quarters to be a significant problem. More important, perhaps, is the assertion that appointment by state officials gives the state entirely too much influence in metropolitan affairs, and metropolitan public interests too little.

Criticism of appointment by state officials as a method of securing public accountability has led to appointment proposals that are intended to improve the responsiveness of metropolitan agencies directly to metropolitan publics, rather than through the agency of state officials. Although these methods do not currently capture much interest, they are outlined below, roughly in order of increasing radicalness.

## Notification and Consultation Procedures

Notification and consultation procedures used in the appointments process could be changed to give greater weight to metropolitan, as opposed to state, interests.

- The new notification, consultation, and hearing procedures for appointments to the RTB--procedures that are expressly designed to involve more metropolitan public interests in these appointments--could be extended to other metropolitan agencies.
- The right of notification and consultation, by the appointing authority (either the Council or the governor) that is now possessed by legislators could be extended to local elected officials.

The Association of Metropolitan Municipalities has proposed this type of change in notification and consultation procedures. The Knickerbocker bill--being generally more focused on the problem of accountability to the Council than accountability to the public--does not.

## Appointment Criteria

Improving the notification and consultation procedures in these ways would be intended to increase accountability for appointments by limiting the unimpeded discretion of the appointing authority. Another change in the appointments process that might have a similar effect would be to establish statutory criteria, or require the Council to establish criteria, indicating qualification for office (e.g., past performance or expertise in the field). Such criteria were used for appointments to metropolitan agencies during the administration of Governor Quie. The "Boland Commission" Report recommended that explicit appointment criteria be established for the MWCC. A rather weak example of this device in existing law is the statutory statement of qualifications for the chair of the Metropolitan Council: "a person experienced in the field of municipal and urban affairs with administrative training and executive ability." An even weaker one exists for MTC members.

## Representational Basis

Altering the representational basis of metropolitan agencies also might serve to increase accountability to metropolitan publics. Various alternatives are possible:

- Party balance could be required on all metropolitan agencies (as it is, for example, on the Public Utilities Commission).
- Metropolitan agency districts could be defined in accordance with natural subregional areas instead of state legislative districts. As the Appendix shows, this alternative may be at least partially effected now by the use of municipal boundaries to define districts for some members of the MTC, the MAC, and the MSFC.
- Accountability through local elected officials could be substituted for accountability through state elected officials, by encouraging service

by local elected officials on the boards of metropolitan agencies. A portion of the membership on each agency, for example, could be reserved, or at least available, for local elected officials.

- Increased representation of local interests might be obtained by increasing the number of members on the boards of metropolitan implementing agencies. This is a step recommended in the "Boland Commission" Report on the MWCC.

### Direct Appointment by Metropolitan Publics

The most far-reaching of the methods designed to increase the influence of metropolitan publics in metropolitan appointments, and so improve public accountability, would be to give these metropolitan publics a direct and formal role in the appointments, beyond mere participation through notification and consultation.

Several methods have been proposed:

- Require the appointing authority (the governor or the Council) to choose from a list of names nominated by a committee of citizens and local government officials. The screening committee process used during the Quie administration is sometimes referred to as a tentative step in this direction. An existing model for a binding nominations process is the requirement that counties select the governing boards of metropolitan watershed districts from lists submitted by cities.
- Provide for appointment of at least some agency members directly by local government officials. This alternative is already partially effected in the procedures for appointments to the MAC and the MSFC. Extension of the idea has frequently been proposed in years past. Opponents argue that this would threaten to transform metropolitan agencies into councils of local governments. This threat could be reduced, somewhat, by simultaneously prohibiting service on the metropolitan agencies by local officials.
- Allow local governments to confirm, or veto, appointments.

As a means of securing nominations or appointments by local elected officials, two methods have been suggested:

- One calls for a joint convention of local officials in each district.
- The other calls for separate votes, weighted by population, of the local governing bodies. This was recommended in the "Boland Commission" Report.

An even more radical approach offered by some observers--really a substitute for direct election of metropolitan agencies--would be to create a role for the general public in the appointments process through some kind of formal nomination procedure, either at the regional or district level, by the public gathered somehow "in convention"--perhaps through the mechanism of television.









**METROPOLITAN GOVERNANCE PROJECT**

**Improving Public Accountability  
through Changes in Administrative Procedures**

**Working Paper #3**

**October, 1985**



## OUTLINE OF CONTENTS

- **Executive Summary**
- **The Problem: Public Accountability**
- **The Rejection of APA Reform Proposals**
- **Options for Limited Application of APA Concepts**
  - Notice and Publications
  - Hearing and Decision-Making Procedures
  - Independent Hearings

## EXECUTIVE SUMMARY

As special districts governed by appointed officials, the metropolitan agencies are said to be excessively insulated from public accountability. Administrative procedural requirements--governing the way that administrative agencies deal with the public--are often advanced as a method of correcting this problem.\*

Except in a few instances, the Legislature has consistently refused to apply to metropolitan agencies the elaborate procedural requirements used to control the way that state agencies deal with the public.

However, various possibilities exist for more selected, limited procedural reforms intended to: (a) improve public notice of agency actions, and (b) change the way that agencies make decisions in certain situations.

Although these changes in administrative procedures are proposed primarily to increase the accountability and visibility of each metropolitan agency to the public, it is obvious that many of the changes (particularly those relating to notice and publications) would also have the effect of decreasing the separation of metropolitan agencies from each other. Therefore, at least in the public's eye, if not in agency attitudes and behavior, some of these procedural reforms might increase integration and accountability among the agencies--the sense that they are not each free-standing units but parts of a larger whole, much as DNR is publicly understood to be part of state government.

### THE PROBLEM: PUBLIC ACCOUNTABILITY

The Legislature established the metropolitan agencies as special districts and has adhered to this form of government over a period of nearly twenty years. Special districts are free of many of the controls placed on general purpose governments and most of the normal channels of political accountability.

This insulation from accountability to the public naturally inspires ideas to reform the way in which the agencies deal with the public--that is, to reform their administrative procedures. Proposals designed to correct perceived deficiencies in the public accountability of metropolitan agencies by altering their administrative practices have surfaced regularly in the Legislature at least since the mid-1970s.

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\*Administrative procedures, as used in this paper, refers to the procedures that agencies employ in dealing with the outside public rather than the procedures used within agencies for internal management purposes (e.g., personnel, auditing, ethics). In other words, the phrase is used as it is in the state Administrative Procedures Act (APA), not as it might be used, for example, by the Department of Administration.

Defenders of these proposals allude to various problems in public accountability:

- The lack of uniformity in agency procedures, as a consequence of variations in statutory provisions and the almost total independence of each agency in matters of procedure;
- The difficulty in following the affairs of metropolitan agencies, even for government analysts, not to mention citizens;
- A lack of public information and the relative invisibility of metropolitan agencies to the general public;
- The reliance of metropolitan agencies on certain types of procedures (e.g., advisory groups, newspaper notices, formal pre-decision hearings) and their relative neglect of other, usually more legally demanding procedures;
- The difficulty experienced by outsiders attempting to challenge agency decisions, to force agencies to reconsider decisions, and to get a fair hearing before a tribunal that is not also an interested party to the issue in dispute.

#### THE REJECTION OF APA REFORM PROPOSALS

Many of the procedural reforms that have been suggested in the Legislature over the last decade are modeled on the state's Administrative Procedures Act (APA). The APA contains fairly intricate requirements on such matters as agency notice, publication, consultation, and decision-making; the agency's duty to justify its actions; and the rights of adversely affected parties. The APA process tends to be quite adversarial and "judicial" in tone, centering as it does on a hearing before an independent hearing officer at which the agency and objecting parties state their cases.

Legislation has been proposed to:

- apply the state APA directly to metropolitan agency decisions, or
- to enact a complete "metropolitan APA", establishing a set of uniform administrative procedures for all metropolitan agencies.

The Legislature has repeatedly and consistently declined these invitations to install a new and more elaborate administrative process in metropolitan agencies. The most recent explanation of this attitude is contained in the Report of the Legislative Commission on Metropolitan Governance, (the so-called "Brandl Commission Report"), published in March, 1983.

The Brandl Commission rejected the idea that due process could be obtained in metropolitan affairs by extending the state Administrative Procedures Act to the metropolitan agencies, or by creating a separate metropolitan APA, or by any other similar elaboration of procedural requirements. In the Commission's view, elaborate administrative proceedings were not well-suited to most of the decisions made by metropolitan agencies. Speaking particularly of the Council,

the Commission found these "quasi-judicial, legalistic processes" to be "inconsistent with the primary functions 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 at other levels of government demonstrated to the Commission's satisfaction that APA-type proceedings "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." Accordingly, the Commission decided that procedural elaboration "might well promote the problem rather than the solution." APA-type proceedings "are not generally appropriate to the types of functions performed by metropolitan agencies," the Commission concluded; and therefore "the Legislature should apply the APA process only on a case-by-case basis and after careful consideration of the untoward consequences."

The Brandl Commission did concede that for certain types of decisions and proceedings the application of some APA-type concepts might be justified. The Commission did not explain the more limited applications it had in mind.

#### OPTIONS FOR LIMITED APPLICATION OF APA CONCEPTS

It is the purpose of the remainder of this paper to list some of these more selective changes that could be made in metropolitan administrative procedures. The paper treats three subjects in particular:

- Notice and publications;
- Decision-making procedures; and
- Independent hearings.

#### Notice and Publications

One of the principal criticisms of metropolitan agencies is the effort required of anyone attempting to follow metropolitan affairs. Under existing law, each metropolitan agency is governed by separate, and sometimes quite disparate, statutory provisions on notice and publication. As a consequence, each agency performs these functions independently and quite differently according to its own enabling law and preference. State agencies, in contrast, are governed by consolidated and more nearly uniform statutory provisions on notice and publication; and the resulting state agency procedures make it somewhat easier for outsiders to track the course of decision-making in state agencies on such matters as contracts, policy development, grants, and approvals.

Among the reforms in metropolitan agency notice and publications suggested by arrangements at the state level are the following:

- Require periodic publication of a consolidated metropolitan code or manual of agency rules, policies, and guidelines. This would certainly not be identical to Minnesota Rules, the state code of agency rules, but it might serve a similar purpose.
- Periodically publish a comprehensive guide to metropolitan agencies that describes services, internal organization, procedures, staffing, phone numbers, etc. for each agency. This would serve a similar purpose as the Minnesota Guidebook to State Agency Services.
- Publish a weekly "metropolitan register" for all official agency notices and require all agencies to use it. This could be done either as a section of the State Register or independently, as a separate metropolitan register.
- Establish a single filing-for-notice office for all metropolitan agencies, so that the interested public would not have to deal with each agency separately.
- Require formal pre-drafting notices by each agency.
- Expand "special notice" requirements for certain decisions (e.g., by mail to legislators, local governments, or by personal service to affected parties).
- Establish a single official repository for the public documents and official records of all metropolitan agencies.

### Decision-Making Procedures

An important theme in criticisms of metropolitan agencies is that outside parties adversely affected by agency decisions are believed to have very limited opportunities to mount effective challenges to these decisions. Even though the metropolitan agencies, particularly the Council, are "replete with process," it could be the wrong type of process for some kinds of decisions (e.g., those affecting legal rights and property). Critics draw a contrast to state agencies, where decision-making is circumscribed by the formal, rather legalistic procedural requirements of the APA that are intended to limit agency discretion and create opportunities for affected parties to challenge decisions or proposed decisions. The Legislature has hesitated to apply these state decision-making procedures to metropolitan agencies, apparently because of the disadvantages--discussed in the Brandl Commission Report--in relying on elaborate legal procedures to assure public accountability of administrative agencies. But if the Legislature did decide to apply APA-type procedures in a more surgical fashion, to limit unimpeded agency discretion in making certain types of decisions, it would have resort to the following kinds of changes:

- Replace the existing separate and disparate statutory hearing and decision-making procedures with one uniform provision; or, alternatively, require the agencies themselves to develop, publish, and use a uniform procedure for hearings and decisions.

- Create a right to petition for agency decisions of certain types, and require a formal agency response.
- Require agencies to make affirmative presentations of reasonableness and necessity for certain types of proposed policies (e.g., user fees or financial allocations).
- Create more extensive requirements for building official records in certain cases.
- Require a majority of decision-making officials (governing board members) to know the record before voting, either by attending hearings or by certifying their reading of the record.
- Require rehearing of a proposed decision of general application, upon substantial amendment by the agency subsequent to the initial hearing.
- Require a "proposal for decision" in certain types of cases, to allow an opportunity for final statements before the agency board by adversely affected persons.
- Require independent hearings on certain agency decisions (e.g., those having elements similar to rule-making and contested case proceedings, or those affecting local governments or tax- or fee-payers in certain ways).

The last of these procedural reforms requires separate elaboration.

### Independent Hearings

The purpose of independent hearings is to provide an impartial tribunal to hear and make recommendations on disputes between an administrative agency and an aggrieved party. By limiting the freedom of the agency to decide entirely on its own who will prevail in disputes in which it is an interested party, the independent hearing can create an opportunity for outsiders to effectively challenge an action of the agency.

In general, there are three alternative methods for independent review of agency decisions:

- judicial review;
- legislative review; and
- administrative review of two types: (a) formal, quasi-judicial procedures (using judicial-style hearings and administrative law judges); and (b) informal administrative dispute settlement procedures (using mediation, etc.).

The most recent systematic legislative analysis of these three alternatives appeared in the Brandl Commission Report in 1983. The conclusions were as follows:

- Judicial review is not a very desirable or effective method of resolving disputes over the decisions most commonly made by metropolitan agencies.



- Legislative review is serviceable only for disputes that raise large questions of policy.
- Quasi-judicial hearings are not much better than judicial review for most disputes with metropolitan agencies, and they suffer from all of the defects of elaborate administrative proceedings.
- Some type of independent administrative review should be established as a method of settling disputes with metropolitan agencies, but for most disputes it should be less formal and legalistic than the APA type of review process.

The Brandl Commission Report seems to express the prevailing wisdom on this subject, for the Legislature has consistently rejected proposals to install independent hearings or administrative appeals procedures in most metropolitan decision-making. In the last decade, the Legislature has seen fit to require a modified APA-type hearing procedure only in the Metropolitan Land Planning Act and in Metropolitan Significance rulemaking.

If the Legislature decided that more decisions of metropolitan agencies should be subject to independent administrative review, various possibilities exist for instituting it.

- Give access to an existing quasi-judicial state administrative agency (like the Public Utilities Commission) for "regulatory" decisions that require legal safeguards. The 1983 report of the Governor's Commission to Review the Metropolitan Waste Control Commission (the "Boland Commission") suggested this possibility for rate-setting decisions.
- Create a metropolitan appeals board. A board could be established specifically for this purpose, or an existing agency could be used to perform this function: the Council for the other agencies, the Regional Transit Board for the MTC, etc. Legislation has been proposed along these lines several times in years past.
- Employ an independent administrative law judge--a hearing examiner--in the fashion of the APA, to hold the hearing and report to the agency. A hearing examiner could be assigned by the state office of administrative hearings or a separate metropolitan office of administrative hearings, or one could be agreed upon by the parties.







**METROPOLITAN GOVERNANCE PROJECT**

**Improving Systems Management through  
the Structure of Governing Boards**

**Working Paper #4**

**November, 1985**



## OUTLINE OF CONTENTS

- **Executive Summary**
- **The Prevailing Model: The Independent Agency**
  - Autonomous Agencies
  - Systems Management: Problems and Alternatives
- **The Agency of the Council**
  - The MPOSC
  - Advantages and Limitations
  - Some Limited Applications
- **Interlocking Directorates: The Ex Officio Membership Device**
  - An Existing Model: The Council Liaison
  - Interlocking Council and Commission Boards
  - Advantages and Limitations
  - The Role of the Metropolitan Council in Systems Management
- **Metropolitan Systems Management Advisory Board (MSMAB)**
  - Existing Models
  - Powers and Functions
  - Purposes
  - Composition
  - Relationship to the Council

## EXECUTIVE SUMMARY

One of the characteristics of the metropolitan governance structure in the Twin Cities is the extraordinary legal and institutional independence of the agencies that compose it. Most of these agencies are separate, free-standing public corporations and political subdivisions of the state, and conduct their affairs with each other and the Metropolitan Council accordingly--at arms length.

The autonomy of metropolitan agencies clearly limits achievement of one of the chief purposes of metropolitan government: the management of metropolitan facility systems, including the supervision and coordination of activities of metropolitan implementing agencies.

The purpose of this paper is to describe ways of modifying this governmental structure, this prevailing separation of agencies, in the interests of better metropolitan systems management.

One alternative, obviously, would be to eliminate the separate governing boards of implementing agencies, replacing them with an administrator responsible to the Council directly.

The Legislature has not adopted this strategy. It has instead preferred to retain the separate governing boards while attempting to link these agencies to the Council--to bring them more under the control of the Council--by investing the Council with certain supervisory and quasi-regulatory powers, primarily the power to appoint some members of the other agencies and limited powers to review and approve their decisions on capital investment in metropolitan systems. This appoint-and-regulate method, favored by the Legislature, allows closer Council management and oversight of implementing agencies without changing the legal status of these agencies.

A second method of subordinating the implementing agencies to the Council while still retaining the separation between them is to alter the legal status of the implementing agencies. This may be done by transforming them from separate public corporations and political subdivisions into agencies of the Council. The agency-of-the-Council arrangement retains the separate decision-making board, and may include all of the appoint-and-regulate devices as well, but pulls the administration and staffing of the agency into the Council. As an agency of the Council, the separate board acts as an advisor to the Council and as the executor of Council policy. The Legislature has chosen this strategy only once, in establishing the Metropolitan Parks and Open Space Commission; but extension of this model to other implementation functions is possible.

A third method of retaining the separate agency boards but bringing them into a closer relationship to the Council is the interlocking board of directors, a strategy that has received limited statutory application in the so-called liaison system, whereby members of the Council serve also as nonvoting, ex officio members of implementing agencies. This concept, of the interlocking directorate, is also embodied in such administrative devices as the Governor's regional subcabinet and the Council's recent efforts to establish a joint, interagency goal-setting and reporting procedure. The interlocking directorate



could be employed more extensively by the Legislature for the purposes of improving metropolitan systems management.

All of these methods for systems management--elimination of the separate boards of implementing agencies, the appoint-and-regulate strategy, the agency-of-the-Council structure, and the interlocking directorate--are methods of putting the Council more firmly and directly in charge of metropolitan agencies for the purpose of improving metropolitan systems management. All are based on the premise that better systems management is, or should be, part of the Council's policy-setting responsibilities.

There is an alternative premise--that systems management is more of an executive or administrative than a policy-setting or legislative function. If accepted, this premise leads to a very different strategy than any suggested so far. If systems management is primarily an executive rather than a leadership function, then the Council, so far from being thrust into management, should rather be freed from these duties. It is possible that the Council, as a result of its current efforts to renew its capacity for leadership, may learn to extricate itself from the morass of implementation and supervision in which most observers find it. Alternatively, the Legislature, recognizing that the demand for better metropolitan systems management is a legitimate demand that will more likely grow than diminish in the future, could choose to establish statutorily a separate board, advisory to the Council, to take on the daily burdens of systems management, coordination, and supervision.

#### THE PREVAILING MODEL: THE INDEPENDENT AGENCY

One of the most striking characteristics of metropolitan governmental structure in the Twin Cities is the extraordinary legal autonomy of the several institutions that compose it: the metropolitan agencies and the local governments that act as regional implementing agencies.

#### Autonomous Agencies

The predominant institutional form of regional agencies in the Twin Cities has always been the special district. The Metropolitan Council and most of the metropolitan implementing agencies are special districts. Each has an independent legal status as a free-standing public corporation and political subdivision of the state. Each has its own separate constitution of authority derived from the Legislature, its own board of directors or commissioners, its own employees, and its own property. Each of these corporations is understandably jealous of its autonomous legal identity, and conducts its affairs accordingly--at arms length from all the others. Besides the Council, the following metropolitan agencies possess this independent and self-governing legal status: The Metropolitan Airports Commission, Metropolitan Waste Control Commission, Regional Transit Board, Metropolitan Transit Commission, and Metropolitan Sports Facilities Commission.

Certain metropolitan implementation functions are performed not by regional agencies but by local governments, especially counties. In these instances, whether the local governments act separately or through joint powers arrangements, their legal status is comparable to the independent regional

agencies. Each of the local government units is a separate legal corporation and political subdivision of the state, and each possesses an independent constitution of authority in state law. The foremost examples of this form of independent implementing agency are in mosquito control, regional park ownership and operations, and solid waste management activities. In the latter two cases--parks and solid waste--the implementing agencies are individual local units of government. The mosquito control agency is unique: it is actually a statutorily mandated and established joint powers organization composed of counties.

This institutional fragmentation may be explained in several ways:

- The governmental system developed in response to specific problems by accretion over a period of twenty years.
- The Legislature has shown a distinct preference for the special district--with its virtues of business-like efficiency, flexibility, and single-mindedness.
- The Legislature has developed the whole structure--with few exceptions--on the underlying principle that policy-making and legislative functions, housed in the Council, should be separated from executive and administrative activities, housed in implementing agencies.

#### Systems Management: Problems and Alternatives

Recent studies of this structure of dispersed power acknowledge the advantages of agency autonomy, but they also increasingly recognize that interagency accountability and therefore integrated and effective metropolitan systems management have suffered accordingly. For management purposes, the structure is undeniably weak: in a government of concurrent and divided powers, coordination is lacking, accountability is unclear, and no one can be held finally responsible for what does--or does not--happen.

Elimination of this fragmentation could, of course, be accomplished by the simple expedient of eliminating the separate boards, replacing them with an administrator hired by the Council. Exactly this course of action was preferred by a minority in the recent Citizens League report, The Metro Council: Narrowing the Agenda and Raising the Stakes (1984). Although it would certainly give the Council the power required for effective systems management, the elimination of separate agency boards has not been given serious legislative consideration. The idea would seem to abandon the hope of separating policy-making and policy-execution responsibilities, and the effect would likely be to immerse the Council in the details of implementation, including the ownership of facilities, contract and labor negotiations, etc.

The Legislature has persisted in its original decision to establish separate boards. At the same time, the Legislature has tried to overcome the inherent management weaknesses of this structure by providing the Council with certain supervisory and quasi-regulatory powers over the implementing agencies, whether regional or local. Primarily these powers are the Council's authority to appoint members of certain regional agencies and the disparate powers of the Council to control the expenditure of public money for capital investments in metropolitan facilities.

These powers of the Council are avowedly systems management devices, a means of bringing some order into the prevailing fragmentation. But because each of these powers inevitably brings the Council closer to implementation activities, the appoint-and-regulate strategy eventually runs afoul of the Legislature's other goal--of separating policy-making from execution. As a consequence of this countervailing goal, the Legislature has always been--and appears to remain--reluctant to enhance these management powers of the Council, a reluctance that imposes very real limits on the capacity of the appoint-and-regulate strategy to improve metropolitan systems management.

The appoint-and-regulate method of empowering the Council in systems management leaves largely untouched the underlying structure of agency independence. There are alternatives to this, short of eliminating the separate boards. The legal structure of the metropolitan agencies could be modified in various ways in an effort to improve systems management without eliminating the multiple boards and without imposing additional supervisory and regulatory burdens on the Council.

It is the purpose of the remainder of this paper to describe these structural alternatives to the prevailing legislative strategy of combining agency independence with expanded regulatory supervision by the Council.

### THE AGENCY OF THE COUNCIL

One such alternative would be to treat the regional implementing agencies and their governing boards not as independent public corporations and political subdivisions of the state but rather as agencies of the Council.

The Metropolitan Parks and Open Space Commission (MPOSC) is an example of this alternative to the independent board model.

#### The MPOSC

Although it is governed by a separate board--just as, for example, are the Metropolitan Airports Commission (MAC) and the Metropolitan Waste Control Commission (MWCC)--the MPOSC is not an independent public corporation or political subdivision of the state. Its legal status is entirely different from these agencies. The MPOSC is an "agency of the Council."

As an "agency of the Council," the MPOSC develops and proposes policy for the Council and implements or executes Council policy. Consistent with its advisory and executive function, the MPOSC is subordinate to the Council in ways that independent, free-standing boards like the MAC or MWCC are not. All of its members, including the chair, are appointed by the Council. Its operating budget is part of the Council's budget. It is staffed by the Council, and its administrative, management, legal, and personnel requirements are supplied to the Commission by the Council rather than performed separately. As a consequence the decisions and internal operations of the MPOSC are subject to greater control by the Council.

This subsidiary status does not mean that the MPOSC is merely an advisory group or task force, similar to the multitude of other groups established by the Council to advise and assist it in its work. The MPOSC is not a creature of the

Council in that way: it has an independent constitution of authority in state law; it is established by statute; the terms and districts of its governing board members are defined by law; and it has statutorily-defined functions and responsibilities as a separate board. These features identify the MPOSC with the other metropolitan agencies and make it quite different from an advisory group formed by the Council.

### Advantages and Limitations

The Legislature could consider extending this agency-of-the-Council structure to other, independent boards. The structure seems to have enabled the Council to assure the execution of its policy decisions without the heavy-handed use of the quasi-regulatory control mechanisms that appear to be required for the management of independent boards. And the much feared immersion of the Council in the details of implementation, so often advanced as an argument in defense of the independent boards model, does not seem to have occurred in the case of the MPOSC. On the contrary, the MPOSC appears to have effectively relieved the Council of detail and allowed it to focus its decisions on larger policy issues. Accordingly, it is possible that an extension of the agency-of-the-Council model to other metropolitan boards and commissions could yield significant benefits: it could improve systems planning and management, help separate the Council from implementation activities, and diminish the regulatory and administrative apparatus that independent agencies seem to require--all while reducing staff and administrative overhead.

Despite these advantages, the MPOSC model is not easily extended to other agencies, primarily because the functions of the MPOSC are more limited than many of the other metropolitan implementing agencies. The MPOSC does not own or operate any regional facilities--unlike, for example, the MAC or the MWCC. The regional parks are actually owned and operated by local governments, mostly counties. The duties of the MPOSC are limited to assisting the Council to develop a regional capital improvement plan for metropolitan parks, approving the detailed plans for regional parks prepared by the local government operating authorities, and administering grants to local operating authorities. As a consequence of its limited functions, the MPOSC has a rather small staff and operating budget, easily accommodated under the Council's umbrella. For these reasons, despite its apparent advantages for purposes of improving interagency accountability and systems management, the MPOSC model may not be readily transferable to regional agencies like the MTC, MWCC, or MAC that have responsibility for owning and operating regional facility systems and, consequently, large staffs and huge budgets.

### Some Limited Applications

Although the agency-of-the-Council model may not be universally applicable as a solution to the systems management problem, certain more limited applications may nevertheless still be possible. Among these are the following:

- Regional Transit Board. The functions of the RTB are virtually identical to those of the MPOSC. The RTB plans, approves local plans, and administers public funds. It does not own and operate facilities. There seems to be no reason, in principle, why the agency-of-the-Council model could not be applied in whole, unchanged, to the RTB. Indeed, if

the power to appoint the chair of the RTB were to be transferred to the Council, as proposed in the Knickerbocker bill (H.F. 272), the only difference between the RTB and the MPOSC--aside from formal legal status--would be the RTB's separate staff and administration.

- Governmental functions of operating agencies. The agency-of-the-Council model could also be partially extended to the large regional operating agencies. This is possible because these agencies do have legislative, or policy-making, duties--as distinguished from their purely executive activities as proprietors and operators of regional facilities. These policy-making, or governance, activities (primarily planning, legal, auditing, and public finance functions) could be carried out under the agency-of-the-Council model, with staff and funding provided to the agency by the Council, while proprietary and operating responsibilities could continue to be carried out by the agency independently. Take the MWCC as an example. The staff and budget for the MWCC's planning, legal, auditing, and finance activities could be supplied to the Commission by the Council, as they are for the MPOSC, while the MWCC's operating division could remain separate, in the direct ownership and employ of the MWCC as an independent agency. The MWCC could act, in its governmental capacity, as an advisory and executive agency of the Council, and in its proprietary capacity as an independent decision-making board. This arrangement could increase the Council's control of policy-making; reduce staff duplication, staff-generated conflict, and agency standoffs; and subject agency finance, services, and operations to greater external scrutiny--while still retaining the separate decision-making board for implementation purposes.
- Implementation activities of the Council. There is a third possibility for extending the use of the MPOSC model. The agency-of-the-Council form might be suited to certain implementation functions now performed directly by the Council, in contravention of the Legislature's general practice of separating the Council from implementation. In particular, the Council's administration of housing programs and solid waste management programs involves functions very similar to those that the Legislature has insisted on spinning off to the MPOSC, in the case of parks, or the RTB in the case of transit. The agency-of-the-Council form seems appropriate for each of these functions. Although this extension of the MPOSC model would require the creation of separate boards, no transfer of staff or separate administration would be necessary, and the separate boards would certainly reduce the Council's current involvement in program implementation and management responsibilities.

The practical effect of the agency-of-the-Council structure is that it retains separate boards, with all of their advantages, but avoids the duplication and conflict in policy-making, and the multiplication of staff and administrative function, that seem to be characteristics of the independent board structure.

## INTERLOCKING DIRECTORATES: THE EX OFFICIO MEMBERSHIP DEVICE

A second alternative to the prevailing appoint-and-regulate strategy is the interlocking of agency boards through ex officio memberships. Ex officio members of a governing board are members of the board by virtue of holding office or membership in some other organization.

### An Existing Model: The Council Liaison

Ex officio membership--in the form of members of the Metropolitan Council appointed by the Council to serve as nonvoting members of other metropolitan agencies--is one of the few methods now provided in the statutes for improving communications and accountability between the Council and the other, separate metropolitan agencies. This "liaison system" (an appropriate term, incidentally, in its suggestion of foreign relations) fell into neglect for some years. The Council has recently attempted its revival.

The revival of the liaison device expresses a need, a need for institutional linkages, for some boundary-spanning structure to integrate the activities of the separate metropolitan agencies. It is a need that currently finds many other expressions: in the Governor's regional subcabinet; in the Council's recent recommendation, in the Regional Service and Finance Study (1984), that a regional "executive council" be established to review and discuss interagency management issues; in the Council's recent efforts to establish a cooperative, interagency goal-setting and reporting process; and in the Council's own internal systems management committee. These are administrative strategies to improve metropolitan systems management.

The liaison device is virtually the only legislative provision that speaks to this need for institutional linkage. In its present form, it is a weak method of interorganizational coordination. The Legislature could employ it more intensively to enhance communication and accountability between the Council and other metropolitan agencies, and so improve systems planning and management, without infringing on the separate legal status of the agencies--whether independent or subsidiary--and without subjecting more decisions of implementing agencies to quasi-regulatory reviews by the Council. The interlocking directorate is a device widely used for these purposes in the private sector.

### Interlocking Council and Commission Boards

In the case of metropolitan organizations, this intensified interlocking of board membership could work in either direction:

- Council members could serve as voting members of metropolitan implementing agencies, perhaps even in leadership positions; or
- the chairs of metropolitan implementing agencies could serve as members of the Council.

To elaborate on the first of these directions, the Council could appoint one of its members to each of the other metropolitan agencies, not merely as a nonvoting liaison but as a voting member, perhaps as the chair of a mandatory planning and finance committee, or even as the chair of the agency. Each of the

metropolitan agencies selected for this treatment (e.g., the MWCC, the RTB, the MPOSC, etc.) would thus have a member of the Metropolitan Council sitting as a voting member--quite a small step beyond the nonvoting liaison--or, stepping further, as a voting member with leadership responsibilities.

The direction of ex officio membership could also be reversed. Instead of Council members serving on implementing agencies, the chairs of the other agencies could serve as ex officio members of the Council. They could serve either as voting or nonvoting members of the Council. They could even be organized, with other Council members, into a systems management and implementation committee of the Council.

### Advantages and Limitations

The purpose of appointing members of the Metropolitan Council to selected metropolitan implementing agencies or the chairs of implementing agencies to the Council would be to produce a more effective and integrated management of the metropolitan systems. With representation on the Council, the implementing agencies could speak on their needs and perspectives from within the Council rather than as outsiders. It is also possible that, through this representation, the agencies might begin to absorb and understand the metropolitan interfunctional planning perspective of the Council, thereby fostering better coordination of the metropolitan systems and better translation of the Council's directives into operations. Perhaps then the debate between the requirements of policy and those of implementation, which so often in the past has taken place in the interstices of the agencies--and in the legislature--would be transferred into the Council itself, where it belongs. In short, with this overlapping of membership, the Council might become better informed about agency affairs, while the implementing agencies might become more oriented to implementing Council policy. The implementing agencies would have the access and voice in Council deliberations that they often say is wanting, and the Council might have greater influence over agency behavior and activities than the appointment power provides, but without the management burden that would be imposed on the Council by current proposals to extend and intensify the Council's supervisory powers.

Despite these advantages, there are some significant practical problems with overlapping membership arrangements, among them the following:

- possible legal conflicts of interest by persons serving on two boards;
- inconsistency with the system of part-time Council members and commissioners, persons already strained by their existing responsibilities; and
- the fact of geographic rather than at-large representation on the Council.

More troublesome than these practical problems are the potential effects of interlocking membership on oversight and decision-making.

- First, if the Council is supposed to be the supervisor and watchdog of the implementing agencies (a premise, incidentally, of limited validity under present arrangements), the overlapping of membership would breach

a very important boundary: some of the foxes would be helping to guard the chickens.

- Second, joint memberships would clearly enhance the opportunity for log-rolling and mutual back-scratching among the implementing agencies, a familiar consequence of mixing administration with policy-making in certain forms of county and city government.
- Third, it is possible that those with dual memberships could not sustain their divided commitment. Perhaps they would be drawn more to their implementation than their policy-making responsibilities. If so, the affairs and interests of implementing agencies could increase their presence on the Council's agenda, thereby accelerating the decade-long drift of the Council from political leadership toward systems management.

### The Role of the Metropolitan Council in Metropolitan Systems Management

All of the methods of improving systems management described so far are based on the premise that metropolitan systems management is, or rather should be, a part of the Council's policy-making responsibilities. The idea of eliminating separate boards, the appoint-and-regulate structure in the existing statutes, the agency-of-the-Council form as an alternative to independent boards, and the interlocking directorate--all are methods of putting the Council more firmly and directly in charge of systems management by increasing its power and influence over implementing agencies.

It is possible that the premise is wrong. It is possible that systems management should be regarded primarily as an implementation function rather than a policy-setting function. Management of the metropolitan systems, big and complicated and interrelated as they are, requires careful program planning and development, ongoing oversight and assistance, financial and service planning and evaluation, independent auditing, performance review, and day-to-day efforts to integrate and coordinate disparate operations. These are executive activities rather than policy-setting ones.

This alternative premise--that managers execute policy, that they implement decisions of policy-makers--leads to a different strategy altogether from the prevailing one. Rather than seeking to invest the Council with more supervisory power and responsibility, in the service of better systems management, the proper course of action would be to remove management responsibilities from the Council along with operations. The object would be to extricate the Council from the management morass to free it for policy-setting and leadership.

The recent Citizen's League report on the Council recommended just such a strategy to the Council--greater assertiveness in policy-setting along with self-restraint in undertaking management activities. It is possible that the Council could, voluntarily and on its own initiative, shift from its preoccupation with management to a greater emphasis on leadership.

Or the Legislature could choose to intervene. The Legislature could statutorily divest the Council of most of its management burdens, while at the same time strengthening systems management, by creating a separate board, advisory to the Council, to assume many of the Council's day-to-day systems management functions--a metropolitan systems management advisory board.



## METROPOLITAN SYSTEMS MANAGEMENT ADVISORY BOARD (MSMAB)

Such a board would not be an unfounded departure from past and existing practice.

### Existing Models

A MSMAB would be similar to joint, interagency planning and management groups used with some success in the 1960s in the metropolitan area. It would be a logical statutory recognition and elaboration of the Governor's regional subcabinet, the Council's proposal to create a regional executive council, and the Council's recent efforts to establish an interagency management process. But a legislative delegation of authority to a MSMAB would go beyond these administrative devices: a MSMAB would have permanent, statutory form and authority and would be accountable to the Legislature as well as the Council and the Governor.

Perhaps the closest existing model for the MSMAB is the Transportation Advisory Board (TAB). Although its functions are limited, the TAB is the only statutorily-recognized joint, interagency planning and management board in the whole metropolitan governmental system. The TAB is responsible for advising the Council on ground transportation policy, coordinating the various agencies and governmental units involved in transportation, and assisting the Council in executing metropolitan system management policies. The TAB is involved in transportation planning, program development, capital programming, and grant administration. It is composed of agency representative and citizens. It functions as an advisory body to the Council, but by virtue of federal requirements for interagency management and cooperation, the TAB has some decision-making authority in its own right.

### Powers and Functions

A variety of systems management functions now exercised by the Council or the implementing agencies, or performed by no one, could be transferred to a MSMAB:

- A MSMAB could perform many of the Council's regular systems management responsibilities, including reviewing the various plans, capital programs, budgets, and grant applications of the metropolitan implementing agencies.
- A MSMAB could also assume the Council's power to review the comprehensive plans and plan amendments of local governments at least as they affected metropolitan systems.
- A MSMAB could play a role in metropolitan significance reviews.
- Various supervisory powers of the Council, aimed at metropolitan systems management, could be transferred from the Council to a MSMAB. And new authority aimed at better management could be added. Proposals for traditional regulatory controls and for independent hearings on decisions of implementing agencies could be placed in a MSMAB. Examples are: the review of rates and charges for metropolitan services, independent auditing, control of personnel policies, more

utility-type controls in solid waste, taxicab regulation and decisions on service areas and market access (e.g., flow control).

- Proposals for metropolitan-level coordination agencies, which are continually surfacing in public discussion, could sometimes be accommodated at the MSMAB, without further burdening the Council or creating new metropolitan agencies. A current example is the need for a coordinating institution for metropolitan river corridors.

### Purposes

A MSMAB would be intended to serve the same purpose--improved systems management--as the previously discussed proposals to increase the Council's direct control of systems management. In addition, the MSMAB would be established to remove some of the burdens of systems management from the Council, so as to improve performance of the Council's other principal function--leadership.

Among the systems management objectives are the following:

- A MSMAB could increase the commitment to, and the possibility of, unified and integrated management of the various metropolitan systems.
- A MSMAB could serve as a forum for translating the Council's policies into implementation strategies and for expressing to the Council the perspectives of the implementing agencies--in short, to bridge the communications gap that is said to exist between the Council and the implementing agencies.
- A MSMAB could provide an institutional setting for the "missing link" in metropolitan governance--mid-range (three-to-five-year) implementation planning. There is no reason to expect that this need will decline in the future; indeed, it is historically one of the principal engines behind the creation of new agencies like the RTB and the constant extension of the Council's responsibility into program management and administration. A MSMAB could provide a metropolitan setting for this neglected and homeless function.

These purposes the MSMAB shares with the other reform proposals. An independent MSMAB could also serve several other purposes not well-served by other strategies.

- A MSMAB could produce a more united and better informed metropolitan voice to the state, including the legislature, on issues of metropolitan systems development, implementation strategy, finance, etc.
- A MSMAB could eliminate the inappropriate appearance of the Governor's subcabinet--that metropolitan agencies are parts of the executive branch of state government.
- A MSMAB could better serve the perceived need to extricate the Council from systems management responsibilities in order to free it for leadership. Other proposals promise to further embroil the Council in

the details of implementation. A properly structured MSMAB could allow the Council to avoid day-to-day management, reserving its voice for occasions presenting larger decisions.

- A MSMAB might eventually make possible the elimination of some operating boards, in favor of a chief administrator or certain forms of privatization and divestiture.

### Composition

An MSMAB would have to be composed of members appointed to represent the interests of the Council, the outside public, and perhaps also the various metropolitan systems implementing agencies. The composition would have to be calculated to ensure an appropriate distribution of power among the constituent agencies and outside interests affected by systems management decisions. And in part the composition would depend on what powers and functions were to be transferred to the MSMAB and what its relationship would be to the Council.

Members could include:

- the chair of the Council, who might be the appropriate chair of the MSMAB;
- the chair of the Council's systems management committee, who could also be the appropriate chair of the MSMAB;
- other Council members;
- citizens appointed from at-large or from metropolitan districts;
- the chairs of the MWCC, RTB, MAC, and MPOSC;
- possibly also the chairs of the MSFC, the MTC, and the TAB; and
- representatives of local governments, particularly counties, that function as metropolitan systems implementing agencies (e.g., for parks and solid waste).

So composed, a MSMAB would be at least in part an organization of organizations and, to that degree, would not be a new layer or particularly expensive institution of government. Some of the members would serve on the MSMAB by virtue of their appointment to some other salaried government job (e.g., the chair of a metropolitan agency), and thus would not require any additional compensation; and the MSMAB would not need to be staffed independently but rather by the existing staffs of its constituent agencies. The board could even have an adjunct technical advisory staff group (as does the TAB--the Technical Advisory Committee, or TAC).

## Relationship to the Council

This transfer of management functions from the Council to a new MSMAB could be achieved while preserving--perhaps even enhancing--the responsiveness of metropolitan agencies to the Council's policy directions and their accountability for implementing the Council's plans. There are available a great many methods of structuring the membership and powers of the MSMAB and its relationship to the Council in order to accomplish these results. Some may be taken directly from the existing TAB model.

### As to composition:

- The Council could appoint the chair of the MSMAB.
- The chair of the Council or some other Council member could be the chair of the MSMAB.
- The Council could appoint or confirm the appointment of many members of the MSMAB that serve ex officio (e.g., the chairs of metropolitan commissions).
- The Council could be given ultimate approval (confirmation) of all appointments to the MSMAB made by other implementing agencies (e.g., counties).
- The Council could appoint citizen members sufficient to provide a proper voting balance.
- The Council could staff the MSMAB, as it does the MPOSC.

### As to powers:

- The statutes could require the MSMAB to follow written Council policies. This could have the added benefit of requiring the Council to pay closer attention than it presently does to the wording and real consequences of its "regulatory" policies, since at least the initial interpretation of these policies would be made by another governmental agency.
- The law could establish the MSMAB as an advisory board and agency of the Council, like the MPOSC, whose every decision would require Council ratification.
- Or the law could establish a veto arrangement similar to that now existing between the Council and the independent implementing agencies, so that both the Council and the MSMAB would have to approve certain decisions.
- Or the relationship between the MSMAB and the Council could be such that the Council functioned as an appeals body. A party aggrieved by certain decisions of the MSMAB could appeal to the Council for a final resolution of the issue, and the Council could initiate reviews of MSMAB decisions where it considered the decision wrong or inconsistent with Council policy. Various decisions of the MSMB could be treated

differently--some allowed to stand without review by the Council, barring appeal, and others subject to automatic review by the Council.

The last option, suggesting an appellate relationship, illustrates the essential virtue of the MSMAB concept that other structural reforms appear to lack: the potential for extricating the Council from systems management and restoring it to a lost position of leadership. As an appellate body, free from many of the direct regulatory and programmatic decisions that now detract from its neutrality and independence, the Council could over time begin to function as the dispassionate decision-maker envisioned by recurrent legislative proposals to create a metropolitan board of appeals.









**METROPOLITAN GOVERNANCE PROJECT**  
**Financial Planning and Management**

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## EXECUTIVE SUMMARY

Recent criticism of metropolitan financial governance appears to arise from concern about: the high spending levels and large debt of metropolitan agencies, their increasing reliance on state and local revenue sources, their natural insularity from external oversight, and heightened awareness of internal agency management problems.

The criticism of metropolitan finance is not as mature as it is on other subjects--appointments, or administrative procedure, or agency structure. And much of the best thinking on the matter comes from the Council itself rather than outside observers. Insofar as it has been defined, however, the problem seems to lie in two areas:

- financial planning, and
- current financial management.

The deficiencies in metropolitan financial planning and financial management are due in part to statutory requirements. To some extent they are therefore amenable to legislative correction.

With respect to the first of these two subjects, the existing law does not appear to provide for or require all of the elements of sound financial planning.

- There is no statute requiring the metropolitan agencies to have long-range capital investment plans.
- The statutes encourage fragmentation of mid-range, five year capital development programs.
- There is no statute requiring the metropolitan agencies to have plans or policies for financing their operating expenses.
- The allocation of authority and the financial decision-making procedures prescribed by the statutes appear to promote an adversarial, quasi-regulatory relationship between the Council and the implementing agencies, which inhibits financial planning and focuses excessive attention on current projects.

Together these characteristics of the statutory scheme help to account for the situation noted in many recent critiques of the metropolitan agencies: weak financial governance at the policy level combined with interagency squabbling over the details of implementation at the project level.

The Legislature could attempt to strengthen financial planning by metropolitan agencies, and shift their focus from projects to policy, by:

- allowing and requiring stronger leadership by the Council in developing policies for capital investment and operations finance, while reducing intervention by the Council at the project and implementation level;

- requiring better and more uniform financial planning by metropolitan implementing agencies, particularly for operations finance; and
- changing the basis of the relationship between the Council and the implementing agencies from regulatory compliance to joint planning.

The weakness in metropolitan financial planning is exacerbated by inadequacies in current financial management. The financial management problems appear to arise from the same source as the financial planning problems--namely, the characteristic structure of the metropolitan agencies as special districts, each relatively free of external constraints except occasional enforcement actions by the Council.

Agency autonomy and metropolitan financial fragmentation are manifested in existing statutory arrangements for:

- revenue raising--i.e., setting user fees and levying taxes;
- financial reporting; and
- financing operations.

The Legislature could seek to reduce the financial fragmentation and autonomy of metropolitan agencies in each of these activities, without destroying the existing governmental structure. Three general strategies are available to the Legislature to do this:

- Enhance the supervisory powers of the Council.
- Increase supervision by state government.
- Create new financial decision-making procedures that would increase supervision by metropolitan citizens and local officials.

### INTRODUCTION: SOURCES OF CONCERN

The criticism of metropolitan governance in the early 1980s tended to focus on government structure, agency appointments, and general management. In the mid-1980s, more attention is being given to deficiencies in financial decision-making and the financial accountability of metropolitan agencies.

The recent concern about metropolitan finance appears to derive principally from five factors, some old and some new:

- Expenditures. The metropolitan agencies raise and spend very large amounts of public money. The annual operating expenditures of the metropolitan agencies total almost a quarter of a billion dollars, while outstanding debt is about a half billion dollars. By way of comparison, this level of operating expenditure exceeds that of every metropolitan county except Hennepin, and exceeds that of all

metropolitan counties combined except Hennepin and Ramsey. The debt of metropolitan agencies is about double the debt of all Minnesota counties combined and about one-half of the debt of the state.

- Operating costs. An increasing proportion of the expenditures of metropolitan agencies is devoted to operations and operating staff rather than capital projects. This expenditure pattern is very different from that prevailing in the years of growth and development of metropolitan facility systems--when the Legislature designed the existing system of administrative oversight, which attends closely to capital rather than operating expenditure.
- Revenue sources. The sources of revenue for metropolitan functions have changed dramatically in recent years, generally shifting from federal to state and local sources. And revenues are sometimes unstable, because of retrenchment in federal and state government.
- Agency structure. The metropolitan agencies are separate, largely independent special districts governed by appointed boards. The governing boards are only loosely coordinated, and they are insulated from external administrative and political scrutiny in many of their decisions.
- Management problems. In the 1980s, evidence has emerged pointing to neglect in the supervision of operations by the governing boards of metropolitan agencies and to inadequencies in the planning and management of metropolitan facility systems. The apparent deficiencies in systems management have increased the concern about the relative freedom of these agencies from political or administrative accountability.

The increasing concern expressed about metropolitan financial governance is understandable, but the financial governance problem is not nearly so well defined, nor the solutions so well considered, as they are for other metropolitan issues--appointments, or administrative procedures, or agency structure. Perhaps because attention to financial governance is so recent, public discussion of the issue seems incomplete and disorganized.

This paper attempts to summarize criticisms of metropolitan financial governance and proposals for reform in two categories:

1. financial planning, and
2. financial management.

## PART I FINANCIAL PLANNING

### THE PROBLEM

If there is a unifying theme in contemporary criticism of metropolitan governance, it is the Council's weakness at the policy or leadership level and its intrusion in the details of operations management best left to implementing agencies. This pattern of weak policy control and misplaced intervention in implementation is displayed quite clearly in metropolitan financial planning.

The causes of the pattern are no doubt many and complex. But some of the fault, at least, may be traced to the arrangements for financial planning that are dictated by the Legislature in statute. The statutory contribution to the problem may be summarized as follows:

- No long-range capital plan. There is no statute requiring the metropolitan agencies, either singly or in combination, to have a long-range (ten to twenty year) capital investment plan or strategy.
- Framgmented mid-range capital development programs. Developing mid-range (five year) capital programs is the responsibility of each implementing agency, acting separately. The Council has only weak and incomplete authority to control and coordinate these capital development decisions.
- No plan for financing operations. With one exception, there is no statute requiring the metropolitan agencies, either singly or in combination, to have any plans for financing operations.
- Planning as rule-making. The separation of policy-making from implementation, which is the distinctive characteristic of the metropolitan institutional structure, is replicated unnecessarily in the financial decision-making process required by the statutes, so that plans and policies take on a kind of regulatory relationship to implementation strategies.

Together, these characteristics of the statutory scheme for financial planning, appear to contribute significantly to the deficiency of policy leadership and the excess of squabbling among metropolitan agencies.

### PLANNING FOR CAPITAL INVESTMENTS

This section summarizes deficiencies in the statutory arrangements for planning metropolitan capital investments. These are:

- first, the lack of long-range capital planning, and
- second, the fragmentation of mid-range capital development programs.

The third subsection describes various methods of changing the law to correct these deficiencies.

## Long-Range Planning

One criticism of metropolitan financial governance--a criticism advanced especially by the Metropolitan Council--is that metropolitan agencies do not have a long-range capital plan or capital investment policy, nor any process for developing one. This deficiency is graphically revealed by the second column in Appendix II, and described in more detail here.

Most of the metropolitan implementing agencies are required by statute to prepare a mid-range (five year) capital development program and an annual capital budget, in accordance with a procedure laid out in statute. But the five-year reach of these capital development programs is considerably shorter than the fifteen or twenty year time span of the Council's policy plans, shorter even than the life of many single construction projects. None of the metropolitan implementing agencies is required by statute to undertake longer-range (ten to twenty year) capital planning. Only the Metropolitan Parks and Open Space Commission (MPOSC) has done so on its own initiative. As a consequence, critics say, capital planning for metropolitan facility systems is short-sighted; metropolitan capital investment decisions have often been focused on near-term construction plans and project-level analysis rather than on long-range capital investment policy.

The lack of long-range capital planning by the individual implementing agencies is aggravated by the absence of a general regional capital investment plan or policy encompassing all agencies. The statutes do not require the Council to have long-range regional capital plans and policies, nor do the statutes establish any multi-agency capital planning process or structure.

On its own initiative, the Council developed an "investment framework" for this purpose in the mid-1970s. The investment framework subsequently fell into disuse, and the Council is currently attempting to revive it and impose it on the implementing agencies. But the Council's sporadic efforts to create a long-range capital plan for the metropolitan area are hampered by a statutory scheme that neither requires such plans for implementing agencies nor provides an interagency, or metropolitan, capital planning process to establish or effectuate the plan.

## Mid-Range Programming

Even if there were a long-range capital investment plan for the metropolitan area, mid-range (five year) capital programming is largely in the hands of the separate implementing agencies. The Legislature has provided very few tools--and relatively weak ones at that--for use by the Council in coordinating and integrating the separate agency capital programs into anything resembling a whole. The Council's authority over the capital decisions of the implementing agencies consists of a weak, "negative" review of proposed decisions--little more than a veto power and far from a positive, policy setting force. And even this veto power is not uniformly applied to the regional implementing agencies. Existing law on the Council's authority to achieve some control of metropolitan capital programs is displayed graphically in Appendix I, Parts B and C, and in Appendix II, columns 3-7 ("capital programming and budgeting"). These statutory requirements are summarized in greater detail here.

As a general rule, the Council has similar authority to review the capital decisions of all of the metropolitan implementing agencies but one--the Metropolitan Airports Commission (MAC). These review powers are as follows:



- The Council reviews both the mid-range (five year) capital programs and the annual capital budgets of the Metropolitan Waste Control Commission (MWCC) and Regional Transit Board (RTB).
- The Council reviews (actually adopts as its own) the mid-range capital program of the Metropolitan Parks and Open Space Commission (MPOSC). The MPOSC has no annual capital budget, because park acquisition and development is actually accomplished by local operating authorities with grants from the MPOSC.
- The Council reviews the annual capital budget of the Metropolitan Sports Facilities Commission (MSFC), for the purpose of assuring payment of the Council's bonds used to finance the stadium. The MSFC is not required to prepare a mid-range capital development program for Council review, largely because the MSFC's power is limited to developing a single facility--the stadium.

The MAC is exempted from the capital programming, budgeting, and review process that the statutes require for these other metropolitan implementing agencies. The Council has some limited authority to review MAC capital projects, but no comparable requirement to review or authority to veto the capital programs and annual capital budgets of the MAC. The Council may resort to its general authority to suspend plans and projects pending a legislative decision on the matter; or the MAC may voluntarily submit to the Council's review of MAC capital programs and budgets along with those of other implementing agencies. But in the statutory scheme, the Council's authority and its responsibility to review MAC capital decisions is focused on individual projects, not development plans or even annual capital budgets.

The Council does not even review all MAC projects. An MAC project must be big to qualify for Council review:

- a project at the MSP airport must exceed \$5 million, one at the other MAC airports \$2 million; and
- the project must involve a substantial increase in airport capacity--a new airport, a new runway or runway capacity, or more than a 25% increase in passenger capacity.

The confinement of the Council's review of MAC capital decisions to the project level appears to exclude the Council from its proper domain--plans and policies--and to insert it where it presumably does not belong, project development and implementation.

This misplacement of Council control is not confined to the MAC, however. Even with the other agencies, who must prepare capital programs and budgets for Council review, the Council sometimes finds its attention focused on projects rather than policy. There may be many reasons for this misplaced intervention by the Council in matters of implementation, but it must be attributed at least in part to the feebleness of the veto power provided to the Council in the statutes. The Council has no power to revise the capital program or budget itself. Instead, the Council must return it to the implementing agency for revision. If the agency refuses to comply, the Council is powerless--until the project stage, when the agency cannot proceed with the project unless it has Council approval. Thus the Council's real leverage on agencies only comes in

its ability to stop projects, once the agency seeks to begin construction. At that time the project must either be in the capital budget or receive separate approval by the Council.

Surprisingly, in the statutory language, the Council's control over the mid-range capital programs of metropolitan agencies is weaker than its control over the comprehensive plans of local governments, where the Council explicitly possesses the power not merely to veto but to require specific modifications.

On more than one occasion, the weakness of the Council's control of the capital programs of regional agencies has produced a stand-off between the planning agency and the implementing agency, with a consequent paralysis in decision-making. On other occasions--if the implementing agency has played its cards right--the Council is forced to give its approval to the project or cause great disruption in metropolitan systems. And from time to time, the Council ultimately stands its ground, stopping or delaying the project. These instances of intrusion by the Council into capital projects are not surprising, given its slight leverage over capital policy. Lacking a secure grip on the leash, the Council is sometimes found to be twisting the tail.

#### Options for Strengthening Capital Investment Planning

In summary, the two chief flaws in the statutory arrangements for planning metropolitan capital investment appear to be the following:

- There is no requirement for an investment plan or strategy extending beyond five years, either for individual agencies or for the metropolitan system as a whole; and
- There are no effective means to coordinate or control the mid-range capital development programs of the implementing agencies, which sometimes causes inappropriate excursions by the Council into project-level implementation decisions.

These deficiencies suggest an objective for reform of metropolitan capital investment planning: to strengthen the Council's authority over capital investments at the policy level and simultaneously reduce its intrusion in implementation decisions. This section examines three ways of doing this:

- to require long-range capital planning for metropolitan systems;
- to strengthen the Council's review powers at the policy and development program level; and
- to reduce the Council's reviews of project and implementation decisions.

As to the first of these, several alternatives are available to encourage the development of a long-range, comprehensive capital investment plan for the metropolitan area, should the Legislature wish to do that.

The least dramatic measure would be to enact statutorily a requirement that the Council develop and use an "investment framework" in reviewing agency capital programs. Although the Council has indicated that it intends to reinstate the

investment framework idea by administrative action, the Legislature could reasonably decide that it should be a requirement of state law. The Council's authority to establish and enforce such a plan administratively is quite weak. The Legislature might wish to specify the content and function of the long-range capital plan, rather than leave it to the temerity of the Council and the goodwill of the implementing agencies.

In addition to mandating an investment framework, the Legislature could, require the metropolitan implementing agencies to prepare long-range capital plans with a time span commensurate with that of the Council's policy plans. Here again, the Council has the authority without legislation to require longer-term capital planning from certain of the agencies, and it proposes to do so. But legislation would not be inconsistent with the Council's proposal, and might bolster the Council's resolve and improve the likelihood of agency compliance.

Alternatively, the responsibility for preparing long-range capital plans for all metropolitan systems could be given to the Council, rather than the implementing agencies. The responsibility for preparing these plans for each implementing agency would not be inappropriately vested in the Council. Because of their extended time span, the capital plans would necessarily be policy documents rather than construction proposals, more extensions of the Council's policy plans than intrusions on the capital development programs of the implementing agencies. If this responsibility were given to the Council, the implementing agencies would remain responsible for preparing the five-year capital development programs and annual capital budgets, which would have to be consistent with the Council's long-range capital plan.

Consolidating in one agency the responsibility for all long-range capital planning has several advantages.

- It would encourage the development and use of an integrated, multifunctional investment strategy or framework, because the responsibility would be clearly focused rather than scattered among many agencies and because the utility and necessity of the investment framework would then be very clear.
- It could increase the Council's authority over the capital decisions of implementing agencies, but without expanding regulatory reviews by the Council.
- It could enhance the Council's responsiveness to the practical problems faced by implementing agencies in attempting to carry out Council policy. It would require the Council to go a little further than it now does in explaining how its twenty-year goals might be realized in practice.

Besides requiring long-range capital planning, the Legislature could make changes in the Council's review authority to shift the focus from projects to policy.

The Council's veto power could be replaced by something more positive--perhaps something similar to that available to the Council in its review of the land use plans of local governments: that is, the power to require the implementing agency to modify its plans in specific ways. This has several possible virtues. A stronger review power would be especially appropriate over any long-range

capital plans to be required of agencies, because plans with such a long time span are necessarily more concerned with policy than with projects and operations. If it were applied also to mid-range agency capital development programs, the stronger review power could inspire the Council and the agencies to grapple directly with the difficult task of translating general policy into actionable objectives--a task that too often in the present scheme of things falls between the agencies, and as a consequence is left undone. A stronger review power over either long-range plans or mid-range development programs might reduce the time that the Council spends sparring with metropolitan implementing agencies in an attempt to get its way using the feeble power that it now has. Firmer control over plans and development programs might moderate the Council's preoccupation with near-term project management, insofar as the Council is impelled into agency affairs in an effort to see its policies implemented by the very weakness of its existing veto power.

A related method of strengthening Council review at the policy level would be to enact statutorily the Council's current proposal for administratively consolidating the existing capital review process--using a metropolitan investment policy framework, common submission dates for all implementing agencies, common formats, and a joint or consolidated review proceeding at the Council. Along with this consolidated review of capital programs, the Legislature could also enact the recommendation in the 1984 Report of the Legislative Commission on Metropolitan Governance (the "Brandl Commission") that the Council be required, annually or biennially, to collect and consolidate all capital programs and budgets of the metropolitan implementing agencies for presentation to the Legislature, with analysis and commentary.

If the Council's authority over long-range capital plans and mid-range capital programs were strengthened in any of these ways, it might be reasonable to reduce the burden now imposed on the Council--and the implementing agencies--by the Council's responsibility to supervise annual capital budgets and capital projects of the implementing agencies. The assumption of the existing statutory scheme--that veto of capital projects is the Council's strong lever to ensure execution of its policies by the implementing agencies--is invalid anyway. It might be better to focus the Council's analysis on policy and strategy--where it is possible to make real change--and reduce the Council's presence in capital budgeting. The Council's veto power could still be preserved, but the existing provision for automatic, mandatory review of the annual capital budgets and amendments to capital budgets could be replaced by a provision allowing the Council, at its option or the request of another, to bring a matter up for ad hoc review for consistency with long-range capital plans and policies.

This idea--that the Council should be pulled back from overseeing the decisions of the implementing agencies--accords with the recent Citizen's League report, The Metro Council: Narrowing the Agenda and Raising the Stakes (1984), which suggests that the Council should reduce its immersion in implementation details by voluntarily accepting the decisions of implementing agencies except on issues of fundamental significance. The Citizen's League's reliance on self-discipline by the Council may not work: if the cause of inappropriate intervention by the Council in implementation projects is the Council's weakness at the policy level, legislation may be required. Whether or not legislation is required to effectuate it, the idea that the Council's presence in management decisions should be reduced runs directly counter to the currently prevailing assumption (reflected for example in the "governance bill" now before the Legislature) that better systems planning and management would result from increasing the Council's participation and oversight in these matters.

## PLANNING FOR OPERATIONS FINANCE

This section describes the neglect of financial planning for operations, as distinguished from capital investment planning, and summarizes various methods of instituting planning for operations finance.

### The Mid-Range Gap

The Legislature has mandated long-range policy planning and mid-range capital programming. But the Legislature has not required either long-range or mid-range planning for operations or operations finance. The statutory description of the Council's long-range planning duties contains almost nothing on this subject. Nor has the Legislature required mid-range (three to five year) agency planning for operations and operations finance in any way comparable to the planning required for capital investment. The preoccupation with long-range policies and capital expenditure was perfectly understandable in the founding era. But in subsequent years it has produced one of the distinctive failings of the statutory scheme for metropolitan financial governance: the "mid-range gap" between the Council's twenty year policy goals and the annual operating budgets of the implementing agencies.

The lack of mid-range financial planning for the operation of metropolitan agencies is displayed in column 8 of Appendix II. The gap is illustrated by the absence of requirements in the statutes that individual agencies plan for such matters as alternative implementation strategies, program and service development, agency service goals, operating standards and plans, performance objectives and measurement, estimates of revenues and expenditures for operations, grants management, anticipated personnel costs, and so-on. The gap is signified also by the absence of any management structure or process, either at the Council or elsewhere, for planning and coordinating the financing of metropolitan facility operations as a whole.

As Appendix II shows, the single exception to this lack of mid-range planning for operations and operations finance is in transit. When the Legislature established the RTB in 1984, it did so partly in recognition that there was no effective planning for transit service and operations or operations finance. The Council was excluded from this activity, and the MTC was preoccupied with its own day-to-day operations. Therefore when the Legislature created the RTB, it also instituted a requirement for financial planning for transit operations. The required contents of the Council's long-range policy plan for transit were expanded to include operations finance; and the RTB's mid-range planning responsibility was expanded from capital development programming to planning for operations finance. This now stands as the only such requirement in the metropolitan statutes.

Many of the characteristic troubles of the metropolitan governmental system may be attributed to the mid-range gap. The Legislature has clearly recognized it. Sometimes, when the gap becomes very noticeable, the Legislature has tended to fill it by investing the Council with programmatic and operations financing responsibilities, in contravention of the practice of separating these activities from the Council. Recent solid waste legislation is an example. Other times, as in transit in the late 1970s and early 1980s, the Legislature has used a state agency (MnDOT) for such work--until the gap between policy and operations widened to such a degree that the Legislature was inspired to fill it with a new metropolitan agency.

Similar gaps are easily identified elsewhere--especially where there exist several service providers or government actors or where there is ratemaking for public services. A currently noticed example is river corridor planning and management.

### Filling the Mid-Range Gap

The Council has proposed that the requirement for mid-range operations planning, installed for transit in 1984, be extended by legislative or administrative action to other metropolitan implementing agencies, especially the MWCC. The Legislature could allow the Council to attempt this extension by administrative pressure, or the Legislature could extend the requirement by law (and could also, incidentally, apply the requirement to the Council itself).

Were they to be required, these mid-range plans would fill the missing link in the current metropolitan planning process--the absence of plans and policies for financing operations and the lack of a bridge between the Council's fifteen to twenty year plans and the annual operating budgets of implementing agencies. If the transit law is taken as a model, the Council would be required to address the policy issues of operations finance in its long-range plans, while the mid-range implementation plans of the agencies would look forward at least one biennium, perhaps two, on such matters as service plans, operating requirements, tax and subsidy requirements, user charges, and performance objectives and measurements. The Council would be given approval power over the mid-range financial plans of the agencies. This is the structure that the Legislature established in the 1984 transit act.

In addition to giving the Council approval over the mid-range financial plans of individual implementing agencies--or in lieu of it--the Legislature could make the Council responsible for collecting and presenting all of the plans to the Legislature and the public, along with trend analysis and commentary. The Report of the Legislative Commission on Metropolitan Governance (the "Brandl Commission") in 1984 recommended that the Council be given this responsibility to consolidate and report on the annual budgets of the agencies, an idea adopted in part by H.F. 272 (Knickerbocker). The task of consolidation might be more appropriate and beneficial to public and legislative analysis if it were done on a biennial basis and focused on mid-range financial, service, and operations plans, rather than on the annual budgets.

Whatever the exact measure of the Council's participation, the mid-range financial planning process could offer a method of increasing the Council's scrutiny of service and operations finance, as some observers have advocated, without immersing the Council in operational details, as other observers fear. There is much less danger of the Council straying into operational details in reviewing mid-range financial plans than in reviewing annual agency operating budgets.

## THE SEPARATION OF POLICY AND IMPLEMENTATION

It is commonly believed that the quality of metropolitan financial planning, programming, and budgeting--whether for capital investment or operations--could be improved by increasing the Council's authority to control and review the financial decisions of implementing agencies. Almost all of the proposals for reform of metropolitan financial planning proceed on this assumption. It is possible, however, that the problem lies elsewhere--not in weak oversight of implementation by policy makers but in the Legislature's insistence on artificially separating decisions that cannot be separated.

### An Alternative View of the Problem: Planning as Rule-making

One of the distinctive characteristics of the metropolitan institutional structure is its separation of policy making, located at the Council, from implementation, located in the regional implementing agencies. This separation of policy making duties from implementation responsibilities is somewhat reminiscent of the separation of legislative and executive functions in state government.

But this separation of function is expressed in the metropolitan statutes not only in agency structure but in a chronological separation of policy decisions from implementation decisions--a procedural separation that is not required by the institutional separation. According to some observers, this procedural separation of policy decisions from implementation decisions accounts for some of the characteristic problems of metropolitan government.

Considered as a whole, the financial planning and programming process set out in the statutes prescribes a definite sequence of decisions: the preparation of policies by the Council precedes and is expected to govern the preparation of programs by the implementing agencies. To ensure that the implementing agencies toe the policy line, they are required to submit some of their decisions to the Council for approval. This results in a three step process--Council plan, agency proposal, Council review and approval--that is outlined in Appendix I. It is, in essence, a regulatory procedure.

Some observers assert that this sequential arrangement, in which general plans and policies are expected to dictate specific actions, is based on a myth long propagated by professional planners--the myth that government action can and should flow rationally from and depend upon predetermined plans and policy decisions. According to its contemporary critics, the belief in a dependent--rather than reciprocal and dialectical--relationship between plans and actions mistakes both the nature of complex systems and the human condition.

The theoretical flaws of the rational planning concept have consequences very easily recognized in practice: procedures that artificially separate the time for policy decisions and the time for implementation decisions; poor communication and much misunderstanding between planners and implementers; passive resistance and active subversion of plans by implementers; an incessant quest among planners, seeking futilely to effect their theory in practice, for regulatory controls over action; and the transformation of "strategic" problem-solving initiatives into a preoccupation with enforcement and compliance.

### Joint Planning as a Solution

If this view of the problem is valid, the existing statutory arrangements should be altered to require that the Council and each implementing agency work together to develop, simultaneously, a long-range policy plan and a mid-range implementation strategy. In place of the sequential and regulatory relationship between the policy plan and the implementation strategy, the Council's revision of its policy plan and the agency's revision of the relevant implementation plans should be done jointly. They should also go to hearing together, as a package, with the Council having the final decision on long-range policy and the implementing agency the final decision of implementation strategy and projects.

The idea of joint decision-making is treated further in the discussion of potential reforms in operations finance, at the end of Part II of this paper.



## PART II FINANCIAL MANAGEMENT

### THE PROBLEM: AGENCY AUTONOMY

The lack of cohesiveness that plagues metropolitan financial planning is also evident in current financial management. Two related issues or problems emerge from the contemporary criticism of financial management by metropolitan agencies:

- Lack of accountability. The Council and the metropolitan implementing agencies are too free of external constraint in making financial decisions.
- Financial fragmentation. Financial decisions are made by each agency separately, with little integration or consideration of the aggregate effect.

The following sections describe these problems as they appear in:

- decisions to raise revenue, by setting fees and levying taxes;
- financial reporting; and
- budgeting for operations.

### Raising Revenue

The metropolitan agencies are relatively autonomous and free of external constraints in revenue-raising decisions--in setting user fees and levying taxes. This situation, described in this section, is summarized graphically in Appendix II, columns 6, 7, and 10.

User fees form the backbone of revenue for many metropolitan functions. The Metropolitan Transit Commission (MTC), Metropolitan Airports Commission (MAC), Metropolitan Waste Control Commission (MWCC), and Metropolitan Sports Facilities Commission (MSFC), all raise substantial revenue from user fees; indeed all but the first support their operations almost entirely on fees. The regional parks receive funds from the Metropolitan Parks and Open Space Commission (MPOSC), but they also are supported in part by user fees imposed at the regional parks by local government operating authorities. Finally, the Metropolitan Council itself uses fees, or "charge-backs" against the regional implementing agencies, to raise revenue for its operations.

Despite the reliance on user fees for metropolitan functions, there are only two provisions in existing law requiring external administrative review of these fees:

- One is a statutory requirement that the Council review and comment on the fees of metropolitan agencies. In the course of its review, the Council is required to hold a public hearing, if requested by local governments, and to report the fee schedules, along with its comments, to the Legislature by January 15 of each year. This requirement is

virtually without practical effect. The Council has only the authority to comment; it has no veto or approval authority. Furthermore, the provision has limited application: at the present time, it applies only to sewers and, probably, transit. Finally, the Council has ignored this statutory mandate in the past (although it has indicated in its Regional Service and Finance Study, published in 1984, that it will exercise this power in the future).

- The other statutory provision requires the Regional Transit Board (RTB), as the overseer of transit operators, to establish and enforce uniform fare policies. This provision, enacted in 1984, subjects fares charged by transit operators to the approval of the RTB.

Except for these two provisions, the statutes leave decisions on fees entirely to each agency acting separately and independently. There is nothing in metropolitan governance akin to the independent review of utility rates by the Public Utilities Commission or the review of state agency fees by the Department of Finance, the Governor, and the Legislature.

The Legislature, of course, could review and change any of the fees of the metropolitan agencies. But there is no required legislative scrutiny, and except when state subsidies are involved (so far, mostly in transit), there is nothing in the legislative process to precipitate it. Consequently, except for transit fares, the user fees of metropolitan agencies have never been subject to systematic or regular legislative oversight.

In summary, as practical matter at this time, only the fees of the MTC are subject to serious external administrative or legislative scrutiny. The other metropolitan implementing agencies--the MWCC, MAC, MSFC, the Council, and local park authorities--set user fees with no external administrative or legislative review.

In the absence of administrative or legislative oversight, the implementing agencies are free of any external constraint except public pressure. But the budgeting decisions of metropolitan agencies are notorious for their invisibility. The public lacks interest and does not participate.

In part this lack of public interest is no doubt due to the structure of the agencies--as appointed metropolitan special districts. But it also has been attributed to agency budgeting procedures. Some critics assert that public participation in decisions on fees is discouraged by the prevailing relationship between the expenditure decisions and rate setting decisions of the metropolitan agencies. Rate making decisions by these agencies are generally integrated with their budgeting and expenditure decisions. Rate making is not a separate procedure with opportunity for comment from affected parties, as it is, for example, in utility rate setting and the setting of many state agency fees. The entanglement of revenue raising and expenditure decisions is especially pernicious when rate making follows, rather than precedes or governs, expenditure decisions, for then the rate making decision is really dictated by a prior decision, and the agency simply points for justification to its existing expenditure budget. This is a sequence of public decision-making that the state, particularly the House of Representatives, has recently tried to reverse.

Whatever the reason, the fact is that fee setting decisions of metropolitan agencies are not carefully scrutinized and controlled by the public. As a

consequence these agencies are free of nearly all external constraint in setting their fees.

The other metropolitan source of revenue for regional agencies is the property tax. At the present time, only the Council and the RTB receive substantial operating revenues from a metropolitan property tax. The RTB, however, is not allowed to spend any of this money on its own operation; all of it must go as subsidies to transit operators, largely the MTC. Thus the Council and the MTC are really the only metropolitan agencies that now benefit from the property tax.

The maximum levies allowed to the Council and the RTB (MTC) are set out in the statutes and are thus decisions of the Legislature. However, the Legislature has chosen to express these levy limits as maximum mill rates, in contrast to the local government levy limit, which is expressed as a revenue limit. As a consequence, these metropolitan tax limits are not "indexed" as are the limits applying to local governments, and agency revenues may escalate (or contract) automatically along with changes in property values. As a result of increases in property values in the metropolitan area in recent years, the Council and the MTC have experienced large wind-fall gains in revenues that have protected them to some extent from the austerity visited on other government agencies.

Outside of the governing boards of the two agencies, only the Legislature is in a position to control the taxes levied by the Council and the RTB (MTC). But--except, perhaps, in transit--the Legislature has nothing akin to the legislative tax and appropriations process to stimulate regular scrutiny of the taxing decisions of these agencies.

### Financial Reporting

The independence of metropolitan agencies in revenue raising decisions is also found in the existing requirements for financial reporting.

Although the statutory requirements for financial reporting are neither uniform nor universal, the metropolitan agencies generally produce two financial reports each year, aside from the budget:

- the annual financial report, and
- the annual financial audit.

Each agency prepares its financial report independently, for itself. Some are required to do so by statute; others are not.

Statutory requirements for the financial audit for each agency are also stated separately and, as a consequence, vary significantly: the state auditor audits the Council and the MWCC; the legislative auditor audits the MSFC and MAC; and the RTB and the MTC may choose to be audited either by the legislative auditor or a private auditor of the agency's own choosing.

Neither the financial report nor the audit is very useful, in the present form, for financial policy analysis or program and performance evaluation.

- Both documents are intended to be accounting reviews, balance-sheet presentations with an orientation toward fund analysis rather than systematic analysis of financial performance and policy.

- Both are annual reports, providing "snapshots" without attention to the trend analysis that is crucial to financial reviews.
- There is no required report that subjects any agency to external financial evaluation except the audit.
- The auditing of metropolitan agencies is criticized for not being sufficiently independent. The internal audit staff of each agency reports to the governing board through the chief administrator or chief operating officer rather than directly. Outside auditing duties are scattered about: neither the legislative auditor nor the state auditor is clearly charged with responsibility for auditing metropolitan financial affairs. And agencies that hire their own outside audit are, according to some, too much in control of the result.
- The annual agency financial report is produced or prepared by each agency, separately, for itself. These agency reports do not typically present a careful evaluation of financial policy and performance.
- There is no regular, comprehensive report or analysis of the financial affairs of the metropolitan agencies as a group.

Thus the financial reporting required by the statutes does not relieve the pattern of agency autonomy and fragmentation in financial management.

### Financing Operations

The pattern applies also to budgeting for agency operations. The Council's authority over the financial decisions of implementing agencies is generally limited to its review of their capital decisions (described in Part I). The Council has no power to review or oversee decisions on financing operations, with three exceptions:

- The MPOSC is an agency of the Council, and therefore its small operating budget is part of the Council's budget.
- The MSFC must submit its annual operating budget to the Council for approval, but this review is only for the purpose of ensuring protection of the holders of the Council's bonds for the stadium.
- The Council has authority to review and approve the mid-range financial plans of the RTB, but not the RTB's annual operating budget. (The RTB, in turn, has a veto power over the MTC's annual operating budget.) As discussed in Part I, no other regional agency but the RTB is required to have a plan for financing operations, let alone submit one for Council review.

Aside from these exceptions, external administrative review of the financial decisions of the metropolitan agencies is confined to the Council's review of capital decisions. There is, therefore, no external administrative scrutiny of the annual operating budgets of the MWCC, the RTB, or the MAC. And, of course, the Council's budget is also free of external administrative scrutiny. The situation is outlined graphically in Appendix II, columns 9 and 10.

The absence of external administrative supervision of operations finance is aggravated by a lack of public and legislative scrutiny. The separate budget formats of the agencies do not encourage it: budget presentations are diverse (despite a 1978 statutory requirement for uniform program budgeting), and they tend to be directed more to internal operation and financial control than to policy or program analysis or review by the interested public. The annual six-month budgeting process, outlined in Part C of Appendix I, is largely an interagency affair, not well-suited or timed to legislative or public participation. The public hearing required before each agency adopts its budget generally does not draw much public interest or participation, and this neglect probably is justified, because the hearing comes at the end of a long agency budgeting process, too late to allow participants an influential role in developing financial policy. The Legislature, of course, could regularly review the operating budgets and financial decisions of all of these agencies. But it does not. There is no process to precipitate systematic legislative intervention, and generally the Legislature has not chosen to intrude, except when state money flows directly into operations--as in transit.

The issue presented by the independence of the separate metropolitan agencies in budgeting for operations is compounded by the absence of any system of budgeting for metropolitan functions as a whole. State and local governments all have a more or less unified budget and budgeting process. In contrast, because each of the metropolitan agencies is a separate special district, there is no revenue-raising or revenue allocation process--no budgeting process--for metropolitan government. There is no central compilation--let alone review, supervision, analysis, or control--of the operating expenditures of all metropolitan facility systems considered together. Nor is there any allocation of resources among functions or programs, as would occur in a general budgeting process. Each metropolitan agency raises and spends money independently for its own activities; no agency is required to participate in an interagency revenue-raising decision or allocation process.

The financial independence of metropolitan agencies, together with the absence of a metropolitan budgeting process, mean that metropolitan finance is actually a huge system of dedicated funding. The issue posed by this situation is whether the Legislature can devise a way to reduce fragmentation and increase management control and accountability, without abandoning the advantages of the special district structure by consolidating budgets into one or by adding excessively to the apparatus of administrative approvals.

#### OPTIONS FOR IMPROVING FINANCIAL MANAGEMENT

Should the Legislature wish to increase the external accountability of metropolitan agencies and ameliorate the fragmentation of financial management, there are generally three ways to proceed, short of abandoning special districts in favor of a unified metropolitan financial system.

- One method is to increase supervision by the Council.
- A second is to increase supervision by state government.
- A third method is to create procedural requirements that would increase supervision by metropolitan citizens and local officials.

The following sections of the paper apply these three methods--supervision by the Council, the state, and metropolitan publics--to each of the problem areas in metropolitan financial decision making discussed earlier:

- raising revenue,
- financial reporting, and
- budgeting for operations.

### Raising Revenue

The Legislature could decide to increase external administrative review and supervision of the fee setting decisions of metropolitan agencies, using the Council (or a subsidiary board of the Council) as a sort of metropolitan PUC or metropolitan department of finance.

- The Legislature could simply enforce the existing statutory provision requiring review and comment by the Council of user fees for sewers and transit.
- The Legislature could apply this existing, review-and-comment provision to other metropolitan agencies.
- The Legislature could require external approval of fees. The Council could be instructed to establish policies on metropolitan user fees. To ensure compliance, the statutes could require some or all metropolitan implementing agencies to secure the approval of the Council (or a subsidiary board) for some or all of their fees. This is essentially the statutory scheme enacted in 1984 for control of transit fares by the RTB.

Of course, in any scheme of supervision placed at the Council, the Council itself escapes from external administrative review of its fees.

Instead of increasing oversight of fees by the Council, the Legislature could elevate administrative supervision to the state. The Legislature could require that certain fees of metropolitan agencies be reviewed and approved by a state administrative body like the Public Utilities Commission or a state agency like the Department of Finance. In 1983, the Governor's Commission to Review the Metropolitan Waste Control Commission (the "Boland Commission") recommended the first of these alternatives--review by the PUC. This requirement would run counter to the legislature's historic reluctance to bring metropolitan agencies under the state administrative structure, a reluctance most recently expressed when the 1984 transit reorganization law moved all remaining transit economic regulation from the state to the metropolitan level.

The Legislature has sometimes shown less reluctance to bring the financial decisions of metropolitan agencies under legislative control. The Legislature could achieve this result by imposing statutory limits on fees, which would precipitate legislative scrutiny. In fact, the Legislature did just that in transit until 1984, and still does to some extent. This strategy of legislative oversight of fees could be extended to other metropolitan fees. Statutory limits could be expressed as numerical limits on the fee itself or on the revenue

from the fee. Or the limits could be expressed as a maximum annual increase in fees, which could be stated as a percentage or indexed to an annual measurement of economic growth or government cost. The disadvantages of this are obvious: after years of enmeshing itself in such matters in transit, the Legislature has recently shown a strong desire to extricate itself from the responsibility for setting the fees of metropolitan agencies.

If the Legislature wished to avoid state control, and also did not wish to entrust rate review to the Council, it could create procedures that would encourage the participation of rate payers and the general public of the metropolitan area in agency financial decisions. Methods of achieving this are discussed at greater length in the last section of this paper, on the budgeting process. One method of increasing public attention, however, applies particularly to fee setting. It was recommended by the Governor's Commission to Review the Metropolitan Waste Control Commission (the "Boland Commission"): the agency should be required to set its fees in a separate process--after a separate public hearing and before adopting a budget--so that this revenue raising decision would be clearly separated from and precede expenditure decisions. This budgeting sequence could be applied to any of the metropolitan agencies. For example, the fees "charged back" by the Council to the metropolitan implementing agencies for the work of the Council could be determined before the Council adopts its budget and incurs expenditures rather than, as now, afterward.

The options for controlling the taxing decisions of metropolitan agencies are fewer than those available to control fees. The independence of metropolitan agencies in tax decisions is difficult to correct using the Council as supervisor, because the only agency other than the Council that relies heavily on the metropolitan property tax is the RTB (MTC).

The taxing authority of these agencies has inspired suggestions that the state should assume control, by making metropolitan agencies part of the Legislature's budgeting process. To some extent, transit has already been accorded this dubious distinction. Opponents object that this treatment of the metropolitan agencies--as state agencies--would mistake the purpose and position of metropolitan institutions in the governmental scheme.

Effective tax limits could be imposed, without subjecting the metropolitan agencies to the legislative appropriations process, by converting the statutory levy limits of the Council and the RTB (MTC) from mill rate limits to revenue limits, in the manner used by the Legislature in setting local government levy limits. By doing this, the Legislature could eliminate the existing opportunity of the Council and the RTB (MTC) to take advantage of increases in property valuation without legislative oversight.

### Financial Reporting

Various possibilities also exist for legislation to improve financial reporting in ways that would contribute to increased agency accountability and reduced fragmentation in metropolitan financial management.

The Legislature could rewrite the statutory requirements for annual agency financial reports. These requirements are not uniform and, for most agencies, were originally devised fifteen or twenty years ago and have not been revised

since. The Legislature could, for example, require a uniform financial reporting format for all metropolitan agencies. If uniformity in reporting is impractical, the law could require specific information that is not currently reported but that is needed for policy analysis, program evaluation, and financial analysis (e.g., financial trend analysis, performance measurement, personnel costs, sources of funds linked to spending programs, financial projections for the future, etc.). The Council has proposed a joint agency effort to develop some of this information by administrative action. Parts of H.F. 272 (Knickerbocker) are also intended to improve financial reporting.

In addition to improving the reporting requirements for individual agencies, the law could require a regular consolidated report to the Legislature on the financial affairs of all metropolitan agencies. This report could include all or only some metropolitan agencies. It could be comprehensive or devoted only to the financial matters over which the Legislature, because it has not delegated control to the Council, retains primary responsibility (e.g., user fees, the level of agency debt, and agency tax levies). The report could be biennial and focused on trend analysis, or, as proposed in H.F. 272, annual and focused on yearly agency performance.

Responsibility for preparing the consolidated financial report could be assigned to the Council. Both the Legislative Commission on Metropolitan Governance (the "Brandl Commission") and the Council itself have proposed this method of consolidated financial reporting. H.F. 272 also would place this responsibility at the Council. Alternatively, consolidated financial reporting could be assigned to an independent auditing office--either state or metropolitan.

The Legislature could seek to improve government auditing, as well as financial reporting, in one of two ways: by increasing the intensity of auditing by the state government, or by establishing an independent government auditing capability at the metropolitan level.

State auditing of the financial affairs of the metropolitan agencies could be performed by the state auditor or the legislative auditor; the legislative auditor could also be expected to undertake program evaluation. Assigning auditing responsibility to one state office would eliminate the variation in the existing auditing requirements for metropolitan agencies. The duties assigned to a state auditing office could include direct auditing, or the setting of uniform state standards for financial reporting, or both. Representative Valento has proposed legislation to bring more uniformity into statutory provisions for state audits of metropolitan agencies (H.F. 941).

Some agencies object to uniform state auditing. They are joined by observers who are concerned about the current trend toward increased domination of metropolitan agencies by state officials. An alternative to increasing state auditing would be to establish, at the metropolitan level, a capability for independent financial and program auditing that does not now exist.

The metropolitan auditing capability could be established internally, within each agency separately, or for all agencies jointly. The independence of internal agency auditors could be fostered by legislation that:

- requires an internal auditor for each agency;
- sets qualifications, duties, and powers;



- requires appointment and supervision of the agency auditor directly by the agency board rather than by the chief administrative officer; and
- requires reporting by the auditor directly to the agency board rather than through the chief administrative officer.

Legislation along these lines was once proposed for the MWCC.

The independence of a metropolitan auditing and financial reporting office for all agencies could be secured in similar ways, even though paid for by the agencies. For example:

- The director of a metropolitan auditing office could be appointed for a specified term by the governor, the state auditor, the legislative auditor, or the Council.
- The auditor's qualifications could be stated in statute.
- The office could be given statutorily prescribed duties and powers.
- The office could report directly to the agency boards, to the public, and to the Governor and Legislature.

The establishment of such an independent metropolitan auditing office might seem unwarranted and duplicative of state offices. But if the Legislature continues to resist state supervision of metropolitan finance, a metropolitan auditing capability is justified by the volume of public expenditure and debt represented by metropolitan agencies and their peculiar independence and insularity from political accountability.

### Financing Operations

The Legislature's usual method of reducing the autonomy of metropolitan agencies has been to subject the agencies to external administrative supervision, to add regulatory style administrative approvals in hopes of improving metropolitan systems management. This method could be used to increase agency accountability and reduce fragmentation in financing the operation of metropolitan systems.

The obvious metropolitan location for this administrative review of operations finance is the Council (or a subsidiary board). Several methods have been advanced for increasing the Council's role in decisions on operations finance (in addition to the methods for improving mid-range financial planning discussed in Part I):

- Require the Council to review and comment on annual agency operating budgets, a power that the Council does not now possess.
- Require the Council to produce each year a report consolidating and evaluating the annual operating budgets of all metropolitan agencies. This was the recommendation of the "Brandl Commission" on metropolitan governance in 1984. A similar idea is embodied in H.F. 272 (Knickerbocker), which requires the Council annually to coordinate agency goal-setting for the succeeding year and to report to the Legislature on the performance of metropolitan agencies in achieving the objectives of the preceding year.

- Give the Council approval power over operating budgets, in the form of either a negative, veto power or a more positive power to require specific modifications.

Increasing the sway of the Council in operations finance suffers from several possible deficiencies.

- First, of course, it does not subject the Council's budget to external oversight.
- Second, it extends the regulatory approach of current law, an approach that some suspect has reduced the Council's ability to exercise leadership by enmeshing it in a jungle of implementation and management problems.
- Third, this method of external oversight yields a distinctively interagency process of financial decision-making. This is exemplified in H.F. 272, where the interagency process is also obviously aimed at garnering state, especially legislative, approval. But improving the interagency and metropolitan-state connection in financial decisions may not create a budgeting process that involves the outside publics at the metropolitan level in an active way in metropolitan financial oversight and agenda setting. It may, in fact, lead ultimately to state budgetary approval--a result that many observers would oppose.

Instead of investing the Council with more control of operations finance, the Legislature could increase state control directly by requiring each agency to present budgets to the Legislature for review and approval just as state agencies do, perhaps even as parts of the state budget. Were it to do this, the Legislature would be stepping decisively down the path to state control of metropolitan financial affairs. Such a course of action would not be unprecedented. In recent years, state financial contribution to certain metropolitan facilities (transit, parks, and solid waste) has been followed, in each case, by state--largely legislative--intervention and control of financial programs and policies. In the mid-1980s, the Legislature has attempted, with some success, to extricate itself from the morass of annual transit financing and financial programming; but, at the same time, it has intervened decisively in the financing of metropolitan parks and waste management.

Some observers consider this legislative intervention inevitable, given the absence of external financial controls on these agencies, and welcome the policy direction it provides the metropolitan agencies. Others, who envision the Council as a quasi-legislative and policy-setting agency for the metropolitan area, deplore the trend as an inappropriate intrusion by the state in metropolitan affairs, a very real danger to the purpose of metropolitan governmental institutions, a barrier to increasing accountability to the Council, and therefore an impediment to improved metropolitan systems management.

Increasing the control of the Council and the state are the two solutions to the management problem that have been preferred by the Legislature; further legislation would proceed along familiar paths. But if the goal is rather to increase agency financial accountability to metropolitan publics, then it would be necessary to invent new methods of financial oversight and integration that go beyond legislative or administrative review. Several ideas have been offered for legislative action that would appear to contribute to this goal.

First, the Legislature could rewrite the statutory requirements for annual agency budget documents. The agency budget presentations, intended for use in internal financial control, are varied in format and not well-suited to financial policy and performance analysis by outsiders. Budgets could, for example, be required to have uniform formats, program rather than fund-based reporting, more summary and trend data, better linkage of revenue sources and expenditures, etc. The idea is similar to that advanced to improve financial reporting.

Second, the Legislature could extend the requirement for mid-range financial planning--required now only of the Council and RTB in transit--to other agencies. Besides the substantive benefits, already discussed in Part I, mid-range planning also presents incentives and opportunities for external public oversight of agency operations and operation finance. A three to five year plan for financing agency operations could draw more public and legislative interest than either the annual budgets of the agencies or the long-range policies of the Council. Annual budgets are necessarily stated in such detail as to impede public policy debate, while the Council's long-range policies are often quite remote. The mid-range financial plan, in contrast, is sufficiently general to make policy recognizable and sufficiently concrete to make it actionable. Done right, mid-range financial planning for operations, especially if it is multi-agency in scope and includes consolidation by the Council, could increase public interest and participation in metropolitan affairs.

Third, the Legislature could require direct public participation in agency budgeting for financing operations--rather than, as now, allowing public comment on budgets after they are developed. One method of achieving such participation would be to require each agency, or the metropolitan agencies jointly, to establish an "advisory finance review committee." This committee should be composed largely, but not entirely, of persons from outside the agency (e.g., from other metropolitan and state agencies, legislators, local governments, and citizens). The committee would meet early in the calendar year, after the agency has adopted its current budget or mid-range financial plan and before it begins the formal agency process for developing the next year's budget or plan. The committee would review and comment on the current budget or plan, make recommendations to the agency for the upcoming budget or plan, and advise on longer-term financial and operations plans. Later in the year, the committee would comment on the budget or plan developed by the agency in relation to the recommendations of the committee.

Alternatively, the Legislature could establish a similar public review and recommendation process that is highly focused--on budget or financial issues rather than the budget or financial plan generally. The advisory committee would report on specific budgetary issues (e.g., fees, or budget formats, or performance measures) identified by some outside authority, probably the Legislature. This would be different from the ad hoc task forces sometimes used by the agencies to study finance issues, in that the process would be mandated and formalized, and perhaps also regular, and directed to producing specific recommendations for use in the following year's budget cycle.

Fourth, in addition to improving and unifying agency budget formats, requiring mid-range financial plans, and installing a proactive public element in agency budgeting, the Legislature could extend the time period allowed for decisions on operations finance. The existing six month agency budgeting process does not encourage recognition and development of financing issues by outsiders. Greater

time for decisions would create opportunities for participation by metropolitan publics. This concept of prospective discussion and longer deliberation of financial issues is embodied, embryonically, in the recent Citizen's League report on the Council and in H.F. 272.

The concept could be taken much further. The Legislature could create entirely new procedures for metropolitan financial budgeting and management so as to integrate Council plans with agency finances and insert them decisively into the public and legislative forum. This would be the fifth, and most far-reaching method of establishing financial accountability to the public outside the metropolitan agency structure.

The following schedule is an example of an alternative process--an extended, highly publicized two-year financial planning and budgeting process. Current dates are used for illustration.

- During 1985:
  - The Council and the agencies would jointly and simultaneously develop financial policies and mid-range financial plans for operations and capital investment for the years 1987-1989.
  - The Council and the agencies would jointly prepare a retrospective report on metropolitan finance for 1982-1984.
- Early in 1986 (at the annual regional meeting and at the Legislature):
  - The Council and agencies would present the report for 1982-1984 and the financial policies they are proposing for 1987-1989.
- During 1986:
  - The Council and the agencies would revise and adopt policies for 1987-1989.
  - The Council and the agencies would jointly prepare a retrospective report on metropolitan finance for 1983-1985.
- Early in 1987 (at the annual regional meeting and at the Legislature):
  - The Council and the agencies would present the report for 1983-1985 and their adopted financial policies for 1987-1989.

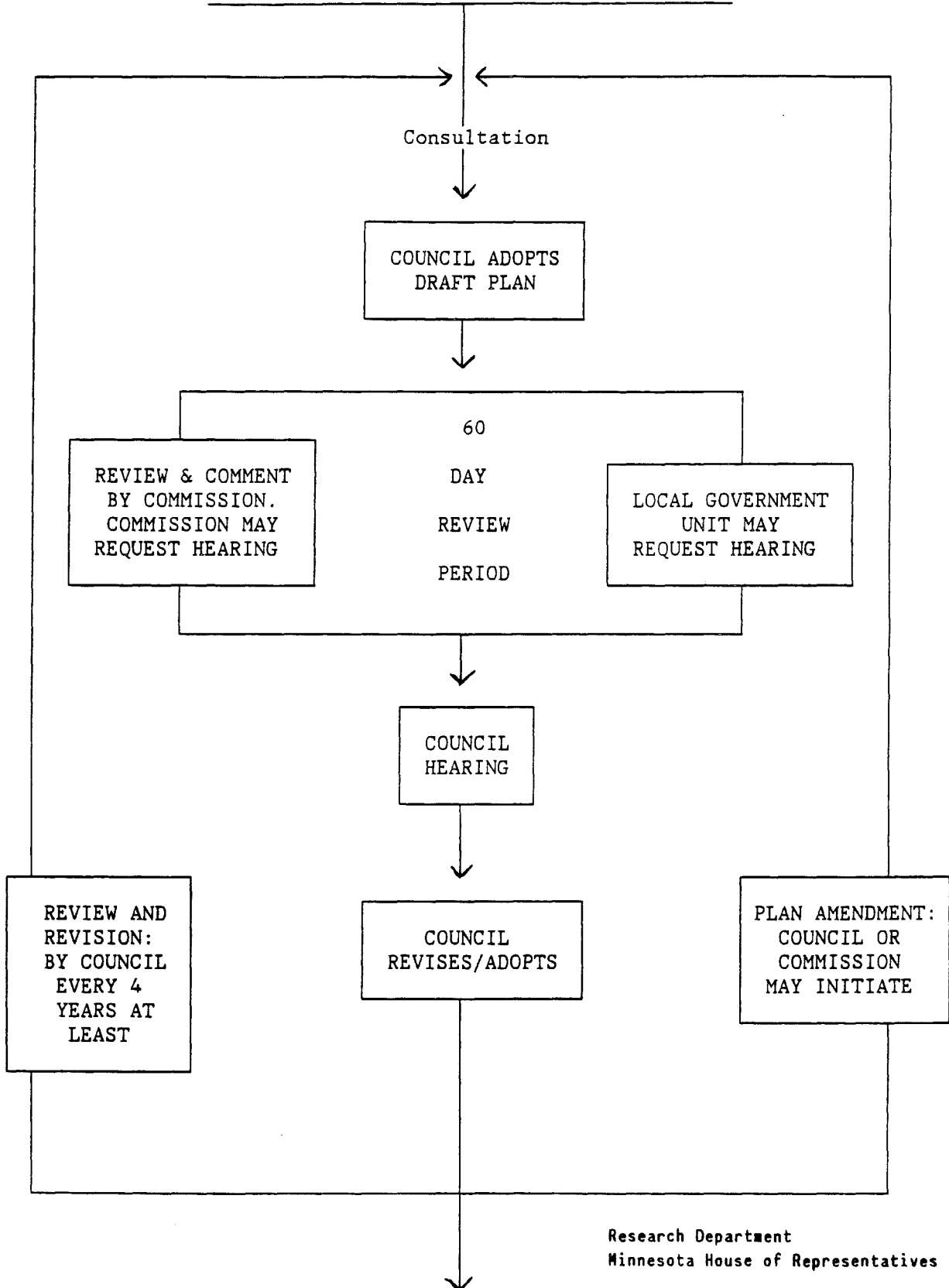
This procedure responds to several problems by combining several reform ideas. The key elements are: (a) prospective financial planning and retrospective financial reporting, covering periods of several years; (b) joint and simultaneous planning by the agencies; (c) the prospective declaration of policies in public and legislative forums; and (d) a one-year lag between the proposal of financial policies and their adoption. This procedure would probably require some formal interagency structure--a regional executive management board composed of agency heads. The idea for such a board, and its various uses, are discussed at some length in the fourth working paper of this series.

To respond to current criticism of metropolitan financial management, any new metropolitan budgeting procedure such as this one should attempt to serve the following goals:

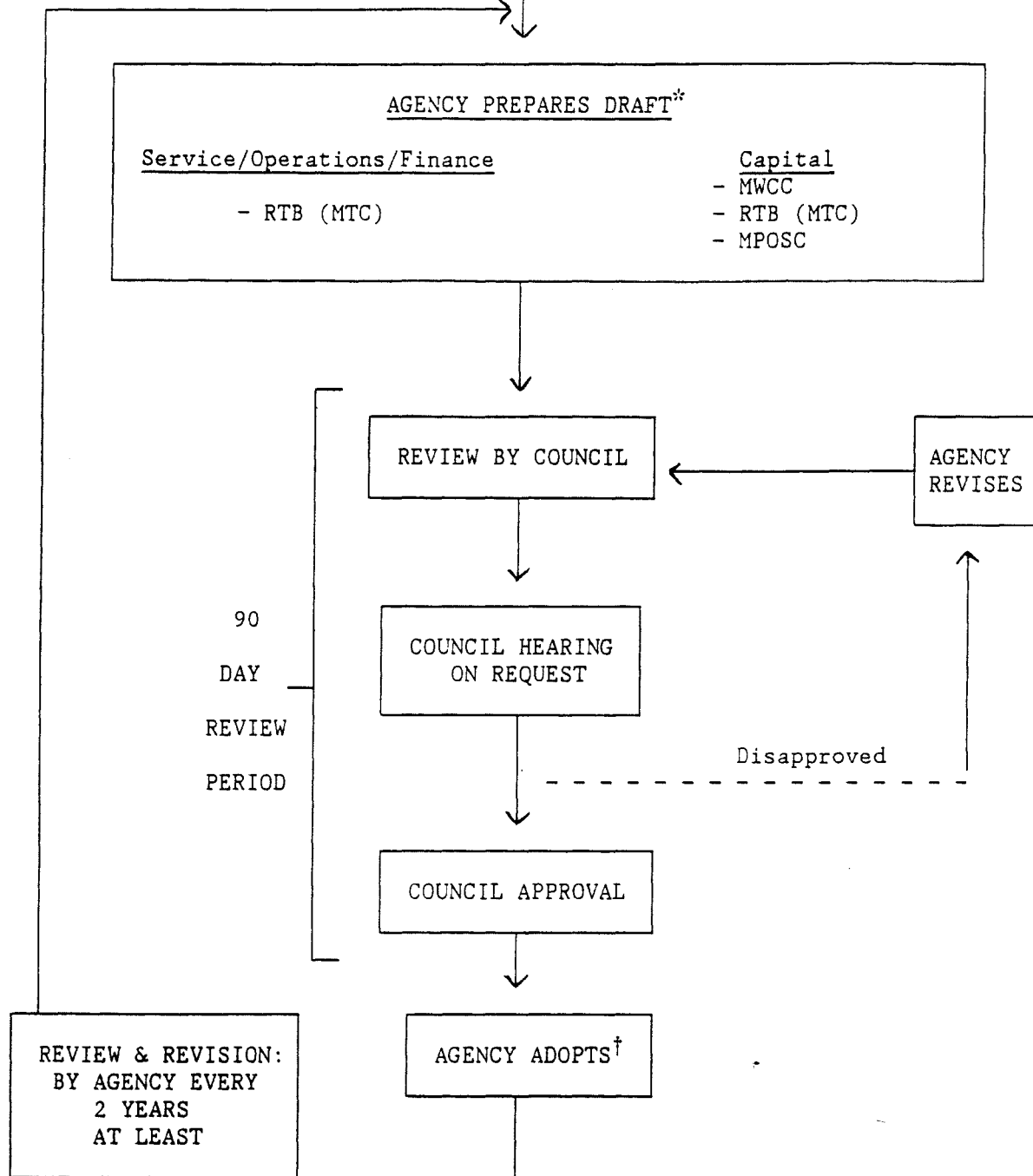
- To reduce agency autonomy and insularity in decisions on operating finance, by enhancing the awareness and timely participation of metropolitan publics and policy-makers (including legislators and local elected officials);
- To promote the early identification of major issues of financial policy and to create time and opportunity for full public discussion;
- To increase the attention given to planning for financing operations and to financial performance and trends;
- To establish interagency relations in such a way as to focus the Council on financial policy analysis, rather than annual operating budgets and financial performance, and to increase the linkage between long-term financial policy and annual action; and
- To enhance public knowledge of the financial affairs of the metropolitan agencies as a group rather than separately.

APPENDIX I  
METROPOLITAN PLANNING, PROGRAMMING, AND BUDGETING PROCESS

PART A  
METROPOLITAN COUNCIL LONG RANGE POLICY PLAN



PART B  
MID-RANGE AGENCY IMPLEMENTATION PLANS/PROGRAMS



\*Not required of the MAC or MSFC. The MAC prepares one voluntarily.

†The Council adopts the MPOSC program as part of the policy plan.

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PART C  
ANNUAL AGENCY BUDGETS

BY AUG. 1

AGENCY  
PREPARES  
DRAFT

COUNCIL REVIEW\*

Operations

- MSFC: annual budget
- RTB (MTC): 3-year financial plan

Capital

- MWCC
- MSFC
- RTB (MTC)

AGENCY  
REVISES

Disapproved

BY OCT. 1

AGENCY  
HEARING

COUNCIL  
APPROVAL

BY DEC. 15

AGENCY  
ADOPTS  
BUDGET

BY DEC. 20

COPY  
FILED WITH  
COUNCIL

BY JAN. 15

COUNCIL FILES COPY  
AT LEGISLATURE

\*Not required of MAC.  
The MPOSC operating  
budget is included  
in the Council's  
budget; the MPOSC  
has no capital budget.

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# **APPENDIX II METROPOLITAN PLANNING, PROGRAMMING, AND BUDGETING AUTHORITIES**

|   | LONG-RANGE PLANNING   |                     | CAPITAL PROGRAMMING AND BUDGETING                               |                                    |                                |   |  | OPERATIONS PROGRAMMING AND BUDGETING                |   |  |
|---|---|---------------------|---|------------------------------------|--------------------------------|---|--|---|---|--|
|   | (1)<br>POLICY PLAN  | (2)<br>CAPITAL PLAN | (3)<br>MID-RANGE<br>(5-YEAR) CAPITAL<br>PROGRAM                 | (4)<br>ANNUAL<br>CAPITAL<br>BUDGET | (5)<br>CAPITAL<br>PROJECTS     | (6)<br>BOND<br>ISSUANCE                 | (7)<br>DEBT<br>FINANCE   | (8)<br>MID-RANGE<br>(5-YEAR) OPERATIONS<br>PROGRAM  | (9)<br>ANNUAL<br>OPERATIONS<br>BUDGET   | (10)<br>OPERATIONS<br>FINANCE  |
| <b>MWCC<br/>(Sewers)</b>                | Required by law;<br>Council adopts  | Not required        | Required by law;<br>MWCC adopts;<br>Council veto                | Council<br>veto                    | Must be in<br>budget           | By Council                              | MWCC fees;<br>No Council<br>review   | Not required  | MWCC adopts;<br>No Council<br>review    | MWCC fees;<br>Council may<br>comment on<br>fees                              |
| <b>RTB<br/>(Transit)</b>                | Required by law;<br>Council adopts (1)                                    | Not required        | Required by law;<br>RTB adopts;<br>Council veto                 | Council<br>veto (1)                | Must be in<br>budget           | By Council                              | RTB tax;<br>No Council<br>review   | Required by law; (1)<br>RTB adopts;<br>Council veto | RTB adopts; (1)<br>No Council<br>review | State funds  |
| <b>MIC<br/>(Transit)</b>                | Same as transit plan<br>for RTB   | Not required        | Included in RTB<br>program                                      | Included in<br>RTB budget          | Included in<br>RTB budget      | By Council,<br>included in<br>RTB issue | Included in<br>RTB tax   | As required by RTB;<br>RTB veto                     | MIC adopts;<br>RTB veto                 | MIC fees + RTB<br>tax + state funds;<br>RTB approval or<br>or allocation     |
| <b>MAC<br/>(Airports)</b>               | No definition in law;<br>Council adopts                                   | Not required        | Not required;<br>MAC adopts;<br>Council suspension              | No<br>Council<br>review            | Limited<br>Council<br>veto (2) | By MAC                                  | MAC fees +<br>tax if<br>necessary;<br>No Council<br>review                   | Not required  | MAC adopts;<br>No Council<br>review     | MAC fees + tax if<br>necessary;<br>No review                                 |
| <b>MPDSC<br/>(Parks)</b>                | Required by law;<br>Council adopts;<br>5-year capital<br>program included | Not required        | Required by law;<br>Council adopts<br>as part of policy<br>plan | Local                              | Local;<br>Council<br>veto      | By Council                              | Tax by<br>Council +<br>State<br>funding                                      | Not required  | Part of<br>Council budget               | Council tax;<br>No review  |
| <b>MSFC<br/>(Sports<br/>Facilities)</b> | Not required  | Not required        | Not required  | Council<br>veto                    | In budget                      | By Council                              | MSFC fees +<br>Mpls. tax if<br>necessary;<br>Council<br>mandates<br>revenues | Not required  | MSFC adopts;<br>Council veto            | MSFC fees +<br>Mpls. tax if<br>necessary;<br>Council<br>mandates<br>revenues |
| <b>Met Council</b>                      | -----   | -----               | -----   | -----                              | -----                          | -----                                   | -----  | Not required  | Council<br>adopts; Not<br>reviewed      | Council fees<br>& tax; Not<br>reviewed                                       |

(1) Under the 1984 transit reorganization act, the Council's policy plan must include service and financial policies. Under that act, the RTB must prepare an implementation plan rather than a development program. The implementation plan must include service and operations finance elements as well as capital programs. The RTB is also required to prepare each year, along with its annual budget, a three-year financing plan.

(2) The Council has veto power over MAC capital projects if: (a) the project is over \$5 million at MSP airport or \$2 million at other airport, and (b) the project increases runway or passenger enplanement capacity.

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Please insert this Appendix "the composition of metropolitan agencies" at the end of Working Paper #2 of METROPOLITAN GOVERNANCE PROJECT publication by Tom Todd.

It was inadvertently omitted.

KJ/df  
Enc.

APPENDIX:  
THE COMPOSITION OF METROPOLITAN AGENCIES

This chart shows, for each metropolitan agency, the total number of members and the manner of appointment, residency or status qualification and term of the chair and other members.

|             | NUMBER | CHAIR                    |                     |                           | MEMBERS                    |   |                        |
|-------------|--------|--------------------------|---------------------|---------------------------|----------------------------|---|------------------------|
|             |        | APPOINTED BY             | RESIDENCE OR STATUS | TERM                      | APPOINTED BY               | RESIDENCE OR STATUS                                   | TERM                   |
| MET COUNCIL | 17     | Governor                 | Metro               | at pleasure               | Governor                   | 16 statutory geographic districts                     | 4 years                |
| RTB         | 9      | Governor                 | Metro               | 4 years at pleasure       | Met Council                | 8 statutory geographic districts                      | 4 years                |
| MTC         | 3      | Elected by Commissioners | Commissioner        | 1 year                    | RTB                        | 1 - Minneapolis<br>1 - St. Paul<br>1 - served suburbs | 3 years                |
| MAC         | 11     | Governor                 | None                | Coterminous with Governor | 8 - Governor               | 8 non-statutory geographic districts                  | 4 years                |
|             |        |                          |                     |                           | 2 - Mayors of the 2 cities | qualified voter                                       | Coterminous with Mayor |
| MWCC        | 9      | Governor                 | Metro               | 4 years at pleasure       | Met Council                | 8 statutory geographic districts                      | 4 years                |
| MPOSC       | 9      | Met Council              | Metro               | 4 years at pleasure       | Met Council                | 8 statutory geographic districts                      | 4 years                |
| MSFC        | 7      | Governor                 | Non-Metro           | 4 years                   | Minneapolis City Council   | No Minneapolis officials                              | 4 years                |

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|             | NUMBER | CHAIR                       |                     |                              | MEMBERS                       |   |                           |
|-------------|--------|-----------------------------|---------------------|------------------------------|-------------------------------|---|---------------------------|
|             |        | APPOINTED BY                | RESIDENCE OR STATUS | TERM                         | APPOINTED BY                  | RESIDENCE OR STATUS                                   | TERM                      |
| MET COUNCIL | 17     | Governor                    | Metro               | at pleasure                  | Governor                      | 16<br>statutory<br>geographic districts               | 4 years                   |
| RTB         | 9      | Governor                    | Metro               | 4 years<br>at pleasure       | Met Council                   | 8<br>statutory<br>geographic districts                | 4 years                   |
| MTC         | 3      | Elected by<br>Commissioners | Commissioner        | 1 year                       | RTB                           | 1 - Minneapolis<br>1 - St. Paul<br>1 - served suburbs | 3 years                   |
| MAC         | 11     | Governor                    | None                | Coterminous<br>with Governor | 8 - Governor                  | 8<br>non-statutory<br>geographic districts            | 4 years                   |
|             |        |                             |                     |                              | 2 - Mayors of<br>the 2 cities | qualified voter                                       | Coterminous<br>with Mayor |
| MWCC        | 9      | Governor                    | Metro               | 4 years<br>at pleasure       | Met Council                   | 8<br>statutory<br>geographic districts                | 4 years                   |
| MPOSC       | 9      | Met Council                 | Metro               | 4 years<br>at pleasure       | Met Council                   | 8<br>statutory<br>geographic districts                | 4 years                   |
| MSFC        | 7      | Governor                    | Non-Metro           | 4 years                      | Minneapolis<br>City Council   | No Minneapolis<br>officials                           | 4 years                   |