Department of State

LOCAL GOVERNMENT HANDBOOK

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Local Government Handbook

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CHAPTER I

The Origins of Local Government — and the Federal System

Local government in New York has evolved over centuries of experience that Empire State residents have had in dealing with the land and its resources. The governmental forms created by the people reflect functional concerns, a fear of concentrated governmental power and a sustained dedication to basic ideas of representative government.

Although we often speak of three "levels" of government, the United States Constitution mentions only two: the federal government and the state governments. The federal system, however, implicitly includes the idea that the states, in the exercise of powers reserved to them by the United States Constitution, would provide for local governments in ways that would take into account local diversities and needs. To the extent that the states have made such provisions in the form of state constitutional grants of home-rule power to the local units, such as in New York, local governments have become, in fact as well as in theory, a third level of the federal system.

Approximately four hundred years have passed since the first Europeans settled in what is now New York State. The experiences of the millions who have lived in this state have provided the raw materials for the creation of present-day social and governmental institutions.

This chapter reviews some basic considerations that are relevant to the following questions:

- Why did New Yorkers of long ago create local governments?
- What types of governments did they establish?
- What did they believe about governmental power and its uses?
- How did the land, its climate and its diversities contribute to the shaping of governmental patterns?
- How did New Yorkers mesh their governmental patterns with those of the emerging nation?

The Heritage of History

"Before the first Roman soldier stepped on the shore of England…" are the words which open a "History of the County Law" in the 1950 edition of McKinney's County Law of the State of New York.

The origins of local government in New York State may be traced to that moment in ancient history. A historian of county government will find, for example, that the familiar office of sheriff existed in England over one thousand years ago — as did the reeve (tax collector) of the shire or "shire-reeve."[1]

Of course, long before the early European settlers began to plan their particular forms of governmental organization in New York State, the Iroquois Confederacy existed as a relatively sophisticated system of government. The Iroquois Confederacy included extensive intergovernmental cooperation and operated effectively from the mouth of the Mohawk River to the Genesee River. The Iroquois had found it advantageous to substitute intertribal warfare and strife for a cooperative arrangement in which each of the six tribes carried out assigned functions and duties on behalf of all. The federal arrangement in the United States Constitution was patterned after the Iroquois Confederacy. The familiar patterns of local government in New York today, however, stem largely from the colonial period.

Colonial Government in New York

Established by the Dutch, the first local governments in New York began as little more than adjuncts to a fur-trading enterprise. Under a charter from the government of the Netherlands, the Dutch West India Company ruled the colony of New Netherland from 1609 until the British seized it in 1664.

At first the Dutch concentrated almost wholly on commerce and trade, particularly the fur trade. As early as 1614 and 1615, they established trading posts at Fort Nassau, near the present Albany, and on Manhattan Island. Serious efforts to colonize began in 1624, when New Netherland became a province of the Dutch Re-

public. Beginning in 1629 the Dutch established feudal manors, called "patroonships," to expedite the effort of permanent settlement. That system bestowed vast land grants upon individual "patroons," who were expected to populate their holdings with settlers who would cultivate the lands on their behalf.

The Dutch rulers of New Netherland initially did not draw a sharp line between their overall colonial or provincial government and that of their major settlement, which was called New Amsterdam. It was not until 1646 that the Dutch West India Company granted what appears to have been certain municipal privileges to the "Village of Breuckelen" — lineal ancestor of the present-day Brooklyn — located across the East River from New Amsterdam. Fort Orange, which later became the City of Albany, obtained similar municipal privileges in 1662. In 1653, the "Merchants and Elders of the Community of New Amsterdam" won the right to establish what was called "a city government." This was the birth of the municipality which would later become New York City.

The Dutch colonial period lasted for more than 50 years. In 1664, during hostilities leading up to the second Anglo-Dutch War, Peter Stuyvesant, the last Dutch governor, surrendered New Netherland to James II of England, who came to be known as James, Duke of York. The British easily adapted the governments previously established by the Dutch to their own patterns and then further modified them to meet the needs of colonial New Yorkers.

Pressed to name a single source for the present pattern of local government in New York, a historian can cite a number of dates and places and can argue that each has validity. However, the most prominent single event in the development of contemporary forms of local government in colonial New York was the "Convention" of delegates, which took place in 1665 at Hempstead, in what is now Nassau County. Its purpose was to propose laws for the colony which had only the year before passed from Dutch to British rule. The laws proposed by these delegates were adopted for the most part and came to be called the Duke of York's laws. They recognized the existence of 17 towns and created one county, called Yorkshire. Thus, the beginnings of town and county government in New York reflected colonial policies of the English government, certain Dutch patterns, and British colonial experience.

At an historic "General Assembly of Freeholders" convened in 1683 by Governor Thomas Dongan, participants passed a charter outlining the principles by which the colony ought to be governed. Known as the Charter of Liberties and Privileges, its principles were drawn from the Magna Carta and closely resembled our modern constitutions. Among other important actions, the Assembly divided the province of New York into 12 counties. The county became the basis of representation in the Colonial Assembly and also the unit of administration for the system of courts that was established at the same time. The charter was signed by the Duke of York and then vetoed by him five months later when he ascended to the throne as King James II. He abandoned the throne in 1688, and in 1691, a new assembly, elected under Governor Henry Sloughter, passed new statutes reasserting the principles contained in the original charter.

The office of town supervisor also originated at this time in a directive to each town to elect a freeholder, to be called the "town treasurer," "to supervise and examine the publique and necessary charge of each respective county." It is of interest to note that the original function of this office, called the "town supervisor" after 1703, was to allocate county expenses among the towns. County boards of supervisors and county legislatures developed from the meetings of the colonial town supervisors for the purpose of apportioning county expenses.

In 1686, the British Crown issued charters, known as the "Dongan Charters," to the cities of New York and Albany. A century would pass before another city was chartered in New York. The City of Hudson received its charter in 1785 by an act of the State Legislature and thus became the first city to be chartered in the new United States.

It is apparent that many of the basic patterns and forms, as well as some of the practices, of local government in the Empire State already existed at the time of the Revolution. The first State Constitution, which became effective in 1777, recognized counties, towns and cities as the only units of local government.

The village emerged as a fourth unit of local government in the 1790s through a series of legislative enactments granting recognition and powers to certain hamlets (see Chapter VIII). This trend culminated in 1798, when the Legislature incorporated the villages of Troy and Lansingburgh. Neither now exists as a village; Lansingburgh was long ago absorbed into what has become the City of Troy.

Some Basic Beliefs

Local governments in the Empire State are more than merely products of four centuries of history; they also

reflect basic beliefs and perceptions that are deeply held by past and present residents of the State.

There is a fundamental perception, widely shared among Americans, that although governmental power can be used to benefit the people, it can also be used to harm them. This awareness has fostered a firm conviction in New Yorkers that the people must not only promote the desirable uses of governmental power, they must also carefully protect themselves from the abuse of such power.

For this reason, many protective mechanisms have been put in place to hedge the constitutional and statutory provisions that authorize the use of power for specific purposes. These mechanisms are designed to assure that power will only be used for generally acceptable purposes and in ways which will not infringe unduly upon either the dignity or the established rights of the individuals, on whose behalf the power is presumed to be exercised.

Later chapters will identify and describe such protective measures as the judicial system, due process of law, certain constitutional protections, instruments of direct democracy (such as referenda, citizen boards and commissions), and other mechanisms of representative self government — all of which reflect a basic belief that we must subject governmental power to tight controls if we want to protect the people against tyranny, whether it is the tyranny of a king, a dictator or a political majority.

The people's strong attachment to representative government has greatly influenced the organization and operation of local government. The Charter of Liberties and Privileges (also known as "Dongan's Laws") declared in 1683 that the supreme legislative authority, in what was then the colony, "under his Majesty and Royal Highness should forever be and reside in a Governor, Council, and the people met in General Assembly." The Council and the Assembly, thus endowed with supreme legislative authority, constituted a bicameral (two-chambered) legislature in which at least the Assembly reflected a belief in representative government. In this particular case, representation was by counties. From the very earliest days, the forms of local government in New York have demonstrated the people's firm belief in representative government.

In addition, New Yorkers have always regarded government in a very practical way. Conceiving of governments as instruments to carry out duties and functions to meet specific needs, they created local governments to carry out particular activities. The Constitution, the statutes, and the charters of the cities, a few villages and some counties, spell out these duties and functions.

Since New Yorkers have typically created local governments to meet generally recognized needs, it follows that they would see the forms, powers and operational arrangements of local governments as devices to accomplish specific ends.

Constitutional amendments, changes in state laws, and local legislative and administrative action have all facilitated the adjustment of form to function. Such measures have kept local governments responsive to the practical needs of the people that are served by such governments. Of course, it is not always easy to make such adjustments and later chapters will identify and describe tensions which develop when adjustments lag behind perceived needs.

The Land and the People

The functions of local governments reflect not only the history and beliefs of the people, but also their interests, how they go about the business of conducting their lives and the characteristics of their physical environment.

New York State encompasses an enormous variety of natural environments. While many local governments on Long Island are concerned with beach erosion and mass transit, those of the North Country often focus on such issues as winter recreation development and snow control.

New York State's location and geography has influenced the shaping of local government in several fundamental ways. Occupying a prominent position among the 13 original colonies, New York firmly held its position as the nation expanded over the two centuries that followed. More than one-third of the battles of the American Revolution were fought in New York, including two decisive battles in the Town of Stillwater and the resulting British surrender at Saratoga, which collectively became the turning point of the war. In New York City, the Federal Union came into being in 1789.

From the start, New York has been the nation's most important roadway to its interior, and its primary gateway from and to the rest of the world. The harbor of New York City and the waterways, railroads and highways of New York have provided the arteries over and through which a large portion of the nation's commerce has flowed. Airline route maps for the United States and the world illustrate the convergence of transportation in New York State and New York City. New York's natu-

ral resources and its people have maintained New York's standing as one of the nation's largest manufacturing states, and as the undisputed financial center of the nation.

The observer who generalizes about New Yorkers and their state does so at his/her peril. If there is a single attribute that characterizes New York, it is diversity. Montauk Point at the eastern tip of Long Island, Rouses Point at the state's northeastern corner, and Bemus Point near the southwestern corner share little beyond their designation as "Points," and all abut bodies of water which are themselves diverse — the Atlantic Ocean, Lake Champlain and Chautauqua Lake, respectively.

The Land

New York has an area of 53,989 square miles, of which 6,765 square miles are water. Two masses of mountains — the Adirondacks and the Catskills — stand out in New York's topography, while Long Island, a 1,701-square-mile glacial terminal moraine, juts 118 miles into the Atlantic Ocean from the mouth of the Hudson River at the tip of Manhattan Island. New York is additionally unique in that its 75 miles of shoreline on Lake Erie, more than 200 miles on Lake Ontario and approximately 165 miles on the Atlantic shore make New York the only state that is both a Great Lakes state as well as an Eastern Seaboard state.

The waters of New York drain literally in all directions: southward to the Hudson, Delaware and Susquehanna Rivers; westward to Lake Erie; and northward to Lake Ontario and the St. Lawrence River. Also, a small part of the state's southwest corner lies in the Mississippi River watershed. Those New York waters drain eastward into the Alleghany River and onward into the Ohio River. The Ohio River empties into the Mississippi River, and ultimately, New York waters discharge into the Gulf of Mexico.

The rivers and waterways of New York greatly influenced the development of local government in the state. Settlement followed the waterways and hence river valleys saw the earliest local governments. Most prominent among the rivers, the Hudson is navigable by ocean-going vessels for nearly 150 miles inland to Albany. Also, near Albany, the Mohawk River and the Erie Barge Canal extend westward from the Hudson River to form a water transportation route from eastern to western New York. In the southern tier region of the state the Susquehanna River, and to some extent the Delaware River, provided waterways along which commerce, trade and settlement moved. In the northern and northwestern parts of the state, Lakes Erie, Ontario, and Champlain, as well as the St. Lawrence River provided additional avenues for development.

The Climate

Meteorologists describe the climate of New York State as "broadly representative of the humid continental type which prevails in the northeastern United States, but its diversity is not usually encountered within an area of comparable size."[2] This means that New York enjoys a climate of extremes — hot in the summer and cold in the winter.

Immediately east of Lake Erie, in the Great Lakes plain of western New York, and in those areas influenced by the Atlantic Ocean, such as Long Island, winter temperatures are often substantially more moderate. Long Island and New York City, for example, record below-zero temperatures in only two or three winters out of ten.

To understand the significance of this climatic diversity one need only glance at the average length of the frost-free season, which varies from 100 to 120 days in the Adirondacks, Catskills and higher elevations of the western plateau, to 180 to 200 days on Long Island. With its obvious implications for the agricultural and other economic interests of New Yorkers, the climate directly affects local government. In parts of the state that are referred to as "snowbelt" regions, the average yearly snowfalls exceed 90 inches. In these areas, a local government must devote a major portion of its time and municipal budget to snow control on the highways and related challenges of highway maintenance.

The People

Nowhere is the essential diversity of New York more clearly demonstrated than in the ethnic and national origins of its people. From the earliest days of colonial settlement, the multiplicity of people coming to the great harbor at the mouth of the Hudson River nurtured the growth of the nation's largest city. Immigrants from all over the world flowed through the vast funnel of New York City. While many went on to populate the nation, others remained residents of the city or the state. The languages of the world continue to echo on the streets of Manhattan.

For 16 decades prior to 1970, more residents of the United States lived in New York than in any other state. After 1980, New York was supplanted by California as the most populous state. With a 2000 Census population of 18,976,457, New York now ranks third to California and Texas, which have 2000 Census populations of 33,871,648 and 20,851,820, respectively.[3]

The downstate counties — Nassau, Suffolk, Westchester and the five boroughs of New York City — account for over 60 percent of the state's population.

Table 1 reveals the diverse sizes of New York's towns and villages. The largest number of towns and villages fall in the 500 to 2,499 population grouping. However, some New York villages have more than 25,000 people and some towns have populations over 50,000.

TABLE 1

Distribution of New York Towns and Villages by Population Category

	Towns		Villages	
Population	**Number**	**Percent**	**Number**	**Percent**
Up to 500	30	3.2	72	13.0
500 - 2,499	385	41.3	272	49.2
2,500 - 4,999	210	22.5	105	19.0
5,000 - 9,999	160	17.1	69	12.5
10,000 - 14,999	51	5.5	16	2.9
15,000 - 19,999	24	2.6	9	1.6
20,000 - 24,999	13	1.4	4	0.7
25,000 - 49,999	39	4.2	5	0.9
More than 50,000	21	2.3	1	0.2
Total	933	100.0	553	100.0

SOURCE: 2000 Census of the Population, courtesy of the Empire State Development.

These population statistics and those of Figure 1 and Table 2 reveal a great deal about local government activity. In some areas of the state, the local governments habitually deal with issues of expansion and growth. They must provide basic public services and amenities, under conditions of rapid expansion, and somehow finance these activities. In other areas, local governments oversee static communities where little or no growth is taking place. A few areas face issues associated with contraction, where, for instance, excess school facilities are visible in communities with declining populations of school-age children.

FIGURE 1

Map of New York State Towns by Population 2000

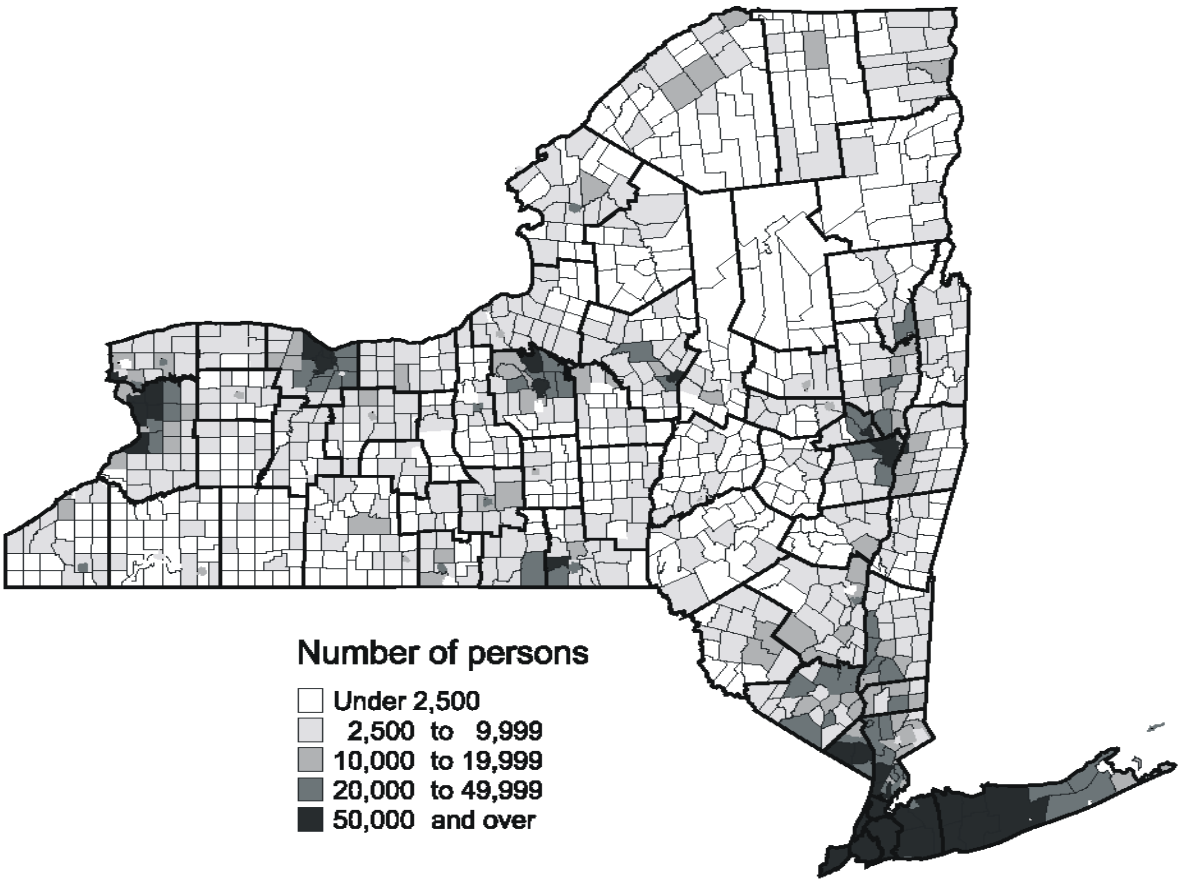


TABLE 2

Population Change by Type of Municipality, 1990 - 2000

	1990	2000	Percent Change	Percent of Total Population
Towns[1]	8,286,227	8,692,132	4.9	45.8
Villages	1,832,430	1,871,947	2.2	9.9
Towns outside of Villages	6,453,797	6,820,185	5.7	35.9
Cities other than NYC	2,381,664	2,265,897	-4.9	11.9
New York City[2]	7,322,564	8,008,278	9.4	42.2
Total	17,990,455	18,976,457	5.5	100.0

[1] Includes villages.
[2] Includes the five boroughs of New York City.

SOURCE: 2000 Census of the Population, cited in the 2005 Annual Report, Office of the State Comptroller

The People's Interests

If government does indeed exist to serve the practical needs of the people, it follows that local governments should reflect the desires of the people and devote efforts to the concerns of the people.

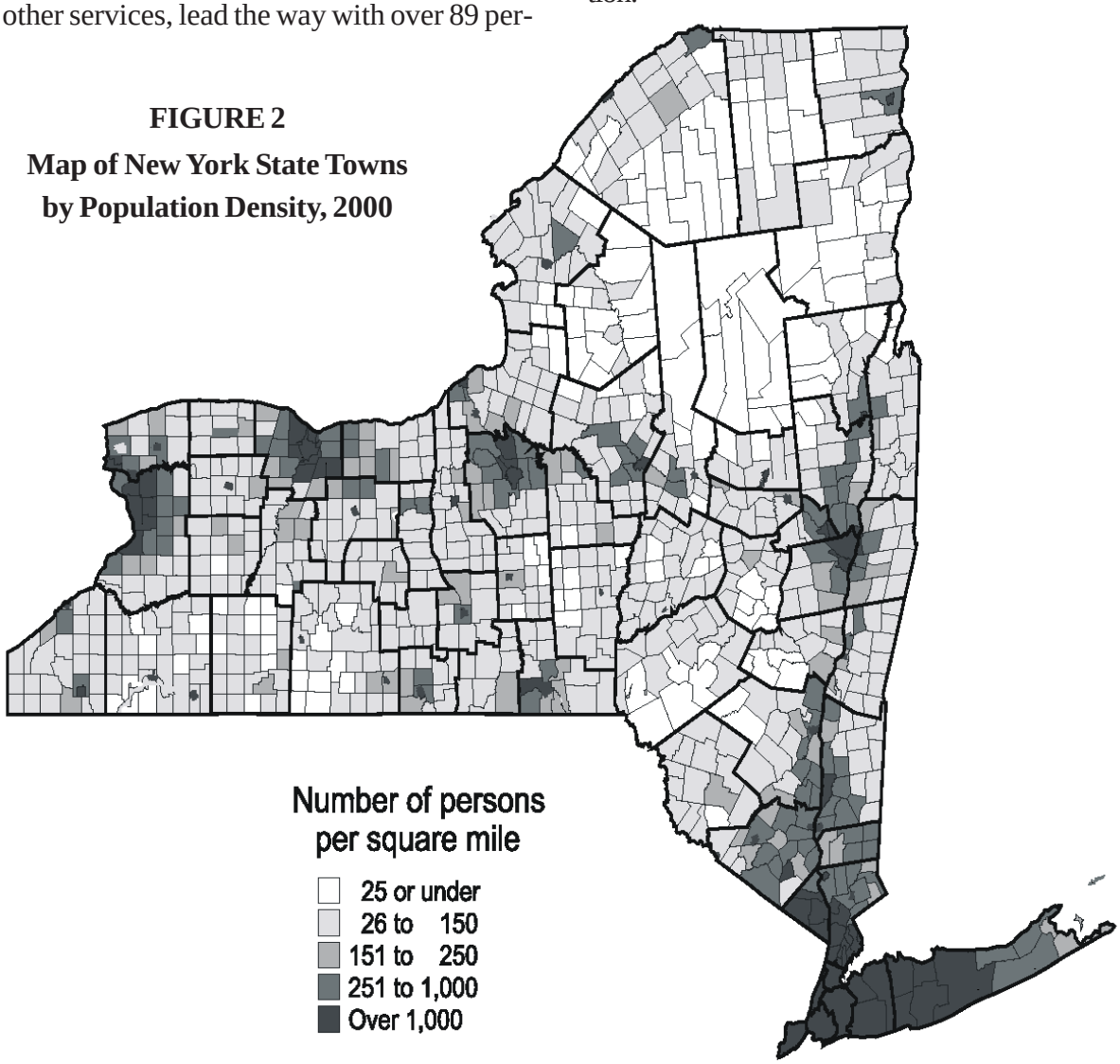
New Yorkers, like most people, are vitally concerned with issues related to making a living. Government at all levels has a role in maintaining an environment that is conducive to such pursuit. Accordingly, some basic economic statistics concerning New Yorkers are in order.

More than one-sixth of those employed in New York State work for federal, state or local government. Whether or not employees of local school districts are included, local governments employ far more people in New York State than the state and federal governments combined.

The total non-agricultural labor force of the state in June of 2005 was estimated at 8,608,800; an 87,600 job increase over June of 1999. Service industries, including wholesale and retail trade, financial, transportation and other services, lead the way with over 89 percent of the non-agricultural employment in New York State.

New York State agriculture is surprisingly diverse and vibrant. Agriculture is not only a vitally important element of New York's total economic life, it is often times the socio-economic backbone of New York's rural communities. The positive impact that New York State agriculture has on the local economic multiplier estimates far exceeds the local economic multipliers of many other employment sectors.[4] Agriculture also provides many valuable quality-of-life benefits such as open space, habitat protection, agri-tourism and recreational opportunities in the form of hunting, fishing and snowmobiling. In 2005, there were 35,600 farms in New York State, comprising 7.6 million acres of land or about 25 percent of the state's land area. The total value of agricultural products sold in 2005 was $3.6 billion dollars, which represents an increase of 14 percent over 2000 numbers, more than half of which was derived from dairy cattle and milk production.[5]

FIGURE 2
Map of New York State Towns by Population Density, 2000



The Federal System

Among the factors that have influenced the nature and development of local government in New York, one of the most important has been the state's role as a member—a charter member—of the federal union called the United States. The state and its local governments are an integral element of the federal system.

At the time the people of the United States were creating the Federal Union in 1787-1789, they deeply feared great concentrations of governmental power. Accordingly, the United States Constitution established more than one principal center of sovereign power.

Although the United States Constitution does not mention local government, the constitutional fathers were well aware of its existence and importance; it is clear that they saw it as a vital and continuing element of American life. The First Congress made the intention of the framers explicit in 1789 when it proposed the Tenth Amendment — all powers which were not delegated to the national government would rest with the states.

Among other reserved powers, the states were free to subdivide, not only their territory, but also their powers, authority, and functional responsibilities, as they believed appropriate to their unique needs and requirements. Accordingly, every state in its own way has provided for local governments and has endowed them with relatively independent authority to deal with issues that are regarded as local in nature. This has been done within limitations and according to applicable procedures set forth in the United States Constitution. The reapportionment of county legislative bodies to conform with the Equal Protection clause of the 14th Amendment (described in Chapter V) provides a clear example.

When, as in New York, the people of a state have endowed their local governments with extensive home-rule authority through State Constitutional provisions, it is possible to regard the local government as a third level of the federal system. By delegation from the people of the state, the local government constitutes a third center of sovereign power, energy and creativity.

The Federal Idea

Local government in New York is more than a mechanical device or a set of legal formulas that channel political power toward specific objectives. It includes beliefs and values that reflect basic ideas, and it embodies centuries of practical experience.

In 1789, the people of the several states were aware of and asserted their differences and diversities. If they were to accept a central government, it would have to recognize that the states would retain and exercise powers and decision-making authority in affairs of immediate and direct importance to the people in the places where they lived and worked. The American people still hold firmly to the idea of federalism. It operates both between the national government and the 50 state governments on the one hand, and between the individual states and their local governments on the other.

The federal system should not be viewed exclusively, however, as a means for limiting the concentration of power. It also permits the people to use power most effectively to deal with problems that are special and unique to different regions of such a highly diverse land.

By leaving the states free to organize and empower local government in response to the demands and needs of local areas, the constitutional framers gave a vast nation the capacity to achieve necessary unity without sacrificing useful diversity. Fostering the unity necessary to have a nation and giving free play to diversity at the same time is the essence of the federal system. Over two hundred years of American history demonstrate the suitability of local government for the nation as a whole, and for New York State in particular.

The National Government

A thorough description of the national government would require several books the size of this one, but we should note some fundamental facts.

First, the national government is a government of "restricted" powers. Over the years, presidential, congressional, and judicial interpretations have found constitutional authority for adjusting and broadening the specific powers granted to the national government into functional areas that the framers could never have foreseen. Nonetheless, the Tenth Amendment of the United States Constitution, which reserves powers to the states, is still applicable.

Article 1, section 8 of the Constitution grants Congress the power "to regulate Commerce with foreign nations, and among the several states…." Without formal amendment, this has sufficed to accomplish such diverse national purposes as the assurance of orderly air travel, electronic communication by radio, television and (potentially) the internet, and the maintenance of orderly labor-management relations in the nation's industries.

Because the national powers alone cannot direct many areas of governmental activity efficiently or effectively, there has been a clarification — perhaps even a strength-

ening in some cases — of the roles of states and local governments in the federal system. We can see this, for instance, in some aspects of governmental action regarding environmental pollution. The national government has not been urged to assume the task of picking up solid waste matter from the curbs in front of homes throughout the country. Nor is this an appropriate matter for the states. The duty to collect solid waste is, by general agreement, a function of local government.

What, then, should the national and state governments do in the area of solid waste management? The national government sets standards, conducts and finances research to develop new technologies for waste disposal, and provides financial assistance to utilize the new technologies to meet the standards. State governments match the research findings to their particular needs, develop specific regulations and operational procedures to meet the standards, devise optional organizational arrangements, and provide technical and financial assistance to local governments with issues related to solid waste management.

Collaborative governmental action can also best handle many other areas of public service.

The Role of the States and Local Government

The states have "residual" powers. In the words of the Tenth Amendment of the Constitution, the states have "the powers not delegated to the United States by the Constitution, nor prohibited by it.…"

Some people assert that the states have "lost" power to the national government, as the latter has moved more and more into areas once regarded as the exclusive province of the states.

To some extent this may be true, but it is also true that state activity has grown. The situation is not so much one of relative gains or losses of power as it is of expanding governmental roles at all levels.

Recent experience shows that even as societal issues become nationwide in scope, they often retain state and local dimensions that make it desirable for the states and local governments to act in concert with the national government.

More and more, contemporary federalism has become a cooperative arrangement whereby national, state and local governments direct their energies toward common objectives. Consider the great highway network that now spans the nation. National, state and local governments all help to finance, build and maintain roads.

Any recent state or municipal budget includes a range of joint national-state-local actions that extends into familiar areas of modern life — public, health, social services, education, environmental pollution, and land-use planning. Local government officials increasingly find themselves cooperating in enterprises where they must coordinate their individual roles with officials who are similarly engaged at other levels of government.

The Contemporary Federal System

For more than a century and a half, people sought to clearly distinguish what the national government could do from what the states could do. The United States Supreme Court has filled many shelves with learned discourses and decisions related to this purpose.

In recent decades, relationships within the federal system raise less questions of relative powers, and more questions regarding the portion of an overall governmental objective that each level of government can achieve. Since contemporary social problems have many facets and dimensions that cross governmental lines, it is no longer productive to view the federal system as an arena where antagonists contend for power. It is far more useful to consider which government can perform a given function, activity or duty and produce the best results.

The contemporary questions of federalism ask: how best to spread the costs of certain types of government programs among the tax-payers of the whole nation, how best to channel the dwindling natural resources of the nation to purposes of greatest benefit to all, how best to ensure that the powers of government are not used unfairly for the benefit of one segment of the society at the expense of others, and how best to ensure that citizens have a meaningful role in making decisions that are important to them.

In some ways the contemporary federal system operates in the way the framers envisaged. But we look at the system somewhat differently now than we did in the past. The root question of the national-state relationship has always been the extent to which the system would be centralized or decentralized. Today we often answer this question in terms of how much centralization or decentralization is necessary or desirable to meet agreed upon general objectives.

For local officials, one of the most significant attributes of the contemporary federal system is the array of federal financial grant programs that have been authorized by Congress, especially since World War II. The *Catalog of Federal Domestic Assistance*, available from the

Superintendent of Documents, contains more than a thousand separate federal aid programs. Many, though not all, are available to local governments.

The fact that a program appears in the *Catalog* does not necessarily mean that funds are readily available. Making a federal grant program operational involves three necessary steps. Congress must enact legislation that "authorizes" a relatively large amount of money for the program. Congress must then appropriate all or part of the authorized amount-usually a considerably smaller figure than the full authorization. Finally, the President must release the appropriated funds through the federal budgetary control mechanisms for administration by the designated federal agency.

In recent years, many federal categorical assistance programs have been consolidated into block grants in response to demands for a simpler aid system and greater flexibility in state and local use of federal funds. Despite the continued consolidation of domestic assistance funding into block grants, the dollar amounts allocated to various programs have been continually reduced.

The Future of the Federal System

The resolution of public problems often requires a multi-pronged approach that the federal system not only makes possible, but facilitates. Many of our challenges can only be overcome by focusing the efforts of people at all levels. This belief has renewed the interest in various forms of decentralization, both of authority and of capacity to deal with specific problems. At the same time, it is realized that popular participation in community decision making should always be encouraged in an increasingly pluralistic society.

Proper functioning of the federal system requires citizen participation, continual patience and compromise, and toleration of diverse views and approaches. The federal system of government is far from perfect. However, its inclusion of checks and balances, diffusion of authority over several levels, and paramount respect for overarching constitutional principles, makes it the strongest bulwark against tyranny that has ever been seen in the world.

Chapter Endnotes

1. Readers interested in the history of local government in New York will find informative the "Early History of Town Government" in McKinney's Town law, prepared in 1933 by Frank C. Moore. Moore later became Comptroller and Lieutenant Governor of New York, and his essay appeared in all subsequent editions of Mckinney's Town Law. Also of interest is the "History of the County Law," prepared by James S. Drake as an Introduction for the 1950 edition of McKinney's County Law.
2. Climate of New York, U.S. Department of Commerce, NOAA, "Climatography of the United States," No. 60, p.2.
3. With a 2000 Census population of 18,976,457, New York now ranks third to California and Texas, which have 2000 Census populations of 33,871,648 and 20,851,820, respectively.
4. *Policy Issues in Rural Land Use*, Vol. 9, No. 2 December, 1996. Department of Agriculture, Resource and Managerial Economics-Cornell Cooperative Extension.
5. New York State Agricultural Statistics 2005-2006 Annual Bulletin, printed and distributed by NYS Department of Agriculture and Markets.

CHAPTER II

The State Government

Government in New York State is essentially a partnership between the state and the local units of government — cities, towns and villages. All of the elements of the state government — the Legislature, the office of the Governor, the courts and the vast administrative structure — are engaged in activities for which the local governments also share responsibility. To understand local government fully, it is necessary to gain a basic understanding of the state government and its far-reaching activities.

Our federal system of government divides responsibilities between the national and state governments. The states, in turn, delegate much power to local governments. The entire system calls for fiscal and political accountability at each government level — from the White House to the village hall.

The interdependence and interrelationships among the Office of the Governor, the State Legislature, state agencies, and local governments are important to know. We must understand the grants of authority, the scope of jurisdiction, the organization and the operative processes of the executive, legislative, judicial and administrative elements of state government in relation to the other elements and to the local government function. The Governor makes policy and provides administrative leadership and direction; the Legislature also makes policy and implements it by enacting legislation and appropriating funds. State agencies carry out the actual programs of state government, and act as intermediaries and close working partners with local governments. By providing a check and balance on the system, the courts also play an integral part in the operation of state and local government. We will discuss the courts in the following chapter.

The Legislature and the Legislative Process

The Constitution of the State of New York vests the lawmaking power of the state in the Legislature. It is a bicameral, or two-house, legislative body consisting of the Senate and the Assembly. Bicameralism in the United States has two major roots: the English Parliament and the "Great Compromise," which was advanced by the State of Connecticut at the Constitutional Convention of 1787. This compromise resulted in a Congress in which all states have equal representation in the Senate and representation roughly proportional to population in the House of Representatives.

Composition

Article III, section 2 of the State Constitution prescribes the number and terms of senators and assembly members. The number of senators varies, but there must be a minimum of 50. At present the Senate membership numbers 62. Elected for two-year terms, members are chosen from senatorial districts established by the Legislature. The presiding officer is the Lieutenant Governor, who may not participate in debates and may vote only in the case of a tie. This tie-breaking vote applies only to organizational and procedural matters and may not be exercised on legislation since constitutionally no bill can become law "…except by the assent of a majority of the members elected to each branch of the legislature."[6] The Lieutenant Governor is not regarded as a member of the Senate. In the absence of the Lieutenant Governor, the presiding officer is the President *pro tem*, whom the Senate chooses from its own membership. However, the President *pro tem* retains the right to vote on all matters.

The State Constitution specifies that the Assembly shall consist of 150 members chosen from single-member districts. Assembly members are elected simultaneously with senators for two-year terms. The presiding officer of the Assembly is the Speaker, who is elected by members of the Assembly.

Eligibility

Article III, section 7 of the State Constitution requires that legislators be citizens of the United States, state residents for at least five years, and residents of the district they represent for at least one year prior to their election.

The Constitution does not specify a minimum age requirement for members of the Legislature, but the statutes provide that "No person shall be capable of holding a civic office who shall not, at the time he shall be chosen thereto, have attained the age of 18 years."[7]

Compensation

Article III, section 6 of the State Constitution allows the Legislature itself, by statutory enactment, to establish rates of legislative compensation. Salary is paid on an annual basis and provision is made for reimbursement of expenses. Neither salary nor any other allowance can be altered during a term of office.

Dual Office Holding

The State Constitution bars legislators from accepting, during the term for which they are elected, a civil appointment from the Governor, the Governor and the Senate, the Legislature, or from any city government if the office is created or if its compensation is increased during the term for which the member has been elected.

The Constitution also provides that a legislator elected to a congressional seat or accepting any paid civil or military office of the United States, New York State (except as a member of the National Guard, Naval Militia or Reserve Forces), or any city government shall vacate his legislative seat.

Internal Procedures

The State Constitution contains provisions regarding the general organization of the Legislature. Each house: determines its own rules; judges the elections, returns and qualifications of its members; chooses its own officers; keeps and publishes a journal of its proceedings; and keeps its doors open except when the public welfare may require otherwise.

The Legislative Process

The Legislature convenes annually in regular session on the first Wednesday after the first Monday in January. The Legislature, or the Senate alone, may also be convened in special session at the call of the Governor or upon presentation to the Temporary President of the Senate and the Speaker of the Assembly of a petition signed by two-thirds of the members of each house of the Legislature.

Introduction of Bills. The introduction of a bill starts the formal legislative process. In general, members of the Legislature may introduce bills, which often appear simultaneously in both the Senate and the Assembly, beginning on the date the Legislature convenes. However, the Governor can introduce budget bills under Article VII of the Constitution without legislative sponsors. Bills may be presented for "prefiling" on and after November 15 for formal introduction when the Legislature convenes the following January. Budget and appropriation bills that the Governor has submitted pursuant to section 3 of Article VII of the Constitution may also be introduced. No bill may be introduced in either house on Fridays except by the Committee on Rules or if submitted by the Governor. The Temporary President designates the final day for introduction of bills in the Senate in each session. In the Assembly, the final day for unlimited introduction is the third Tuesday of May. After that date, and through the last Tuesday of May, each member of the Assembly may introduce not more than 10 bills. Bills may be introduced after the final dates for introduction only by unanimous consent of the houses or by the Committee on Rules of the respective houses.

Committees. The rules of each house provide for the establishment of standing committees to consider and make recommendations concerning bills assigned to the committees according to the subject matter, area affected or specific function to which the bills relate. A bill introduced in the Senate or Assembly is first referred to a standing committee unless, by unanimous consent, it advances without committee reference. A bill begins its course through the Legislature when a majority of the committee membership votes it out of committee. Figure 3 charts the course of a bill through the New York State Legislature.

Amendment. Bills may be amended an unlimited number of times. In either house the sponsor may amend and recommit a bill in committee, or the committee may report the bill with amendments. Either house may amend a bill even after it has passed in the other house.

The originating house must concur on amendments added by the second house and repass the bill before it may be transmitted to the Governor. Each time the first house amends a bill, it adds a letter of the alphabet, beginning with "A," to the bill number. If the second house amends a bill, it assigns a print number to the bill. Either house may substitute, on a motion from the floor, an identical bill from the other house.

Action by the Governor. Ordinarily the Governor must sign a bill which has passed both houses of the Legislature before it becomes a law. While the Legislature is in session, the Governor has 10 days, excluding Sundays, to approve or veto a bill. If the Governor signs the

bill, or does not take action within the 10 days, the bill becomes a law. If the Governor vetoes the bill, it dies unless it is repassed and becomes law by approval of two-thirds of the members of each house.

All bills passed or returned to the Governor during the last 10 days of the session are treated as "30-day" bills. On such bills, the Governor has 30 calendar days, *including* Sundays, after the Legislature adjourns, within which to act. If the Governor does not act on a bill during the 30-day period, it is dead. Such bills are said to have been "pocket vetoed", since the Governor is not required to act upon them and does not have to give reasons for his failure to act.

Constitutional Amendments

A concurrent resolution proposing an amendment to the State Constitution is considered by the Legislature in the same manner as a bill. The Legislature must, however, transmit the proposed amendment to the Attorney General for an opinion as to its possible effect upon other provisions of the Constitution. The Attorney General must return the proposal within 20 days. Failure of the Attorney General to render an opinion does not affect the proposal or action thereon. If adopted by both houses, it is sent to the Secretary of State for filing. No action by the Governor is required. The proposal must again be submitted in the first year of the term of the next succeeding Legislature. If adopted a second time, it is submitted to the people for consideration and vote. If approved, it becomes part of the Constitution as of the following January first.

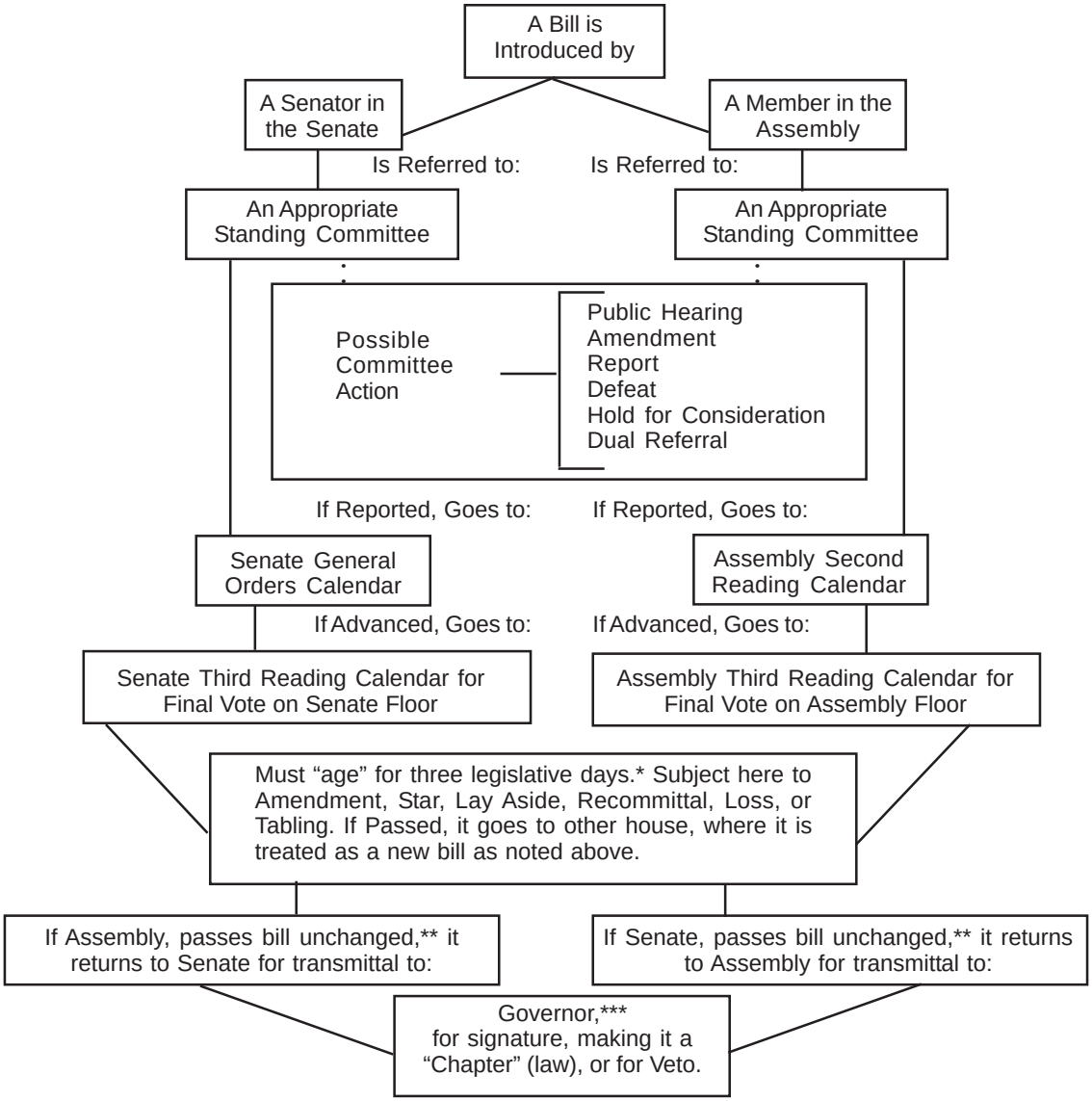
A concurrent resolution ratifying a proposed amendment to the United States Constitution is treated in the same manner as a bill. If adopted by the Legislature, the resolution is delivered to the New York State Secretary of State, who forwards it to the United States General Services Administration.

Sources of Legislation

A characteristic of our relatively open society in the United States is that an idea for legislation, and indeed a bill itself, may originate from almost any source. Sources of legislative proposals include the Governor's annual legislative program, the legislative programs of the various state departments, individual legislators, special interest groups, municipal associations, local governments, individual citizens and various committees of the Legislature.

FIGURE 3

Course of Bill Through New York State Legislature



* The State Constitution requires the printed bill to be on Members' desks for three calendar legislative days. This procedure may only be shortened by a "Message of Necessity" for immediate vote from the Governor.

** If changed, the house of origin must concur before it goes to the Governor.

*** The Governor has 10 days, excluding Sundays, to act on bills sent to him or her prior to by 10 days before adjournment. If the Governor does not act in that time, the bills automatically become law. The Governor has 30 calendar days after the Legislature adjourns to act on bills passed during the last 10 days of the session. These bills may not become law without the Governor's approval ("pocket veto").

Legislation — Local Government Role

The legislative process provides local officials and the public with the opportunity to express their views on pending legislation to the Legislature and to the Governor. Individuals can have an impact on legislation; it does not take an accomplished lobbyist to point out to legislators and legislative leaders the advantages or deficiencies of a particular bill. Officials and citizens alike should not be dissuaded from making their views known merely because they are unfamiliar with the legislative process. Local officials can turn to their municipal associations for guidance on legislative matters, and citizens have the opportunity to work with an array of public and special interest groups.

In many cases, the task of making one's views known may begin before specific legislation has been introduced.

Legislative commissions and committees frequently hold public hearings on particular problems at which the views of public officials and citizens are sought. Also, individual legislators often actively seek out the views of their constituents as to needed legislation.

The best time to make one's views known about a particular bill is when it is under consideration by the Legislature, particularly while the bill is in committee. Written comments given to the committee's chairperson, with sufficient copies for committee members and staff, will help accomplish this purpose.

After a bill is reported out of committee, getting an opinion across becomes increasingly difficult, because, if for no other reason, a vast number of bills come before each house. At this point it is best to direct comments to the leaders of each house. Anyone wishing to express views on a bill should remember that even if a bill passes one house prior to becoming a law, the other house must also consider it, first in committee and then on the floor.

After a bill has passed both houses, comments should be directed to the Governor or his or her Counsel. Here, again, time is of the essence. If the bill is passed early in the session, the Governor has only 10 days in which to sign or veto it.

In the Assembly, the news media and the public are now provided access to all standing committee meetings. The committee chairpersons have the option to close meetings or hold executive sessions in accordance with the Open Meetings Law, but roll call votes must be available to the press and to the public as soon as practicable. The public may also check committee attendance records. The Assembly public information office provides the public with a variety of materials relating to standing committees (schedules of meetings, hearings, etc.), sponsor's memoranda on bills, transcripts of debates, daily calendars and other relevant information. The Assembly also maintains a home page on the internet.

The Senate has also adopted "open Senate" rules. These rules provide that all committee meetings must be open to the news media (although committee chairpersons may call special closed meetings in accordance with the Open Meetings Law). The rules also provide that agendas for committee meetings must be made available to the news media and to the public, and provide that standing committees must serve all year. The Senate Journal Clerk's office provides, or helps the public to obtain, materials similar to those available from the Assembly Public Information Office. The Senate also maintains a home page on the internet. Both houses provide a telephone "hotline" service during sessions, from which anyone can obtain information on the current status of any bill.

The Governor

The Governor is the central figure in the state's public affairs. The Governor initiates programs and executes them; guides the Legislature; appoints and removes key officials; and represents the state and its people. The Governor has a very strong role in the State of New York since the office includes policy development, legislative leadership, executive control, and sovereign responsibilities.

Policy Development

The policymaking role derives from the Governor's responsibilities and position as chief executive officer of the state. The role of chief policymaker is therefore more implied than explicitly stated in either the State Constitution or other state laws. As the state's activities have grown, the Governor's concerns have become broader. Today they include economic and community development, transportation, education, environmental conservation, health, criminal justice, drug abuse, housing and other matters affecting daily life. The people look to the Governor for leadership and direction in these areas, but the Constitution does not explicitly vest the office with such powers. It is of particular significance, however, that the Constitution mandates that the Governor annually present a "State of the State" message and an executive budget to the Legislature.

Legislative Leadership

Of course, legislative authority is often required to implement executive policy proposals. To achieve implementation the Governor has substantial constitutional, statutory and other, less formal resources. The Governor not only has influence with legislators and with the public, but he or she also has constitutional authority to convene, and specify the agenda of, special legislative sessions. Via messages of necessity, the Governor also has the power to clear bills for consideration. With these powers, the Governor has a key role in establishing the agenda for decision making and in shaping such decisions. The Governor serves as a public leader as well as the chief administrator of the State of New York.

Executive Control

The State Constitution provides that "the executive power shall be vested in the Governor," who "shall take care that the laws are faithfully executed."[8] The Consti-

tution also empowers the Governor to appoint and remove the heads of most state agencies and to propose the budget. These provisions form the basis for gubernatorial direction of state activities.

The executive budget is perhaps the strongest managerial tool that the Constitution provides the Governor. Since 1927, Article VII of the New York Constitution has conferred on the Governor initial responsibility for proposing to the Legislature a coherent statewide plan for government spending. Under this system, the State's budget originates with the Governor, and he must submit to the Legislature proposed legislation, including "appropriation bills," to put his or her proposed budget into effect. The Legislature may not alter an appropriation bill the Governor has submitted, except to strike out or reduce items. The Legislature may, however, add items of appropriation, provided that each such item is stated separately and distinctly from the original items and that each refer to a single object or purpose. "Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that separate items added to the governor's bills by the legislature shall be subject to [the governor's line-item veto]." Gubernatorial direction over administrative agencies centers in the Division of the Budget, which both recommends to the Governor how much state agencies should be allowed in appropriations and exercises considerable authority over how agencies spend the funds appropriated by the Legislature. The Governor's specific constitutional powers for administrative control, however, are not extensive and do not include complete administrative and managerial powers. Constitutionally, the Governor does not control the entire executive branch. Both the State Comptroller and the Attorney General are popularly elected, and the Legislature chooses the Regents of the University of the State of New York, who supervise the Education Department. The Governor primarily concentrates on policy, and focuses gubernatorial administrative attention on overall direction.

Sovereign Responsibilities

The Governor has the power to grant reprieves, commutations and pardons after conviction for all offenses except treason or in cases of impeachment. The Governor also may remove certain local officials, particularly those concerned with law enforcement, and may appoint certain judges and local officials to complete terms in some cases and to fill vacancies pending election in others. Finally, the Governor is commander-in-chief of the state's military and naval forces.

Eligibility

The Governor must be a citizen of the United States, not less than 30 years old, and must have resided in the state for at least five years at the time of election.

Succession

If the Governor dies, resigns or is removed from office, the Lieutenant Governor becomes Governor. If the Governor is absent from the state, under impeachment, or is otherwise unable to discharge the duties of the office, the Lieutenant Governor acts as Governor until the inability ceases. The Temporary President of the Senate and the Speaker of the Assembly are next in the line of succession respectively.

Lieutenant Governor

The Constitution assigns the Lieutenant Governor only the role of serving as President of the Senate. The Governor and the Legislature may, however, make other assignments, and traditionally Governors have turned to the Lieutenant Governor for help of various kinds, ceremonial and otherwise.

State Comptroller

The State Comptroller is the state's chief fiscal officer. The Office of the State Comptroller: maintains accounts and makes payments on behalf of the state; audits the finances and management of state agencies, New York City and public authorities; examines the fiscal affairs of local governments; provides fiscal legal advice to state agencies and local governments; trains local officials in fiscal matters; and administers the state's retirement systems. The State Comptroller's Office publishes a wide range of materials on fiscal matters, including annual reports on state and local government finances, as well as an annual volume of legal opinions on local government operations.

Attorney General

The Attorney General is the state's chief legal officer. The Office of the Attorney General prosecutes and defends actions and proceedings for and against the state, and defends the constitutionality of state law. Local government legal officers may obtain informal, written Opinions from the Attorney General. These opinions, while not binding on the local government, are nonetheless extremely useful, and may be given great weight by the courts. The Attorney General's responsibilities also include supervising the Organized Crime Task Force; protecting consumers against fraud; safeguarding civil rights

and the rights of workers; condemning property; and collecting debts. Specialized bureaus handle: criminal prosecutions, antitrust cases, investor protection, environmental protection, consumer fraud and protection, civil rights, worker protection, regulation of cooperative and condominium housing, charities, and trusts and estate matters.

State Agencies

The State Constitution provides that there shall be no more than 20 civil departments in the state government. These departments previously were specified by name, but the Constitution was amended in 1961 to eliminate the specification of departments and to set the maximum number of departments at 20.

The Legislature is authorized by law to assign new powers and functions to departments, offices, boards, commissions, or executive offices of the Governor, and to increase, modify, or diminish such powers and functions. The Legislature is further authorized to create temporary commissions for special purposes or executive "offices" in the Executive Department. Numerous state agencies fall into the latter two categories — that is, temporary commissions and "offices" in the Executive Department.

Generally speaking, the heads of all departments, boards and commissions (except the State Comptroller, Attorney General and members of the Board of Regents) must be appointed by the Governor with the advice and consent of the Senate, and may be removed by the Governor in a manner prescribed by law. Another exception involves the authority of the Board of Regents to appoint and remove the Commissioner of Education

A final exception pertains to the Commissioner of the Department of Agriculture and Markets. The Constitution provides that this department head shall be appointed as provided by law, which presently provides for the Governor to make this appointment. While this manner of appointment is consistent with the general manner of appointment of department heads, the Governor's appointment power is statutory rather than constitutional.

The administrative structure of New York State government currently consists of 20 state departments and a great number of other agencies, such as public authorities, temporary state commissions, and various divisions and offices in the Executive Department. Each department and agency has been established for a particular purpose, and each functions in a particular way within a legally prescribed area of operation. Each department directly or indirectly affects local governments of the state in terms of jurisdictional or regulatory authority, advisory services, aid programs and other related functions, depending on its program responsibilities.

Some state agencies were created in response to federal mandates requiring that a particular type of statewide agency handle a particular program. Pressures from within the state for new agencies to furnish specialized services led to the establishment of other agencies. The relationships between these agencies and local governments in the provision of public services are discussed in Chapter XV.

Chapter Endnotes

6. Article III, §2; see also Public Officer's Law §3.
7. See N.Y.S. Constitution, Article VII, §4.
8. Article III, §2; see also Public Officer's Law §3.

CHAPTER III

The Judicial System

The State Constitution establishes a unified court system for New York State. All courts, except those of towns and villages, are financed by the state in a single court budget. Administration of the courts is the responsibility of a single administrator, having statewide authority, who acts in accordance with policy direction supplied by the Chief Judge of the Court of Appeals.

The courts that compose the state's judicial system generally may be arranged on three functional levels: (1) appellate courts, including the Court of Appeals and the Appellate Divisions of Supreme Court; (2) trial courts of superior jurisdiction, including the Supreme Court and various county level courts; and (3) trial courts of inferior jurisdiction, including the New York City civil and criminal courts and various district, city, town and village courts upstate.

The court system in New York is one of the three separate branches of state government (Executive, Legislative and Judicial), and it plays an integral role in both state and local governmental operations. The courts are charged with: interpreting provisions of the State Constitution and laws enacted by state and local governments; resolving disputes between private citizens or between a private citizen and a state agency; exercising jurisdiction over persons accused of crimes and other violations of law; and adjudicating claims of individuals against state and local governments.

In 1962, New York made its first court reorganization in more than a century by completely revising the judiciary article of the State Constitution (Article VI). This new article continued or established the various courts that now comprise the New York court system. It also prescribed the number of judges and justices for each of these courts, their method of selection, and their terms of office (Table 3). The new article also created an administrative structure responsible for administering the courts and for disciplining judges.

In November 1977, the people of the state approved a series of amendments to the judiciary article that: (1) changed the manner in which Judges of the Court of Appeals are selected from statewide popular election, to gubernatorial appointment; (2) established a new, centralized system of court administration; and (3) streamlined procedures for disciplining judges. These amendments took effect on April 1, 1978.

Of great importance to the operation of the court system was the 1976 enactment by the State Legislature of a unified court budget for all courts of the unified court system, except town and village courts. Whereas formerly both state and local government sources had funded the affected courts in over 120 different court budgets, effective April 1, 1977, the state funded them entirely in a single court budget.

FIGURE 4

New York State Unified Court System
Current Trial Court Structure

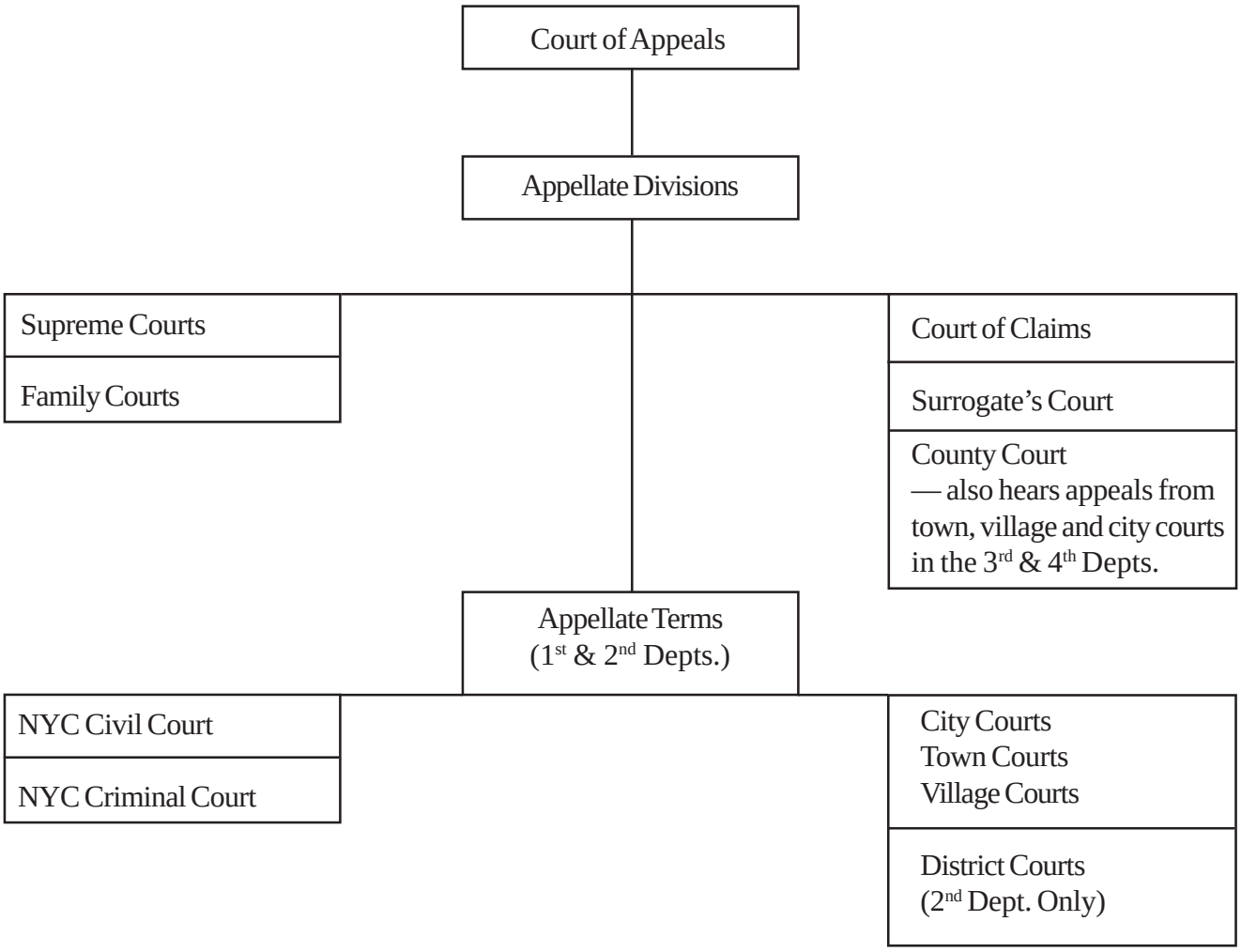


TABLE 3

New York State Court System Characteristics

Court	No. of Judges	How Selected	Term
Court of Appeals	7	Gubernatorial appointment with advice and consent of Senate upon recommendation of a commission on judicial nomination	14 years[1]
Appellate Division	24 permanent; number of temporary judges	Gubernatorial designation from among duly elected Supreme Court justices	Presiding justice: 14 years, or balance of term as Supreme Court justice[1] Associate justice (permanent): 5 years or balance of term as Supreme Court justice[1]
Appellate Term	Varies	Designated by Chief Administrator of Courts, with approval of presiding justice of the Department, from among duly elected Supreme Court justices	Varies[1]
Supreme Court	328[2]	Elected	14 years[1]
Court of Claims	26	Gubernatorial appointment with advice and consent of Senate	9 years or, if appointed to fill a vacancy, the period remaining in that term[1]
Surrogate's Court	31[3]	Elected	14 years in New York City[1] 10 years outside the City[1]
County Court	129[4]	Elected	10 years[1]
Family Court	127	Mayoral appointment in New York City. Elected outside the City	10 years or, if appointed to fill a vacancy, the period remaining in that term[1]
Civil Court of New York City	120	Elected	10 years[1]
Criminal Court of New York City	107	Mayoral appointment	10 years or, if appointed to fill a vacancy, the period remaining in that term[1]
District Court	50	Elected	6 years[1]
City Court	162	Most elected, some appointed by Mayor of Common Council	Varies[1]
Town Court	Approx. 2,000	Elected	4 years
Village Court	Approx. 570	Elected	Varies; most are 4 years

[1] Mandatory retirement at end of year in which Judge reaches age 70, with limited potential exceptions for Supreme, Appellate and Court. of Appeals justices.

[2] Includes justices designated to the Appellate Division and Terms. Does not include certified justices of the Supreme Court (which number may vary significantly each year).

[3] Includes only separately elected surrogates.

[4] Includes 72 county judges and 57 multi-hatted county-level judgeships.

Court of Appeals

Established in 1846, the New York Court of Appeals has emerged as the great common law court at the apex of the state court system. In criminal cases where the judgment is death, appeals may be taken directly to the Court of Appeals from a court of original jurisdiction; in other cases appeals may be taken as the Legislature provides. Review of death judgments includes both questions of law and fact. Otherwise, review is usually limited to questions of law. In civil cases, appeals may be taken as of right or by permission, depending on the finality of the determination from which an appeal is sought, the issues involved, the court in which the action or proceeding originated, and whether there was disagreement in the court below.

The Court of Appeals consists of a Chief Judge and six Associate Judges. Each judge serves a term of 14 years or until the end of the calendar year in which he or she reaches age 70, whichever occurs first. Vacancies on the court are filled by gubernatorial appointment from among individuals found to be qualified by a nonpartisan Commission on Judicial Nomination. In order to be eligible for appointment, candidates must have been admitted to the practice of law in New York for at least 10 years. All appointments must be approved by the State Senate. The Governor is empowered to designate justices of the Supreme Court to serve as additional Associate Judges on the Court of Appeals during times of heavy caseload.

Generally, all seven judges of the Court of Appeals hear each case, although the Constitution requires only a quorum of five judges. In every case the concurrence of at least four judges is necessary for a decision.

The operations of the Court of Appeals are supervised and controlled by the court itself, the Chief Judge, and the clerk of the court. The Chief Judge serves as the principal officer of the court and oversees its maintenance and operation. The Chief Judge presides at the hearing of arguments and at the conference of judges during which decisions are reached.

Appellate Division

Established in 1894, the Appellate Division of the Supreme Court serves a very important function in the administration of justice in New York State. The four courts of the Appellate Division correspond geographically to the four Judicial Departments on the map in Figure 3.1. They are constituted as courts of intermediate appellate jurisdiction. For all practical purposes, however, they serve as courts of last resort; 90 percent of the cases they hear are not subsequently reviewed by the Court of Appeals.

Under the State Constitution and implementing statutes, appeals in civil matters are taken to the Appellate Divisions from each of the trial courts in the unified court system, except the New York City Civil Court, and district, town, village and city courts outside the City of New York. On an appeal, the Appellate Division reviews questions of law and questions of fact. Appeals in criminal matters are taken to the Appellate Division from County and Supreme Courts. As in civil cases, the Appellate Division reviews questions of fact and questions of law in criminal appeals. The Appellate Division also has original jurisdiction in a limited number of cases.

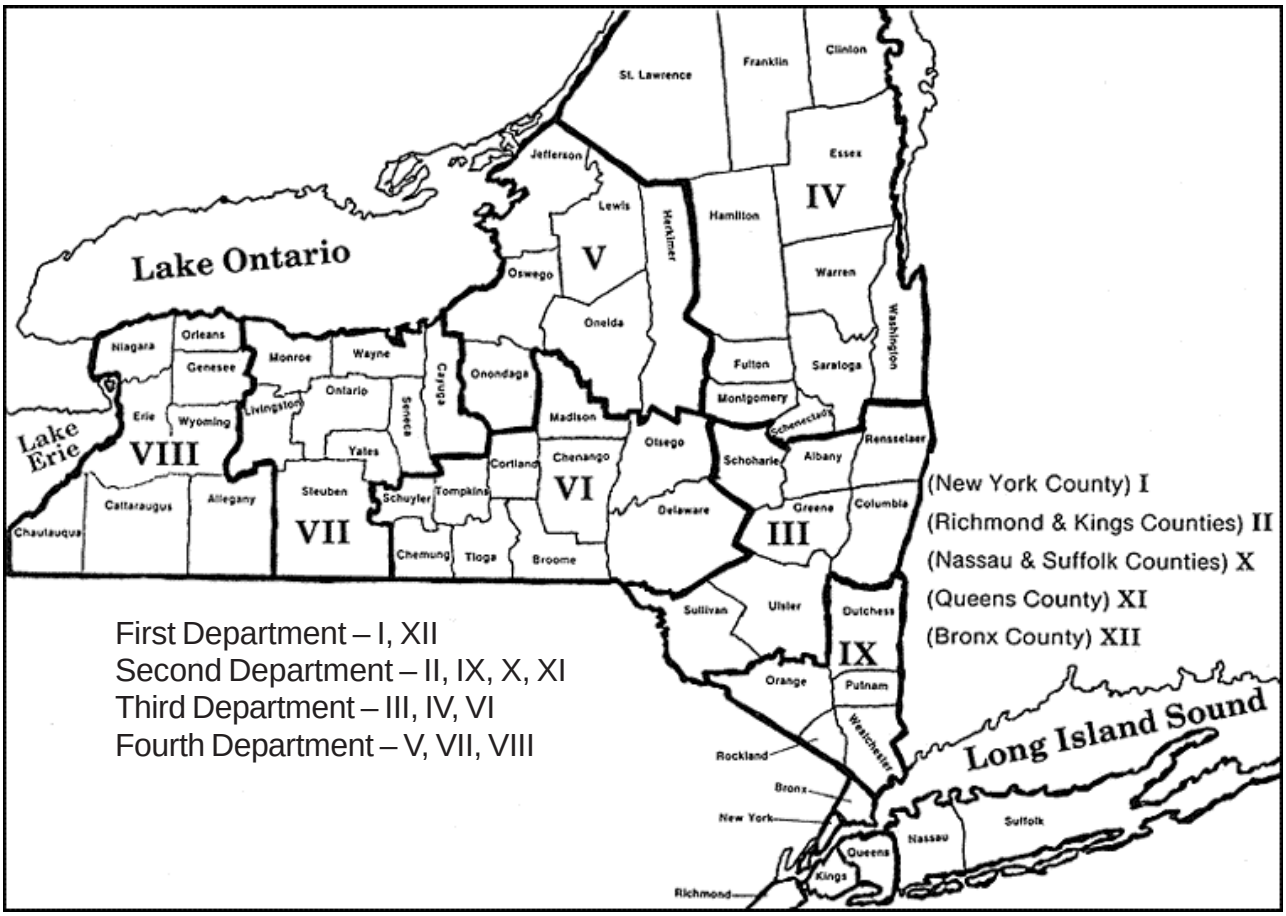
The State Constitution authorizes the First and Second Judicial Departments to have seven justices while the Third and Fourth Judicial Departments are each authorized to have five justices. The Governor can assign additional justices to each of the courts to assist with the case load. Justices of the Appellate Division, other than the presiding justice, are designated by the Governor from among the justices elected to the Supreme Court. The term of office of each justice is five years, but is limited to the end of the calendar year in which the justice reaches age 70. However, Associate Justices who have been certified for continued service may be designated to remain on an Appellate Division bench beyond this retirement age. While the Governor is not generally limited to choosing justices who reside in the Judicial Department where a vacancy exists, the Constitution requires that a majority of the justices designated to sit in any Appellate Division shall be residents of that Department.

The presiding justice of each Appellate Division is designated by the Governor from among the Supreme Court justices in that Department. The term of office of the presiding justice equals the period of time remaining in his or her term as a Supreme Court justice. From time to time, as terms expire or vacancies occur, the Governor makes new designations. The Governor is also empowered to make additional designations during times of heavy caseload or when a sitting justice is unable to serve for a period of time.

The Appellate Division courts generally sit in panels of five justices, although panels of four justices are authorized. In every case the concurrence of at least three justices is necessary for a decision. The operations of the Appellate Division are supervised and controlled by each court itself, its presiding justice, and the clerk of the court.

FIGURE 5

Judicial Districts of the State of New York



Appellate Term

The Constitution authorizes the Appellate Division in each judicial Department to establish an Appellate Term for that Department or a part of that Department. The Appellate Terms are conducted by no more than three Supreme Court justices who have been specially assigned to the terms. Two justices constitute a quorum, and the concurrence of at least two is necessary for a decision. Where they have been established, Appellate Terms exercise jurisdiction over civil and criminal appeals from local courts and certain appeals from county courts. At the present time, Appellate Terms have been established only in the First and Second Departments.

Supreme Court

The Supreme Court, as presently constituted, was established in 1846. Formed by the consolidation of the offices of circuit judge and chancery judge with the preexisting Supreme Court, it is now considered a single court having general original jurisdiction in law and equity.

Under this broad constitutional grant of jurisdiction, the Supreme Court may hear any criminal or civil action or proceeding irrespective of its nature or amount, except claims against the State. In practice, however, the Supreme Court outside New York City principally hears civil matters, and the County Courts hear criminal matters. In New York City, the Supreme Court sits in both civil and criminal parts.

Justices are elected for 14-year terms by electors within their judicial districts. Retirement is mandatory at the end of the calendar year in which a justice reaches age 70, but justices can be certified for up to three two-year periods after reaching 70. A justice of the Supreme Court must have been admitted to practice law in the state for at least 10 years before assuming office. The number of justices for each judicial district is prescribed by the State Legislature, subject to a constitutionally prescribed maximum number.

Court of Claims

From 1777 until 1897, New York State did not permit any claim for damages to be asserted against it in any court. During that period, the state was entirely immune from suit in its courts. Individuals suffering injury to their

persons or property through the activities of public employees were not however, wholly without remedy, as they could petition the Legislature for redress in the form of private legislation. In 1817, an administrative remedy was made available for some claims related to the Erie Canal. From this modest 1817 provision, the Court of Claims evolved through many enactments, culminating in Chapter 36 of the Laws of 1897.

Article VI, section 9, of the Constitution provides:

> "The Court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide."

Implementing this grant of authority, the Legislature has provided that the Court of Claims shall have jurisdiction over claims against the State for appropriation of real or personal property, breaches of contract, and torts. The Legislature also has specifically granted the court jurisdiction to hear claims involving: wrongful acts by members of the military; military employees in the operation of any vehicle or aircraft; and claims of imprisoned convicts later pardoned as innocent by the Governor. The court serves as a forum for claims by or against the State and certain public authorities. It does not possess the power to grant claims against political subdivisions such as counties, cities, towns and villages. These claims are litigated in the Supreme Court.

The Court of Claims currently consists of 26 judges, who hear claims against the State. The court holds two trial terms each year in each of its 9 districts throughout the state. Claims are usually tried and decided by one judge, unless the presiding judge appoints up to three judges to sit in a particular case. Judges of the Court of Claims are appointed by the Governor, by and with the consent of the Senate, for nine year terms (although retirement is mandatory at the end of the calendar year in which the judge reaches age 70). A judge must have been admitted to practice law in the state for at least 10 years before he or she may begin to serve on the bench.

County Court

A County Court sits in each of the 57counties of the state outside the City of New York. Under the State Constitution, they have unlimited criminal jurisdiction, but their civil jurisdiction is limited to money claims for not more than $25,000. The County Court also has limited appellate jurisdiction; in the Third and Fourth Judicial Departments, it hears appeals from civil and criminal judgments of justice courts and city courts.

The State Constitution of 1846 declared that there should be elected in each of the counties of the state, except the City and County of New York, one county judge, who should hold office for four years. The term of office has been changed to 10 years, but the office has remained elective. A candidate, to be eligible for election, must have been admitted to practice law in the state for at least five years and must be a resident of the county. Retirement is mandatory at the end of the calendar year in which a judge turns 70 years of age.

The Constitution authorizes the Legislature to provide that the same individual may hold two or all of the positions of county, surrogate and family court judge at the same time. There are many so-called "two-hat" and "three-hat" judges in upstate counties.

Surrogate's Court

The existence of the Surrogate's Court in New York can be traced back to colonial times, when early Dutch officials exercised jurisdiction over estate matters. This practice continued through the British colonial period. The granting of letters of administration and the probate of wills in the State of New York became the responsibility of the Governor. In discharging this responsibility, the Governor was authorized to appoint a delegate to act in his stead. One of the early delegates used the title of "surrogate."

The State Constitution (Article VI, section 12) provides that the Surrogate's Court shall have jurisdiction over all actions and proceedings relating to:

- the affairs of decedents, probate of wills and administrtion of estates;
- the guardianship of the property of minors; and
- such other actions and proceedings, not within the exclusive jurisdiction of the Supreme Court, as may be provided by law.

In practice, the court's jurisdiction, which includes such equity jurisdiction as may be provided by law, extends to, among other proceedings: the probate and construction of wills; grants of letters testamentary to executors; grants of letters of administration; proceedings for the payment of creditors' claims; proceedings by fiduciaries and claimants to determine the ownership of property; proceedings for the payment of bequests; grants of letters of trusteeship; appointment of guardians for infants and their property; and accountings by executors, administrators, trustees and guardians.

The State Constitution provides that there shall be at least one judge of the Surrogate's Court in each county

and such number of additional judges as may be provided by law. Each judge of the Surrogate's Court, also known as a "surrogate," must be a resident of the county in which the surrogate serves and elected by the voters of that county. The term of office is 14 years within the five counties of the City of New York and 10 years in the other 57 counties. All surrogates are subject to mandatory retirement at the close of the calendar year in which they turn 70 years of age.

There is no constitutional requirement that the surrogate be a separately elected position. The Legislature has provided that where it is not, the county court judge shall discharge the duties of the surrogate, as well as those of the County Court.

Family Court

Viewed as one of the major accomplishments of the 1962 constitutional reorganization of the judiciary, the Family Court has emerged as a major entity in dealing with difficult issues involving children and families. The court sits in every county in the state outside of New York City and citywide in New York City.

The Family Court's jurisdiction is divided between matters that originate as provided by law and those that are referred to it from the Supreme Court. The court's original jurisdiction includes authority to adjudicate matters related to the:

- protection, treatment, correction, and commitment of minors;
- custody of minors;
- adoption of persons (shared concurrently with Surrogate's Court);
- support of dependents;
- establishment of paternity; and
- proceedings for conciliation of spouses and family offenses (shared concurrently with courts with criminal jurisdiction).

The Family Court, when exercising its jurisdiction over matters referred to it from the Supreme Court, has the same powers possessed by the Supreme Court.

In New York City, judges of the Family Court are appointed by the mayor for terms of 10 years. In counties outside the City of New York, judges of the Family Court are elected by the voters of the counties for terms of 10 years. All judges of the Family Court must retire at the end of the calendar year in which they turn 70 years of age.

Criminal Court of the City of New York

The Criminal Court of the City of New York is the busiest criminal court in the world. Constituted in its present form in 1962, the court has its roots in colonial days and is the product of an evolutionary process that culminated in the abolition of two court systems in the City — the Magistrates Court and the Court of Special Sessions — and their replacement by the Criminal Court of the City of New York. The court now has an authorized complement of 107 judges.

The Criminal Court of the City of New York has jurisdiction to adjudicate misdemeanors and offenses less than misdemeanors, and to conduct pre-indictment felony hearings. Most of the court's business consists of traffic violations, and violations of the Administrative Code of New York City or the Multiple Dwelling Law.

Judges of the Criminal Court must be residents of New York City. They are appointed for terms of 10 years by the mayor. Where a vacancy occurs for reasons other than expiration of a 10-year term, the mayor appoints a judge to fill the position for the balance of the unexpired term. Retirement is mandatory at the end of the calendar year in which the judge turns 70 years of age.

Civil Court of the City of New York

The Civil Court of the City of New York came into existence on September 1, 1962, when it was established through a merger of the City and Municipal Courts as part of the state's plan of court reorganization. The Civil Court is one of the busiest courts of civil jurisdiction in the United States. The court has jurisdiction over numerous civil actions, including contracts, actions for personal injury, real property actions, and actions in equity. The State Constitution, however, limits the civil jurisdiction in actions involving money claims to a maximum of $25,000.

The Civil Court has a special housing part, instituted in 1972, to assure the effective enforcement of state and local laws for the establishment and maintenance of proper housing standards in New York City.

The Civil Court also has a small claims part. Claimants may present a small claim without being represented by an attorney. Corporations, associations and assignees may not institute actions in the small claims part, although they may be sued as defendants. They may, however, institute small claims in the Court's commercial claims part, which observes the same informal, expedited procedures as the small claims part.

The Civil Court presently consists of 120 judges, selected for terms of 10 years by voters within New York City from "districts" established by the State Legislature. Retirement is mandatory at the end of the calendar year in which a judge turns 70 years of age.

District, Town, Village and City Courts

Minor civil and criminal litigation, as well as the early stages of major criminal litigation, arising outside New York City are handled by district, city, town and village courts. These courts of "inferior jurisdiction," as they are sometimes called, include some of the oldest of the state's courts — town justices date back to the seventeenth century — and some of the newest — the Nassau and Suffolk District Courts were established in 1937 and 1964, respectively. The population centers served by courts of inferior jurisdiction range from small cities, villages and towns, many of which have populations under a thousand, to counties having more than one million residents. These courts deal with a variety of matters, including simple traffic offenses, bill collection cases, felony hearings, and complex commercial litigation.

Town and village courts are staffed by full-time or part-time justices, who often are not lawyers. District courts and some of the city courts are staffed by full time judges who are lawyers. Court sessions are held in places ranging from the justice's living room or office, to rooms in town or village halls, to formal court houses. In some localities, court records are kept directly by the judicial officer. In others, records are kept by one or more full-time or part-time clerks.

An initiative to achieve procedural uniformity in the lower courts in New York culminated in the enactment of sections of the Uniform Court Acts, which assure that procedures followed in these courts are substantially the same throughout the state.

Town Courts. The town justice court is the oldest of the "inferior" courts in the state (see also, Chapter VII). Under the original town structure, justices of the peace were members of the town board and thus had legislative as well as judicial functions. The Town Law, adopted in 1934, substituted town councilmen for justices on the town board in towns of the first class. In towns of the second class, justices remained members of the town boards, although the town boards had the option — by resolution subject to permissive referendum — of providing that justices should not be members of the board. In 1976, the Town Law was amended again to preclude all town justices from serving on town boards during the tenure of their judicial office.

All town justices of the peace formerly ran their courts independently, regardless of the number of justices in the same town. In 1962, however, the Court Reorganization Amendment integrated town justice courts into the unified court system, and the enactment of the Uniform Justice Court Act firmly established the single court concept in each municipality. All justices of a town are considered to be justices of the same court, and the proceedings of one justice are treated as acts of the whole court. The salaries of judicial and non-judicial personnel of a town justice court are funded by the town.

Village Justice Courts. Although villages appeared as local governmental units as long ago as 1790, village justices have not played the same central roles in village organization as justices of the peace played in town development.

The constitutional history of the office of village justice, formerly known as the police justice, starts with the Constitutional Convention of 1846. Until then, village police justices apparently were not the subject of general legislation. At the convention, a proposal was made to authorize the Legislature to create inferior local courts of civil and criminal jurisdiction in cities and villages. Today's village justice court traces its roots to that point in time.

A village justice court has the same jurisdiction within the village as a town justice court has within the town. The cost of village justice court operations is funded locally.

City Courts. Since 1846, the Legislature has been authorized to create city courts of limited jurisdiction and to establish the tenure of city judges and the method of their selection. For many years, the resulting legislative enactments were framed as individual court acts, each affecting only one city. In 1988, however, the Legislature combined all provisions of law regulating city courts and their judgeships into a single section of law. Also, as has been done with town and village justice courts and the district courts, the Legislature has established general procedural and jurisdictional regulations in one consolidated statute of general applicability to all city courts in the state outside the City of New York — the Uniform City Court Act.

District Courts. The first district court was established in Nassau County in 1937, under the provisions of the State Constitution and the Alternative County Government Law. The only other district court now in existence is the district court of the First Judicial District of Suffolk County, comprising the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown. It was

created by the Legislature with the approval of the voters of those towns in 1963.

Although there are only two district courts now in operation in the state, the State Constitution provides that a district court may be established in any area of the state where the local governing body of the affected area requests the State Legislature to establish such court and where both the Legislature and the voters of that area approve its establishment.

Jurisdiction. District, town, village and city courts have limited civil and limited criminal jurisdiction, as defined in the Uniform Court Acts. In general, the civil jurisdiction of these courts is limited to claims for money damages not exceeding $15,000 in the district court and city courts, and $3,000 in the town and village justice courts, and to jurisdiction over summary proceedings for the recovery of real property. Each court also has jurisdiction over small claims, as discussed below. The criminal jurisdiction of these courts is identical to that of the New York City Criminal Court.

Small Claims. Each town, village, city and district court has a small claims part where money claims up to a maximum of $5,000 ($3,000 in town and village courts) may be heard and determined in accordance with more informal court procedures. Special jurisdictional requirements must be met before a suit may be brought in a small claims part. If suit is brought in a town or village justice court, the defendant must reside or have an office for the transaction of business or a regular employment within the municipality in which the court is located. If brought in a city court, the defendant must reside, have an office or be regularly employed within the county in which the court is located. If brought in a district court, the defendant must reside, have an office or be regularly employed within the territory embraced by the court.

City and district courts also have commercial claims parts where money claims up to a limit of $5,000 may be brought by businesses and heard and determined as in small claims parts.

State rules provide for a simple, informal and inexpensive procedure for prompt determination of small claims and commercial claims. Such claims must receive an early hearing and determination, and the hearings must be conducted in such a way as to ensure substantial justice between the parties according to the rules of substantive law. The parties are not, however, bound by statutory provisions or rules of practice, procedure, pleading or evidence.

Court Financing

Effective April 1, 1977, New York adopted a unified court budget system. Under this system, the state took over the entire non-capital cost of the operation of all courts and court-related agencies of the unified court system, except town and village justice courts.

Disciplining of Judges

Effective April 1, 1978, new constitutionally mandated procedures for the disciplining of judges were established. A Commission on Judicial Conduct, comprising 11 persons selected from the community by the Governor, the Chief Judge of the Court of Appeals, and the leadership of the Legislature, has primary responsibility for the investigation and initial determination of complaints against judges. The Commission may admonish, censure, remove or retire judges against whom complaints are sustained. The Court of Appeals may review all determinations.

The State Constitution authorizes two other methods by which judges who are found guilty of misconduct may be removed from office, both of which require action by the Legislature: removal by impeachment and removal by concurrent resolution of the Senate and Assembly. Neither method is frequently used.

Court Administration

Effective April 1, 1978, the structure of court administration in New York changed considerably. The principal features of the new system include:

- appointment of a Chief Administrator of the Courts by the Chief Judge of the Court of Appeals, with the advice and consent of an Administrative Board of the Courts;
- central administrative direction of the courts by the Chief Judge and the Chief Administrator;
- approval by the Court of Appeals of statewide standards and policies governing the operation of all courts;
- promulgation by the Chief Judge, and approval by the Court of Appeals, of a code of conduct for judges; and
- frequent consultation with the Administrative Board of the Courts in court management decisions.

The Chief Administrator has numerous duties. Among the most significant are: preparing the judiciary budget; establishing the terms and parts of court and assigning judges to them; engaging in labor negotiations with unions representing non-judicial employees of the courts; and

recommending to the Legislature and Governor changes in laws and programs to improve the administration of justice and court operations. To assist in the performance of these duties, the Chief Administrator has established an Office of Court Administration, staffed by lawyers and management experts. The Chief Administrator has also delegated responsibility to a cadre of administrative judges, each serving on a regional basis.

The Office of Court Administration seeks to reduce the caseload in the state's courts through an alternative approach to resolving problems that develop between people — the Community Dispute Resolution Centers Program. Under the program, which was authorized by the Legislature in 1981 and made a permanent part of the Unified Court system in 1984, the Chief Administrator of the Courts contracts with nonprofit community agencies to provide mediation assistance to help disputants reach mutual agreement. Now operating statewide, these centers take referrals from judges, law enforcement agencies, individuals and others. They handle such matters as animal complaints, breaches of contract, domestic arguments, harassment, landlord/tenant problems, noise complaints, petty larceny, school problems, small claims and ordinance violations.

CHAPTER IV

Local Government Home Rule Power

The constitutional and statutory foundation for local government in New York State provides that counties, cities, towns and villages are "general purpose" units of local government. They are granted broad home rule powers to regulate the quality of life in communities and to provide direct services to the people. In doing so, local governments must operate within the powers accorded them by statute and the New York and United States Constitutions.

The home rule powers available to New York local governments are among the most far-reaching in the nation. The extent of these powers makes each local government a full partner with the state in the shared responsibility for providing services to the people.

Local government in New York State comprises counties, cities, towns and villages, which are corporate entities known as municipal corporations. These units of local government provide most local governmental services. Special purpose governmental units also furnish some basic services, such as sewer and water services. School districts, although defined as municipal corporations, are single-purpose units concerned basically with education in the primary and secondary grades. Fire districts, also considered local governments in New York State, are single-purpose units that provide fire protection in areas of towns. Fire districts are classified as district corporations. There are other governmental entities which have attributes of local governments, but which are not local governments. These miscellaneous units or entities are generally special-purpose or administrative units normally providing a single service for a specific geographic area.

In this country's federal system, consisting of the national, state and local governments, local government is the point of delivery for many governmental services and is the level of government most accessible to and familiar with residents. Local government is often referred to as the grass-roots level of government.

New York has many local governmental entities that possess the power to perform services in designated geographical areas. While all of these entities fall within the broad definition of "public corporation,"[9] only a very small percentage of them are "general purpose" local governments — counties, cities, towns and villages — which have broad legislative powers as well as the power to tax and incur debt. In order to stem the proliferation of overlapping and independent local taxing units, the New York Constitution was amended in 1938 to prohibit the creation of any new type of municipal or other corporation possessing both the power to tax and to incur debt.[10]

While New York has long had counties, towns, villages and cities, their powers have increased greatly in the last century. Originally, each individual local government was created by a special act of the State Legislature. Each act created the corporate entity, identified the geographical area that would be served by the entity and granted powers and duties.[11] Over time, the State Legislature adopted general laws to govern the nature and extent of local governments' powers: the Town Law, Village Law, General City Law and the County Law.[12] These general laws still apply, and now are augmented by the overriding constitutional guarantee of "home rule."[13]

A local government's power is primarily exercised by its legislative body. The general composition of legislative bodies for counties, cities, towns and villages is discussed in the individual chapters addressing each particular form of government. The New York State Constitution, however, guarantees and requires that each county, city, town and village have a legislative body elected by the people of the respective governments.[14] Local legislative bodies are granted broad powers to adopt local laws in order to carry out their governmental responsibilities.[15]

Local governments serve a vital link in the relationship between the states and the federal government under the federal system. Many governmental services, whether from the national or state level, have implications for, or call for the involvement of, local government. Additionally, in exercising its broad legislative authority, a local government can profoundly impact the quality of life of

its residents. This sharing of responsibility with the other levels of government emanates from the federal and state constitutions and the various statutory grants of power that the State Legislature has passed to local governments.

Constitutional and Statutory Sources of Local Authority

Federal Constitutional Foundation

Because the states and, particularly in New York, local governments are integral elements of the federal system, neither state constitutional and statutory provisions nor local government legislative actions may contravene the United States Constitution. It is rare for many of the specific restrictions on state powers and authority, such as those found in Article I, section 10, of the federal Constitution, to affect the day-to-day activities of local government, since these restrictions are designed primarily to ensure the supremacy of the national government in foreign relations. Whenever any local government exercises any power accorded it by either the state constitution or by statute it must take care to consider whether its actions would compromise federal constitutional provisions that define the relationship of the state (and, by implication, any of its political subdivisions) within the federal system, or guarantee personal liberties to individuals. For example, Article 1, section 8 of the United States Constitution provides Congress with the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." This grant of power over commerce among the States has been interpreted to limit States' power to adversely impact interstate commerce. Local regulatory measures that restrict interstate commerce have been struck down by the United States Supreme Court as unconstitutional.[16]

The federal Constitution also guarantees that certain personal liberties will not be taken away by the federal government or by any state or local government. Of great importance among these are the limitations on state power that derives from the language of the Fourteenth Amendment, which reads in part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is not practicable here to review the many ways in which the Fourteenth Amendment limits and restricts the exercise of state and local power. Suffice it to say that in exercising the general power to make regulations for the "…health, peace, morals, education, and good order of the people…" — the power known as "police power" — the state, as well as its local governments, must be careful to do so only in ways that do not contravene the "due process of law," "equal protection of the laws," and "privileges and immunities" provisions of the Fourteenth Amendment.

State Constitutional Foundation

Local governments look to the State Constitution for the basic law which provides for their structure, powers and operational procedures. Two articles of the State Constitution concern key local government needs: home rule (Article IX) and finance (Article VIII). Article IX, entitled "Local Government," is commonly referred to as the "Home Rule" article of the State Constitution, for it provides both an affirmative grant of power to local governments over their own property, affairs, and government, and restricts the power of the State Legislature from acting in relation to a local government's property, affairs, and government only to general laws or to special laws upon home rule request.[17] This article includes:

- a local government bill of rights;
- local government's power to adopt local laws;
- the duty of the State Legislature to provide for the creation and organization of local governments;
- the duty of the Legislature to enact a statute of local governments;
- restrictions upon the power of the Legislature to act by special legislation in relation to the property, affairs or government of a local government;
- the power of the Legislature to confer additional powers upon local governments.

Article VIII, entitled "Local Finances," contains the constitutional powers pertaining to local taxation and the incurring of debt. Among its provisions are the following:

- prohibition on gift and loan of public money or property to any private undertakings except for the care of the needy;
- prohibition of loan or credit to any public or private individual, corporation or undertaking;
- authorization for two or more local governments to incur debt for cooperative arrangements;
- limitations on the amount of debt that counties, cities, towns, villages and school districts may contract

and the purposes for which such debt may be incurred;

- limitation on the creation of a municipal or other corporation which would have both the power to levy taxes and the power to incur debt other than a county, city, town, village, school district or fire district;
- the manner of computation of the amount of debt that may be incurred, including specified exclusions from the total debt-incurring power;
- limitations on the amount of real property taxes that may be raised for local purposes; and
- the power of the State Legislature to restrict the powers of taxation and incurring of debt.

Table 4 indicates other articles of the State Constitution that either contain references relating to local government powers and operations or place restrictions on the State Legislature.

Article IX of the State Constitution grants power in two ways: directly, where the grants are, in effect, self-executing and require no further state legislative implementation; and indirectly, where the grants require further legislation before they can be exercised.

Examples of direct grants of power are contained in section 1 of Article IX of the State Constitution, entitled "Bill of Rights for Local Governments." These rights include: (1) the right of a local government to have a legislative body elected by the people; (2) the power to elect or appoint local government officers whose election or appointment is not otherwise provided for by the Constitution; (3) the power to take private property for public use by eminent domain; and (4) the right to make a fair return on local government utility operations.

In some cases, although the Constitution sets forth direct grants of power, these grants may still be subject to state legislative implementation through the enactment of procedural steps for their use. For example, Article IX of the State Constitution grants local law powers to local governments, but the exercise of the local law power must be in accordance with the procedures set forth in the Municipal Home Rule Law, which was enacted by the State Legislature to implement the constitutional grants of power.

Some grants of power require additional legislative authorization or direction in order for a local government to utilize them. These grants include: (1) the power to engage in cooperative undertakings as authorized by the Legislature; (2) the power to apportion the costs of governmental services as authorized by the Legislature; and (3) the power for counties to adopt alternative forms of county government under a special law or a general law enacted by the State Legislature.

These Constitutional references indicated in the following table are intended only to acquaint the reader with the existence of a constitutional base for local governments. Determining whether a local government may exercise a particular power or function requires a greater familiarity with the complete text of the constitutional provision, the state legislative implementation, and judicial interpretations, if any.

TABLE 4

Constitutional Provisions Relating to Local Government

New York State Constitution	Subject
Article V, §6	Prescribes civil service merit system.
Article V, §7	Prescribes that after July 1, 1940 membership in any pension or retirement system of the state or civil division is a contractual relationship and cannot be diminished or impaired.
Article VI	Provides for the court system.
Article X, §5	Prescribes the power of the State Legislature to create public corporations.
Article XI	Provides for the educational system.
Article XIII	Contains several provisions relating to local office holders, including: filling of vacancies, compensation of constitutional officers and election of city officers.
Article XVI	Contains the general provisions relating to taxing authority.
Article XVII	Contains the basic provisions relating to public assistance and the social services system.
Article XVIII	Provides the authority for the provision of low-rent housing and nursing home accommodations for persons of low income and for urban renewal.

The Statutes

In many instances, the Constitutional provisions described above direct the State Legislature to adopt laws that give local governments the authority to take certain legislative actions, such as entering into inter-municipal agreements or adopting city or county charters. The State Legislature also may delegate to local governments additional authorizations as it deems appropriate or necessary to enable local governments to fulfill their obligations in the partnership of government.

The Legislature has enacted a body of law, known as the Consolidated Laws, containing the statutory provisions from which local governments derive most of their substantive and procedural power. The title of each volume of the law generally suggests the subject matter or level of government to which it has primary application. Table 5 indicates the Consolidated Laws that are most relevant to local government.

TABLE 5

Consolidated Laws Relating to Local Government

Civil Service Law	The state's merit system; powers and duties of the State Civil Service Commission; provisions for civil service administration at the local level; the Public Employees' Fair Employment Act, commonly referred to as the Taylor Law.
County Law	The structure, administrative organization, and power and duties of county government.
Education Law	The powers of the State Education Commissioner; the structure, organization, and powers and duties of school districts; and the basic programs of state aid to school districts.
Election Law	The conduct of elections.
Eminent Domain Procedure Law	Procedure for acquiring property by exercise of the power of eminent domain.
General City Law	The powers and duties of cities generally, as well as specific authorizations of taxation for the City of New York.
General Municipal Law	Powers and duties pertaining to all local governments and school districts, including provisions relating to the maintenance of reserve funds, planning activities, cooperative undertakings, establishment of municipal hospitals, public bidding requirements, municipal airports, local bingo and games of chance option, urban renewal, annexation, and conflicts of interest.
Highway Law	Construction and maintenance of state highways and arterials; powers of the State Department of Transportation; powers and duties of county and town superintendents of highways; the construction and maintenance of county and town highways, including limitations on expenditures for certain highway-related purposes, as well as state aid programs for highways.
Local Finance Law	Authorizations and procedures relating to the incurring of debt by counties, cities, towns, villages, school districts, fire districts and district corporations.
Municipal Home Rule Law — Statute of Local Governments	Basic authorizations, requirements and procedures for the adoption of local laws by counties, cities, towns and villages, and the procedures for enactment and revision of county charters and city charters, as well as the Statute of Local Governments.
Public Officers Law	Provisions applicable to state and local officers, including residency requirements, official oaths and undertakings, resignations, filling of vacancies, removal from office, public access to records and open meetings.
Retirement and Social Security Law	State and local retirement systems.

TABLE 5

Consolidated Laws Relating to Local Government
(*Continued*)

Second Class Cities Law	The organization of cities which were classified as cities of the second class on December 31, 1923. This law has limited application.
Tax Law	General taxation laws of the state and authorizations for sales and use taxes by counties, cities and certain school districts.
Town Law	The structure, organization, provision of services, and powers and duties of towns and fire districts, as well as fiscal procedures and requirements.
Vehicle and Traffic Law	State operation and regulation of vehicular traffic as well as authorizations for regulation by counties, cities, towns and villages.
Village Law	The structure, organization, powers and duties of villages.
Volunteer Firefighters' Benefit Law	Disability or death benefits for firefighters or their families as a result of injuries or death arising from the performance of duties by volunteer firefighters.
Workers' Compensation Law	Workers' compensation benefits for employees of public as well as private employers. Also contains authorizations for self-insurance plans by local governments.

This listing is not a complete compilation of the laws applicable to local government. Many other laws that have significance either to a particular level of government or to an individual local government are scattered throughout the statutes. For example: the State Finance Law sets forth the provisions relating to the state's revenue-sharing programs; the Labor Law contains provisions relating to prevailing wage requirements in public works contracts; the Agriculture and Markets Law contains provisions relating to the establishment of agricultural districts, dog regulation and impoundment and sealers of weights and measures; the Correction Law contains provisions relating to supervision and administration of county jails and penitentiaries and state supervisory powers over city jails; the Parks, Recreation and Historic Preservation Law contains authorizations for historic preservation and local snowmobile operation regulation; and the Transportation Corporations Law contains local government approval requirements for the formation of private sewer and waterworks corporations. The Social Services Law, Mental Hygiene Law, Real Property Tax Law and Public Health Law are discussed elsewhere in this book.

Statute of Local Governments

Article IX of the State Constitution required the State Legislature to enact a "Statute of Local Governments" in order to grant certain powers to local governments. The granted powers include the power to: adopt ordinances, resolutions, rules and regulations; acquire real and personal property; acquire, establish and maintain recreational facilities; fix, levy and collect charges and fees; and in the case of a city, town or village, to adopt zoning regulations and conduct comprehensive planning.

The powers granted in the Statute of Local Governments are accorded quasi-constitutional protection by Article IX; a power so granted cannot be repealed, impaired or suspended, except by the action of two successive Legislatures, and with the concurrence of the Governor. Thus, for example, the repeal of village ordinance power by the State Legislature was accomplished by Chapter 975 of the Laws of 1973 and Chapter 1028 of the Laws of 1974.

The Statute of Local Governments reserves certain powers to the State Legislature, even where the exercise of these powers could or would diminish or impair a local power. These include the power to take actions relating to the defense of the state, to adopt laws upon local home rule request, to adopt laws relating to the creation of alternative forms of county government and to adopt laws relating to matters of overriding state or regional concern.

Limitations on the State Legislature

The powers of the State Legislature are derived from Article III of the State Constitution, as well as from other Constitutional provisions. Additional powers, as well as restrictions thereon, were conferred upon the Legislature by Article IX of the State Constitution, which directs the State Legislature to adopt certain laws necessary to effect the local powers granted by that article. Article IX also restricts the State Legislature from adopting special laws that affect a local government's property affairs or government. Article IX, therefore, serves both as a source of authority for local governments and as a shield against intrusion by the State upon their home rule prerogatives.

The restriction on the State Legislature's legislative powers is predicated upon the phrases "property, affairs or government" and "general law." The Legislature is specifically prohibited from acting with respect to the property, affairs or governance of any local government except by general law, or by special law enacted on a home rule request by the legislative body of the affected local government or, except in the case of the City of New York, by a two-thirds vote of each house upon receiving a certificate of necessity from the Governor. The definitions of the terms "general law" and "special law" as set forth above also apply in the context of this provision.

Local Laws and Ordinances

Local legislative enactments must be considered in order to fully define the power and authority of a local government. City and county charters originally were adopted by a special act of the State Legislature when a city or county was created. These charters created the municipal corporation and, importantly, directed its organization, and responsibilities, and accorded its powers. The Municipal Home Rule Law, pursuant to constitutional direction, authorizes cities to amend their charters and counties to adopt or amend charters by charter local law.[18] Charters of charter local governments must be consulted in order to ascertain the nature and extent of any power held by that government.[19]

Once a local government adopts an ordinance or local law, the government is bound by such legislative enactment until it is amended or repealed. Since local laws may direct that a local government's power be exercised in a certain manner, and, in some instances, may supersede state law (to be discussed later), the local government's local laws and ordinances must be consulted in order to fully define its powers.

Administrative Rulings and Regulations

Local government powers also may be expanded, restricted or qualified by the rules and regulations of state agencies. These rules and regulations are usually adopted as part of the implementation of a state program having local impact or application. Thus, it is advisable to review state regulations on a particular subject in order to ascertain the extent of local authorization in undertaking a particular activity or program.

An example is the promulgation of a local sanitary or health code. While a local government may promulgate such a code, it must first ascertain what areas of regulation have been covered by the State Sanitary Code. The State Sanitary Code and other rules and regulations appear in the Official Compilation of Codes, Rules and Regulations of the State of New York, which is published and continually updated at the direction of the Secretary of State.

Home Rule and Its Limitations

What "home rule" means depends upon the context in which it is used. Home rule in a broad sense describes those governmental functions and activities traditionally reserved to or performed by local governments without undue infringement by the state. In its more technical sense, home rule refers to the constitutional and statutory powers given local governments to enact local legislation in order to carry out and discharge their duties and responsibilities. This affirmative grant of power is accompanied by a restriction upon the authority of the State Legislature to enact special laws affecting a local government's property, affairs or government.

Interpreting Home Rule

Originally, the powers of local legislation were derived from specific delegations from the State Legislature. These delegations concerned specific subjects and were narrowly circumscribed. The courts applied strict rules of construction when called upon to interpret state statutes that delegated legislative power to local governments. However, with the evolution of the broad home rule powers, which culminated in constitutional grants to all local governments in 1964, there emerged a gradual recognition that the rules of strict construction were no longer applicable to the interpretation of such delegated powers. Rather, the same rules of liberal construction applicable to enactments of the State Legislature should be applied to the local law power.

Judicial interpretations of the Home Rule article illustrate the tension between the affirmative grant of authority to local governments and the reservation of matters outside the "property, affairs or government" of local governments to the State Legislature. In a society where many issues transcend local boundaries, a growing number of matters are considered to be matters of state concern.[20]

The home rule powers enjoyed by local governments in this state are among the most advanced in the nation. By recognizing the extent of their powers and by continuing to exercise them, local governments can best avoid the erosion of such powers. In this fashion, local governments will not only serve the needs of the people, but will strengthen state-local relationships as well.

Local Legislative Power

Forms of Local Legislation

Local legislation may take the form of local laws, ordinances and resolutions.

A **local law** is the highest form of local legislation, since the power to enact a local law is granted to local governments by the State Constitution. In this respect, a local law has the same quality as an act of the State Legislature, since they both are exercises of legislative power accorded representative bodies elected by the people. Indicative of this is the fact that acts of the State Legislature and local laws are both filed with the Secretary of State, the traditional record keeper for State government.

An **ordinance** is an act of local legislation on a subject specifically delegated to local governments by the State Legislature. Counties do not ordinarily possess ordinance powers and the power of villages to adopt ordinances was eliminated in 1974.

A **resolution** is a means by which a governing body or other board expresses itself or takes a particular action. Unlike local laws and ordinances, which can be used to adopt regulatory measures, resolutions generally cannot be used to adopt regulatory measures. Exceptions exist to this rule, however, as authorized by the State Legislature. For example, section 153 of the County Law provides that a power vested in a county may be exercised by local law or resolution.

The Local Law Power

Article IX of the State Constitution was implemented in1964 by the State Legislature through the enactment of the Municipal Home Rule Law, which reiterates and explicates the constitutional local law powers and provides procedures for adopting local laws.

Both the Constitution and the Municipal Home Rule Law provide the following categories of local law powers:

- The power to adopt or amend local laws relating to their property, affairs or government which are not inconsistent with the provisions of the Constitution or with any general law;
- The power to adopt or amend local laws, not inconsistent with the Constitution or any general law, relating to specifically enumerated subjects, whether or not these subjects relate to the property, affairs or government of the local government, and subject to the power of the Legislature to restrict the adoption of local laws in areas not relating to property, affairs or government; and
- The State Legislature is expressly empowered to confer upon local governments additional powers not relating to their property, affairs or government and to withdraw or restrict such additional powers.

The phrase "property, affairs or government" is a term of art which has been defined largely by court decisions which have determined what it is not — i.e., what are, instead "matters of state concern". Even where the subject matter of a local law falls instead within the meaning of "property, affairs or government," the local law must be consistent with all general state laws and with the Constitution.

The second category of local laws set forth above includes the specifically enumerated topics found in section 10 of the Municipal Home Rule Law. For example, a county, city, town or village may, by local law, modify the powers, qualifications, number, mode of selection and removal, terms of office, compensation and hours of work of its officers and employees. It may: create and discontinue departments of its government; decide the membership and composition of its legislative body; and regulate the acquisition and management of property, the levy collection and administration of local taxes and assessments, and the fixing, levying and collecting of local rental charges and fees. It may also provide for the protection of its environment, the welfare and safety of persons and property within its boundaries, and the licensing of business and occupations.

Additional powers are conferred upon counties, cities, towns and villages in section 10 of the Municipal Home Rule Law, for example:

- Counties may assign administrative functions to the chairperson of the county legislative body, create an administrative assistant to the chairperson, and provide for the control of floods and reforestation of lands owned by the county;
- Cities may revise their charters, as well as authorize benefit assessments for local improvements;
- Towns may adopt local laws relating to the preparation, making, and confirmation of assessments of real property and the authorization of benefit assessments, consistent with state law. They may also supersede any provision of the Town Law in relation to an authorized area of local legislation, unless such supersession has been restricted by

the State Legislature and except for those provisions of the Town Law relating to improvement districts, areas of taxation, referenda and town finances;

- Villages may authorize benefit assessments and may also supersede any provision of the Village Law in relation to an authorized area of local legislation, unless the State Legislature has restricted such supersession.

The courts also have recognized the extent of local law power. In a landmark case, the Court of Appeals, the state's highest court, upheld a locally enacted county charter provision that superseded a general state law.[21] Similarly, a town's authority to supersede provisions of the Town Law has been upheld.[22]

It can be readily seen that the grant of local law power to local governments in New York is quite broad.

Restrictions on Local Law Powers

The local law power is not without its limitations. The restrictions upon the exercise of the local law power are as follows:

- A local law cannot be inconsistent with the Constitution or with any general law. The term "general law" is defined in the Constitution as a law enacted by the State Legislature which in terms and in effect applies alike to all counties outside the City of New York, to all cities, to all towns or to all villages. Conversely, a special law is defined as one which applies to one or more, but not all, counties, cities, towns or villages;
- A number of specific restrictions or qualifications are contained in the Constitution or have been enacted by the State Legislature, such as those set forth in section 11 of the Municipal Home Rule Law. This section, for example, restricts the adoption of a local law if it would remove a restriction of law relating to the issuance of bonds;
- Local law power is restricted where the subject of the local law is one considered to be of "state concern." "Matters of state concern" is a phrase born in judicial opinions rather than in the Constitution or statutes. It is a term used by the courts to define what local governments may not accomplish by local law – in other words, what is not within their "property, affairs or government." Matters of state concern are those of sufficient importance to require State legislation. If the matter is to a substantial degree a matter of State interest, it is considered a matter of State concern, even if local concerns are intermingled with the State concerns.[23] Court cases construing the home rule grants have indicated that "state concern" includes such matters as taxation, incurring of indebtedness, education, water supply, transportation and highways, health, social services, aspects of civil service and banking. As a general principle, a local government may not adopt a local law relating to a "matter of state concern" unless the Legislature has specifically granted such power by law; and
- Local law power is restricted where the subject of proposed local law action has been preempted by the state. Preemption occurs when the State Legislature specifically declares its intent to preempt the subject matter, or when the Legislature enacts sufficient legislation and regulation so as to *indicate an intent* to exclude regulation by any other governmental entity. The courts have termed such indication intent to "occupy the field."

Referenda

New York's governmental heritage is that of a representative form of government where most matters are addressed by elected officials. Certain matters of particular importance, however, are set aside to be confirmed by the voters through referenda. These matters generally include approval of Constitutional amendments and bonding authorizations. The preference for a representative form of government also carries through to the local level. Matters may be set for local referendum only when authorized by state statute. Certain local laws, which are subject to mandatory referendum, do not become effective until approved by the voters through a referendum. The referendum requirements that apply to local laws are set forth primarily in sections 23 and 24 of the Municipal Home Rule Law, and are discussed at greater length in Chapter X.

Chapter Endnotes

9. Public corporations include municipal corporations, district corporations and public benefit corporations. Municipal corporations are cities, towns, villages, counties and school districts. District corporations are territorial divisions of the state with the power to contract indebtedness and to levy (or require the levy of) taxes, such as a local fire district. Public benefit corporations are formed for the purpose of constructing public improvements, such as a local parking authority. District and public benefit corporations are discussed in Chapter IX.

10. New York Constitution, Article VIII, § 3; see the discussion in *Greater Poughkeepsie Library District* v. *Town of Poughkeepsie*, 81 N.Y.2d 574 (1993).

11. The 1777 New York State Constitution, Article XXXVI, confirmed land grants and municipal charters granted by the English Crown prior to October 14, 1775. Chapter 64 of the Laws of 1788 organized the state into towns and cities.

12. A small group of villages still operate under their original special act charters. See Chapter VIII, Villages.

13. See the New York Constitution, Article IX, added to the Constitution in 1963 and effective January 1, 1964.

14. New York Constitution, Article IX, § 1(a).

15. New York Constitution, Article IX, § 1(a).

16. A town's solid waste flow control law which restricted interstate commerce by limiting out-of-state firms' entry to the unsorted garbage market was struck down under what is called the "dormant" Commerce Clause. *C.& A. Carbone, Inc.* v. *Town of Clarkstown*, 511 U.S. 383 (1994).

17. New York Constitution, Article IX, § 2(b)(2).

18. Municipal Home Rule Law, Article 4.

19. This holds true for any charter village, as well.

20. The most recent home rule cases indicate a growing class of state concerns. *City of New York* v. *State of New York*, 76 N.Y.2d 479 (1990); *Albany Area Builders Association* v. *Town of Guilderland*, 74 N.Y.2d 372 (1989).

21. *Town of Smithtown* v. *Howell, et al*., 31 N.Y. 2d 365 (1972).

22. *Kahmi* v. *Town of Yorktown*, 74 N.Y.2d 423 (1989).

23. See *Adler* v. *Deegan*, 251 N.Y. 467 (1929) and *Wambat Realty Corp.* v. *State of New York*, 41 N.Y.2d 490 (1977).

CHAPTER V

County Government

While originally established to serve as instrumentalities of the state existing for state purposes, counties in New York are now full service general purpose units of government that provide a vast array of services to their residents.

What is a County?

New York counties began as entities established by the State Legislature to carry out specified functions at the local level on behalf of the state. During the 20th century, county government in New York underwent major changes in function, form and basic nature.

The counties in New York are no longer merely subdivisions of the state that primarily exist to perform state functions. The county is now a municipal corporation with geographical jurisdiction, home rule powers and the fiscal capacity to provide a wide range of services to its residents. To some extent, counties have evolved into a form of "regional" government that performs specified functions and which encompasses, but does not necessarily supersede, the jurisdiction of the cities, towns and villages within its borders.

New York State outside New York City is divided into 57 counties. The five boroughs of the City of New York function as counties for certain purposes, although they are not organized as such nor do they operate as county governments. Unless otherwise indicated, references to counties in this chapter will apply only to those outside New York City.

Counties in New York are very diverse in population and demographics. The 2000 Census populations of the counties vary from Suffolk County's 1, 419, 369 to Hamilton County's 5, 379. St. Lawrence County is the largest in geographical area, with over 2, 700 square miles, and Rockland is the smallest, with 175 square miles. The most densely populated county is Nassau County with more than 4, 500 people per square mile, and the most sparsely populated is Hamilton County, with fewer than 3 people per square mile. The population of New York's counties is shown in Table 6.

Of the state's 57 counties outside New York City, 21 contain no cities. All counties include towns and villages, although the number of each varies widely, from 32 towns in St. Lawrence, Cattaraugus and Steuben counties to three towns in Nassau County, and from Hamilton and Warren counties' one village each to Nassau County's 64 villages.

The foregoing statistics indicate that it can be deceptive to speak of counties in New York State as though they were all alike. New York counties are among the most urban and the most rural in the nation, and the interests, concerns and governmental expectations of their residents are similarly diverse.

Historical Development

The patterns of county government organization in New York were set in colonial times. The "Duke's Laws" of 1665 created "ridings," or judicial districts, which were in effect a system of embryonic counties. In 1683, an act of the first Assembly of the Colony established the first 12 counties — adding 2 to the 10 which had previously come into existence — and created the office of sheriff in each county. These original counties were Albany, Cornwall, Dukes, Duchess, Kings, New York, Orange, Queens, Richmond, Suffolk, Ulster, and Westchester. Cornwall and Dukes were deemed part of Massachusetts after 1691.

County legislative bodies began at the same time, when freeholders, later known as supervisors, were elected to represent each town in the establishment of tax rates to defray the costs of county government, including the operation of a court house and a jail.

The reasons for the creation of county governments in the early colonial period appear to have been practical: to improve protection against enemies and to provide a more broadly based mechanism for maintaining law and order. The first duties of county government lay in these functional areas. It is of interest to note that the sheriffs in

the first counties were appointed by the Governor and could serve only one term.

The first State Constitution in 1777, which designated counties, towns and cities as the only units of local government, recognized the existence of 14 counties that had been established earlier by the colonial Assembly. Two of those counties were ceded to Vermont in 1790 in the settlement of the New Hampshire land-grant controversy. All of New York's other 50 counties were created by acts of the State Legislature. The state's newest county, Bronx, was established in 1914.

The basic composition of the counties was set in 1788 when the State Legislature divided all of the existing counties into towns. Towns, of course, were of earlier origin, but in that year they acquired a new legal status as components of the counties.

Throughout the nineteenth century, additional counties were created, usually when an area contained approximately 1,000 residents. New counties were typically formed out of existing counties, some of which originally covered vast geographical areas.

TABLE 6

New York State Counties

COUNTY	Chief Administrative Official	Legislative Body	Number of Members	Population **
Albany*	Executive	Legislature	39	294,565
Allegany	Administrator	Legislature	15	49,927
Broome*	Executive	Legislature	19	200,536
Cattaraugus	Administrator	Legislature	21	83,955
Cayuga	Chair of Legislative Body	Legislature	15	81,963
Chautauqua*	Executive	Legislature	25	139,750
Chemung*	Executive	Legislature	15	91,070
Chenango	Chair of Legislative Body	Supervisors	23	51,401
Clinton	Administrator	Legislature	10	79,894
Columbia	Chair of Legislative Body	Supervisors	22	63,094
Cortland	Chair of Legislative Body	Legislature	19	48,599
Delaware	Chair of Legislative Body	Supervisors	19	48,055
Dutchess*	Executive	Legislature	25	280,150
Erie*	Executive	Legislature	17	950,265
Essex	Manager	Supervisors	18	38,851
Franklin	Manager	Legislature	7	51,134
Fulton	Chair of Legislative Body	Supervisors	20	55,073
Genesee	Manager	Legislature	9	60,370
Greene	Administrator	Legislature	14	48,195
Hamilton	Chair of Legislative Body	Supervisors	9	5,379
Herkimer*	Administrator	Legislature	17	64,427
Jefferson	Administrator	Legislature	15	111,738
Lewis	Manager	Legislature	10	26,944
Livingston	Administrator	Supervisors	17	64,328
Madison	Chair of Legislative Body	Supervisors	19	69,441
Monroe*	Executive	Legislature	29	735,343
Montgomery	Administrator	Supervisors	15	49,708
Nassau*	Executive	Legislature	19	1,334,544
Niagara	Chair of Legislative Body	Legislature	19	219,846
Oneida*	Executive	Legislature	29	235,469
Onondaga*	Executive	Legislature	19	458,336
Ontario	Administrator	Supervisors	21	100,224

TABLE 6

New York State Counties
(*Continued*)

COUNTY	Chief Administrative Official	Legislative Body	Number of Members	Population **
Orange*	Executive	Legislature	21	341,367
Orleans	Administrator	Legislature	7	44,171
Oswego	Administrator	Legislature	25	122,377
Otsego	Chair of Legislative Body	Legislature	14	61,676
Putnam*	Executive	Legislature	9	95,745
Rensselaer*	Executive	Legislature	19	152,538
Rockland*	Executive	Legislature	17	286,753
St. Lawrence	Administrator	Legislature	15	111,931
Saratoga	Administrator	Supervisors	23	200,635
Schenectady*	Manager	Legislature	15	146,555
Schoharie	Chair of Legislative Body	Supervisors	16	31,582
Schuyler	Chair of Legislative Body	Legislature	8	19,224
Seneca	Manager	Supervisors	14	33,342
Steuben	Administrator	Legislature	17	98,762
Suffolk*	Executive	Legislature	18	1,419,369
Sullivan	Manager	Legislature	9	73,966
Tioga	Chair of Legislative Body	Legislature	9	51,784
Tompkins*	Administrator	Legislature	15	96,501
Ulster	Administrator	Legislature	33	177,749
Warren	Administrator	Supervisors	20	63,303
Washington	Administrator	Supervisors	17	61,042
Wayne	Administrator	Supervisors	15	93,765
Westchester*	Executive	Legislature	17	923,459
Wyoming	Administrator	Supervisors	16	43,424
Yates	Administrator	Legislature	14	24,621

* Charter County
** 2000 Census.

SOURCE: U.S. Bureau of the Census, courtesy of Empire State Development Corporation.

County government information courtesy New York State Association of Counties.

New York City Boroughs/Counties

Borough	Population**
Bronx	1,332,650
Kings	2,465,326
New York	1,537,195
Queens	2,229,379
Richmond	443,728

** 2000 Census.

SOURCE: U.S. Bureau of the Census, courtesy of Empire State Development Corporation.

The Changing Nature of County Government

The basic changes in form, powers and functions, which the counties in New York have been undergoing, have been hastened and facilitated by three major developments:

- The rapid urbanization of many areas of the state after World War II, particularly in the environs of large cities;
- The availability, by general law, of authority for the residents of a county to draft and adopt a home rule charter to provide whatever form of government they consider most appropriate to local needs, and through the charter, to assign to the county government duties and functions they want the county to undertake — within state Constitutional and statutory limitations;
- Basic alteration of the representative base for county legislative bodies resulting from federal and state court rulings requiring that such representation comply with the "one person-one vote" principle.

While county government still must perform as an administrative arm of state government for many purposes, at the same time it must be an independent unit of government exercising powers of its own to meet new, difficult and complex demands.

As the population spilled out from the central cities of the metropolitan areas, the towns and the counties occupying the periphery had to take on a wide range of new functions, services and duties. As a result, the forms and procedures of county government changed to meet the needs of the metropolitan areas. At the same time, however, the old forms of county government, which largely reflected rural needs and county functions as state administrative units, were retained in areas where they were still appropriate. Even in the latter case, however, it has proven convenient for the state to use the counties in new ways for new purposes in carrying out new state programs and objectives.

At the present time, most New Yorkers live in counties that are now considered urban because of their population or proximity to a major city. Some counties are marginally urban because of their economic orientation and because people journey to work from those counties to larger metropolitan centers that may be some distance away. This very fact, however, lends an urban aura to those counties even though their primary activities may still have rural characteristics.

The County Charter Movement

One of the developments that has facilitated the changing nature of county government in New York has been the provision of general law authority for counties to draft and adopt home rule charters by local initiative and action.

Most of the counties of the state still operate, as they did in the past, under the general provisions of the New York State County Law. Even these counties have certain latitude under state law to develop their own organizational structures and to provide for the administration of their services. In fact, a majority of the counties that operate under the County Law have a county administrator or comparable position.

Any county, regardless of size, may gain a much wider scope for local initiative and action through the adoption of a county charter. Table 7 lists the 19 charter counties in New York and the year of adoption of their current charter.

TABLE 7

Charter Counties In New York

County	Date Charter Adopted
Nassau	1936
Westchester	1937
Suffolk	1958
Erie	1959
Oneida	1961
Onondaga	1961
Monroe	1965
Schenectady	1965
Broome	1966
Herkimer	1966
Dutchess	1967
Orange	1968
Tompkins	1968
Rensselaer	1972
Albany	1973
Chemung	1973
Chautauqua	1974
Putnam	1977
Rockland	1983

The spread of the county charter movement in New York has been a relatively recent phenomenon. In 1937, the Legislature enacted an Optional County Government

Law which broadened the scope of local choice as to organization and form. By the early 1950's only three counties — Nassau, Monroe and Westchester — had organized under optional or special charters granted by the State Legislature. Because of the counties indifferent response to this form, in 1952 the Legislature repealed the optional County Government Law and enacted the Alternative County Government Law, which extended to the counties a choice of four optional alternative forms of government organization. However, no county utilized the provisions of this law. In 1958, Suffolk County was granted an alternative form of county government by special state legislation.

An amendment to the State Constitution in 1959 provided the necessary constitutional basis for locally developed and adopted charters. With the implementing statutes enacted by the State Legislature, the amendment enabled counties to adopt charters that could supersede the governmental structures provided in the County Law. The response was immediate; Erie County in 1959 was the first to adopt its own charter under the new law. In 1961, Oneida and Onondaga Counties followed. Enactment in 1963 of the Municipal Home Rule Law, to which the County Charter Law provisions were transferred, further facilitated the reorganization by charter of county governments. Since that change, the number of counties operating under charters has increased to 19. One of these counties — Herkimer — chose only to reapportion the county legislative body through the county charter method and left intact the organizational arrangements provided under the County Law.

Reform of County Legislative Bodies

A third recent development that significantly impacted county government in New York was the reapportionment of representation in county legislative bodies in response to judicial mandates.

From the earliest days of county government, the county's legislative body — and its executive and administrative elements as well — was a board of supervisors. The board of supervisors consisted primarily of the supervisors of the towns within the county who were elected solely as town officers at town elections but who served ex officio as county legislators. In counties containing cities a number of "city supervisors" were elected by city voters, usually by wards, to serve solely as county officials and having no other duties as city officials.

In the early 1960's, the courts found that many of the arrangements in New York for boards of supervisors violated the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. The basis for this ruling was the fact that each town in a county, small or large, had one vote in the legislative body. Thus, a voter in a town with a population of a hundred wielded ten times more weight in the county legislative body than did a voter in a town of a thousand. Accordingly, the counties were ordered to bring the apportionment of their legislative bodies into compliance with the principle of one person-one vote.

The counties of New York State have used one of two basic methods to comply with the Supreme Court's mandate: weighted voting or districting. Some counties still retain the board of supervisor's arrangement, but with an appropriate weighting of the relative voting strength of each supervisor. Other counties now elect legislators from districts, which may or may not coincide with town lines.

Variations of these two basic methods have been used to accommodate local conditions. In some counties, weighted voting provides that each legislator "casts the decisive vote on legislation in the same ratio which the population of his or her constituency bears to the total population." In others, the weighting simply reflects the represented population. Districting has taken the form of single or multi-member districts or a mix of both.

In many cases, the members of the county legislative bodies now occupy their positions in that capacity alone; they are clearly county legislators, elected as such. This is a major change in the basic structure of county government, since it can be argued that until the county had its own independently elected legislative body, it could not truly be regarded as a full unit of local government with its own defined powers and its own authority to utilize those powers in response to countywide needs.

County Government Organization

Four organizational elements exist in some form and in varying degrees among all counties, both charter and non-charter. These are: (1) a form of executive or administrative authority, either separate from or as a part of legislative authority; (2) a legislative body; (3) an administrative structure; and (4) certain elective or appointed officers who carry out specific optional duties and functions.

Executive and Administrative Authority

Non-charter Counties. The County Law, which provides the legal framework for non-charter county government, makes no provision for an independent executive or administrative authority. The executive and legislative authority remain joined in the legislative body, which may exercise that function indifferent ways. The legisla-

tive body may organize its committee structure around the functional areas of county government; each committee or its chairman exercises a certain amount of supervisory or administrative authority on behalf of the legislative body over the operational arrangements for the provision of the specific service or activity. The legislature may also delegate to its chairman a substantial amount of administrative authority to be exercised on its behalf.

As long as the functions of county government were relatively few and simple, such arrangements assured the legislature of direct information about day-to-day county operations. As county functions and programs increased in number, diversified in kind, and expanded enormously in both complexity and cost, this fragmentation of administrative authority often fell short of providing necessary overall supervision and coordinated direction. Partly to correct this inadequacy, the county charter movement spread rapidly during the 1950's and 1960's among the larger and rapidly urbanizing counties of the state.

In addition to the internal arrangements whereby a county legislative body may exercise a certain amount of executive and administrative authority, several provisions of law authorize the county legislature to establish the office of county administrator or a similar office to carry out, on behalf of the legislature, certain administrative functions.

The first of these provisions is section 10(1)(a)(1) of the Municipal Home Rule Law, which authorizes local governments to enact local laws relating to the powers, duties, qualifications, number, mode of selection and removal, and terms of office of their officers and employees. Under this provision, a county may create the office of county administrator or manager, and assign to the office certain administrative functions and duties to be performed on behalf of the county legislature.

A county legislature should keep two factors in mind when creating such an office. The first is to determine whether the powers and functions to be assigned to the office would either diminish the powers of any elected county official or transfer to such an office any powers and duties presently vested by law in other county offices. In such situations, the Municipal Home Rule Law provides for a mandatory referendum. The second is to determine how far the county legislature is empowered to go in assigning various functions and duties to the office of county administrator. At what point will the legislature, in effect, be enacting an alternative form of county government? In other words, how far can the county go in assigning powers and functions before it becomes necessary to enact a county charter?

Another option is found in the Municipal Home Rule Law, section 10(1)(b)(4), which authorizes a county to create by local law the position of administrative assistant to the chairman of the board of supervisors. While such a law may assign specified administrative functions, powers, or duties to this office, the board must remain the final authority with respect to such administrative functions and duties.

Finally, section 204 of the County Law provides that the county legislative body may establish the position of "executive assistant" by local law, resolution, or by inclusion in the county budget.

The foregoing illustrates that a county government without a charter still has a number of options through which it can provide itself with a certain amount of administrative leadership and day-to-day direction. However, the legislative body must retain the executive authority generally embodied in making policy and developing the annual budget.

Charter Counties. The principal difference between a county government operating pursuant to the County Law and one operating pursuant to a charter is that a county charter ordinarily provides for an executive or administrator, independent of the legislature, who administers the day-to-day affairs of county government. Of the 19 charter counties in the state, 16 have elected executives, while 2 have professional managers.

Voters in the charter counties of New York, in most cases, have chosen the elected executive form of county government organization. The creation of the office of elected executive provides the county with potentially strong leadership, because the executive is elected by the voters of the entire county. Thus, the executive operates from a strong political base to speak for the county, and to exercise leadership in relation to the legislative body. This principle holds true even where the charter does not endow the executive with extensive powers.

The elected executive also provides a focus of public attention in county government that is lacking in the organization under the County Law. Like elected executives at other levels, the county executive operates under constant scrutiny.

Under most county charters, the elected county executive may secure additional professional administrative assistance, subject to appropriated funds. For example, the executive may provide, within the annual appropriation, for the creation of the office of deputy county executive for administration or for an executive assistant to

carry out responsibilities that may be delegated by the executive.

One of the most influential elements of the elected executive's authority is the budgetary power, an essential tool of executive participation in policy development and in strong administration. Through the framing of an executive budget, the county executive establishes and recommends to the county legislature priorities among programs. If they are approved by the legislative body, these priorities provide a direction for the implementation of policies.

Another important element of the authority of the county executive or county manager in charter counties is the power to appoint and remove department heads. The charter may allow the executive to exercise this authority without confirmation or approval by the legislative body, and in other cases, the charter may require the confirmation or approval of the action. In either case, the executive must exercise this authority within the scope of the applicable civil service laws as described in Chapter XIII.

Initially, the size of a county's population has much to do with whether the county's voters believe it is necessary to provide the county with executive leadership and day-to-day direction of operations by adopting a locally drafted charter. It is possible, however, that other considerations, such as fiscal concerns, are of equal importance. Without a strengthening of executive capacity, the urbanizing counties of the state found themselves severely handicapped in meeting and dealing with new and expanding service demands. Legal authority to draft and adopt a charter locally, one specifically tailored to fit local conditions and requirements, has facilitated the efforts of counties to meet their rapidly growing responsibilities as true units of local government.

County Legislative Bodies

Every county has power to enact laws, adopt resolutions, and take other actions having the force of law within its jurisdiction. This power, along with the related authority to make policy determinations, is vested in a legislative body.

The legislative bodies of the counties are designated by various names, including Board of Supervisors, Board of Representatives, Board of Legislators, and County Legislature. Originally, the legislative bodies of all counties were boards of supervisors, consisting of the town and city supervisors. With the adoption of various reapportionment plans and with the spread of home rule charters, however, other designations were developed according to local preference.

Figure 6 shows the basic makeup of county legislative bodies, along with their 2000 Census populations. This figure illustrates that neither the size of a county's population nor the fact of having a charter have little if anything to do with the size of a county's legislative body. Legislatures range in size from seven members in Franklin and Orleans Counties to 39 in Albany County.

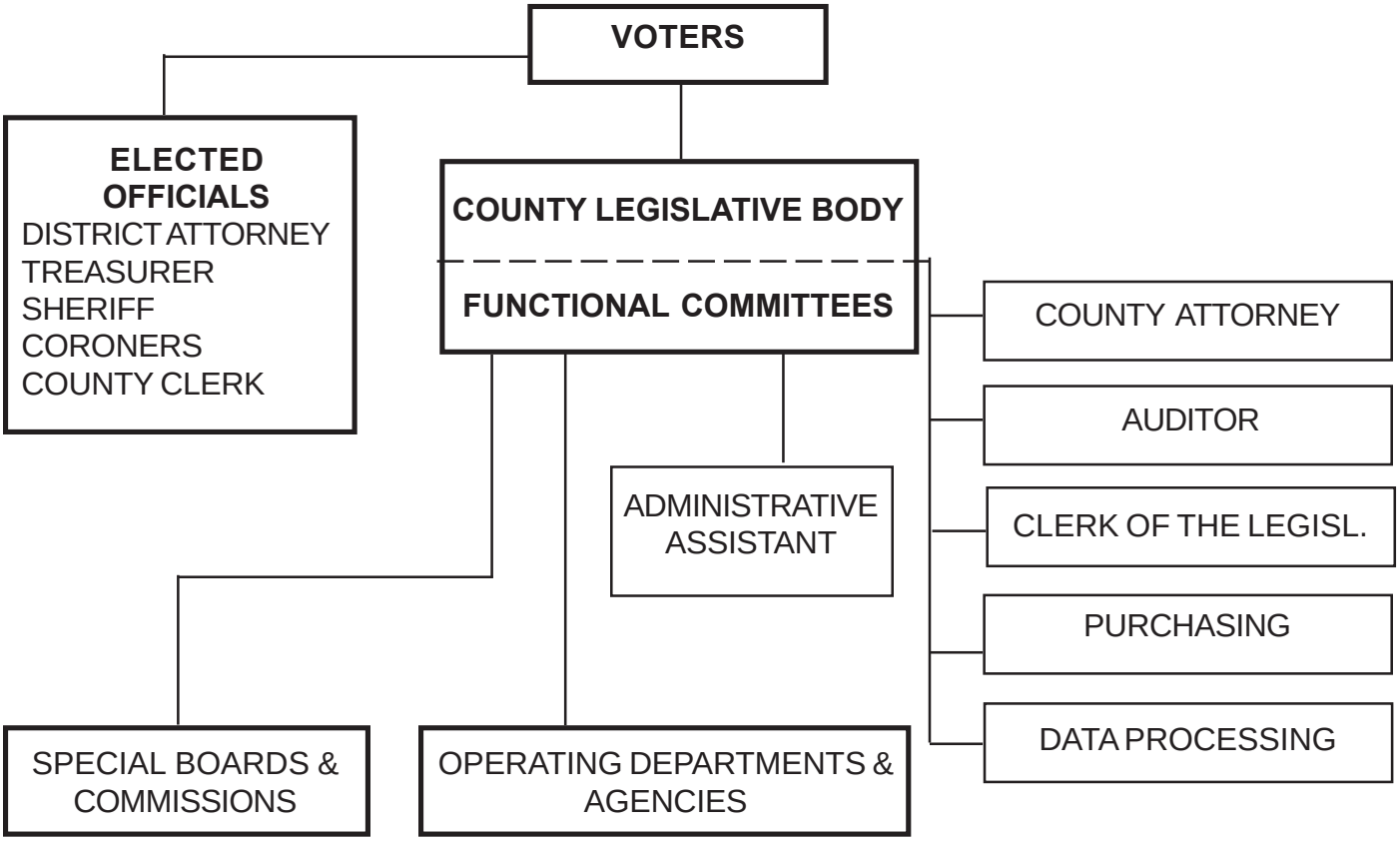
Generally, members of county legislative bodies are elected for either two or four year terms. In counties that have retained a Board of Supervisors, the term of office for each member is two years, except in towns that have exercised the option under the Town Law to extend the term to four years. Of the 57 county legislative bodies, 36 conduct scheduled meetings once a month and 17 meet twice a month. Other meeting patterns are practiced by three counties, and one legislative body, Herkimer, conducts a scheduled meeting quarterly, but holds additional meetings as needed. All of the legislative bodies convene for special meetings, a fairly frequent occurrence in many counties.

Since the role of the county as a true unit of local government continues to evolve, the legislative bodies of New York counties are also continuing to change. Their committee structures, rules of procedure, and patterns of action may reflect some practices of earlier times, but it is clear that adjustments are under way. The heightened responsibility of members of county legislative bodies is indicated by the fact that the budgets they must consider and adopt each year range from tens of millions of dollars in small counties to hundreds of millions in large counties. Several counties have budgets in excess of one billion dollars, and Nassau County's budget nears three billion dollars.[24]

Administrative Structure

The administrative structures of county governments in New York are generally similar. The basic organizational arrangements and operational procedures of county administration were set at a time when the functions and duties were few, relatively simple and largely reflective of state objectives. In some counties with smaller and homogeneous populations, the traditional arrangements still provide an adequate administrative structure.

FIGURE 6
County Government
County Law Form Organization Chart



In the large counties, however, urbanization has created a need for new patterns of administration as well as new leadership arrangements. The result has been a rapid growth in both the size and complexity of county administrative structures. These arrangements meet the needs of both ongoing traditional county functions, such as law enforcement and record keeping, as well as the newer county functions in such areas as industrial and economic development, mental health services, and the provision of recreational facilities and programs.

The administrative structures of New York counties generally fall into three categories: (1) organization under the County Law; (2) organization with an elected county executive; and (3) organization with an appointed manager or administrator. As might be expected, there are many similarities among these three forms, but there are also differences. As illustrated in Figures 6, 7, and 8, the primary differences among the three forms are at the top, in the relationship between the elected representative body and how the county is functionally administered. The administrative structure of a county government does not depend on whether the county elects an executive, appoints a manager, or leaves administrative direction and supervision to its legislative body. However, most of the larger counties have found it desirable, if not necessary, to divide their administrative structures into many departments. This organizational structure facilitates proper direction and supervision of what have become large-scale enterprises.

FIGURE 7

County Government

Executive Form Organization Chart

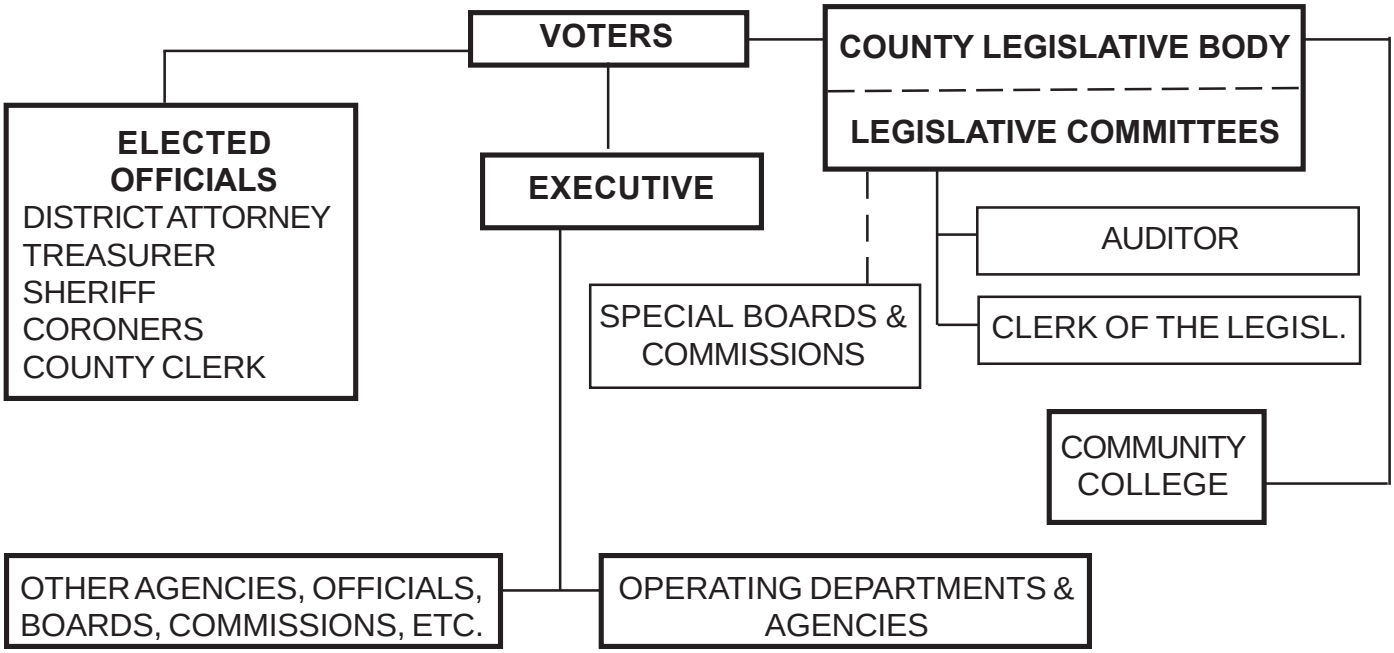
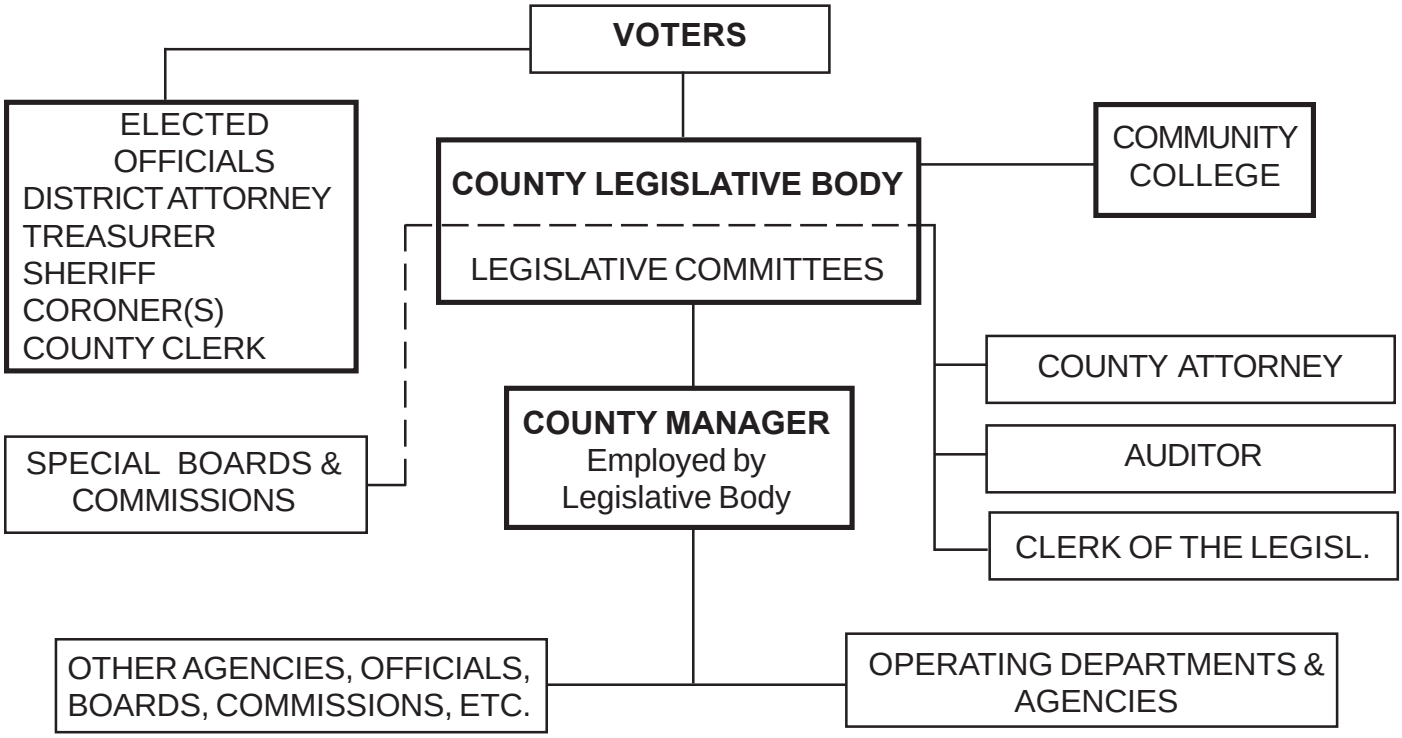


FIGURE 8

County Government

Manager Form Organization Chart



Other Elected and Appointed Officers

In counties organized under the County Law, the following officials must be elected: district attorney, sheriff, coroner(s)[25] and county clerk. Under a home rule charter, a county may alter some of these officers' duties, subject to referendum. The treasurer must also be elected, but this office may be eliminated under either the County Law or a home rule charter.

Many of the charter counties have dropped the office of treasurer and incorporated its functions with those of a director of finance. The office of sheriff, although based in the Constitution, may also be substantially modified. In counties with county police departments, for example, the office of sheriff has few, if any, law enforcement functions, but may retain civil functions and responsibility for operating a county correctional facility.

The Functions of County Government

At the beginning of this chapter we noted that the principal reasons for creating county governments in the colonial period were to facilitate the defense of the community against enemies and to maintain public order.

With the establishment of state government, the counties provided an already existing and readily available administrative unit through which the state could carry out a number of its functions and duties. To do this, the counties found themselves keeping records on behalf of the state, enforcing state laws and conducting elections for the state, among other state-assigned functions. In New York, as in other states, the prevailing view saw county government as an arm of state government, serving state purposes.

It is doubtful that many residents of the counties of New York ever fully shared this assessment of the nature of the county. The people of the counties appear to have felt from earliest times that the county, like the city, the town and the village, was one of "their" local governments, even though it may have performed duties for the state.

The recent fundamental changes in the nature and form of county government in New York have in some ways brought the legal concept of a county closer in line with the concept held by most of the counties' inhabitants. The impetus for this merger of the *de jure* with the *de facto* probably sprang from the rapidly expanding demands for services, which were stimulated by population growth and urbanization, which often could not be supplied by the towns, cities, and villages.

The functions of county government at the beginning of the twenty-first century scarcely resemble those of colonial times, although the county still enforces laws and maintains order. In 1980, the total expenditures by county government in New York amounted to $5.5 billion. By 2003, this amount had grown to over $16.4 billion. To see what counties are doing today and to illustrate the demands now being placed on county government, it is useful to examine how county government spends it money. Table 8 shows the dollar amount and percent distribution of major expenditures for all counties for 1980 and 2003.

TABLE 8

Trends in County Expenditures by Purpose

Expenditure Category	1980 Amount (millions of dollars)	1980 Distribution (percent)	2003 Amount (millions of dollars)	2003 Distribution (percent)
General Government	504	9.2	2,005	12.2
Police and Public Safety	515	9.4	2,924	17.8
Health	644	11.8	2,188	13.3
Transportation	430	7.9	1,194	7.3
Economic Assistance	2,589	47.4	5,852	35.6
Culture and Recreation	131	2.4	349	2.1
Education	144	2.6	868	5.2
Home and Community Services	500	9.2	1,050	6.4
Total	5,458	100.0	16,430	100.0

SOURCE: Office of the New York State Comptroller.

Economic assistance, which includes social services programs such as Medicaid and Aid to Dependent Children, remains the largest category of expenditure for county government. However, the share of the distribution of expenditure for this category has declined as expenditures in other categories have increased and accounting for Medicaid expenditures has changed. In 1980, county expenditures for Medicaid reflected the entire cost of the program (counties paid the full cost and were then reimbursed from state and federal sources). In 2003, however, county medical expenditures reflect only the county contribution (roughly 25 per cent of total Medicaid costs), making comparisons between these years difficult. The greatest percentage of growth in dollar terms has been in the education category, which includes the counties' obligation to pay for the education of pre-school special education children as well as the costs of providing community college education to county residents. Police and public safety has also experienced significant growth and expenditures accounting for the cost of operating a jail in addition to the expenses of a sheriff's department, plus probation and rehabilitation services. General government includes staffing and administrative costs of county officials, the district attorney, public defenders, maintenance of buildings and other central operations.

Transfer of Functions

Article 9, section 1(h)(l) of the State Constitution authorizes alternative forms of county government[26] to transfer functions or duties from one unit of local government to another, subject to referenda approval. Any such transfer, whether included in a proposed county charter or charter amendment, or by local law through procedures set forth in section 33-a of the Municipal Home Rule Law, must be approved by separate majorities in the area of the county outside the cities, and in all cities in the county, if any, "considered as one unit." In addition, if a function or duty is transferred to or from any village, the transfer must also be approved by a majority of voters in all villages so affected, again "considered as one unit."

In many cases, counties have assumed new activities without formal transfer of the function. So long as the county has power to engage in a specific activity —the provision of parks, for example — it often does so at the same time that cities, towns and villages undertake similar activity. This power of the local units to carry out the same activity presents local taxpayers with recurring policy questions regarding which units can perform each service best and at least cost. In many cases cities have urged counties to assume activities, such as oversight of parks, zoos, civic centers and the like, not only to spread the cost more equitably, since all county residents are likely to use such facilities, but also because the county has greater ability to finance such activities.

Summary

Although the counties still carry out, in one way or another, their original functions and duties, they also have taken on a vast array of new ones. As a result, county governments in New York have had to adapt so that they can provide and finance these services for all the cities, towns and villages within their jurisdiction.

County government has been strengthened as a unit between the cities, towns and villages on the one hand and the state government on the other. The State Legislature and the people of the state have made it possible, through the Constitution and statutes, for the counties to restructure themselves, if they choose, to provide the executive and administrative leadership, the administrative organization and the operational procedures required meeting new demands.

In urban areas, the counties are now major providers of services, and it appears likely that county government will continue to assume new responsibilities.

Chapter Endnotes

24. Comptroller's Special Report on Municipal Affairs for Local Fiscal Year Ended in 2003.

25. Counties may replace the elective position of coroner with the appointive position of medical examiner.

26. See Alternative County Government Law.

CHAPTER VI

City Government

Each of New York State's 62 cities is a unique governmental entity with its own special charter. Two — New York and Albany — have charters of colonial origin, and the other 60 were chartered separately by the State Legislature.

Although home rule was a hard-won prize for the cities of New York State, they now have substantial home rule powers, including authority to change their charters and to adopt new charters by local action. New York State contains all of the major forms of city government: council-manager, strong mayor-council, weak mayor-council and commission.

New York City was originally established as a consolidated "regional" government and is now the core of a vast metropolitan region that sprawls over large areas of Connecticut and New Jersey as well as New York. In response to swift-moving social and economic changes the government of New York City has undergone important changes in both structure and allocations of authority.

When the Dutch West India Company granted what roughly amounted to a charter to New Amsterdam in 1653, it established the first city organization in the future state. New Amsterdam operated as an arm of a "higher government." The provincial governor — Peter Stuyvesant, at the time — appointed local officials. These magistrates were then granted the power to choose their successors. However, Stuyvesant reserved the right to promulgate ordinances.

The charters granted to New York City and Albany by English Governor Thomas Dongan in 1686 gave these cities more privileges and authority which they could exercise independently of the colonial government.

The first State Constitution, adopted in 1777, recognized the existing charters of New York and Albany and authorized the Legislature "…to arrange for the organization of cities and incorporated villages and to limit their power of taxation, assessment, borrowing and involvement in debt." Since that time separate special legislative acts have been necessary to establish each new city, although later developments permitted cities to replace or amend their charters by local action.

By 1834, six new cities had been chartered along the state's principal trading route, the Hudson-Mohawk arterial between New York City and Buffalo. These new cities were Brooklyn, Buffalo, Hudson, Rochester, Schenectady and Troy. Thirty-two more cities were created between 1834 and 1899, as thousands of immigrants were attracted to the state. The most recently chartered city in New York is the City of Rye, which came into being in 1942.

What is a City?

Historically, the need to provide services for population centers prompted the creation of cities. Beyond that common factor, it is difficult to ascertain common purposes or to generalize about their structures, charters granted to cities in New York differ widely.

No general law provides authority for the incorporation of cities; there is no statutory minimum size, either in population or geographical area, which must be met for an area to become a city. Furthermore, there is no concept of progression from village to city status. The primary difference between a city and a village is that the organization and powers of cities is set out in their own charters, while most villages are organized and governed pursuant to provisions of the Village Law. Also, unlike a city, a village is part of a town, and its residents pay town taxes and receive town services.

The Legislature may incorporate any community of any size as a city. In fact, most of the state's 62 cities have populations smaller than the population of the largest village, whereas over 150 of the state's 556 villages have populations greater than that of the smallest city.

As a practical matter, the State Legislature does not create cities without clear evidence from a local commu-

nity that its people desire incorporation. This evidence ordinarily is a locally drafted charter submitted to the Legislature for enactment and a home rule message from local governments that would be impacted by the incorporation.

Home Rule and the Cities — Historical Development

Historically, the Legislature enacted a charter to meet the specific needs of a center of population. As these centers grew, expanded and experienced changing needs, these charters were amended by special acts of the Legislature. Later on, cities gained the authority to revise and adopt new charters without the approval of the State Legislature. As a result, there is little uniformity in city charters throughout the state, as each city has, by trial and error, determined for itself what it believes to be the most effective form of government.

New York cities, as instrumentalities created individually by the Legislature, struggled long and hard for greater authority to manage their own affairs as they saw fit. Not until the late 1800's did the Legislature begin to legislate for cities generally rather than passing specific laws on individual local matters.

In 1848, the State Constitution was amended to ensure the integrity of elections of local officials. Prior to this time, there had been continual battles between the State and the cities of New York and Brooklyn over state-imposed changes of local officials who had been elected by city voters. The state would regularly move in and appoint local officials, thereby nullifying local elections. After 1848 the state could no longer do this, and in 1854 the mayor of New York City demanded, and at last received, authority to appoint agency heads.

Despite such changes, however, cities often were subjected to legislative intervention. In 1857, for example, the Legislature created a new police force in New York City and Brooklyn because of allegations of police corruption. Nine years later the state temporarily took over New York City's health and excise departments, despite a court battle by the mayor.

Municipal home rule was a major issue at the Constitutional Convention of 1894. The Constitution of 1894, as amended in Article 12, section 2, divided cities into three classes by population: First Class — 250,000 or over; Second Class — 50,000 to 250,000; and Third Class — under 50,000. This classification was intended to provide a scheme whereby the Legislature could legislate for municipalities by passing general laws and still meet the particular problems of each type of city. It was actually a compromise between those favoring regulation of particular city affairs through special laws, and those favoring the covering of all communities in one general scheme of regulations. In addition, provision was made to require that any law not applicable to all the cities in a class had to be submitted for approval to the mayors of the cities affected by it. If the mayors disapproved, the law was returned to the Legislature for reconsideration. In practice, however, mayoral vetoes seldom were overridden. In 1907 a Constitutional amendment altered the classification of cities so that all cities with a population over 175, 000 became First Class; this, of course, narrowed the population range of Second Class cities.

Over the years, the Legislature has enacted a number of major general laws affecting cities. The General Municipal Law enacted in 1892, covered cities as well as other forms of local government. The General City Law of 1909 applied specifically to cities. It granted certain powers to cities generally, and at the same time regulated their administration. In 1913 the General City Law was amended to grant to each city the power "…to regulate, manage, and control its property and local affairs…" as well as "…the rights, privileges and jurisdiction necessary and proper for carrying such power into execution."[27]

The General City Law also granted specific powers in a number of areas, such as construction and maintenance of public works, expenditure of public funds, provision of pensions for public employees and, by an amendment in 1917, zoning. This legislation, which is still in effect, authorizes cities to implement these powers by enacting ordinances. Since the enactment of the Municipal Home Rule Law in 1964, all of these powers may also be exercised by local law.

Home Rule and the Cities — In the 1900's

Attempts by the State Legislature to address the question of city government structure included the Second Class Cities Law of 1906 and the Optional City Government Law of 1914. The Second Class Cities Law, which in effect provided a uniform charter for cities of the second class, is still operative for cities that were cities of the second class on December 31, 1923.

The way was opened in 1923 for cities to establish by local charter the form of government they wished, for in that year the voters approved a Home Rule Amendment to the Constitution and the Legislature enacted a City Home Rule Law. These actions spelled out the power of cities to amend their charters or adopt new charters by local law, without going to the Legislature. Under the

Home Rule Amendment cities also were empowered to enact local laws dealing with their "property, affairs or government" as long as these laws were not inconsistent with the Constitution or general laws of the state. The Legislature was specifically prohibited from legislating on these matters, except through general laws affecting all cities alike. The tripartite constitutional classification of cities was abolished, except as it applied to the second class cities then in existence. The provisions of the City Home Rule Law were incorporated without substantial changes into the present Municipal Home Rule Law when it was enacted in 1964.

Abolition of the classification of cities in the 1923 constitutional amendment raised questions concerning the terms first, second and third class cities, which in some cases still exist. Since 1894 many statutes have referred to one or more of these designated classes of cities. Although most of these laws have been amended, revised or repealed, some are still in effect and statutes using these terms of classification have been enacted since 1923. Although it has been generally agreed that these statutes are constitutional, the problem arises as to how to interpret the classifications in the absence of a constitutional definition. References to classes of cities occurring in statutes passed prior to January 1924 are interpreted under the assumption that the statute effectively incorporated the constitutional classification which was in effect on the effective date of the statute. With respect to laws passed after 1924, the approach to interpretation is less clear. Often it is assumed that each class means what it had come to mean through prior usage.

The Forms of City Government

A city's charter forms the legal basis for the operation of the city. The charter enumerates the basic authority of the city to govern, establishes the form of government, and sets up the legislative, executive and judicial branches of city government.

Each city has enacted and amended various ordinances and local laws over time, and has often codified these enactments into a code of ordinances and/or local laws. Together, the charter and code prescribe the method and extent to which a city carries out its legal powers and duties.

Because all cities have separate charters granted by the State Legislature, and all now have the power to revise their charters by local action, it is difficult to describe a common city structure. All cities have elected councils, but elections are by wards, at large, or a combination of the two. Most cities have mayors; some mayors are elected at large by the voters, while others are selected by the council. Otherwise, city government in New York exhibits a variety of forms. In general, city government falls into four broad categories:

- council-manager, under which an appointed professional manager is the administrative head of the city, the council is the policymaking body and the mayor, if the position exists, is mainly a ceremonial figure. The manager usually has the power to appoint and remove department heads and to prepare the budget, but does not have veto power over council actions;
- strong mayor-council, under which an elective mayor is the chief executive and administrative head of the city, and the council is the policy making body. The mayor usually has the power to appoint and remove agency heads, with or without council confirmation; to prepare the budget; and to exercise broad veto powers over council actions. This form sometimes includes a professional administrator appointed by the mayor and is then called the "mayor-administrator plan;"
- weak mayor-council, under which the mayor is mainly a ceremonial figure. The council is not only the policy making body, it also provides a committee form of administrative leadership. It appoints and removes agency heads and prepares budgets. There is generally no mayoral veto power; and
- commission, under which commissioners are elected by the voters to administer the individual departments of the city government and together form the policy making body. In some cases one of the commissioners assumes the ceremonial duties of a mayor, on a rotating basis. This plan sometimes includes a professional manager or administrator.

All of these types of city government are found in New York State. Thirteen of the 62 cities have council-manager arrangements; three utilize the commission plan, one of which also has a city manager. The remaining 46 cities have the mayor-council form, three of which also have a city administrator; their governments are located at various points along a continuum between strong mayor and weak mayor. Within each group there are many hybrids. See Table 9 for a listing of cities, their 2006 populations and their forms of government.

No new weak mayor-council or commission forms of city government have been adopted in recent years, although two cities with the council-manager form have

switched to the mayor-council form. At present, the strong mayor-council form is the most popular form of city government in New York.

TABLE 9

Form of City Government

City*	Population Estimates July 1, 2006*	Rank*	Form of Government**	Council Members**
Albany	93,963	6	Mayor-Council	16
Amsterdam	17,758	34	Mayor-Council	5
Auburn	27,766	24	Mayor-Council-Manager	4
Batavia	15,473	36	Council-Manager	9
Beacon	14,908	41	Mayor-Council-Administrator	6
Binghamton	45,217	14	Mayor-Council	9
Buffalo	276,059	2	Mayor-Council	9
Canandaigua	11,317	49	Mayor-Council-Manager	8
Cohoes	15,011	40	Mayor-Council	6
Corning	10,478	51	Mayor-Council-Manager	7
Cortland	18,423	32	Mayor-Council	8
Dunkirk	12,299	46	Mayor-Council	5
Elmira	29,567	21	Mayor-Council-Manager	5
Fulton	11,459	47	Mayor-Council	6
Geneva	13,366	44	Mayor-Council-Manager	8
Glen Cove	26,438	26	Mayor-Council	6
Glens Falls	14,078	43	Mayor-Council	6
Gloversville	15,175	37	Mayor-Council	7
Hornell	8,705	54	Mayor-Council	10
Hudson	6,985	58	Mayor-Council	11
Ithaca	29,829	20	Mayor-Council	10
Jamestown	29,918	19	Mayor-Council	9
Johnstown	8,502	55	Mayor-Council	5
Kingston	22,828	29	Mayor-Council	10
Lackawanna	17,926	33	Mayor-Council	5
Little Falls	4,980	60	Mayor-Council	8
Lockport	21,035	30	Mayor-Council	6
Long Beach	35,111	15	Council-Manager	5
Mechanicville	4,923	61	Mayor-Commission	6
Middletown	26,005	27	Mayor-Council	9
Mount Vernon	68,395	8	Mayor-Council	5
New Rochelle	73,446	7	Mayor-Council	6
New York	8,214,426	1	Mayor-Council	51
Newburgh	28,345	23	Mayor-Council-Manager	4
Niagara Falls	52,326	12	Mayor-Council-Administrator	5
North Tonawanda	31,770	17	Mayor-Council	5
Norwich	7,203	57	Mayor-Council	6
Ogdensburg	11,346	48	Mayor-Council-Manager	6
Olean	14,584	42	Mayor-Council	7
Oneida	10,935	50	Mayor-Council	6
Oneonta	13,238	45	Mayor-Council	7
Oswego	17,638	35	Mayor-Council	7

TABLE 9
Form of City Government
(*Continued*)

City*	Population Estimates July 1, 2006*	Rank*	Form of Government**	Council Members**
Peekskill	24,601	28	Mayor-Council-Manager	6
Plattsburgh	19,298	31	Mayor-Council	6
Port Jervis	9,160	53	Mayor-Council	9
Poughkeepsie	30,050	18	Mayor-Council-Administrator	8
Rensselaer	7,812	56	Mayor-Council	10
Rochester	208,123	3	Mayor-Council	9
Rome	34,220	16	Mayor-Council	7
Rye	15,109	38	Mayor-Council-Manager	6
Salamanca	5,762	59	Mayor-Council	5
Saratoga Springs	28,499	22	Mayor-Commission	4
Schenectady	61,560	9	Mayor-Council	7
Sherrill	3,151	62	Mayor-Commission-Manager	4
Syracuse	140,658	5	Mayor-Council	10
Tonawanda	15,107	39	Mayor-Council	5
Troy	47,952	13	Mayor-Council	9
Utica	59,082	10	Mayor-Council	10
Watertown	26,712	25	Mayor-Council-Manager	4
Watervliet	9,802	52	Mayor-Council-Manager	2
White Plains	57,081	11	Mayor-Council	6
Yonkers	197,852	4	Mayor-Council	7

* Table 5: Annual Estimates of the Population for Minor Civil Divisions in New York, Listed Alphabetically Within County: April 1, 2000 to July 1, 2006 (SUB-EST2006-05-36) Source: Population Division, U.S. Census Bureau. Release Date: June 28, 2007.

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The comparatively greater frequency of the mayor-council form among New York cities can likely be attributed to both historic and socio-economic factors. The council-manager form occurs more frequently in younger cities of a more homogeneous composition found in the Midwest and the Far West. New York cities tend to be older than those in other parts of the country and tend to have more heterogeneous populations. In such cities the mayor-council form, especially with a strong mayor, has been more prevalent.

Contents of City Charters

Although cities have the home rule power to revise their charters and adopt new charters, this authority is not unlimited, and must be exercised in accordance with the State Constitution and the Legislature's grant of local law powers to cities. Cities act by local law, which includes adopting and amending charters that are not inconsistent with the State Constitution and are not inconsistent with any general law of the State. A city may act in the interest of good government, its management and business, the protection of its property, and the health, safety and welfare of its inhabitants.

Generally, city charters address the following topics:

- Name of the city
- Boundaries
- Wards, districts, or other civil subdivisions
- Corporate powers
- Fiscal year
- Legislative body, e.g., City Council, Common Council, Board of Aldermen
  - Legislative powers
  - Composition
  - Meetings
  - Rules of procedure
- Chief Executive
  - Mayor
    - Veto power/legislative override Power of appointment

City Manager
Corporation Counsel or City Attorney
City Clerk
Departments, offices, agencies and commissions
Budget — financial procedures
Tax administration

Decentralization and Urban Problems

Today New York State has 62 cities, ranging in population from 3,151 to over 8,000,000. Thirty cities have a population of more than 20,000, including 12 with more than 50,000. Their geographic areas range from 0.9 to 303.7 square miles.

The problems of the large cities in the state reflect many complex elements of social change, but population changes are often seen as both cause and effect. All of the state's large cities experienced rapid growth between 1900 and 1930. In those 30 years the populations of the six largest cities increased 98 percent — from 4,202,530 to 8,303,038 — an increase from 58 percent to 66 percent of the state's total population. This surge in population was accompanied by a corresponding development in city facilities and services. The vast New York City Transit System was built, for example, and all cities built schools, roads, libraries, sewers, water systems, parks and a great array of other facilities to accommodate the needs and demands of their burgeoning populations.

This rapid growth tapered off during the depression decade between 1930 and 1940, and came to a halt in the 30 years from 1940 to 1970. In the period from 1970 to 1999 most cities experienced a population decline, and census estimates indicate that this trend has continued through the 2000's. The population of New York City dropped nearly 11 percent during the period from 1970 to 1980, but had recovered nearly half this loss by 1996. During the same period, the collective population of the next five largest cities (Yonkers, Syracuse, Rochester, Buffalo, Albany) declined by nearly 23 percent. With the exception of Yonkers, these cities have continued to lose population through 2006.

The stabilization and subsequent decrease of population in the central cities has been accompanied by growth in the surrounding suburban communities. Following closely on the heels of this residential shift to the suburbs has been a decentralization of commerce and industry. Economic considerations have prompted businesses to turn to the suburbs in search of more and cheaper space for expansion. The cost savings, coupled with the shift of the labor supply, have made it increasingly more attractive for industry to locate outside the central cities.

A transformation has occurred over the years in the characteristics of urban populations. City populations generally include a comparatively large proportion of immigrants, persons of lower incomes and persons in the youngest and oldest age groups (under 5 and over 65), all of whom present city governments with new and special challenges.

Cities in New York are faced with a gamut of urban problems — physical blight, infrastructure deterioration, substandard housing, unemployment, crime and environmental pollution. Due to the comparatively greater age of New York's cities, however, these problems, particularly the physical problems, are often more severe than elsewhere.

New York City

Although New York City is the oldest city in the country's 13 original states, its present city government is just over a century old. The city was assembled from a number of other counties, cities, towns and villages by the State Legislature, after a more than 30-year effort by advocates of consolidation. The result of this governmental reorganization was the creation of five boroughs coterminous with county boundaries and the assembling of all five into the City of New York.

The present City of New York, the land area of which has remained basically unchanged since its consolidation in 1898, covers more than 303 square miles. Its population of over eight million is greater than that of 39 of the 50 states.

New York has been the most populous city in the United States since 1810. It currently has almost as many residents as the combined population of the next three most populous cities in the country. The city's 2006 population was estimated at 8,214,426.

The 42 percent of New York State's citizens who reside in New York City live in the only consolidated major local government in the state. There are five counties but no county governments. The area of the city contains no villages, no towns and no sub-city self-governing units.

In addition to the mayor, a comptroller and a public advocate are elected citywide. The council is composed of the public advocate and 51 council members, each of whom represents a council district.

In recent years, New York City has experimented with various forms of decentralization to meet a rising tide of objections from city residents that the government had

become too remote and inaccessible. The most significant decentralization development has been the creation of 59 community boards.

The Mayor. The mayor serves as the chief executive officer of the city, and with the assistance of four deputy mayors, presides over many departments, offices, commissions and boards. The mayor may create, modify or abolish bureaus, divisions or positions within the city government. The mayor, who may be elected to serve a maximum of two four-year terms, is responsible for the budget and appoints and removes the heads of city agencies and other non-elected officials.

The Comptroller. The comptroller, who may be elected to serve a maximum of two four-year terms, serves as the chief fiscal officer of the city. The Comptroller advises the mayor, City Council and public of the city's financial condition, and makes recommendations on city programs and operations, fiscal policies, and financial transactions. The Comptroller also audits and examines all matters relating to the finances of the city, registers proposed contracts, verifies budget authorizations and codes for contracts, determines credit needs, terms and conditions, prepares warrants for payment, issues and sells city obligations, is responsible for a post-audit, and is an ex officio member of numerous boards and commissions, most notably the board of estimate. The comptroller may investigate any financial matter, administer sinking funds, keep accounts and publish reports. The Governor may remove the comptroller, but only on charges, after a hearing.

The Public Advocate. The public advocate is elected to a four-year term to represent the consumers of city services, in addition to presiding over meetings of the City Council. The public advocate may sponsor local legislation, is an ex officio member of all council committees, and may participate in council discussions but may not vote unless there is a tie. The public advocate reviews and investigates complaints about city services, assesses whether agencies are responsive to the public, recommends improvements in agency programs and complaint handling procedures, and serves as an ombudsman for people who are having trouble obtaining the service they need from city agencies.

The Council. The City Council is the city's legislative body. It has the power to enact local laws, including amendments to the city charter and the administrative code, originate home rule messages, and adopt capital and expense budgets. Members, who represent districts, are elected to terms of four years. In addition to its legislative role and oversight powers over city agencies, the Council approves the city's budget and has decision-making powers over land use issues.

The Borough Presidents. The five borough presidents, who are the executive officials of each borough, are also elected to four-year terms. The borough presidents' chief responsibilities involve working with the Mayor to prepare the executive budget and propose borough budget priorities directly to the Council, review and comment on major land use decisions and propose sites for City facilities within their boroughs, monitor and modify the delivery of City services within their boroughs, and engage in strategic planning for their boroughs.

Borough Board. Each borough has a Borough Board consisting of the Borough President, the district council members from the borough, and the chairperson of each community board in the borough.

Community Boards. The 59 community boards play an advisory role in zoning, other land use issues, community planning, the city budget process, and coordinating municipal services. Each board comprises up to 50 unsalaried members appointed by the borough president in consultation with the City Council members who represent any part of the board district.

The Metropolitan Transportation Authority. One of the most important governmental agencies in the New York City area is the Metropolitan Transportation Authority (MTA). This agency was established by the State Legislature to provide mass transportation services within and to the City of New York, including the subway and all public bus systems, as well as the commuter systems of the Long Island Rail Road, Long Island Bus and the Metro-North Railroad. The Metropolitan Transportation Authority is also responsible for several bridges and tunnels. The Governor, with Senate advice, appoints the MTA Board which consists of a Chairman, Chief Executive Officer and 18 other members.

New York Metropolitan Transportation Council. The council is the official metropolitan planning organization for the New York metropolitan area, composed of elected officials, and transportation and environmental agencies.

The council is composed of nine members representing the principal jurisdictions involved in transportation planning in the downstate area: the county executives of Nassau, Putnam, Rockland, Suffolk and Westchester counties; the chairman of the New York City Planning Commission and the commissioner of the New York City Department of Transportation; the chairman of the Met-

ropolitan Transportation Authority; and the commissioner of the New York State Department of Transportation (the permanent co-chairperson of the council). The advisory (nonvoting) members include representatives of the Port Authority of New York and New Jersey, the U.S. Department of Transportation's Federal Highway Administration and Federal Transportation Administration, the U.S. Environmental Protection Agency and the NYS Department of Environmental Conservation. The chair is shared by the NYS transportation commissioner and one other council member elected annually.

The council coordinates transportation planning in the metropolitan area, prepares travel-related forecasts for personal transportation, serves as a cooperative forum for regional transportation issues, and collects, analyzes and interprets travel-related data. Major projects include the five-year Transportation Improvement Program and a long-range transportation plan for the region.

Chapter Endnote

27. General City Law §19, added by Chapter 247 of the Laws of 1913.

CHAPTER VII

Town Government

Town government in New York can be traced to both New England and Dutch colonial government arrangements in the Hudson Valley. The state's towns encompass all territory within the state, except territory within cities and Indian reservations. In size, towns are the most diverse of all the units of local government.

Towns existed independently in the colonial period. When New York became a state, towns were generally regarded as creations of the State Legislature that existed to serve state purposes. Town governments now, however, have long been recognized as primary units of local government. They possess authority to provide virtually the full complement of municipal services. By statutory and constitutional adjustments, towns are flexible units that can function as rural or as highly urbanized general purpose units of government, depending on local needs.

Everyone in New York who lives outside a city or an Indian reservation lives in a town. There are more towns in New York than there are cities and villages combined.

In New York, "town government" includes both the Town of Hempstead, with a 2005 estimated population of 751,276, more than twice that of the City of Buffalo, and taxable real property of over $87 billion, and the Town of Red House, Cattaraugus County, with 37 residents and a taxable real property of $81 million. Between these two extremes are 930 other towns, some of which provide to their residents a great number of municipal services, while others do little more than maintain a few rural roads.

The Beginnings of Town Government

Town government in New York has both Dutch and English roots, with even earlier antecedents in the Germanic tribes — the English word "town" is derived from the Teutonic "tun," meaning an enclosure.

The Dutch communities established in the Hudson Valley in the early seventeenth century were easily integrated with the strong, tightly knit version of town government that was brought a few years later by immigrants from Massachusetts and Connecticut to the eastern shores of Long Island. In 1664, Charles II claimed the territory between the Connecticut and the Delaware rivers by right of discovery and conveyed it to the Duke of York. His agent, Colonel Nicolls, armed with a commission as Governor, appeared with a fleet off the shore of New Amsterdam, and the Dutch quickly capitulated.

Immediately after they established British sovereignty in New York in 1664, the English began to more fully develop the patterns of local government. Issued in 1665, the Code of Laws, known as the "Duke's Laws," confirmed the boundaries of 17 existing towns and provided for basic organization of the town governments. These laws gave freeholders the right to vote and provided for a town meeting system resembling that still used in New England.

Town government continued to develop throughout the remainder of the Seventeenth and into the Eighteenth Century. A town court system grew up. Provision was made for a chief fiscal officer, known as a town treasurer, a forerunner of the present supervisor. In 1683, the first general property tax was imposed. In 1703, provision was made for a system of highways.

The State Constitution of 1777 recognized the existence of 14 counties and some towns. The Constitution provided that "it shall be in the power of the State Legislatures of this State for the advantages and conveniences of the good people to divide the same into such other and further counties and districts as it may then appear necessary." Between 1788 and 1801, the Legislature was especially active in dividing counties into towns. However, the form of town government remained essentially the same as it had been under British rule.

In the early decades of the Nineteenth Century, town government began to assume a more modern form. In the Ninth Edition of the Revised Statutes of New York, laws affecting towns were segregated in Chapter 20 of

the General Laws. This chapter was the immediate predecessor of the Town Law. The title "Town Law" appears to have been used first in its modern sense when laws affecting towns were recodified by Chapter 569 of the Laws of 1890 and made applicable to most towns with certain exceptions. In 1909, another recodification grouped statutes applicable to towns into Chapter 62 of the Consolidated Laws.

Despite these recodifications, the Town Law still contained general statutes and special acts which duplicated each other. In 1927, a Joint Legislative Committee set about to recodify the Town Law once again. The result was the present Town Law, which is Chapter 634 of the Laws of 1932.

Characteristics of Towns

Geography

Towns and cities encompass all the lands within the state, except Indian reservations, which enjoy special legal status. The 932 towns in the state vary greatly in size, ranging from the Town of Webb in Herkimer County (which is larger than 11 counties and covers 451.2 square miles) to the Town of Green Island in Albany County (which covers only 0.7 of a square mile).

Towns are not distributed equally among the counties. Nassau County, with a population of 1, 334,544 in 2000, being the second most populous county outside New York City, has only three towns, while Cattaraugus County, with a population of 83,955 (less than one-fifteenth of Nassau County's population), contains 32 towns.

Legal Status

Courts have determined that towns are true municipal corporations. Previously the courts had ruled that towns were: "…involuntary subdivisions of the state, constituted for the purpose of the more convenient exercise of governmental functions by the state for the benefit of all its citizens" (*Short* v. *Town of Orange*, 175 A. D. 260, 161 N.Y.S. 466 (1916)). The Town Law definition now confirms that towns are municipal corporations:

> "A town is a municipal corporation comprising the inhabitants within its boundaries, and formed with the purpose of exercising such powers and discharging such duties of local government and administration of public affairs as have been, or, maybe conferred or imposed upon it by law." (section 2, Town Law)

Towns were finally granted full membership in the local government partnership when, in1964, they were constitutionally granted home rule powers (see Chapter IV).

Development — Rural to Suburban

Physical development came to towns before they emerged as municipal corporations. Indeed, the pressing needs arising from physical development gave impetus to their legal development. For many years towns provided only basic government functions, such as organizing and supervising elections, administering judicial functions, and constructing and maintaining highways. In carrying out these governmental functions, towns served their own needs while also carrying out the state's purposes. The elective machinery took care of maintaining local political organizations as well as giving town officials contact with, and an element of control or influence in, county, state and federal political organizations. The local judicial function, in conjunction with the police function of county sheriffs and state police or military agencies, gave the people of the towns security. Control of highways assured residents of rural towns that they would maintain contact with their neighbors and distant urban centers, and that they would be able to market their crops.

Even in rural areas, however, the increasing population and its clustering into hamlets gave rise to needs for services not available at the town level. Towns required all-weather roads to assure year-round access to shops, sidewalks to protect pedestrians, public water to protect public health, sewers to carry waste away, and police to protect growing populations and increasingly valuable property.

The flight of city dwellers to the suburbs, which began as early as the second decade of the twentieth century, resulted in a continuous, almost geometric growth in town population. From 1950 to 1990, the population living in towns in New York State increased by 110 percent, while the population of cities decreased by 20 percent (excluding New York City). While the past two decades have seen a significant slowdown in this shift, an increasing proportion of the total outward migration during this time period has settled in more rural (as opposed to suburban) towns. New town-dwellers, whether suburban or rural, have demanded many of the services they had been accustomed to in the cities — water, sewage disposal, refuse collection, street lighting, recreational facilities and many more. Since suburban development in many cases was formless and without identifiable business centers, village incorporation often proved problematic. The suburban challenge has fallen upon town government, a challenge to develop services where needed without losing the traditional role as the most local of local governments.

Government Organization

Classification of Towns

The Town Law divides towns into two classes based on population. All towns of 10,000 or over in population as shown by the latest federal decennial census, with the exception of towns in Suffolk and Broome Counties and the towns of Ulster and Potsdam, are by statute towns of the first class. All towns in Westchester County, regardless of population, are towns of the first class.

In addition, any town may become a town of the first class by action of the town board, subject to a permissive referendum, if it:

- has a population of 5, 000 or more, as shown in any federal census (not necessarily decennial);
- has an assessed valuation over $10 million; or
- adjoins a city having a population of 300,000 or more.

All towns which are not first class towns are towns of the second class. Under the Town Law, there are organizational differences between first class and second class towns. The elected officers of a first class town are its supervisor, four council persons (unless increased to six or decreased to two as provided by the Town Law), town clerk, two town justices, a highway superintendent, and a receiver of taxes and assessments. Voters in second class towns, on the other hand, elect the supervisor, two council persons, two justices of the peace, a town clerk, a highway superintendent, three assessors and a collector.

In 1962, the Legislature created the additional classification of "Suburban Town." Suburban Towns must be towns of the first class, and must:

- have a population of at least 25,000; or
- have a population of at least 7,500, be within 15 miles of a city having at least 100,000 population, and have shown specified growth in population between the 1940 and 1960 decennial censuses.

Provided a town meets the above criteria, it may become a Suburban Town at the option of the town board, subject to permissive referendum.

When the classes of towns were originally authorized, there was a fairly clear-cut differentiation between the powers allotted to the different classes. As town powers were broadened, differences in powers among classes became less clear. For example, the Constitutional Home Rule Amendment in 1964 granted to all towns the local law powers formerly possessed only by Suburban Towns. Even organizational differences have become less sharply defined over time. For example, legislation enacted in 1976 granted all towns the authority to create and/or abolish elective as well as appointive offices and to restructure the administrative agencies of town government by local law. Formerly, only Suburban Towns had specific authority to departmentalize town government operations. For all intents and purposes, all towns, regardless of their statutory classification, possess roughly equivalent legal powers.

Legislative Leadership

The legislative body of the town is the town board. Historically, the town board consisted of the supervisor and the town justices of the peace. The dual status of justices of the peace (now designated as town justices) as judicial and legislative officers has always concerned students of government, but this was accepted in rural towns because it was less expensive than separate offices. When classification of towns was introduced, the judiciary was completely separated from the legislative branch in towns of the first class.

In 1971, the Town Law was amended to allow town boards in towns of the second class to exercise the option of removing town justices from the town board and electing two additional town councilpersons. In 1976, the Legislature amended the Town Law once again, separating the legislative and judicial functions in all town governments by removing town justices from town boards.

One of the distinguishing features of town government organization is the lack of a strong executive branch. Virtually all of a town's discretionary authority rests with the town board. What little executive power the supervisor has is granted by specific statute or by the town board. The town board, therefore, exercises both legislative and executive functions. This situation is not very different from the basic form of government prescribed by state law for counties, cities and villages. What is different, however, is that until recently, towns did not possess the same degree of home rule powers granted to the other units of government to change the basic prescribed forms of government.

It was not until 1964 that home rule was extended to towns. It had previously been extended to villages with a population in excess of 5,000 and to counties and cities. While the extension of home rule powers to towns was a step forward in the evolution of towns to the status of full-fledged municipal corporations, towns were still generally bound by a much greater number of specific statutory directives than were counties, cities and villages.

Many of these directives fell within the constitutional definition of "general law," which could not be superseded by exercising home rule power. In this respect towns suffered in comparison to counties, cities and villages, each of which possessed extensive grants of authority to adopt a structure of government through the home rule process suitable to their individual needs. In 1976, the Legislature remedied the situation by authorizing towns to supersede certain provisions of the Town Law relating to the property, affairs or government of the town, notwithstanding the fact that they are "general laws" as defined by the Constitution. This grant of powers can be viewed as a major expansion of home rule powers for towns, for it equipped them with powers similar to those enjoyed by other units of local government.

Executive Leadership

Supervisor. The Town Law does not provide for a separate executive branch of town government. Because the supervisor occupies the leader's position on the town board, and because town residents often turn to the supervisor with their problems, many people think the supervisor's position is the executive position of town government. But the supervisor is part of the legislative branch and acts as a member and presiding officer of the town board. He or she acts as a full member of the board, voting on all questions and having no additional tie-breaking or veto power.

The supervisor is more of an administrator than an executive. The supervisor's duties under law are to: act as treasurer and have care and custody of monies belonging to the town; disburse monies; keep an accurate and complete account of all monies; make reports as required; pay fixed salaries and other claims; and lease, sell, and convey properties of the town, when so directed by the town board.

The basic source of the supervisor's power lies in the position's traditional political leadership and the holder's ability to use this leadership. Familiarity with day-to-day problems of the town often enables the supervisor to influence the policy decisions of the town board.

In 1938, provision was made in the Town Law for a town manager form of government, which would have made possible a greater executive coordination of town functions. The idea did not catch on at that time, and the provisions were repealed in 1957. In 1972, however, the State Legislature enacted special legislation authorizing the Town of Fallsburg to adopt a town manager plan. Then, in 1976, Article 3-B of the Town Law was enacted, once again enabling any town, by local law, to establish a town manager form of government. Since 1998, the Towns of Collins, Erwin, Mount Kisco, Putnam and Southampton have been operating under a town manager form of government.

By delegating a few more specific powers, the Suburban Town Law gives the supervisor a bit more authority. Although designated as "chief executive officer," however, the Suburban Town supervisor has no major new executive powers.

As noted earlier, the Legislature has authorized towns to adopt local laws superseding many specific provisions of the Town Law. The purpose of this legislation was to allow towns to restructure their form of government to provide for an executive or administrative branch separate and apart from the legislative branch of government. Offices such as town executive and town manager may be established and granted powers similar to those granted by counties, cities and villages to the offices of county executive or manager, city mayor or manager, and village mayor or manager.

In addition, section 10 of the Municipal Home Rule Law authorizes local governments to enact local laws relating to the powers, duties, qualifications, number, mode of selection and removal, and terms of office of their officers and employees. Where it is constitutionally permissible, some offices which are elective by statute may be made appointive by local law. Conversely, offices which are appointive by statute may be made elective by local law. Both types of local laws require public referenda. A town may also change the term of office of any of its officers by local law.

Judicial

The state's judicial system has been described in Chapter III. As was pointed out earlier, all town justices were originally members of the town board, but uneasiness over this duality of functions led to the gradual phasing out of their legislative roles. Also, to enhance the level of professionalism of local justices, state law now mandates their training. The jurisdiction of the town court system is town-wide, even extending to village territory where it is coincident with that of village courts. The cost of the town judicial system is a town-wide charge.

Operations and Services

The operational organization of towns displays the same lack of sharp definition encountered in the legislative, executive and judicial branches of town government. Although there has been de facto departmentalization by many towns, and formal departments have been created

in some instances by specific statutory authorization or by home rule enactments, there is no general provision for departmental organization.

It is useful to differentiate the town operational structure into two general categories: (1) services provided and functions performed on a town-wide basis, including services to villages; and (2) those provided to part of the town, either to the entire area of the town outside existing villages (the "TOV") or to a specific district or area of the TOV.

Town-wide Organization and Services

Towns first emerged to carry out general governmental functions as distinguished from "proprietary" functions. These general functions cover the basic town-wide services still provided by the town. The cost is imposed town-wide. Through the years some services have been added, including those which may be carried out by a town within the territory of a village, either on a cooperative basis or with the consent of the village.

Elective Processes. One of the primary functions provided by towns on a town-wide basis is the organization and supervision of elections. The individual election district is the primary element in the election machinery. Towns, in all except Monroe, Nassau and Suffolk Counties, must establish and operate all election districts outside cities. In these districts, all inspection clerks and election employees are appointed by the town board upon recommendation from the organized political parties. Party organization is also built around the election district. Party committee members, elected in each election district, form the backbone of town, county and state committees. Hence, when politicians talk about the "grassroots of the party," they are talking about town party committees. Town officers, who are both products of this party organization and its custodians, often remain closely connected to it during their political careers. These party ties tend to give town officials advantages in dealing with counties or the State. It is likely that a town's greatest strength in maintaining and promoting its place in the governmental scheme of things rests with the electoral function. This strength can be brought to bear whenever towns perceive they are about to lose power to other units of government.

Representative democracy has traditionally been achieved in almost all towns through the system of electing town board members as at-large representatives. Towns of the first class (generally, towns with a population of 10,000 or more, or those towns with a smaller population that have chosen to become towns of the first class pursuant to Town Law sections 12 and 81) usually elect a Town Supervisor and four town board members as the town legislative body, separate from other elective or appointive town offices such as clerk, justice, and assessor.

Under the current at-large system, each voter may cast a vote for each vacant seat on the board. Casting multiple votes for one candidate is prohibited. The available town board positions are filled by the candidates who receive the highest vote total; a candidate need not receive a majority of votes to assume a seat on the board.

The ward system of electing town board members is an alternative to the at-large system of election and is authorized by sections 81 and 85 of the Town Law. Unlike cities in New York, which have a mix of both at-large and ward-elected board members, only a handful of towns currently elect board members by ward. As of the year 2000, only 10 of 932 towns in New York use the ward system, and since the mid-1970's, voters have defeated its implementation whenever it has been proposed on the ballot.

A town of the first class may, upon the vote of the town board or upon a duly qualified petition, submit a proposition to the voters for establishing the ward system. If the voters approve the proposition, the county board of elections must divide the town into four wards and fix their boundaries. "So far as possible the division shall be so made that the number of voters in each ward shall be approximately equal" (Town Law section 85[1]). The ward system is deemed established only upon the date the county board of elections duly files a map "showing in detail the location of each ward and the boundaries thereof" (Town Law section 85[1]).

The boundaries of the wards are not generally known at the time of the ballot, but are fixed by the board of elections if the proposition is successful. Apart from the constitutional requirement of "one person one vote" (see, *Reynolds* v. *Sims*, 377 U.S. 533, 84 S. Ct. 1964) codified in statute by the requirement that wards contain "approximately" the same number of voters, the voter has few assurances regarding how wards will be drawn.

If the ward system is established, the terms of the sitting board members end on December 31, after the first biennial town election held at least 120 days after the ward system is established. The terms of the board members elected by ward commence January 1 following such election.

Only a town of the first class is authorized to both establish the ward system and increase the number of

board members from four to six, and such a town may submit both propositions at the same election (Op. Atty. Gen. [Inf.] 90-63; 1968 Op. Atty. Gen. [Inf.] 52;13 Op. St. Compt. 223, 1957). May a town of the second class, which is not authorized to increase the number of board members or establish the ward system, submit a proposition to the electorate to change its classification to first class at the same election it submits the other propositions? Under the authorizing sections of sections 81 and 85 of Town Law, the answer is that the electorate must first approve a change in classification to first class, with subsequent elections necessary to increase the number of board members and to establish the ward system. The Attorney General has opined, however, that a town of the second class may, by enactment of a local law, increase its number of board members and establish the ward system (Op. Atty. Gen. [Inf.] 90-63). Under the Municipal Home Rule Law (MHRL) towns, cities, counties and villages are authorized to adopt local laws not inconsistent with the Constitution or any general law, in relation to, inter alia, "the powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees" (MHRL, section 10 [1][ii][a][1], emphasis supplied). Such a local law would be subject to a mandatory referendum (MHRL, section 23[2][b], [e], [g]).

Therefore, if the voters want representation by ward they have the means to establish it.

Tax Assessment. One of the cornerstones of town government is its authority to assess, levy, collect and enforce payment of taxes. The real property tax remains the most important source of locally raised municipal revenue despite enactments of sales and use, admissions, off-track betting and income taxes. Another major portion of municipal revenue comes from intergovernmental transfers. Fundamental to the levy and collection of real property taxes is the function of property assessment. The goal of property tax assessment is to value property consistently and fairly. The practice has been to make uniform assessments at a constant percentage of full value within a municipality, and to equalize these rates among municipalities. This matter is discussed more fully in Chapter XI.

Assessing is done in towns by an assessor or board of assessors. In the past, all towns had to have a board of three assessors. Later, towns were permitted to substitute a single assessor for the board. Still later, the Assessment Improvement Act of 1970, which required training and county assistance for local assessors, also stated that each town had to provide for a single, appointed assessor unless it took positive action, by way of mandatory referendum, to retain its elected three-member board. All towns also must provide for a board of assessment review, consisting of three to five members, to hear grievances and appeals from determinations of the assessor.

The assessment roll which the town assessor prepares serves a dual, and sometimes triple, purpose. First, it is the basis for all town general taxes and county taxes levied within the town. Second, a copy of the roll must be made available to all school districts within the town and is used, unchanged as to assessments, to prepare the school district tax roll. Third, any village, wholly or partially, within the town may adopt and use the town roll for levying village taxes instead of assessing its own properties.

Levy of Taxes. The completed tax roll is forwarded to the county together with the town budget and estimates of levies required for town purposes. These amounts, and the county taxes required within the town, are levied and recorded on the tax roll prior to December 31st of each year. At this point, unpaid school taxes from the last school tax roll are also re-levied on the town tax roll.

Collection and Enforcement. In towns of the first class, the collection of taxes is carried out by a receiver of taxes and assessments, an office that may be either elective or appointive by local choice. Normally in such towns, the town receiver also collects all school taxes for school districts located wholly or partially in the town, unless the town and school district have made an agreement to the contrary. In towns of the second class, the collecting officer is the elected town tax collector. However, such towns may abolish the office of collector and, thereafter, the town clerk must collect the taxes.

General Administration. The cost of general administration of town functions, including the salaries of town officers is levied as town-wide charges even where the functions are less than town-wide in scope. For example, the salary of the town superintendent of highways and the capital cost and operation of the town highway garage are both general (town-wide) charges, even though their functions basically cover only part of the town (the portion outside villages). On the other hand, the salaries of highway employees may be either general charges or applied to only part of the town, depending on the highway item to which their time is charged.

Part-town Organization

Services for part of the town may be rendered to either all of that portion of the town outside villages (TOV), or to particular areas of the town by way of improvement districts or improvement areas.

Until recent decades, the only major service that towns were required to provide to town residents living outside villages was highway maintenance. Town government provided few services other than general government administration and basic functions, such as justice court. Lately, however, population growth in TOV areas has resulted in demands for many of the services already provided by villages. It should be noted that these functions, such as waste collection and disposal, can, and often are, provided on either a town-wide or TOV basis. The more common TOV functions include:

- Appointment of a planning board to regulate subdivisions and review site plans, and assist in developing and administering zoning;
- Adoption of zoning regulations, appointment of a building inspector or zoning enforcement officer to administer and enforce them, and appointment of a zoning board of appeals to hear appeals and grant relief in proper instances;
- Police protection, which may be provided on either town-wide or TOV basis, depending upon the availability of police protection within the villages in the town; and
- Highway construction and maintenance, which must be considered a TOV function, since it normally encompasses only town streets and highways outside villages. Since the highway function of towns predated the establishment of villages, certain highway maintenance costs are town-wide charges.

Over the years, village taxpayers' responsibility for sharing the cost of town highways has been one of the most abrasive factors in town-village relationships. Consequently, there has been a continual search for ways of reducing this friction and promoting equity in the distribution of costs. One compromise permits towns to exempt village property from assessment for the cost of acquisition and repair of highway machinery, the cost of snow removal, and several other miscellaneous items.

Fire Protection. Fire protection is not a town function, since it can only be provided in towns through the medium of districts — fire districts, fire protection districts and fire alarm districts — all of which are discussed in Chapter IX. Since most TOV areas are covered by districts, fire protection can be considered, in a sense, a TOV service.

Special Districts. Towns in the path of suburban growth were not prepared to provide needed services on a town-wide basis. Tax bases were hardly sufficient to support town-wide water or sewer systems. The need was not general enough throughout the town so as to garner voter support for such town-wide services. The expedient answer was, therefore, to create the special district. Large enough to serve the area of need and supported only by the property owners within the district, the special district required from the rest of the town only use of the town's credit to financially support its obligations and use of the town's organization to administer the services within the district. Districts have worked well and have multiplied in both number and type.

Unlike the districts discussed in Chapter IX, special districts created under the Town Law are not units of local government, but instead are administered by the town board. Town improvement districts have proliferated, with lighting, water supply, sewerage, drainage, park, public parking, and refuse and garbage districts accounting for over 95 percent of all special districts. The idea has proved so flexible and has worked so well that it has been used to meet some unusual and unique needs. Escalator districts have been formed to relieve weary commuters of their climb to elevated train stations, and dock and erosion control districts have enhanced seaside properties on Long Island.

Special districts have been established, extended and consolidated until, by the end of 2004, there were approximately 1,987 improvement districts (including fire districts) in existence — an average of more than two for each town in the state for 2004.

TABLE 10

Town Special Districts and Fire Districts by Type of District

As of December 31, 2004

Drainage	66
Fire	635
Lighting	500
Park	50
Refuse and Garbage	81
Sewer	315
Water	448
Parking	11
Other	119
TOTAL	2,225

Source: *Comptroller's Special Report on Municipal Affairs*, 1997

Most special districts can be and are established under general provisions of Articles12 and 12-A of the Town Law. Those which cannot must be created by act of the State Legislature.

Under Article 12, a petition from property owners in the area of the proposed district must specify the boundaries of the district and state the maximum permissible expenditure. For certain types of districts a map showing the boundaries of the district and the proposed improvements must accompany the petition. The petition must be signed by owners of more than one-half of the total assessed valuation of taxable property in the proposed district, including at least one-half of the *resident-owned*, taxable, assessed valuation therein. When such a petition is filed, the town board must call a public hearing on the proposal and, after consideration, approve or deny the establishment of the district. If the town board approves the establishment of a district for which the town is to incur indebtedness, it must apply to the State Comptroller for approval. The State Comptroller, after considering the application, must make an independent determination that establishment of the district will serve the public interest and that it is not an undue burden on the property or property owners who live in the district. After the State Comptroller approves the petition, the town board may adopt an order establishing the district.

Under Article 12A, a petition is not required to establish a district; the town board may, on its own motion, subject to a permissive referendum, establish a district. All other procedural steps are essentially the same as under Article 12.

With the exception of 78 older special districts which retain their separate boards of commissioners, the town board acts as the administrative body for all improvement districts in a town. Specific provisions of the Town Law authorize a town board to let contracts for the construction of district improvements, determine the manner of levying assessments to cover costs, set water and sewer rents or other service charges, and provide for the issuance of obligations to cover capital costs. Although all district costs must be levied against the properties therein, the districts have no debt-incurring powers of their own. All obligations issued on their behalf must be general obligations of the town, and are chargeable to town debt limits.

Town Improvements. As towns have continued to develop in suburban areas, the need for services on a town-wide or at least TOV basis has become more pressing. The "town improvement" is a compromise between the district approach and the provision of services as a true town function. This approach allows a town board to construct infrastructure improvements in specific areas of the town while not establishing a district with defined boundaries. First authorized only for Suburban Towns, authority for town improvements was later extended to all towns. In establishing an improvement by this method, the town board has the option of levying the capital costs against the entire TOV area, or against the benefitted areas only, or of allocating it between the two areas in any way it chooses. The cost of operating and maintaining the improvement must be levied against the entire TOV area. Thus, the town improvement procedure is simpler and more flexible than that available for creating an improvement district.

Summary

Many towns in New York are still small governments providing basic services to rural residents and they continue the pattern of town government that originated before the American Revolution. Other town governments, caught in the mass population migrations of the Twentieth Century, have had to provide services usually associated with urban living. Both kinds of town governments — and the gradations between — must deal with problems such as protecting the environment and delivering municipal services against a fiscal background of ever increasing costs. Rising costs will probably compel town government to develop new patterns of working with other governments and new ways to deliver services. Town residents and government officials, who have had to respond to similar challenges in the past, will doubtless continue town government's long tradition of responding to change.

CHAPTER VIII

Village Government

In New York State, the village is a general purpose municipal corporation formed voluntarily by the residents of an area in one or more towns to provide themselves with municipal services. But when a village is created, its area still remains a part of the town where it is located, and its residents continue to be residents and taxpayers of that town.

The first village was incorporated at the end of the eighteenth century. The village form of municipal organization became a prominent feature of the state's growing metropolitan areas between 1900 and 1940. The patterns of village organization are similar to those of cities.

Many people think of villages as being small, rural communities. Population size alone however, does not determine whether one community becomes a village and another remains as an unincorporated "hamlet" in a town. In New York State a village is a legal concept; it is a municipal corporation. The largest village in the state, Hempstead in Nassau County, had more than 56,000 residents in 2000, while the smallest city, Sherrill, had 3,147. Fifty-two of New York's 62 cities had populations in the year 2000 that were smaller than Hempstead's.

Villages were originally formed within towns to provide services for clusters of residents, first in relatively rural areas and later in suburban areas around large cities. Today, many of the existing 556 villages are in the areas surrounding the state's larger cities. Many villages have public service responsibilities that differ little from those of cities, towns, and counties, and village officials face the full range of municipal obligations and challenges.

What is a Village?

A village is often referred to as "incorporated." Legally cities, towns, villages and counties are all "incorporated." Hence, there are no "unincorporated villages" in New York State. The vernacular "incorporated village" likely came to be used because villages are areas within towns for which an additional municipal corporation has been formed.

Many places in the state having large numbers of people living in close proximity are neither villages nor cities. Many have names, some have post offices. Some, like Levittown on Long Island, have thousands of residents. If the people in such communities have not incorporated pursuant to the Village law, they do not constitute a village. While many people refer to such places as "hamlets", the term "hamlet" actually has no meaning under New York law.

By definition, a village is a municipality which, at the time of its incorporation, met statutory requirements then established as prerequisites to that incorporation. Although the Village Law now sets area and population criteria for an initial village incorporation, a number of existing villages have populations smaller than the present statutory minimum.

Historical Development

The earliest villages in the state were incorporated partly to circumvent the legal confusion about the nature and scope of town government that resulted from legislative modification of English statutes. Generally, in the decades after the Revolution, villages in New York were created because clusters of people in otherwise sparsely settled towns wanted to secure fire or police protection, or other public services. Those inhabitants receiving the fire or police service, and not the whole town, paid for such services. A forerunner of villages appears to have been a 1787 legislative act granting special privileges to part of a town, entitled "An act for the better extinguishing of fires in the town of Brooklyn."

The appearance of the village as a formal unit of local government began in the 1790's. Villages were created by special acts of State Legislature, but the starting date for this process is in dispute among historians due to a lack of precision in terminology in those early legislative acts. In 1790, the Legislature granted specific powers to the trustees of "… part of the town of Rensselaerwyck, commonly called Lansingburgh." The term "village" first

appeared in state law in a 1794 enactment incorporating Waterford. The legislative act of 1798, providing for the incorporation of Lansingburgh and Troy as villages, is seen by many historians as the first formal authorization in the state for the village form of government. This enactment included all of the legal elements (including an incorporation clause and delegation of taxing and regulatory power) deemed necessary for a true unit of local government.

First mention of the village as a constitutional civil division appeared in a section of the 1821 New York State Constitution prescribing qualifications of voters. The Constitution of 1846 required that the Legislature "provide for the organization of cities and incorporated villages." The Legislature passed a general Village Law in 1847, but continued to incorporate villages through the enactment of special charters, as it had for the previous half-century. Separate incorporation led to a variety of village government forms, even for villages of similar characteristics. In 1874, a revised State Constitution forbade incorporation of villages by special act of the State Legislature. Since that time, New York State villages have been formed through local initiative pursuant to the Village Law.

An 1897 revision of the Village Law required those villages with charters to comply with provisions of the Village Law that were not inconsistent with their charters. It also gave the charter villages the option of reincorporating under the general law. Although numerous charter villages did reincorporate, 12 villages still operate under charters. These are: Alexander, Carthage, Catskill, Cooperstown, Deposit, Fredonia, Ilion, Mohawk, Ossining, Owego, Port Chester and Waterford.

In the first 40 years of the twentieth century, as people moved from cities into the suburbs, more than 160 villages were incorporated under the Village Law. The rapid growth of towns in suburban areas in the late 1930's and following World War II emphasized the need for alternatives to villages. To provide services, suburban areas made increasing use of the town special district. This had a profound effect on the growth of villages. Although more than 160 villages were formed from 1900 to 1940, only 31 new villages have appeared over the succeeding 66 years, and 24 have dissolved during that period.

There were 556 villages in New York State in 2006. They range in size from the Village of West Hampton Dunes with a 2000 Census population of 11, to the Village of Hempstead, with a 2000 Census population of 56,554. The majority of villages have populations under 2,500, although there were 25 villages between 10,000 and 20,000 population in 2000 and 10 villages with more than 20,000 population.

Over 70 villages are located in two or more towns. There are seven villages which are in two counties. One village, Saranac Lake, lies in three towns and two counties. Five villages — Green Island in Albany County, East Rochester in Monroe County, and Scarsdale, Harrison and Mount Kisco in Westchester County — are coterminous with towns of the same name. A coterminous town-village is a unique form of local government organization. The town and village share the same boundaries and the governing body of one unit of the coterminous government may serve as the governing body of the other unit (i.e., the mayor serves as town supervisor and trustees serve as members of the town board).

Creation and Organization

The Village Law governs the incorporation of new villages and the organization of most existing villages. The 12 remaining charter villages are subject to this law only where it does not conflict with their respective charters.

Incorporation

A territory of 500 or more inhabitants may incorporate as a village in New York State, provided that the territory is not already part of a city or village. The territory must contain no more than five square miles at the time of incorporation, although it may be larger in land area if its boundaries are made coterminous with those of a school, fire, improvement or other district, or the entire boundaries of a town.[28]

The incorporation process begins when a petition, signed by either 20 percent of the residents of the territory qualified to vote, or by the owners of more than 50 percent of the assessed value of real property in the territory, is submitted to the supervisor of the town in which all or the greatest part of the proposed village would lie. If the area lies in more than one town, copies of the petition are also presented to the supervisors of the other affected towns.

Within 20 days from the filing of the petition, the supervisor of each town affected must post and publish notices indicating that a public hearing will be held on the petition. Where the proposed village is in more than one town, the giving of notice and subsequent hearing are a joint effort of the affected towns. The purpose of the hearing is to determine only whether the petition and the proposed incorporation are in conformance with the provisions of the Village Law. Other considerations and objections to the incorporation are not at issue. This formal

hearing must be held between 20 and 30 days after the date of posting and publication of notice.

Within 10 days after the conclusion of the hearing, the supervisor of the affected town(s) must judge the legal sufficiency of the petition. If more than one town is involved, and the supervisors cannot agree on a decision, their decision is deemed to be adverse to the petition. Any decision made is subject to review by the courts. If no review is sought within 30 days, the decision of the supervisor(s) is final. If the decision is adverse to the petition, a new petition may be presented immediately. If the decision is favorable to the petition, or if the petition is sustained by the courts, a referendum is held within the proposed area no later than 40 days after the expiration of 30 days from the first occurring of either the filing of the supervisors' favorable decision or the filing of a final court order favorable to the petition. Only those residing in the proposed area of incorporation and qualified to vote in town elections may vote in the referendum.

Where the proposed area lies in one town, an affirmative majority of those voting is required in order to incorporate. Where more than one town is involved, an affirmative majority in the area proposed for incorporation in each town is required. If any required majorities are not obtained, then the question is defeated, and no new proceeding for incorporation of the same territory may be held for one year. If a majority vote(s) in favor of incorporation is obtained, and there is no court challenge, the town clerk of the town in which the original petition was filed makes a report of incorporation.

TABLE 11
Village Incorporations Since 1940

VILLAGE	COUNTY	DATE
Florida	Orange	08/05/1946
Prattsburg	Steuben	12/07/1948
Tuxedo Park	Orange	08/13/1952
Sodus Point	Wayne	12/30/1957
New Square	Rockland	11/06/1961
Atlantic Beach	Nassau	06/21/1962
Port Jefferson	Suffolk	04/09/1963
Amchir	Orange	09/09/1964
Pomona	Rockland	02/03/1967
Lake Grove	Suffolk	09/09/1968
Round Lake	Saratoga	08/07/1969
Sylvan Beach	Oneida	03/17/1971
Lansing	Tompkins	12/19/1974
Harrison	Westchester	09/09/1975
Pelham*	Westchester	06/01/1975
Kiryas Joel	Orange	03/02/1977
Rye Brook	Westchester	07/07/1982
Wesley Hills	Rockland	12/07/1982
New Hempstead	Rockland	03/21/1983
Islandia	Suffolk	04/17/1985
Cape Vincent*	Jefferson	04/15/1986
Montebello	Rockland	05/07/1986
Chestnut Ridge	Rockland	05/16/1986
West Carthage	Jefferson	07/22/1987
Pine Valley	Suffolk	03/15/1988
Kaser	Rockland	01/25/1990
Bloomfield*	Ontario	03/27/1990
Airmont	Rockland	03/28/1991
W. Hampton Dunes	Suffolk	11/19/1993
East Nassau	Rensselaer	01/14/1998
Sagaponack	Suffolk	09/27/2005
S. Blooming Grove	Orange	07/14/2006
Woodbury	Orange	08/28/2006

* Cape Vincent was created in 1853 but the proper incorporation paperwork was not filed until 1986.

* Pelham and North Pelham were consolidated into Pelham.

* Bloomfield was created by the consolidation of East Bloomfield and Holcomb.

The report is sent to the Secretary of State, the State Comptroller, the State Office of Real Property Services, the county clerk and county treasurer of each county in which the village will be located, and the town clerks of each town in which the village will be located.

Upon receipt, the Secretary of State files the report in his/her office and prepares and sends a Certificate of Incorporation to the clerks of each town in which the village is located. The village is deemed incorporated on the date the report is filed with the Secretary of State. Within five days after the filing of the Certificate of Incorporation, the clerks of each town in which the village is located jointly appoint a resident of the new village area to serve as village clerk until a successor is chosen by the village's first elected board of trustees. Election of the board and mayor is held within 60 days of the appointment of the interim village clerk, except in instances where the new village embraces the entire territory of a town. In that case the election of village officers is held at the next

regular election of town officials, occurring not less than 30 days after the filing of the certificate of village incorporation.

The Legislative Body

The legislative body of a village — the board of trustees — is composed of the mayor and four trustees. However, the board may increase or decrease the number of trustees, subject to referendum. Trustees are elected for two-year terms unless otherwise provided by the board of trustees and subject to permissive referendum.

The village board has broad powers to govern the affairs of the village, including:

- organizing itself and providing for rules of procedure;
- adopting a budget and providing for the financing of village activities;
- abolishing or creating offices, boards, agencies, and commissions and delegating powers to these units;
- managing village properties; and
- granting final approval of appointments of all non-elected officers and employees made by the mayor.

The mayor presides over meetings of the board. A majority of the board, as fully constituted, is a quorum. No business may be transacted unless a quorum is present.

Executive Branch

The chief executive officer of most villages in New York State is the mayor. Unless otherwise provided by the board of trustees, the mayor is elected for a two-year term. In addition to his/her executive duties, the mayor presides over all meetings of the board of trustees and may vote on all questions coming before that body. The mayor must vote to break a tie. The mayor is responsible for enforcing laws within the village and for supervising the police and other officers and employees of the village. The mayor may share the law enforcement responsibility with a village attorney - who may handle prosecutions for violations of village laws, and the county district attorney - who usually handles general criminal prosecutions in the county.

At the direction of the board of trustees, the mayor may initiate civil actions on behalf of the village or may intervene in any legal action "necessary to protect the rights of the village and its inhabitants." Subject to the approval of the board of trustees, the mayor appoints all department and non-elected officers and employees. Except in villages that have a manager, the mayor acts as the budget officer. The mayor may, however, designate any other village officer to be budget officer. The budget officer serves at the mayor's pleasure.[29] The mayor ensures that all claims against the village are properly investigated, executes contracts approved by the board of trustees and issues licenses. In certain cases, when authorized by the board of trustees, the mayor may sign checks and cosign, with the clerk, orders to pay claims.

At the annual meeting of the board of trustees, the mayor appoints one of the trustees as deputy mayor. If the mayor is absent or unable to act as mayor, the deputy mayor is vested with and may perform all the duties of that office.

Village Managers or Administrators

In order to provide full-time administrative supervision and direction, some villages have created the office of village manager or administrator. The position of village manager is created by a local law, which fixes the powers of the office and the term of the incumbent. As an alternative to direct adoption of a local law establishing a village manager, a village may create a commission to prepare a local law establishing a village manager and defining the manager's duties and responsibilities. The commission must issue a report within the time set forth in the local law, which can be no later than two years after the appointment of its members.[30] While there is no mandate that the commission prepare a local law creating a village manager, if the commission does prepare such a local law, it must be placed before the voters at a referendum; the board of trustees need not approve the local law.

The village manager is usually assigned administrative functions that would otherwise be performed by the mayor. Under the Village Law, the manager may designate another village official as budget officer, to serve at the pleasure of the manager.

Sixty-seven villages in New York State had an administrator or manager in 2007; they are listed in Table 12. Some of these individuals hold more than one title and some are known as "coordinator".

TABLE 12

Villages Which Have Administrators/Managers

Akron	East Rochester	Irvington	Pelham Manor	Southampton
Alden	Ellenville	Lake Success	Pleasantville	Spencerport
Amityville	Elmsford	Lawrence	Perry	Springville
Ardsley	Fairport	Lowville	Phoenix	Sylvan Beach
Attica	Farmingdale	Mamaroneck	Port Chester	Tarrytown
Blasdell	Floral Park	Massapequa Park	Port Jefferson	Thomaston
Briarclif Manor	Fredonia	Massena	Potsdam	Valley Stream
Brockport	Garden City	Monticello	Rockville Centre	Walden
Bronxville	Great Neck Estates	Mount Kisco	Roslyn	Westbury
Buchanan	Groton	Oakfield	Rye Brook	Westfield
Croton-on-Hudson	Hamburg	Ocean Beach	Scarsdale	Williamsville
Dobbs Ferry	Hastings-on-Hudson	Old Westbury	Sea Cliff	
East Aurora	Horseheads	Ossining	Seneca Falls	
East Hampton	Huntington Bay	Pelham	South Floral Park	

SOURCE: 2007 NYCOM Directory of City & Village Officials, New York State Conference of Mayors and Municipal Officials, 2007.

Other Village Officers

The village treasurer is the chief fiscal officer of the village. The treasurer maintains custody of all village funds, issues all checks and prepares an annual report of village finances.[31]

The village clerk has responsibility for maintaining all records of the village.[32] The clerk collects all taxes and assessments, when authorized by the village board, and orders the treasurer to pay claims. The clerk is required "on demand of any person" to "produce for inspection the books, records, and papers of his/her office."[33] The clerk must keep an index of written notices of defective conditions on village streets, highways, bridges, crosswalks, culverts or sidewalks and must bring these notices to the attention of the board at the next board meeting or within 10 days after their receipt, whichever is sooner.[34]

Unless local law provides otherwise, the mayor appoints both the clerk and the treasurer with the approval of the board of trustees. Terms are established at 2 years and may be increased. In many villages, the offices of clerk and treasurer are combined and are held by a single person.

Where no village office of justice has been established, or where the office has been abolished, the functions devolve on the justices of the town or towns in which the village is located.

Organization for Service Delivery

Differences in the size of villages and in the services they perform make it difficult to describe the organization of a "typical" village. Larger villages often have multi-departmental organizations similar to cities, while small villages may employ only one or two individuals. Functions performed by villages range from basic road repair and snow removal to large-scale community development programs and public utility plants. A number of villages operate their own municipal electric systems.

Financing Village Services

Like most local governments, villages have a strong reliance on the real property tax to finance their activities. In the 2004 fiscal year the real property tax accounted for nearly 45 percent of total village revenues in New York State. The balance of the revenues comes from a variety of sources; these include user charges and other revenue from water and sewer services, electric systems, airports and marinas, as well as license and rental fees and penalties on taxes. Special activities generated about 39 percent of all village revenues in fiscal 2004. Sales tax revenues in 2004 accounted for 5 percent of total revenues for villages. State and federal aid provided 11 percent of village revenue in 2004.

State Aid and Village Finance

State aid programs that provide funds to villages are Aid Incentives for Municipalities (AIM) program, mort-

gage tax, aid for the construction and operation of sewage treatment plants and aid to youth bureaus and recreation programs. A more detailed discussion of revenue sharing and other state aid appears in Chapter XI.

The mortgage tax is a state tax is collected by counties. The allocation to towns is made according to the location of the real property covered by the mortgages upon which the tax was collected. For towns that contain a village within its limits, a portion of the town allocation is made to the village according to the proportion the assessed value of the village bears to twice the total assessed valuation of the town. While a village under this formula would receive aid even if no mortgages were registered in a village, the town may receive the greater amount of revenue, even though much of the property that yields the revenue may be within villages in the town.[35]

Village Dissolution

Just as villages are formed by local action they can be dissolved by local action. Article 19 of the Village Law provides the procedure for village officials and electors to disband their village. Since villages are formed within towns, the underlying town or towns would become fully responsible for governing the territory of the former village after it is dissolved.

The dissolution process may be commenced by the village board of trustees on its own motion or through the presentation of an appropriate petition to the board of trustees. If a proper petition is presented, the board is obligated to prepare a "dissolution plan" and to submit a proposition for dissolution to the electors. If the board seeks to initiate the dissolution process on its own motion, it may submit a proposition to dissolve the village to the electors, again in accordance with a plan for dissolution. In either case, the question must be decided by the voters of the village at an election.

The village board of trustees is responsible for preparing the dissolution plan. The village law lists 8 criteria which must be addressed in a plan. The plan must contain provisions relating to: (1) the disposition of the property of the village; (2) the payment of outstanding obligations and the levy and collection of the necessary taxes and assessments or same; (3) the transfer or elimination of public employees; (4) any agreements entered into with the town or towns in which the village is situated in order to carry out the plan for dissolution; (5) whether any local laws, ordinances or rules and regulations of the village in effect on the date of the dissolution of the village shall remain in effect for a period of time other than as provided by section 19-1910, i.e., two years; (6) the continuation of village functions or services by the town; (7) a fiscal analysis of the effect of dissolution on the village and the area of the town or towns outside the village; and (8) any other matters desirable or necessary to carry out the dissolution.

The village board of trustees must appoint a study committee to prepare a report on the dissolution of the village. The study committee must include at least two representatives, who reside outside the village boundaries, from each town or towns in which the village is situated. A copy of the report must be sent to the village board of trustees and supervisor of each town in which the village is situated. The report must address all the topics required to be included in the dissolution plan and alternatives to dissolution. The committee may also propose a plan for dissolution for consideration by the board of trustees. Prior to submitting its report, the study committee must hold at least one public hearing upon 20 days notice published in the official village and town newspapers.

The village board of trustees must also hold at least one public hearing, which must be preceded by notice provided by certified mail to the supervisors of the town(s) involved, and published at least 10 days but not more than 20 days prior to the hearing in the official newspaper of the town(s) and village. Once the board of trustees' hearing is concluded, the proposition is generally presented to the village voters at the next regular or special village election for officers held not less than 30 days after the board of trustees hearing.

The proposition to be submitted to the voters must contain the question of dissolution and, numbered separately, a plan for disposition of village property, the payment of its outstanding obligations including the levy and collection of necessary taxes and assessments and such other matters as may be necessary. Although all or any part of such plan can be made the subject of a contract between the village and the town prior to submission of the proposition, the primary objective of this plan is not to legally bind either the village or the town. Rather, it is a document that will educate and inform the resident village electors as to the consequences of their vote. By outlining an orderly program for the transfer to the town of village functions, assets and properties, and for the disposition of any outstanding debts, obligations or taxes, the plan will provide the village residents some picture – incomplete though it may be – of the tangible effects of the dissolution.

If the proposition is approved by a majority of those voting on the question, a certificate of the election must

be filed with the Secretary of State and clerks of each town and county in which any part of the village is situated. The village would then be dissolved as of the thirty-first day of December in the year following the year in which the election took place. If the proposition is defeated, no similar proposition can be submitted within two years of the date of the referendum.

TABLE 13

Village Dissolutions in New York State

Village	County	Date
Roxbury	Delaware	04/18/1900
Prattsville	Greene	03/26/1900
Rifton	Ulster	08/18/1919
Union*	Broome	1921
LaFargeville	Jefferson	04/18/1922
Brookfield***	Madison	12/31/1923
Oramel	Allegany	12/23/1925
Eastwood**	Onondaga	08/06/1926
Newfield	Tompkins	12/02/1926
Pleasant Valley	Dutchess	05/22/1926
Marlborough	Ulster	04/20/1928
Northville	Suffolk	05/16/1930
Old Forge	Herkimer	10/21/1933
Forestport	Oneida	06/18/1938
North Bangor	Franklin	03/24/1939
The Landing	Suffolk	05/25/1939
Downsville	Delaware	09/21/1950
Amchir	Orange	04/30/1968
Prattsburg	Steuben	09/22/1972
Pelham	Westchester	06/01/1975
N. Pelham	Westchester	06/01/1975
Fort Covington	Franklin	04/05/1976
Friendship	Allegany	04/04/1977
Belleville	Jefferson	04/20/1979
Rosendale	Ulster	05/23/1979
Savannah	Wayne	04/25/1979
Elizabethtown	Essex	04/23/1981
Bloomingdale	Essex	02/26/1985
Pine Hill	Ulster	09/24/1985
Woodhull	Steuben	01/13/1986
East Bloomfield	Ontario	03/27/1990
Holcomb	Ontario	03/27/1990
Pine Valley	Suffolk	04/04/1990
Ticonderoga	Essex	05/01/1992
Westport	Essex	05/29/1992
Henderson	Jefferson	05/23/1992
Schenevus	Otsego	03/29/1993
Fillmore	Allegany	01/13/1994
Mooers	Clinton	03/31/1994
Andes	Delaware	12/31/2003

* date of 1921 based on the last financial record on file at OSC; annexed into the village of Endicott, April, 22, 1964

** annexed into the city of Syracuse

*** based on referendum date

Trends

Several significant trends, issues, and problems affecting village government in New York have become apparent in the last quarter of the Twentieth Century.

Zoning

The power to zone the area of the village separately from the remainder of the town still provides an incentive for village incorporation. The 1972 recodification of the Village Law continues the authority of the board of trustees to regulate land use, lot sizes, and density of development. With certain exceptions, villages that adopt their first zoning law must establish a zoning commission to draft regulations and establish zone boundaries. They must also establish a zoning board of appeals to hear appeals from decisions made by the village official who enforces zoning regulations. A more detailed discussion of zoning and other aspects of land use regulation appears in Chapter XVI. It should be noted that the proliferation of villages in Nassau County resulted in a charter provision that grants zoning authority to towns within any territory incorporated as a village on or after January 1, 1963.

Village -Town Relations

Fiscal relations continue to be a source of contention between towns and villages. Village residents are liable for payment of taxes to the town in which their village is located, as well as to the village in which they reside. Before the advent of the automobile, village residents rarely considered this dual taxation unduly burdensome. However, the need for miles of paved town roads and the rapid growth of population in towns near the state's metropolitan areas has greatly increased expenditures for town highways and highway-related items.

The State Highway Law exempts village residents from paying the costs of repair and improvement of town highways, thus relieving them of a substantial portion of the town highway maintenance expense. Unless exempted

by the town board, however, village residents must help bear the costs of town highway equipment and snow removal on town roads. Village residents not exempted from such highway costs often feel that they are being taxed for town services they do not receive or use in addition to being taxed for the same services within their village. Villages also regard as inequitable the rent the town may charge for village use of the town highway equipment that the village residents have already helped pay for through taxation.

The question of who should pay for what services has been a source of contention between towns and villages since the 1950's, but it can be resolved through local cooperative action. Towns and their constituent villages often undertake formal and informal cooperative ventures. Many share municipal buildings as well as officials and employees, or engage in cooperative purchasing, auto maintenance, and emergency vehicle dispatching. For example, one government may provide library, ambulance, landfill or recreation programs to the other at a negotiated fee. More information on inter-municipal agreements is found in Chapter XVII.

Chapter Endnotes

28. Village Law, Article 2 is the Village Incorporation Law.
29. Village Law, §5-500(2).
30. Village Law, §§18-1820 to 18-1828.
31. Village Law, §4-408.
32. Village Law, §4-402.
33. Village Law, §4-402(e).
34. Village Law, §4-402(g).
35. Tax Law, §261(3).

CHAPTER IX

Special Purpose Units of Government

Local municipal services are provided in New York by general purpose municipal corporations — counties, cities, towns and villages — and by several types of special purpose units of government. These include school districts, fire districts, and a variety of public benefit corporations.

As demands for municipal services have increased, many new types of public benefit corporations have been established. These entities normally provide a single service or type of service, such as water and sewer services, airport management, or industrial development, rather than the gamut of government services provided by the general purpose municipality.

School districts, fire districts and "local" public benefit corporations, often referred to as authorities, are discussed within this chapter.

Public Education

The constitutional basis for school district organization appears in Article XI, section 1 of the State Constitution:

> "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the state may be educated."

The 1795 legislative session provided, on a five-year basis, a statewide system of support for schools, but comprehensive legislation establishing school districts was not enacted until 1812.

Education in New York State today is a massive enterprise. It represents the largest single area of expense for local governments, accounting for approximately one-third of all local government expenditures in the state.

By any measure, the most prominent elements of the educational effort are the 699 local school districts, which in 2002-03 enrolled more than 2.8 million pupils and spent over $41 billion.

School districts cover the entire area of New York State, frequently crossing city, town, village, and even county lines. With the exception of the "big five" cities (over 125,000 in population), where the school budget is part of the municipal budget, each school district is a separate governmental unit that has the power to levy taxes and incur debt.

The State Education Department, acting in accordance with policies determined by the Board of Regents of the University of the State of New York, supervises and provides leadership to the public schools. Some of this responsibility is exercised through supervisory districts headed by district superintendents of schools.

Basic School District Types

There are five different types of school districts in New York State:

Common School Districts. The common school district, with its origins in legislation of 1812, is the oldest of the existing types. Common school districts do not have the legal authority to operate high schools but, like all school districts, they are responsible for ensuring a secondary education for resident children. As a consequence, common school districts send pupils to designated high schools of neighboring school districts. As of July 2004, 11 common school districts are operating in the state. One common district, the South Mountain Hickory District in the Town of Binghamton, does not directly provide education; it contracts for all education. Common school districts are typically governed by either a sole trustee or a three-member board of trustees.

Union Free School Districts. The 1853 session of the Legislature established the union free school district, which is generally formed by two or more common school districts joining together for the purpose of providing a high school. Many of the early union free districts had boundaries that were coterminous with, or similar to, those of a village or city.

Although the original purpose of the union free district was to provide for secondary education, about one-fifth

of these districts currently do not operate high schools. As of July 2004, there are 163 union free school districts, of which 31 provide only elementary education. Thirteen of the latter are components of central school districts, while the rest provide secondary education by contracting with neighboring districts. Another 16 union free school districts were established solely to serve children residing in specified child care institutions. These districts are often referred to as "special act" school districts. Union free school districts are governed by a board of education that is composed of between three and nine members.

TABLE 14

New York State School Districts, as of July 2004

	Total
Common School Districts	11
Union Free School Districts	163
Central School Districts	460
City School Districts	62
Central High School Districts	3
Total	699

SOURCE: N.Y.S. Comptroller's Office.

Central School Districts. The central school district is the most common type of school district in New York State, with 460 in existence as of July 1, 2004. They were established as a means of providing a more comprehensive and intensive education than was possible in most of the 10,000 small common districts operating in the state at the turn of the century. The solution came in the form of the Central Rural Schools Act of 1914, which was revised in 1925. This legislation, together with state aid incentives, preceded a massive school reorganization, which resulted in the central school districts of today.

A central school district may be formed by any number of common, union free and central districts. As in the case of union free districts, central school districts have the authority to operate high schools. The governance of a central district follows essentially the same laws as a union free district; thus, it can be viewed as a variation of the union free type of district.

One difference between the two types of districts is the size of the board of education. A central district's board may consist of five, seven or nine members. Within this limitation, the size of the board or length of term (three, four or five years) may be changed by the voters of the district.

City School Districts. There are two types of organization for city school districts, the application of which depends on population.

School districts in the 57 cities under 125,000 in population are separate governmental units. Each district is governed by its own board of education and has independent taxing and debt-incurring powers. In all of these districts, the members are elected to the school boards, which may consist of five, seven, or nine members.

Many of these city districts encompass larger geographic areas than their respective cities, and are referred to as "enlarged city school districts." Seven of these enlarged districts have been reorganized as "central city school districts" a designation limited to districts in cities with less than 125,000 population.

In the state's five cities of over 125,000 in population (the "Big Five" – Buffalo, Rochester, Syracuse, Yonkers, and New York City), district boundaries are coterminous with those of their respective cities. Each of these school districts has a board or panel with varying independence and power to set policy for the school system. However, none of these boards have the power to levy taxes or incur debt for the district. Instead, funding is provided as part of the overall municipal budget. Buffalo, Rochester and Syracuse have separately elected boards of education. In Yonkers, however, the board is appointed by the Mayor. Buffalo and Yonkers each have nine-member boards, while Rochester and Syracuse have seven-member boards.

Since 2002, the New York City public school system is run as a city agency, headed by a Chancellor. Instead of a Board of Education that is responsible for setting broad policy, the Department of Education has the Panel for Educational Policy, which advises the Chancellor and approves major Department of Education initiatives, budgets and union agreements. Of the 13-member panel, each of the five Borough Presidents appoints one member. The other 8 members (including the Chancellor, who serves as Chairperson) are appointed by the Mayor.

Central High School Districts. The central high school district is the most unique organization type; as of July 2004 only three exist, all in Nassau County.

Central high school districts provide secondary education to children from at least two common or union free districts, which provide elementary education. Appointed representatives from the component districts'

boards of education comprise the board of education for each central high school district.

Authorized in 1917, this type of district was seen as a promising way to promote reorganization of smaller school districts. However, central high school districts proved unpopular, resulting in the repeal of authority for the formation of additional districts in 1944. Thirty-seven years later, in 1981, legislation reinstated the option of central high school districts for Suffolk County only.

The Supervisory District. The supervisory district was established in 1910, as a means of providing educational supervision and leadership to the thousands of tiny school districts then in existence. A district superintendent of schools was appointed to head each supervisory district.

At the time of their founding, 208 supervisory districts were established in the state, with as many as seven located in a single county. As of July 1, 2004, 38 supervisory districts exist, each coterminous with an area served by one of the 38 Boards of Cooperative Educational Services (BOCES) in the state.

The district superintendent of schools serves as a local representative of the Education Commissioner and as chief executive officer of the BOCES. Reflecting this dual role, the district superintendent is appointed by the governing body of the BOCES from a list of candidates approved by the Education Commissioner.

The BOCES. A BOCES provides a single organization through which local school districts may pool their resources to provide services that might ordinarily be beyond their individual capabilities. A BOCES is formed by a majority vote of the members of local school boards within a supervisory district. A board of five to fifteen members governs the BOCES organization. Members are elected for staggered three-year terms at an annual meeting of the boards of education of the constituent districts.

A BOCES has no taxing authority; the sources of BOCES funds are primarily taxes levied by component districts, state aid, and a relatively small amount of federal aid. The component districts' share of costs is based either on full valuation, a pupil count based on enrollment, or upon the Resident Weighted Average Daily Attendance (RWADA) of each district. Currently, all BOCES, except for one, use the RWADA method of allocating costs.

BOCES services include specialized instructional services — such as classes for students with disabilities and vocational education — as well as support services such as data processing, purchasing and the provision of specialized equipment for constituent districts. Specific BOCES services are financed through contracts between the BOCES and the individual school districts. Thus, a school district pays only for those services that it uses. The state reimburses a portion of the individual district's payment to the BOCES for such services.

At the end of the 2003-04 school year, the number of students enrolled in a BOCES from constituent districts ranged from 9,448 to 209,055 students. All but nine school districts in the state are members of a BOCES. Of the nine, four are eligible to become members of BOCES; the remaining districts are the five city school districts with populations over 125,000, which are not eligible to join BOCES. The 38 BOCES served a total of 1,630,671 students in the 2003-04 fiscal year.

Charter Schools. A charter school is an independent public school that operates under a "charter," a type of contract issued by the New York State Board of Regents.

Charter schools typically provide innovative curricula or other non-traditional approaches that differentiate them from regular public schools. Charter schools are financed by local, state and federal funds, but they have the flexibility to operate free of many educational laws and regulations.

Each charter school, however, is held accountable to provisions in the Charter School Law (Article 56 of the Education Law) and the charter authorizing the school. Every school must also satisfy the same health and safety, civil rights, and student achievement requirements that are applicable to other public schools. A school's charter may be revoked for violation of charter provisions, failure to meet performance levels on state assessments, serious violations of law, fiscal mismanagement, or employee discrimination in contravention of the Civil Service Law.

A charter is originally issued for a term of up to five years. Upon the expiration of each term, a charter may be renewed for five more years. The Board of Regents may not issue more than 100 new charters.[36] The renewal of a charter and the conversion of public school to a charter school are not counted toward the current statutory limit of 100 charter schools.

Financing Education

Property Taxes. With few exceptions, property taxation is the only major local revenue source available to school districts. Property taxes for schools totaled more than $19.5 billion in 2002-03, or 50.8 percent of all school

revenues. School districts are not subject to constitutional or statutory tax limits, but resident district voters approve annual school budgets, except for the "Big Five" cities. The practical effect of this referendum, however, is considerably constrained by law. Even if the voters defeat a proposed budget, a school board may still levy sufficient taxes to meet costs for debt service, teachers' salaries and a number of "ordinary and contingent" expenses as long as the board adopted budget does not exceed a specified percentage increase over the prior year's budget. This percentage is based on 120 percent of the consumer price index as specified by law, not to exceed 4 percent.

In each of the state's five largest cities, the city council determines the school tax levy. The board of education prepares its budget for approval by the city council. The council may increase or decrease the budget as a whole, but it may not change individual items. The levy for schools is then included in the overall city tax levy. Furthermore, the school tax levy must be accommodated within the two percent city tax limit allowed by the state constitution for Buffalo, Rochester, Syracuse and Yonkers, and 2.5 percent allowed for New York City.

Nonproperty Taxes. Nonproperty taxes represent a small revenue source for school districts. In 2002-03, school districts collected $250.8 million from nonproperty tax sources, or less than one percent of total revenue collected from taxes.

The only nonproperty tax a school district may levy directly is a tax on consumers' utility bills, which may be imposed at a maximum rate of three percent. This tax is limited to school districts with territory in cities of under 125,000 population. Of the 66 school districts eligible to impose this tax in the 2002-03 fiscal year, only 20 actually did so.

While only cities and counties can impose a sales tax, the Tax Law provides that they may distribute all or part of the proceeds to school districts. Five of the counties that collected sales taxes in fiscal 2002-03 distributed a portion of the revenue to school districts.

State Aid. Receipts from state aid programs represented the second largest revenue source for school districts in the 2002-03 school year. Over $14.6 billion was received in that year, representing about 37.9 percent of total school revenues. There are two major categories of state aid to education: general and special aid. The latter is a group of relatively small programs, generally experimental or aimed at meeting the special needs of a specific group of pupils.

General aid is paid to all school districts, with variations related to formulas taking into account such items as taxable property, income of district residents per pupil, and district size and organization. The category of general aid includes:

- operating expense aid;
- BOCES aid;
- transportation aid;
- high tax rate aid;
- growth aid;
- building aid; and
- reorganization incentive aid.

Operating aid, which represents more than one-half of total aid provided, is for the general operating expenditures of a district. Other general aid formulas exist to compensate for particular cost factors in school operations, building construction costs, high tax rates, and transportation costs.

Federal Aid. The third largest revenue source, but one far smaller than state aid or local revenues, is federal aid. Federal assistance represented about $2.7 billion in revenues for the 2002-03 fiscal year, or 7.0 percent of total revenues.

Organizing for Fire Protection

Buildings constructed close to each other are particularly vulnerable to fire. Fire protection services in New York have long been viewed as an essential governmental function in densely populated areas. Early on, cities as well as many villages made provisions for fire departments and the organization of fire companiesusing both career and volunteer services. This did not happen in towns, however, where sparse development made fire, while no less catastrophic to the individuals involved, a more personal than a communal threat. Traditional fire protection in rural areas consisted of close neighbors forming bucket brigades. The era of the bucket brigade was followed by the formation of loosely-knit groups which accumulated rudimentary firefighting equipment. Such groups were precursors to the modern-day volunteer fire companies, which have developed a high degree of organization and capability.

For many years volunteer fire companies supplied reasonably effective fire protection to rural areas without government assistance or support. Gradually, however, greater demands for fire protection service, the high cost of modern and specialized equipment, and the need for giving volunteers economic security in the event of duty-

connected death or injury, forced independent fire services to request assistance from the government.

In towns, the answer came (as in the case of other services) not on a town-wide basis, but through the establishment of special districts on an area-by-area basis. These districts took two basic forms: fire districts, which were true district corporations and enjoyed autonomy from town government; and other types of districts, including fire protection districts, fire alarm districts and certain water supply districts, which were little more than assessment areas that received fire protection.

Fire Districts

A fire district is a public corporation established for the purpose of providing fire protection and responding to certain other emergencies. The New York State Constitution (Article X) recognizes that fire districts have certain characteristics of general purpose municipal corporations, such as powers to incur indebtedness and to require the levy of taxes. Generally, fire district taxes are levied by the county and collected by the town or towns where the district exists. A fire district is almost a completely autonomous political entity; it has its own elected governing body, its own administrative officers, and it must observe its own expenditure limitations. However, it is dependent upon the parent town or towns for its initial creation, extension, and dissolution.

As of December 31, 2003, New York has 868 fire districts. They are of varying sizes, including smaller districts with annual budgets of several thousand dollars and large districts, some of which feature departments that have both career and volunteer firefighters and annual budgets of several million dollars.

Establishment. A fire district is created to provide fire protection to areas of towns outside villages. Villages usually provide their own fire protection. Towns and villages may establish joint town-village fire districts.

A town board may establish a fire district on its own motion or upon receipt of a petition from owners of at least 50 percent of the resident-owned taxable assessed valuation in the proposed district. Whichever method is used, the town board must hold a public hearing and determine that: all properties in the proposed district will benefit, all properties that will benefit have been included and the creation of the district is in the public interest.

If the town board decides to establish a district and proposes to finance an expenditure for the district by the issuance of obligations, it must request approval from the State Comptroller, who must first determine that the public interest will be served by the creation of the district and that the cost of the district will not be an undue burden on property in the district. If such approval is not required, a certified copy of the notice of hearing must be filed with the State Comptroller.

After a fire district has been established, the town board appoints the first temporary board of five fire commissioners and the first fire district treasurer. At the first election, five commissioners are elected for staggered terms of one to five years so that one term expires each year. At each subsequent election, one commissioner is elected for a full term of five years. The fire district treasurer is elected for three years, although the office may subsequently be made appointive for a one-year term. A fire district secretary is appointed by the board of fire commissioners for a one-year period.

Operational Organization. After establishment and initial appointments by the town board, the fire district becomes virtually autonomous from the town in its day-to-day operations.

A fire district has only those powers that are expressly granted by statute, or which are necessarily implied by statute. Unlike towns, villages, cities and counties, a fire district does not possess home rule powers. The powers granted to a fire district board are extremely specific and narrowly limited. A listing of some of the more important and general powers granted to the board of fire commissioners in Town Law serves as a quick synopsis of many of the important areas of operation for fire districts:

- They shall have the power to make any and all contracts for statutory purposes within the appropriations approved by the taxpayers or within statutory limitations;
- They may organize, operate, maintain and equip fire companies, and provide for the removal of members for cause;
- They may adopt rules and regulations governing all fire companies and departments in the district, prescribe the duties of the members, and enforce discipline;
- They may purchase apparatus and equipment for the extinguishment and prevention of fires, for the purposes of emergency rescue and first aid, and fire police squads;
- They may acquire real property and construct buildings for preservation of equipment and for social and recreational use by firefighters and residents of the district;

- They may construct and maintain fire alarm systems;
- They may purchase, develop, or contract for a supply of water for firefighting purposes; and
- They may contract to provide firefighting or emergency services outside the fire district where such services can be supplied without undue hazard to the fire district.

Financing. Fire districts are not governed by the constitutional tax or debt limits that restrict most municipal corporations. However, statutory limitations are imposed on their spending and financing authority.

Under section 176(18) of the Town Law, every fire district has a minimum basic spending limitation of $2,000, plus an additional amount related to full valuation of district taxable real property in excess of one million dollars. Several important expenditures are exempt from this spending limitation, such as certain insurance costs, salaries of career firefighters, most debt service and contracts for fire protection or water supplies. The basic spending limitation may be exceeded only if a proposition for the increase is approved by the voters of the district. Further, many capital expenditures proposed for a fire district, which would exceed the spending limitation, also require voter approval. Certain expenditures that are not chargeable to the spending limitation may also be subject to voter approval under other provisions of law (e.g., General Municipal Law section 6-g, relative to capital reserve funds).

A fire district may incur debt by issuing obligations pursuant to provisions of the New York State Local Finance Law. Fire districts are subject to a statutory debt limit (generally three percent of the full valuation of taxable real property in the fire district) and mandatory referendum requirements.

Within the statutory constraints, the district enjoys general autonomy in developing its budget. When completed, the budget is filed with the town budget officer of each of the towns where the district is located. The town board can make no changes in a fire district budget and must submit it with the town budget to the county for levy and spreading on the town tax roll. When the taxes are collected, the town supervisor must "immediately" turn over to the district treasurer all taxes levied and collected for the fire district.

In 1956, the Volunteer Firefighters' Benefit Law was enacted to provide benefits similar to those provided by Workers' Compensation for volunteer firefighters who are injured, or die from injuries incurred, in the line of duty. Cities, towns, villages and fire districts finance these benefits through their annual budgets.

Fire Department Organization. The board of fire commissioners exercises general policy control over its fire department, while the chief of the department exercises full on-line authority at emergency scenes. The fire department of a fire district encompasses all fire companies organized within the district, together with career employees who may be appointed by the board of fire commissioners. Fire companies usually are, but need not be, volunteer fire companies incorporated under the provisions of the Not-for-Profit Corporation Law. They can be formed within the fire district only with the consent of the board of fire commissioners and, thereafter, new members can only be admitted with board consent.

All officers of the fire department must be members of the department, residents of the state and, if required by the board of fire commissioners, residents of the fire district. Officers are nominated by ballot at fire department meetings, and appointments by the board may be made only from such nominated candidates.

Joint Fire Districts in Towns and Villages. Article 11-A of the Town Law and Article 22-A of the Village Law allow for the establishment of joint fire districts in one or more towns and one or more villages. Under the provisions of the Town Law, if it appears to be in the public interest, the town board(s) and village board(s) shall hold a joint meeting for the purpose of jointly proposing the establishment of a joint fire district. If, at the joint meeting, it is decided by majority vote of each board to propose a joint district, the boards must hold, upon public notice, a joint public hearing at a location within the proposed district. If, after the public hearing, the town board(s) and village board(s) determine that the establishment of the joint fire district is in the public interest, each board may adopt a separate resolution, subject to a permissive referendum, establishing the joint fire district.

A joint fire district established pursuant to Article 11-A of the Town Law is governed by the provisions of Article 11 of the Town Law unless there is an inconsistency between the two articles. In such case, Article 11-A would provide the prevailing language. Management of the affairs of joint fire districts is under a board of fire commissioners composed of between three and seven members, who are either appointed by the participating town boards and/or village boards of trustees in joint session, or elected as provided in Article 11.

Upon the establishment of a joint district, the town board or village board of trustees of each participating munici-

pality shall by local law dissolve any existing fire, fire alarm or fire protection districts contained within the joint fire district. The board of trustees of a village or the board of commissioners of a fire district, all of the territory of which is embraced within the boundaries of a joint fire district, may by resolution authorize the sale or transfer of any village-owned or district-owned fire house, fire apparatus, and fire equipment to the joint district. Such transfer may occur with or without consideration, and is subject to the terms and conditions deemed fitting and proper by the board of trustees or board of commissioners.

Fire Protection and Fire Alarm Districts

Fire protection districts and fire alarm districts are not public corporations. Both types of districts may be described as assessment areas within which a town can provide limited services and assess the cost back against the taxable properties within the district.

Fire protection districts are established for the sole purpose of providing fire protection by contract. After establishing a fire protection district, a town board may contract with any city, village, fire district or incorporated fire company maintaining suitable apparatus and appliances to provide fire protection to the district for a period not exceeding five years. A town may also acquire apparatus and equipment for use in the district and may contract with any city, village, fire district or incorporated fire company for operation, maintenance and repair of the apparatus and equipment and for the furnishing of fire protection in the district. The cost of the contracted services, together with certain other expenses incurred by reason of the establishment of the district, is then levied against the properties of the district on the annual tax roll.

Fire alarm districts are formed primarily to finance the installation and maintenance of a fire alarm system. However, a town board may contract for fire protection for these districts in a manner that is similar to the way it provides protection for fire protection districts.

Public Benefit Corporations

The Nature of Public Benefit Corporations

Public benefit corporations and other special purpose entities created for specific limited public purposes are often generically referred to as authorities. Many of these entities, however, carry other terms within their titles, such as *commissions, districts, corporations, foundations, agencies* or *funds*. For the sake of clarity, in this chapter we will limit our discussion to *municipal* level authorities and special purpose entities.

The first public authority in New York State was created in 1921 by an interstate compact that required the approval of the United States Congress. However, the idea of public benefit corporations or local authorities with independent powers, including the ability to incur debt and by extension the power to levy taxes in order to retire debt, was not quickly embraced by the public. In 1956, only 90 such entities existed in the state. As of 2005, 866 such entities, including local housing authorities, urban renewal agencies, industrial development agencies and others, filed separate financial statements with the Office of the State Comptroller.[37]

TABLE 15
Local Authorities and other Special Purpose Entities*

Housing authorities	120
Parking authorities	11
Urban Renewal Agencies	20
Industrial Development Agencies	116
Municipal Libraries	273
Soil & Water Conservation Districts	53
Special Districts	65
Consolidated Health Districts	55
All other	153
TOTAL	866

* Entity totals reflect units (not including joint activity units or component units) that file separate financial statements with the Office of the State Comptroller.

The traditional purpose of the public authority was to construct, operate and finance specific types of improvements. This concept has broadened, however, and many local authorities now exist to meet such diverse needs as housing, parking, water supply, sewage treatment, industrial development, solid waste management, urban renewal, transportation, and community development.

Objectives

Public benefit corporations have been created for a number of reasons, including to:

- overcome jurisdictional problems in the operation of facilities or services that are best provided on a regional, interstate or even international basis;
- provide an administrative entity with the ability to operate and manage public enterprises, without being subject to many of the limitations that apply

to the operations of the state and its political subdivisions;

- facilitate a transition from private to public operation;
- finance public improvements or services by using rents or user charges from the improvement or service itself without having to levy additional taxes;
- permit the use of revenue bonds (secured by revenues from the improvement) in order to finance the project, rather than general obligation bonds of a municipality;
- permit financing without being subject to voter approval or constitutional debt limit restrictions; and
- provide a vehicle that can take advantage of certain types of federal grants and loans more easily than general purpose municipal corporations.

Powers and Restraints

Public benefit corporations enjoy many of the same powers as general purpose governments, plus some very important powers that are not enjoyed by general purpose governments. In addition, authorities are not subject to some of the traditional constitutional and statutory restraints imposed upon general purpose governments, such as:

- constitutional debt limitations, but they may be subject to statutory limits set forth in their own enabling legislation;
- provisions of the State Finance Law or the Local Finance Law relating to the issuance and sale of obligations, except to the extent provided in their enabling legislation, and they have greater flexibility in scheduling debt payments; and
- the type of public bidding provisions that are applicable to state and municipal governments.

The power of each public benefit corporation is set forth in its own legislative authorization. The tendency has been to put some of the requirements applicable to general purpose governments (such as the requirement for public bidding) into the special acts establishing authorities, although often in different forms. In addition, several provisions of the Public Authorities Law contain requirements applicable to all or a class of authorities, such as requirements to adopt investment guidelines and rules for awarding personal services contracts. However, the basic financial provisions that distinguish authorities from municipalities, again subject to the requirements of their own special acts, have been kept reasonably intact. Since enhanced fiscal powers often are the most important incentive for using authorities to provide public services, it is useful to explore these powers in greater depth.

Fiscal Powers

Authorities generally have one fiscal limitation that distinguishes them from municipal corporations. No authority may be established with both the power to incur debt and the power to levy or require the levy of taxes or assessments.[38] This is a constitutional power generally reserved for true municipal corporations. Also, an authority cannot be created with both debt-incurring power and the power to collect rentals, charges, fees or rates for services, except by special act of the State Legislature.

Generally, an authority may not be created within a city with power to both contract indebtedness and collect charges from owners or occupants of real property within the city for a service formerly provided by the city, without approval of the electorate.[39]

Subject to these restrictions, authorities may use their fiscal power to finance their authorized functions. They sometimes may even finance improvements and services that cannot be provided directly by the municipal corporations included in the area of the authority. They also often enjoy the same income tax exempt status as municipal corporations for the interest on their obligations. In consideration of these factors, many municipalities turn to authorities to provide capital-intensive improvements or services.

In the issuance of their financial obligations, authorities generally are not bound by the maturity and certain other requirements in the provisions of the Local Finance Law. Authorities, on the other hand, may have to pay somewhat higher interest rates to borrow money, since their obligations are secured by prospective revenues only and are not backed by the full faith and credit of a municipal corporation with the ability to levy taxes.

Neither the state nor any municipality may be held liable for the payment of the obligations of an authority. However, the state or a municipality, if authorized by the Legislature, is not precluded from acquiring the properties of an authority and paying its indebtedness.

Chapter Endnotes

36. Education Law, §2852(9).
37. Office of the State Comptroller, 2005.
38. State Constitution, Article VIII, §3.
39. State Constitution, Article X, §5.

CHAPTER X

Citizen Participation and Involvement

If the American system of government is to function properly, citizens must actively participate in its operations at all levels, but especially at the local level. Local officials have both a responsibility and a stake in keeping citizens fully informed about local programs and activities and giving them clear opportunities to play meaningful roles in determining and implementing local public policy.

The history, tradition, development and patterns of local government in New York State are based on a belief that a responsive and responsible citizenry will maintain a vigorous, informed and continuous participation in the processes of local government. A basic principle upon which New York local government, with its broad home rule authority, is constructed is that local community values can be fostered and served. Assuring meaningful participation by citizens in government at all levels in the face of the complexity of contemporary society is one of the great challenges of American democracy.

The individual citizen has numerous ways to influence government. Some of these, such as writing letters to public officials, joining interest groups and supporting lobbying efforts, are of a private nature. The structure of government itself, however, provides other avenues of a more formal character. These include applications of the electoral process through which citizens may express their interests and concerns, plus devices such as public hearings and open meetings of legislative bodies. All local officials have a basic duty to assure that citizens have ways to participate actively and meaningfully in local government affairs. Apart from making themselves accessible to their constituents, local officials can keep citizens informed about public affairs; citizens, in turn, may express their will through the electoral process.

The Electoral Process

Abroad base of participation in local government forms the foundation of our working democracy, and the electoral process is only one of many ways in which individual citizens may express their views at the local level.

Elective Offices

At the turn of the twentieth century, enlightened citizen groups recommended adoption of the short ballot along with several electoral reforms. They believed that a citizen could acquire more knowledge about candidates and issues, and could therefore vote more intelligently, if fewer offices appeared on the ballot. They argued further that the voter's basic concern lay with choosing officers who would make policy rather than filling jobs of an administrative or even clerical nature in which there was no decision-making authority. Despite some improvements during the past century, the length of a ballot still seems to depend on the proximity of the citizen to the governmental level — national, state and local. In the American three-branch system of government, the minimum ballot would include a chief executive (or two), one or more legislators, and perhaps judges. At the state level, the ballot may also include the offices of attorney general, state comptroller or auditor, and others. At the local level, the ballot grows to include such miscellaneous offices as town clerk, superintendent of highways and others.

New Yorkers, in their local elections, vote for officers to serve in two, three, or even more different local governments. A city resident, for example, will vote for county, city and often school district officials. A village resident will vote for village, county, town and school district officials. A resident of the town outside the area of the village may vote in a fire district election as well as in county, town and school district elections. Although there are infinite variations, the most typical elected local officials appear in the following list.

County — executive (charter county only)
county legislators(s) (except in counties retaining boards of supervisors)
county clerk
county treasurer
coroner[1]
comptroller

sheriff
district attorney
county judge
family court judge
surrogate

City — mayor
comptroller
council members
municipal judges

Town — supervisor
board members
justices
town clerk
superintendent of highways
receiver of taxes or tax collector assessors[2]

Village — mayor
trustees
justice(s)

1. Duties are performed by an appointive officer in some counties.
2. Appointive in some towns.

As counties and cities adopt and revise charters, the trend is toward fewer elective offices. Changes in state legislation and expanded powers of home rule have also made it possible for towns and villages to reduce the number of elective offices by local action.

Legislative Elections

During the 1960's and 1970's, many counties changed their governing body from a board of supervisors to a county legislature, with representation based on districts. In those counties, town residents vote for one or more county legislators in addition to the town supervisor, who formerly served *ex officio* as the town's representative on the county legislative body.

Counties with county legislatures elect legislators from single-member districts, multi-member districts, or a combination of single and multi-member districts. Cities elect members of the city council at-large, or from wards or districts, or both at-large and from wards or districts. A few villages operate on a ward system.

Fire District Elections

Elections in fire districts are relatively simple and uniform. Under the Town Law, each fire district elects five commissioners and a treasurer at large. Chapter IX discusses these officials in a greater detail.

School District Elections

With certain rare exceptions, all local school board members in New York are elected. The method of election varies from district to district. In all school districts that elect board members, however, the citizens of the entire district elect all board members at large. The number of school board members prescribed by state law varies from one or three for common school districts to not more than nine for union free, central and city school districts (see Chapter IX for a more complete discussion of school boards). In most cases, the district has some latitude to decide upon the number of board members. Terms are staggered so that the entire board is never up for election at the same time.

Improvement Districts

In a few towns, most of which are located in Nassau and Erie Counties, the residents also elect boards of commissioners for independent improvement districts. It has not been possible to create additional independent districts under the Town Law since 1932, but elections continue in those districts that were created prior to 1932.

The Political Party System

State law provides for political party committees at the state and county level and other committees as the rules of the party provide. Generally, county committees consist of at least two members elected at primary elections from each election district within the county. As a practical matter, the party system is subdivided further into town committees and city committees. Many village elections and all school district and fire district elections are held on a nonpartisan basis, but town, county and (with a few exceptions) city elections are contests between local representatives of statewide parties.

In the absence of a primary, candidates for local offices who are designated by party caucuses become the nominees, but a competing candidate who obtains the required number of voters' names on a petition can require that a primary be held on the statewide primary date. Primaries in New York State are closed, and voters must enroll in a party to be eligible to vote in that party's primary. Since 1967 permanent personal registration has been in effect statewide.

Election Calendar

Some municipal elections coincide with statewide elections, while others are also held in November, but in the "off" or odd-numbered years. In fact, a provision of the State Constitution requires that city mayoralty campaigns

not coincide with gubernatorial campaigns. An election may, however, be held in an even-numbered year if necessary to fill a vacancy in the office of the mayor. Village elections are generally held on the third Tuesday in March or June, but they may be held on any other date the locality chooses. Except in cities, school district elections are generally held annually on the first Tuesday in May or June. Fire district elections are held annually on the second Tuesday in December.

Election Calendar	
State	November even-numbered year
County	November odd-and even-numbered year
City	November odd-numbered year
Town	November odd-numbered year
Village	March or June annually or biennially
School District	May or June annually
Fire District	December annually

Referenda

The use of the referendum — direct vote of the people on issues — has been carefully limited in New York State in accordance with the basic principles of a representative form of government.

On the principle that voters elect government officials to make decisions on their behalf, government officials are not given broad authority to delegate decision making powers back to the electorate. Case law stipulates that a local government must find specific authority, either in the Constitution or state law, to conduct an official referendum on any subject, and in the absence of such authority, it may not conduct a referendum. A local government may not spend public monies to conduct a so-called "advisory referendum," that is, one conducted to gather public opinion on a particular matter, unless state law specifically authorizes it.

Types of Referenda

The four general classifications of referenda available to local governments in New York State are mandatory, permissive, on petition and discretionary.

A *mandatory referendum*, as the name implies, leaves a local government with no choice; it must submit the particular question to referendum.

A *permissive referendum* is one in which the local governing body may decide on its own motion to place a matter before the voters, or it may decide to take the proposed action and wait a specified period of time after publication of notice that the action is to become effective. During that interval, a petition may be filed by the public demanding that the matter be submitted to referendum. If a proper petition is filed in the correct time period, the matter must then be submitted to referendum.

Referendum on petition relates to situations where the only method by which a particular matter may be put to a vote is by the circulation and filing of a proper petition by the public.

A *discretionary referendum*, the most flexible variety, allows the governing body to determine whether a particular action shall be subject to referendum and, if so, whether it will be mandatory or permissive.

Referendum Majorities

There are a few instances in which more than a simple majority is required for the approval of a question submitted to the voters. Perhaps the most important of these relates to the adoption of a county charter, which requires a majority vote in any city or cities in the county and a majority vote outside the city or cities. If a charter provides for the transfer of any function from the villages to the county, a majority vote in the affected villages is also required.

Subjects of Referenda

Generally local governments are required to conduct a referendum on any question involving basic changes in the form or structure of government, such as county or city charter adoption, changes in boundaries or in the composition of legislative bodies and the abolition or creation of elective offices. The only budgets subject to mandatory referenda are those of non-city school districts.

Procedures relating to permissive referenda must be observed in counties, cities, towns and villages, for matters such as appropriating money from reserve funds and constructing, leasing or purchasing a public utility service. In towns, permissive referenda are required for proposed changes from second class to first class status if the town has between 5,000 and 10,000 in population. A permissive referendum is also required for a change from first class to suburban town status. Such actions by towns are roughly equivalent to charter adoption by a county or city, which is subject to mandatory referendum. The towns, however, are more generally bound by referendum requirements than any other type of local government unit. For example, towns, but not other units, are subject to permissive referenda when constructing, purchasing or leasing a town building or land for such purposes, and when establishing airports, public parking,

parks, playgrounds, and facilities for collection and disposal of solid wastes.

Local laws of counties, cities, towns and villages are subject to referenda on petition if they would result in changes to existing laws relating to such matters as public bidding, purchases, contracts, assessments, power of condemnation, auditing and alienation or leasing of property.

The creation of improvement districts in both towns and counties is a frequent subject of referenda. The referendum for a county water, sewer, drainage or refuse district is permissive. A town improvement district can be established either on petition and action of the town board, or by motion of the town board and with a permissive referendum held in the area to be included in the district.

In practice, matters subject to permissive referenda, or referenda on petition, are seldom actually brought to referenda, unless they become the subject of particular local controversy. Matters subject to referenda in recent elections have included:

- county charter adoption;
- increases in terms of local offices from two to four years;
- city charter amendments;
- county reapportionment plans;
- transfer of street-naming authority from cities, towns and villages to a county;
- change from at-large elections to the ward system;
- village incorporation;
- coterminous town-village; and
- village dissolution.

Initiative and Recall

New York State law does not recognize the principle of recall, by which an elected officeholder may be removed by a popular vote. There are very few instances in which there may be initiative, where the voters initiate and enact laws or constitutional amendments. Although not strictly an example of the initiative, citizens in New York may, by petition, require a referendum on certain actions taken by a local governing body. There are also instances in which a petition can initiate official action. The voters of a county may, by petition, require the submission of a proposition at a general election on the question of appointment of a charter commission. If approved by the voters, the county legislative body must appoint a commission.

Voters of a city may, by petition, require submission of a city charter amendment or new city charter to the electors. Since the substance of such a local law must be set forth in full in the petition, this procedure is similar to the initiative as it is known in other states. Voters in Suffolk County may, through an initiative and referendum procedure, enact amendments to the county charter. A special Act of the State Legislature provided authority for this power.

Facilitating Citizen Participation

Boards and Commissions

Since school board members and fire district commissioners are unpaid volunteers, and since many other local officials in New York State, including some chief executive officers and legislators, receive nominal salaries, they embody citizen participation in government. As rural areas develop into urban centers, however, the growing responsibilities of local officials make it more and more difficult to operate local governments effectively with part-time leadership. In order to retain citizen leadership in elected policy making positions, these chief executives must be given adequate professional staff to supervise daily operations.

Citizens of New York State have many opportunities to participate in local government as members of advisory or operational special-purpose agencies, such as planning boards, environmental councils and recreation boards, to name only a few. These agencies offer local officials opportunities to enlist the talents, interest and concern of the community in important aspects of local government. In addition to the many special agencies authorized by state law, local chief executives and legislative bodies have authority to establish and appoint *ad hoc* citizens' advisory committees on numerous matters, such as reapportionment, cable TV, historic celebrations and new municipal buildings. A municipality may also, if it wishes, have a continuing citizens' advisory committee to consider a variety of matters as they arise.

There are many reasons for local officials to encourage citizens to participate actively in their local governments, including:

- involvement of citizens in the planning stages of a program or project so as to avoid
- misunderstandings and problems at later stages;
- obtaining firsthand knowledge of citizen needs and problems;
- taking advantage of expertise which might otherwise not be available, especially in small communities;
- spreading the base of community support;

- improving public relations; and
- fulfilling the requirements of certain federal programs.

Public Hearings

Public hearings provide a convenient and useful forum for citizens to play a significant role in the governmental decision making process. As a general rule, local governments in New York State are required to hold public hearings whenever the action of the governing body can be expected to have significant impact on the citizenry. For example, laws require public hearings as part of the approval process for:

- local laws and ordinances;
- capital improvements;
- village dissolutions;
- town consolidations;
- budgets; and
- certain federal programs.

Local governing bodies may also conduct hearings at any time on any subject on which they wish to obtain the views of the public. In addition, the Open Meetings Law (see "Public Information and Reporting, " below) requires that all meetings of public bodies be convened open to the public and preceded by notice given to the public and news media.

The choice of whether to hold a hearing often depends upon striking a balance between democratic requirements and the interests of government efficiency. The choice may not be easy, but an informational hearing, even when not mandated, may be advisable where the subject matter is particularly controversial.

Notice. Where there is a specific provision in law regarding notice of a public hearing, the notice should be sufficient to inform the public of the date, time, place, and subject of the hearing. A small notice in a large newspaper, however, may be inadequate. When significant issues affect either a particular neighborhood or the entire community, public notices may be conspicuously displayed at several key locations in the affected jurisdiction. Public officials should write notices in a language that laymen can understand, rather than in legal language unfamiliar to most people. They should also consider using local radio and television to inform the public.

Location. Although governments traditionally hold public hearings in a central municipal building, they frequently use other venues in the community to conduct hearings on issues affecting specific geographic locations. By so doing, they gain greater neighborhood participation and sharper focus of attention on an issue. Government decision makers are likely to learn more about a problem by visiting the area of the problem.

Statutory Provisions . There is no uniformity in state law with respect to public hearings and their procedures. Specific provisions requiring public hearings and setting forth procedures for same are generally spread out through the laws relating to the various types of local governments. In many cases, the requirements for a hearing will vary depending on the section of law related to the matter at hand.

Public Information and Reporting

Freedom of Information Law

In1974, the State Legislature enacted the Freedom of Information Law (Article 6, Public Officers Law). Subsequently, the law was substantially amended to provide the public with broad authority to inspect and copy records of state and local government. Under the Freedom of Information Law, all government records are available, except those records or portions of records that the law allows the government to withhold. In most instances, the law describes the grounds for denial in terms of potentially harmful effects of disclosure.

The Law created the Committee on Open Government, which consists of 11 members. The Committee includes the Secretary of State, in whose department the Committee is housed, the Lieutenant Governor, the Director of the Budget, the Commissioner of the Office of General Services, six non-office holding citizens, and an elected official of a local government. The Governor appoints four of the public members, at least two of whom must be or have been representatives of the news media, and an elected official of a local government; the Speaker of the Assembly and the Temporary President of the Senate appoint one public member each. The Law enables the Committee to:

- furnish to any agency advisory guidelines, opinions or other appropriate information regarding the law;
- furnish to any person advisory opinions or other appropriate information regarding the law;
- promulgate rules and regulations with respect to the implementation of the law;
- request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and

- report annually on its activities and findings, including recommendations for changes in the law, to the Governor and the Legislature.

Each agency in the state must adopt procedural rules consistent with (and no more restrictive than) the rules promulgated by the Committee on Open Government. In addition to rights of access to records generally, units of local government as well as state agencies must maintain and make available three types of records, including:

- a record of votes of each member in every proceeding in which a member votes;
- a record identifying every officer or employee by name, public office address, title and salary; and
- a current list in which all records of the agency are identified by subject matter in reasonable detail, whether or not the records are available (Note: It has been suggested that the records retention and disposal schedules developed by the State Archives and Records Administration at the State Education Department may be used as a substitute for the subject matter list).

In a judicial challenge to a denial of access to records, the agency has the burden of proving that the records withheld fall within one or more of the grounds for denial. It has also been held that an agency may not merely assert a ground for denial and prevail; on the contrary, it must demonstrate that the harmful effects of disclosure described in the grounds for denial would arise.

Many local government records available for inspection under the Freedom of Information Law had been available under earlier laws. The Freedom of Information Law preserves rights of access that were granted prior to its enactment by other laws or judicial determinations. The existence of, and publicity given to, the law has also produced a greater uniformity of procedures in state and local government and increased the public's use of rights to obtain records.

Open Meetings Law

In 1976, the State Legislature enacted the Open Meetings Law (Article 7, Public Officers Law), which is applicable to all public bodies in the state (including governing bodies) as well as their committees, subcommittees, and similar bodies. Later amendments to the Law clarified some vague original provisions. The Open Meetings Law does *not* apply to: judicial or quasi-judicial proceedings (except proceedings of the public service commission and zoning boards of appeals); deliberations of political committees, conferences and caucuses; or any matters made confidential by federal or state law.

The Open Meetings Law provides people with the right to observe the performance of public officials, and attend and listen to the deliberations and decisions that go into the making of public policy. Just as the Freedom of Information Law presumes the public's right of access, the Open Meetings Law presumes openness. The deliberations of public bodies must be open to the public, except when one or more of eight grounds for entering into an executive session may appropriately be cited to exclude the public. The grounds for executive session are based largely upon the harmful effects of public airing of particular issues.

In a general statement of intent, the law asserts that every meeting of a public body shall be open to the public except when an executive session is called to discuss particular subjects that are listed in the law. The statute defines "executive session" as that portion of a meeting not open to the general public. Once in executive session, a public body may vote and take final action, except that a vote to appropriate public monies must be conducted in an open meeting.

When a meeting is scheduled at least one week in advance, public notice of its time and place must be given to the news media and posted in one or more designated public locations at least 72 hours before the meeting. Public notice of the time and place of all other meetings must be given to the public and the news media to the extent practicable at a reasonable time prior to the meeting.

Minutes must be compiled for open meetings and when action is taken during executive sessions. Minutes of executive sessions must be made available within one week while minutes of open meetings must be made available within two weeks. Minutes of executive sessions need not include information not required to be disclosed under the Freedom of Information Law.

Any aggrieved person has standing to enforce the provisions of the Open Meetings Law. If a public body has taken action in violation of the law, a court has the power to declare the action null and void. A court also has discretion to award reasonable attorney fees to the successful party in a proceeding brought under the law.

Records Management

A sound records management program enables local governments to create, use, store, retrieve and dispose of their records in an orderly and cost-effective manner pursuant to applicable state law. Such a program helps

make records readily available to staff and the public, prevents the creation of unneeded records and promotes the systematic identification and preservation of records of long-term archival value. Article 57-A of the Arts and Cultural Affairs Law, the Local Government Records Law, requires that the governing body of a local government promote and support a program for the orderly and efficient management of records. It also requires that each local government designate a "records management officer. In towns and villages, the clerk is always the records management officer; in fire districts, it is always the district secretary. All other local governments have discretion on whom they may assign to be records management officers.

Through its Government Records Services, the State Archives, a unit of the State Education Department, provides information and assistance to help local governments improve records management and archival administration. It publishes records retention and disposal schedules that list the minimum time periods for which records of all units of local government must be retained.

The State Archives also produces publications, workshops, and web resources to help all local governments better manage all their records, including electronic records. The Archives maintains nine regional offices across the state to provide local onsite advice and direction on records management to local governments.

Information on the administration of court records is provided by the state's Office of Court Administration. Within New York City, information on municipal records management is provided by the City's Department of Records, though the Archives' publications and workshops are also available for use by New York City agencies.

Public Reporting

Annual Reports and Newsletters. In municipal reporting, a fine line separates the need to keep the public informed from the tendency to use public funds to aggrandize an incumbent administration. Although many municipalities in New York State publish and distribute annual reports and/or periodic newsletters, state law does not require them to do so. State law, which does not make any specific provision for counties and cities with reference to such reports, tends to restrict these activities by towns and villages. Both the Town Law and the Village Law authorize the expenditure of funds for publication and distribution of a report relative to the fiscal affairs of the municipality. This can and has been interpreted to include most of the items usually included in annual reports, such as programs and services, capital projects, and land or property acquisition. It cannot, however, include certain items — such as biographies of incumbent officers — which are clearly non-fiscal in nature.

Informal Reporting. There are many other ways for local officials to keep the public informed both through the media and through municipal resources. In addition to traditional press releases, municipalities use:

- municipal web sites that include basic information, such as agendas of meetings, minutes, proposed local laws and the ability to communicate by e-mail with local officials;
- press conferences and media interviews;
- weekly radio or TV interview programs;
- slide shows or video cassette recordings on new municipal programs, or on the budget, for presentation to civic, professional or school groups;
- displays on public services and programs at schools, shopping centers, fairs and other public gathering places;
- prominent posting of time and place of meetings (including public hearings) of the legislative body;
- rotation of legislative body meetings to various neighborhoods or communities within the municipality;
- radio or cable television broadcasts of meetings of the legislative body;
- informational meetings on new programs and significant issues;
- information centers to direct citizens to appropriate agencies; and
- publication of materials, such as a directory of local officials and municipal services, newsletters on public services and programs, and brochures or folders on specific services.

Cable television also offers opportunities for informing the public and encouraging citizen participation. As cable television has become more widely available, interest has grown in utilizing its potential for community programming. Meetings of municipal boards are frequently televised by public access television stations. Two-way cable television systems are available in some communities and may offer opportunities for local officials to make themselves directly accessible to citizen inquiries.

Media Relations. The media can be valuable to local governments. In addition to using the media for special programs, local officials should contact the press,

radio and television as a means of keeping the public informed about governmental programs. The experience of many local officials suggests that the best approach to the media is to be as open and free with information as possible, rather than avoiding controversial issues.

Handling Citizen Complaints

In larger units of government, where citizens may not have easy access to elected officials or know where to go for assistance, problems can arise which may seriously alienate citizens from their state and local governments. Public reporting as discussed above can enhance the ability to solve communication problems between citizens and their government. While most problems can be resolved simply through better communication, some may be insoluble because the citizen expects government to act in a manner inconsistent with or not authorized by law. But even in that case, the citizen may gain satisfaction from having gained the attention of the government and learning that the difficulty involves compliance with law rather than reluctance on the part of the government.

Some local governments have established ombudsman programs to assist citizens with problems involving their agencies. In many cases though, citizen assistance is provided by staffs of local chief executives, municipal clerks, public information officers, members of local legislative bodies and other officials in the performance of their routine duties.

CHAPTER XI

Financing Local Government

The balancing of municipal programs and activities against available fiscal resources is the key element in financing local government. The task is performed in an environment essentially different from that of a business enterprise in the private sector since laws, constitutions, and public accountability, as well as considerations of public policy, all impose constraints on the process.

Broadly speaking, financing local government is a twofold proposition. It involves a determination, on the expenditure side, of the quantity and quality of activities, services and improvements that will be undertaken by the community, and an allocation of resources from revenues and borrowing within the capacity of the community. Political, economic and social considerations are involved in the process. All enter into the formulation of financial plans, which are most visible in the budget of a municipality, where commitments and resources are brought into balance on an annual basis.

Compared to the private sector, local governmental financial decisions seem largely removed from the classic marketplace. They are constrained within a framework of State Constitution, state statutes, and legal restrictions found in charters, local laws and ordinances. The legal setting of local finances is one of the first things to impress public officials upon taking office. It permeates many aspects of municipal finance administration.

Local governments may spend money only for what are deemed public purposes, a basic condition that springs from the State Constitution and appears in statutes and official opinions of state agencies. Strict conditions are attached to the delegation of the state's taxing power. Many local governments are restricted as to the amounts they may raise by levies upon real property, and they may levy taxes other than property taxes only as authorized by the Legislature. New York State law also closely constrains local governments with respect to incurring indebtedness, including limitations on its purposes, the types of municipal obligations, maximum terms of debt for different purposes and basic conditions of bond sale and guarantees. Financing local government takes place in an arena of competing demands and conflicting interests. The individual local government faces internal and external pressures; the state and federal governments are very much in the picture. Local officials are responsible for striking a balance among these interests and pressures.

Local Expenditures in New York

Local government expenditures are divided into current operations, equipment and capital outlays, and debt service costs. Equipment and capital outlays cover expenditures for the construction, improvement and acquisition of fixed assets. Debt service costs include payments of principal and interest on debt. All other local costs fall into the current expense category, which accounts for the largest share of expenditures — 83 percent of local government costs in New York State in 2005.

Expenditure Patterns. Table 16 summarizes 2005 current expenditures by general purpose local governments, excluding the City of New York. It presents a generalized profile, in dollar terms, of the service responsibilities of these local governments.

- Counties are heavily involved in social services programs. The expenditure profile, however, confirms the diversification of county services;
- City and village expenditures show a similarity in the application of resources to public safety;
- Traditional town responsibilities for general government and highway functions are reflected in the table. Towns are also heavily involved in water and sewer services, refuse management and public safety.

Expenditure Factors. Expenditures for social services and health programs mandated and partly financed by the state and federal governments have greatly increased over the years. Population and economic changes

have presented new challenges to local governments throughout the State of New York.

Central cities focus on a wide variety of municipal services, including police and fire services, roads, health, transportation, economic assistance, culture and recreation, sanitation, sewer and water service, and upgrading deteriorating infrastructure and facilities. City officials generally are looking for ways to conserve their cities' existing residential, commercial and industrial assets, and to attract and hold new enterprises. Towns, on the other hand, are more generally concerned with community development, the extension of necessary municipal services, the installation of public improvements and other typical demands of growth due to out-migration from cities and the effects of urban sprawl.

TABLE 16

Local Government Current Expenditures by Function, 2005

(Excluding New York City)

Amounts in Millions of Dollars

Function	Counties	Cities	Towns	Villages	Total
General Government	$2,260.1	$502.8	$905.4	$342.2	$4,010.5
Public Safety	3,064.8	1,409.4	839.1	520.5	5,833.8
Health	2,087.7	6.1	113.8	6.2	2,213.8
Transportation	957.7	228.0	1,073.6	210.9	2,470.2
Economic Assistance	5,839.0	27.9	58.3	8.7	5,933.9
Culture and Recreation	282.4	179.4	498.1	137.2	1,097.1
Education	931.1	0	0	0	931.1
Home and Other Community Services	942.8	674.9	1,248.6	543.4	3,409.7
Total	$16,365.6	$3,028.5	$4,736.9	$1,769.1	$25,900.1

Percent Distribution

Function	Counties	Cities	Towns	Villages	Total
General Government	13.8	16.5	19.1	19.3	15.5
Public Safety	18.7	46.5	17.7	29.4	22.5
Health	12.8	0.2	2.4	0.4	8.6
Transportation	5.9	7.5	22.7	11.9	9.5
Economic Assistance	35.7	0.9	1.2	0.5	22.9
Culture and Recreation	1.7	5.9	10.5	7.8	4.2
Education	5.7	0	0	0	3.6
Home and Other Community Services	5.7	22.3	26.4	30.7	13.2
Total	100.0	100.0	100.0	100.0	100.0

SOURCE: Office of the State Comptroller

Table 17 reflects growth in current expenditures from 2000 through 2005 for each unit of general and special purpose local government, excluding New York City. During the five-year period 2000 through 2005, local governments experienced a 29 percent increase in current expenditures. Growth of expenditures in towns, villages, school districts and fire districts outpaced that experienced by counties and cities (excluding New York City) during this period.

TABLE 17

Local Government Current Expenditures, 2000 and 2005

(Amounts in Millions of Dollars)

Government Unit	2000	2005	Percent Increase 2000-2005
Counties (excluding New York City counties)	$13,310.1	$ 16,365.6	22.8
Cities (excluding New York City)	2,442.2	3,028.4	24.0
Towns	3,501.7	4,737.0	34.7
Villages	1,316.5	1,769.2	32.1
School Districts (excluding New York City)	19,657.2	26,121.6	32.9
Fire Districts	249.8	353.6	40.7
Total	$ 40,477.5	$52,375.4	29.2

Local Government Revenues

Total local government revenues in New York State increased by about 27 percent during the period 2000 to 2005, from $45.7 billion to $57.9 billion. A significant development in local revenue sources during the sixties and seventies was the growing importance of intergovernmental aid. The federal government, through its array of categorical grant programs, transferred substantial sums to state and local governments.

New York State also increased its aid to local governments, providing more general assistance as well as funds for specific programs.

The introduction of federal general revenue sharing in 1972 signaled the shift from categorical to block grants. Local government was thus provided with more control over the disposition of its federal monies, but with a reduced amount available, beginning in the second half of the seventies. The federal revenue sharing program expired in 1986. The early 1980's witnessed increased efforts to consolidate numerous categorical grant programs in such areas as education, social services and health into a greatly reduced number of block grants and has not changed dramatically since. The federal contribution to local revenues in New York State in 2005 was $3.6 billion, 24 percent more than the 2000 level of $2.9 billion. State aid of $14.0 billion in 2005 was 23 percent more than the 2000 amount of $11.4 billion, with increases in school aid a significant factor in state aid growth over the period.

Local government property tax in New York State rose from 40.2 percent of all local revenue in 2000 to 42.5 percent in 2005. Property taxes in 2005 totaled close to $24.6 billion, about 34 percent more than 5 years earlier.

Table 18 shows total tax revenue for New York State local governments by type of tax. The real property tax raises significantly more revenue in the state than any other single tax.

Property Taxation

The property tax in New York State is a tax based on the value of real property (land and improvements). It occupies a special place in the financing of local government not only because of its yield in relation to total local revenue, but also because of its key position in the municipal budget process.

Property Tax and Local Budgets

Municipal budgeting follows a procedure that first estimates expenditures or appropriations and then deducts estimated revenues from sources other than the property tax to arrive at a remainder, which is the tax levy. Thus the property tax levy becomes the balancing item on the revenue side of the municipal budget. This process is constrained by the existence of legal limitations upon the amounts that may be raised by certain jurisdictions from the real property tax.

TABLE 18

Local Taxes in New York State, 2000 and 2005

(Amounts in Billions of Dollars)

Local Taxes	2000 Amount	2005 Amount
Real Property	$18.3	$24.6
Sales	4.6	5.9
Other Taxes and Fees[1]	0.5	0.3
Total	$23.4	$30.8

[1] Includes sales tax credits to towns used to reduce real property tax levy, utility gross receipts tax, consumer utility tax (if not included in sales tax), OTB surtax, hotel occupancy tax, harness and flat track admission tax, privilege tax on coin-operated devices, revenues from franchises, interest and penalties on non-property taxes, etc.

SOURCE: Office of the State Comptroller. Detail may not add due to rounding.

The final step is fixing the local tax rate. The tax levy is divided by the total dollar amount of the taxable assessed valuation of real estate within the local government. The result is a percentage figure, which is expressed as a tax rate, normally so many dollars and cents per $1,000 of assessed valuation.

Where the tax levy for a county, school district or improvement district is spread between or among two or more municipalities, assessed valuations are equalized for each municipality through the use of equalization rates. Equalization is intended to ensure equity where a property tax is levied over several local government units that assess properties at different percentages of value.

For school apportionment and for county apportionment in most counties, the equalization rates are determined by the State Office of Real Property Services (ORPS). In other counties — except Nassau County and the counties in New York City — equalization rates are established by the county legislative body, subject to review by ORPS.

Property Tax and Local Revenues

Table 19 illustrates the position occupied by real property taxes in the general revenue structure of local governments and school and fire districts in 2005. Obviously, property taxes continue to play a prominent role in financing school district, town and village expenditures. Fire districts depend most heavily upon this revenue source.

TABLE 19

2005 Local Government Revenue Sources

Percent Distribution

Government Unit	Real Property Taxes and Assessments	Non-property Taxes	State Aid	Federal Aid	All Others	Total
Counties (excluding New York City counties)	25.0	28.2	12.7	15.0	29.1	100.0
Cities (excluding New York City)	27.2	20.4	18.1	7.0	27.3	100.0
Towns	50.4	11.3	11.2	3.0	24.1	100.0
Villages	45.7	7.5	6.9	3.0	36.9	100.0
School Districts (excluding New York City)	54.8	1.0	34.7	5.1	4.4	100.0
Fire Districts	90.7		—	—	9.3	100.0
Total — All Units	31.6	8.8	25.7	6.6	27.3	100.0

SOURCE: Office of the State Comptroller.

Table 20 shows the increase in real property tax income between 2000 and 2005 for all levels of local government. Overall, real property taxes in 2005 were about 34 percent higher than in 2000.

TABLE 20

Local Government Real Property Tax Revenue by Type of Government, 2000 and 2005

(Amounts in Millions of Dollars)

Government Unit	2000	2005	Percent Increase 2000-2005
Counties	$ 3,336.6	$ 4,384.9	431.4
Cities	767.6	987.1	28.6
Towns	2,244.6	2,885.5	28.5
Villages	61739.6	965.8	30.6
School Districts (excluding New York City)	10,879.5	15,805.6	45.3
Fire Districts	363.5	494.0	35.9
Total	$18,331.4	$24,633.9	34.4

SOURCE: Office of the State Comptroller

Property Tax Exemptions

The exemption of federal property from local taxation springs from the American constitutional doctrine of intergovernmental immunity. The exemption of state property from local taxation rests on the principle that the sovereign entity cannot be taxed by subordinate political units and still be sovereign. When so determined by the Legislature, however, the state does permit taxation of its property.

The exemption of certain privately-owned property from local taxation is grounded in theory, history and practice. The underlying principle is that real property used exclusively for religious, educational or charitable purposes serves a public purpose by contributing to moral improvement, public welfare and the protection of public health. Although such property is wholly exempt from general municipal and school district taxes, it does pay a share of the costs of certain capital improvements made by improvement districts (such as water supply and sewer systems).

Exemptions from property taxation may be granted in the State of New York only by general law. References to the subject comprise some of the most extensive and complex provisions of the Real Property Tax Law. State law in some instances mandates exemption and in other instances allows exemption upon enactment of local legislation.

Non-fiscal Purposes. The use of the property tax for what may be described as non-fiscal purposes — to accomplish goals other than raising municipal revenue — is a controversial topic, particularly as such uses extend beyond the traditional confines of religious, educational, or charitable purposes and are directed toward economic, environmental and social ends. The following are examples of types of property which may be partially of fully tax-exempt: public housing, privately owned multiple dwellings, industrial development agency facilities, commercial and industrial facilities, railroads, air pollution control facilities, industrial waste treatment facilities, agricultural and forest lands, and the residences of veterans and the low-income senior citizens.

Property tax exemptions can cause severe financial stresses on local governments. Exemptions do not reduce tax levies, but instead shift a greater portion of the levy to remaining taxpayers, who consequently must pay higher taxes. An exception is the School Tax Relief (STAR) exemption, a partial school tax exemption applicable to most residential property, which is State-funded. Many challenge the use of property tax exemptions for non-fiscal purposes, arguing that subsidies for such purposes might better come from broader revenue sources than the limited base of the local property tax.

The standard source at the state level for technical assistance on the law and practice of property tax exemption is the State Board of Real Property Services. The Board has published a number of reports on the impact of various exemptions on local tax bases. In addition, it annually publishes a statistical report detailing the value and location of exempt property in the state.

The value of exempt property is often obscure. Many assessors conclude that they have no reason to place realistic values on property which will not be taxed. Furthermore, many assessors do not revise exempt property lists, even periodically, since the figures are not utilized for any apparent purpose. Consequently, the reported valuations of exempt properties in New York State in all likelihood do not reflect their full impact on municipal tax bases or the revenue they would return if they were made taxable. With that caveat in mind, it is worth noting that the ratio of exempt valuation to the total of taxable and exempt valuation in New York State rose from 11 percent at the turn of the twentieth century to about 32 percent in 2005.

Exemptions in Cities and Towns. In 2005 there were 4.5 million property tax exemptions on assessment rolls in New York. The value of exempt property in cities and towns totaled $678 billion in 2005, almost 32 percent of the state's real property assessed value. In nine of New Yorks cities, more than half of the value of the real property contained therein was exempt from taxation. Twenty-three of the 932 towns in New York had in excess of 50 percent of their total real property value exempt from taxation on their 2005 assessment rolls.

Property owned by government and quasi-government entities, such as public authorities, accounts for 47 percent of the total value of exempt property. As for private owners, the largest proportion of exempt property is owned by community service organizations, social organizations and professional societies (13 percent of all exempt property). As for exempt residential property other than multiple dwellings, the leading categories of exemption based on value are the School Tax Relief (STAR) Program (23 percent of total exempt value), property owned by veterans (almost 5 percent) and property owned by senior citizens (about 2.5 percent).

The percentage of exempt value attributable to state-mandated exemptions statewide was 94 percent. In absolute terms, the total value of state-mandated exemptions on 2005 assessment rolls was $637 billion.

Property Tax Administration

The administration of the real property tax involves four tasks: (1) the discovery and identification of land and buildings; (2) their valuation by a defensible method or suitable combination of methods; (3) the preparation of the final assessment roll against which property taxes are levied; and (4) the review of assessed valuations for the correction of inequalities.

Organization for Assessment. The first three of the above tasks are the duty of local assessors. In New York State the assessing units include the 62 cities and 932 towns. Other local governments use the assessment rolls as they require them. County and school tax levies, it was noted earlier, are distributed among constituent municipalities in relation to their equalized values. Although the 556 villages are empowered to assess property for purposes of village taxation, many accept the town rolls and a majority have terminated their status as assessing units and transferred that function to the towns.

There are two county assessing units in the state: Tompkins County and Nassau County. Under the Tompkins County Charter, an appointed county director of assessment assesses all real property in the county subject to taxation for county, town, village, school district or improvement district purposes. The Nassau County Government Law establishes a county board of assessors, consisting of four appointed members and a chairman and executive officer who is elected from the county at large. The board assesses real property on a countywide basis for purposes of county, town, school district and improvement district taxation.

Local assessors are either elected or appointed to their positions. All but two cities have a single appointed assessor or appointed boards of assessors. Since 1927 village assessors have been appointed, and villages have either one or three assessors. In some villages, the village trustees act as assessors.

Title 2 of Article 3 of the Real Property Tax Law provides that, except in Tompkins and Nassau Counties, cities under 100,000 population and all towns shall have a single assessor, appointed to a six-year term of office. In any city or town where one or more of the offices of assessors was elective, the governing body was empowered to retain elective assessors by enactment of a local law, providing such action was taken prior to April 30, 1971. About 50 percent of towns retained elected assessors under this option.

Property Valuation. There are three basic methods for arriving at the value of real estate for tax assessment purposes — sales analysis and comparison, income capitalization, and the replacement cost of improvements. The separate valuation of land entails a further set of value factors and a judgement as to their combined effect upon a give parcel of land. Among the various considerations are prevailing land use or classification, sales and income data, and the establishment of separate units of value (such as front foot), subject to modification for reasons of lot size, depth or irregularities.

The basic issues in property valuation are treating the owners of taxable property fairly and administering the property tax efficiently in the interest of both the municipality and the taxpayers. Until December, 1981, section 306 of the Real Property Tax Law required all assessments to be set at full value. Historically, however, real property in this state was usually assessed at a percentage of full value. Inequities had long existed among and within different classes of property, e.g., residential, industrial, commercial. These inequities stimulated a series of court challenges to the property tax assessment system in New York State. The most notable cases are *Hellerstein v. Assessor of the Town of Islip* 37 NY2d 1,371 NYS2d 388 (1975) *modified by* 39 NY2d 920,

386 NYS2d 406 (1976) and *Guth v. Gingold* (34 NY2d 440, 358 NYS2d 367 (1974)).

In its June 1975 decision in *Hellerstein*, the Court of Appeals found that assessment of real property must be at its full value since the Real Property Tax Law did not, at that time, authorize fractional assessments. In *Guth*, the Court of Appeals determined that a property owner could use the equalization rate established by the State Board of Equalization and Assessment (now the State Board of Real Property Services) as a sole means of proving inequality with respect to the assessment of a property.

In December 1981, the State Legislature repealed section 306 of the Real Property Tax Law thereby removing the full value assessment requirement. Section 305 of the Real Property Tax Law authorizes the continuation of existing methods of assessment in each assessing unit. However, it specifically requires assessment at a uniform percentage of value (fractional assessment) within each assessing unit.

Special provisions applicable to New York City and Nassau County prescribe a classification system. In all other areas of the state, assessing units are authorized to preserve homestead class tax shares on taxing jurisdictions completely within the assessing unit — predominantly cities, towns or villages. This means they may reduce the tax burden on residential real property (dwellings for three or fewer families) and farmhouses relative to other types of property.

Assessment Improvement. Efforts at the local level to improve assessment administration take various forms such as assessor training, improved record-keeping, tax maps and computerization of assessment data. Many municipalities have conducted comprehensive reappraisals. State financial assistance on a per parcel basis is available to assessing units which conduct reappraisals. Statewide, however, wide disparities still exist among classes of property and within classes of property regarding a uniform and equitable relationship of property assessments to full value.

The State Board of Real Property Services maintains a comprehensive system of software programs called the *Real Property System* (RPS) which is available to all assessing units. It is capable of maintaining assessment, physical property inventory, and valuation information for any type of real property. In addition, RPS has the ability to conduct a mass appraisal of an entire municipality. A new version of the *Real Property System* called RPS V4 was released in November 1999 to approximately 100 assessing units. Like earlier versions of the system, RPS V4 is capable of producing assessment rolls, tax rolls and tax bills. In addition, it includes a Geographic Information System (GIS) and ten layers of State-provided geographic coverage data (roads, municipal boundaries, wetlands, school district boundaries, etc.). A document image management system (DIM) allows any document, such as a photograph, a sketch, a deed or a map, to be electronically attached to a parcel of property. A custom report writer (CRW) provides the assessor with the ability to create reports regarding assessment, sale or inventory data. Other municipal systems or off-the-shelf software can be easily integrated with the RPS V4 system.

Legislation passed in 1970 provided for the appointment of property tax directors at the county level to coordinate and assist local assessment functions; gave towns the option of converting from elected to appointed assessors; created boards of assessment review in each municipality; required all counties with the exception of Westchester and those in New York City to provide assessors with modern, accurate tax maps; established minimum qualifications for appointed assessors; and required many town and most city assessors to achieve certification from the State Board of Real Property Services. The legislation also provided for advisory appraisals of taxable utility property by the State Board upon local request.

In 1977, the State Legislature enacted Article 15-B of the Real Property Tax Law. This article provides for state financial assistance to local governments that implement improved systems for real property tax administration. This program has been revised several times, most recently in 1999 to encourage annual reassessments.

Effective in 1982, the Legislature amended the Real Property Tax Law to make training mandatory for all assessors, whether elected or appointed, as well as for directors of county real property tax services. In addition, the State Board of Real Property Services was given authority to review the qualifications of appointed assessors and county directors to determine if they meet the minimum qualification standards.

Local Non-Property Taxes

The power of taxation is an inherent attribute of state sovereignty, not possessed by its political subdivisions. Article XVI of the State Constitution declares:

> "The power of taxation shall never be surrendered, suspended or contracted away, except as

to securities issued for public purposes pursuant to law. Any laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide for their review."

Using this authority, the State Legislature has authorized the imposition of what have come to be known as local non-property taxes.

New York City Taxes

New York State began to utilize local non-property taxes because of the difficulties the City of New York experienced during the business depression of the 1930's. Delegation of local taxing power on a significant scale started with New York City. At the emergency session of 1933, the Legislature granted the City power to impose, for a six-month period, any type of tax that the State itself could impose. This initial grant of power was to expire six months after its effective date. Amid much controversy the initial grant was renewed and modified, but the broad outlines of state policy with regard to special local taxes did not emerge until 1939. After the 1938 Constitutional Convention the State altered its *home-rule* stance toward New York City's authority to tax. From this point forward the Legislature narrowed the range of special taxes available to New York City and began to limit maximum rates. By the postwar period, New York City possessed the power to impose a variety of special taxes, which, under economic conditions in some degree peculiar to the City, became an important source of revenue. These included taxes on hotel room occupancy, sales, utilities, gross income, business gross receipts and pari-mutual wagering.

Local Utility Taxes

In 1937, the Legislature extended optional, local taxing power to the upstate cities when it authorized upstate cities to levy a local one percent tax on the gross income of public utilities. Initially, the proceeds could only go to pay for relief. In 1942, the Legislature removed the welfare restriction upon the use of utility tax proceeds and receipts could thereafter be applied to general municipal purposes. The utilities gross income tax proved attractive, and cities throughout the state adopted it.

Housing Subsidy Taxes

Following a 1938 housing amendment to the State Constitution, the Legislature authorized a series of special non-property taxes, which could be levied by cities and by villages of 5,000 or more population. The proceeds were to cover periodic housing subsidies or to meet service charges for local housing debt incurred outside the normal constitutional debt limit. Although the only two municipalities that took advantage of this legislation — the Cities of Buffalo and New York — have since repealed their local statutes, the enabling legislation marked another phase in the development of local taxing power.

Extension of Permissive Taxing Power

The further extension of permissive local taxing power occurred in New York State at the same time it was expanding elsewhere. After the Second World War, municipal costs soared. Many people felt that the full weight of these additional expenditures should not fall upon the property tax base. Local government officials and finance officers throughout the country expressed interest in gaining authority to adopt non-property taxes at local option. One conspicuous result was the well-known "home rule" tax law adopted by the Commonwealth of Pennsylvania in 1947. In 1947 and 1948, the New York State Legislature also enacted permissive local tax laws, applicable to cities and counties. A principal factor stimulating their enactment had been the adoption of a permanent teachers' salary law. These permissive tax laws reflected state policy that optional local taxes had to be defined and that they would neither supplant nor supplement the principal existing sources of state revenue.

The most productive local tax contained in the law was the sales tax. Other items included a business gross receipts tax (later denied upstate), a tax on consumers' utility bills, and an array of miscellaneous taxes or excises. The permissive tax law has been frequently amended and additional local taxes or options have been made available under other provisions of law.

Adoption of Permissive Taxes

Some of the important developments with respect to optional local taxing powers as follows:

- Sales and use tax exemptions are allowed for property and services used or consumed by qualified businesses within Empire Zones.
- The exemption on items of clothing and footwear priced under $110 was temporarily repealed and two clothing exemption weeks at the same $110 threshold were created.
- All 57 counties (outside of New York City) have adopted a sales and use tax. As of September 2005, 49 of these counties plus New York City have local sales tax rates that exceed the 3 percent statutory limit, including eight counties with local rates exceeding 4 percent.

- Extension of limited optional local taxing power was extended to city school districts, with the result that by 2005, 21 city school districts had adopted a consumers utility tax.
- Adoption by sixty cities, other than New York City, and 348 villages, have accepted at least a one percent tax on the gross income of utility companies.
- Ten of the 61 eligible cities, other than New York City, have adopted the miscellaneous taxes and excises allowed by law, including taxes on coin-operated amusement devices, hotel room occupancy, real estate transfers, restaurant meals, amusement admissions and the consumer utility tax.

Special local taxes now occupy a prominent place in the financing of local government in the State of New York. Table 19 shows the proportion of total revenue provided by local non-property taxes in 2005. Non-property taxes were over one-quarter of total revenues for counties, and approximately one-fifth for the cities other than New York City. Special local taxes were a less significant income-producer proportionately for towns, villages, and school districts in New York State.

The local non-property tax revenues of cities, other than New York City, towns, and school districts outside New York City reflect, in varying degrees, the distribution of county sales tax receipts. More jurisdictions have adopted higher sales tax rates in recent years. The 2000 to 2005 comparison in Table 21 shows that jurisdictions are gaining larger sales tax yields. The methods of distribution specified in the Tax Law are varied and complex, and further variations are permissible with the approval of the State Comptroller. Methods employed to distribute county sales tax revenues are the responsibility of county governing bodies.

Special Charges, Fees and Earnings

Local governments in the State of New York derive substantial revenues from special charges, fees and the earnings of municipal enterprises. In cities, for example, fees and charges may be made for licenses, permits, rentals, departmental fees and charges, sales, recoveries, fines, forfeits and other items. Earnings of municipal enterprises and special activities include user payments and miscellaneous revenues of such operations as water service, bus transportation, airports, hospitals, stadiums and public auditoriums, off-street parking, and municipally-owned public utilities. In the aggregate, local government revenues from special charges, fees and municipal enterprises rose from $5.1 billion in 2000 to $6.7 billion in 2005, an increase of 32 percent.

TABLE 21

Local Non-Property Tax Revenue, 2000 and 2005
(Amounts in Millions of Dollars)

Government Unit	2000	2005	Percent Increase 2000-2005
Counties (excluding New York City counties)	$ 3,658.3	$4,943.7	35.1
Cities (excluding New York City)	620.5	741.9	19.6
Towns	475.8	646.1	35.8
Villages	122.5	158.1	29.1
School Districts (excluding New York City)	232.9	259.8	11.6
Fire Districts	—	—	—
Total	$5,110.0	$ 6,749.6	32.1

SOURCE: Office of the State Comptroller

Municipal Practices

Local governments have some latitude in establishing user charges and fixing rates, although fees collected by local officials are often controlled by state law, particularly in the administration of justice and offices of record. In general, the amount of a regulatory license or permit fee must be reasonably related to the cost to the municipality of the particular regulatory program, and the fees established for the use of a municipal service or facility must be reasonably related to the cost of providing the service or operating the facility. Municipalities have found it profitable to re-examine their charges periodically and bring them in line with current costs. Policy issues, local choice, and practical considerations are involved in the imposition of user fees. For example, many local governments will cover, or more than cover, the costs of a water supply and distribution system through water rates. In the case of certain enterprises such as airports, hospitals, public auditoriums, bus transportation and rapid transit, however, considerations other than the recovery of full annual costs may prevail.

At this time, there is no general authority for the imposition of service charges for established responsibilities of local governments such as police, fire, public works and libraries. There are exceptions for particular aspects of these services, but, in general, these services are viewed as providing benefits to the public at large without relation to particular benefits provided to individuals.

State Aid

Intergovernmental payments by the state to local governments are a major aspect of local finances. State aid consists of grants-in-aid, which are payments to local governments for specified purposes, and general assistance. State assistance during 2005 accounted for over one-quarter of all revenues received by municipalities and school districts. Overall state aid, in actual dollars, increased 22.9 percent from 2000 to 2005.

Background of State Aid

Early Origins. Origins of state aid in New York go back to the early days of statehood. References to state aid for common schools appear in 1795, and education aid began to assume real importance with the free public school movement of the 1840's, although the principle of free schools was not fully realized until after the Civil War. A leading purpose of school aid in this era was to compensate for revenue losses that resulted from eliminating local tuition. At a later point, the state introduced incentive grants to stimulate local participation in particular aspects of public education. These purposes — providing assistance in meeting the costs of state-originated programs and providing an incentive for localities to participate in such programs — have continued to this day.

Growth and Expansion. State aid has grown from its small beginnings to its present dimensions because of various economic and social developments. These include free schools; the advent of the automobile; statewide initiatives in health and mental health, sanitation and public welfare; and, more recently, concern with the environment and natural resources, educational opportunity beyond twelfth grade, public safety and mass transportation.

Amount of State Aid

Table 19 illustrates the position that state aid occupies in the general revenue structure of local governments in the state in 2005. Overall, state aid supplied 25.7 percent of all local government revenues in 2005. State aid is a very important revenue source for school districts outside New York City, representing 34.7 percent of their revenues in 2005.

Table 22 illustrates the percentage increase in state aid between 2000 and 2005 for the different classes of government in the State.

TABLE 22
State Aid Payments to Local Governments by Type of Government, 2000 and 2005
(Amounts in Millions of Dollars)

Government Unit	2000	2005	Percent Increase 2000-2005
Counties (excluding New York City counties)	$2,287.4	$2,686.9	17.5
Cities (excluding New York City)	492.1	657.4	33.6
Towns	365.8	641.1	75.3
Villages	97.0	144.9	49.4
School Districts (excluding New York City)	8,111.6	9,824.1	21.1
Fire Districts	—	—	—
Total	$11,353.9	$13,954.4	22.9

SOURCE: Office of the State Comptroller

State Aid to Local Governments

General Purpose Assistance. General purpose assistance can be defined as financial aid for the support of local government functions without limitation as to the use of such aid and without the substantive program and procedural conditions that are routinely attached to categorical grants-in-aid. In the late 1990's, interest centered on the General Purpose Local Government Assistance program, which distributed over $770 million to cities, towns and villages during state fiscal year 1999-2000. The program, which had been titled "Revenue Sharing" in the early 1970's, grew to include four distinct components: General Purpose Local Government Aid (GPLGA); Emergency Financial Aid to Certain Cities; Emergency Financial Aid to Eligible Municipalities, and Supplemental Municipal Aid. The 2005-06 budget established the Aid and Incentives for Municipalities (AIM) Program, which collapsed these four programs into one "base level grant" for all cities, towns and villages statewide.

New York State has provided financial aid to its municipalities since 1789. Early programs included categorical grants for activities encouraged by the state and the shared tax system whereby localities received portions of taxes they had participated in collecting. The per capita aid program instituted in 1946 allocated specific dollar amounts per capita to cities, towns and villages. In 1965, a statutory formula was established to calculate aid based on fiscal need, effort and capacity indicators.

The revenue sharing program created in 1970 was designed to eliminate the complexity and uncertainty of previous state aid programs and to provide municipalities with flexible, equitable and predictable aid. New York State Finance Law Article 4-A, section 54 outlined the framework of the Revenue Sharing Program, which was based on the previous Per Capita Aid Program. This program was designed to allocate specific amounts to counties, cities, towns and villages (with special emphasis on cities), based on population and full value data. The original legislation envisioned a distribution of aid equaling 21 percent of Personal Income Tax (PIT) revenues and that such aid would grow annually, keeping pace with growth in the State's major revenue source (hence the name – revenue sharing).

The revenue sharing program underwent numerous changes in the 1970's. Before the program was even implemented, allocations were cut in 1971 to 18 percent of PIT receipts. In 1977-78, the State capped distributions at the 1976-77 level. In 1978-79, revenue sharing aid was further restricted when the Finance Law was amended to change the basis of funding from 18 percent of PIT receipts to 8 percent of total State tax collections. In 1979-80, the State froze revenue sharing at the 1978-79 level, and until 1984-85, funding was capped at $800 million.

The program peaked in fiscal year 1988-89 at nearly $1.1 billion. During the early 1990's, New York had a serious fiscal crisis and cut numerous programs, including unrestricted local government aid, which was reduced by roughly 50 percent over four years. By 1992-93, revenue sharing had been decreased by more than $500 million to a low of $532 million.

AIM Program

The Aid and Incentives for Municipalities (AIM) program enacted in 2005-06, increased unrestricted aid to cities, towns and villages by $57 million. The 2007-08 Enacted Budget restructures the AIM program to target additional State aid primarily to fiscally distressed municipalities. An AIM increase of 450 million is authorized in 2007-08, and in each of the three following years, for a four-year total of $200 million. These increases are tied to enhanced accountability requirements that encourage local fiscal improvement. Finally, the 2007-08 AIM program includes $15 million in grants for a range of local shared services activities. In addition, a new $10 million consolidation incentive aid is created under SMSI provides a recurring 25 percent AIM increase to municipalities that merge or consolidate beginning in 2007-2008.

Federal Aid

The role of federal aid in local finances from 2000 through 2005 is indicated in Table 24. During this period federal assistance to local governments in the state increased from $2.9 billion in 2000 to $3.8 billion in 2005.

Under pressure from state and local governments, which were overwhelmed by the multiplicity of federal programs and their individual requirements and administration, Congress enacted legislation during the 1970's that consolidated various categorical aid programs into block grants in the broad functional areas of education, manpower, law enforcement, and housing and community development. These programs have been broadly characterized as "special revenue sharing" programs. Among the objectives of this legislation were the simplification of grant administration, the provision of increased discretion in the use of funds allocated to state and local government grant recipients, and the elimination of conventional matching requirements. This system of categorical block grants to local governments is still presently utilized.

A major development in federal aid was the passage of federal general revenue sharing in 1972. For the first time, the national government distributed aid to local and state governments with very few restrictions on how the money could be spent and without requiring governments to apply for the grants. A local government's allocation was based on a complex formula which, at the local level, took into account the adjusted taxes, per capita income, population and intergovernmental transfers of each governmental unit.

State and local governments received their first revenue sharing checks in December 1972 for the entitlement period January 1 through June 30, 1972. The federal general revenue sharing program was discontinued in the mid 1980's.

Amount of Federal Aid

Table 19 illustrates the position that federal aid occupies in the general revenue structure of the local govern-

ments in the state in 2005. Overall, federal aid supplied 6.6 percent of all local government revenues in 2005.

Table 23 reflects the growth of federal aid from 2000 through 2005 for each respective class of government, both in actual dollars and by percent increase.

TABLE 23

Federal Aid Payments to Local Governments, 2000 and 2005 by Type of Unit

(Amounts in Millions of Dollars)

Government Unit	2000	2005	Percent Increase 2000-2005
Counties (excluding New York City counties)	$ 1,678.1	$1,884.8	12.3
Cities (excluding New York City)	181.1	255.0	40.8
Towns	140.7	172.2	22.4
Villages	81.6	62.6	-23.3
School Districts (excluding New York City)	853.4	1,459.1	71.0
Fire Districts	—	—	—
Total	$ 2,934.9	$3,833.7	30.6

SOURCE: Office of the State Comptroller

CHAPTER XII

Administering Local Finances

The financing of local government activities in New York takes place within a number of limitations. The State Constitution limits the amounts that most municipalities may raise annually from the real property tax. Similarly, municipalities operate under limitations on debts, with a variety of provisions that limit borrowing power. The fiscal management of local government, spelled out in the constitution and in statutes, is subject to certain prescriptions, reviews and audits by the state.

The previous chapter discussed local government expenditure trends, principal sources of revenues and aspects of intergovernmental fiscal relations. This chapter discusses the more prominent legal limitations upon local government financing, the basic features of municipal financial administration and state supervision of local finances.

Tax and Debt Limits

Tax Limits

Article VIII of the State Constitution imposes limitations on the amounts local governments may raise by tax upon real property. These limitations have a history that goes back more than a century. They have had a pronounced impact on the financing of local government in the State of New York, particularly with regard to state aid, local non-property taxes, education financing, general purpose assistance and special city aid. The real property tax limitation has evoked much debate over the years.

Against a background of increasing state involvement in local finances, an 1884 constitutional amendment declared:

> "The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants or any such city of the state, in addition to providing for the principal and interest of existing debt, shall not, in the aggregate, exceed in any one year two percent of the assessed valuation of the real personal estate of such county or city …"

Thus, the tax limitation first applied only to the cities of New York, Brooklyn, Buffalo and Rochester, and to New York, Kings, Erie and Monroe counties. With the consolidation of New York City in1898, a single 2 percent limit was accepted as applying to the whole city and later to the overlying county government. As a result of population growth, Syracuse, Albany and Yonkers came within the constitutional tax limit, and with them Onondaga, Albany and Westchester counties.

Tax Limit Developments. Many other cities of the state have been subject to tax limitation under special laws or local charters. By 1920 there were 33 cities in this category. Limitations ranged from 1 to 2 percent of assessed valuations or took the form of appropriation restrictions. In virtually every instance, taxes for school purposes and debt service, as well as other municipal functions in certain of the cities, were excluded from these limitations.

After the First World War, every city suffered from inflation, a serious factor in municipal finances even in the prosperous years of the 1920's. Some of the stringencies experienced by the tax-limited cities, however, probably resulted from policies of under assessment. At its outset, the depression created difficulties because it reduced the valuations by which taxing power was measured and imposed additional expenditures for public relief.

Amendment of 1938. A 1938 amendment revised the constitutional tax limitation by substituting five-year average valuations as the measure of taxing power for the then-current annual valuations. The 2 percent limit was extended in 1944 to all the cities and villages of the state, with the provision that the Legislature might exclude amounts raised by local property taxation for school purposes in the case of villages and of cities having less

than 100,000 population. The 1938 amendment granted the Legislature the power to further restrict the authority of any county, city, town, village or school district to levy taxes on real estate.

Current Limitations. Material changes were made in the tax limits contained in Article VIII during the period following World War II. They were accompanied by a series of major moves in state-local fiscal relations as they related to the distribution of shared taxes, categorical assistance, school aid, local non-property taxes and city-school relations.

Tax limit provisions of the State Constitution as amended in 1949, 1951, 1953 and 1985 provided as follows:

- All Constitutional tax limits relate to the five year average of the full value of taxable real estate.
- The tax limit for New York City for combined city and school purposes is fixed at 2.5 percent.
- The tax limits for the other cities with populations of 125, 000 or more are 2 percent for combined city and school purposes.
- In cities under 125, 000 population, the tax limit is 2 percent for city purposes alone.
- All counties outside New York City are subject to tax limits of 1.5 percent for county purposes; however any county may raise its limit to 2 percent by action of the county governing body in accordance with County Law.
- The limit for villages is 2 percent for village purposes.
- In certain instances, taxes levied for financing capital expenditures on a "pay-as-you go" basis and amounts raised for debt service are excluded from tax limitation.
- School districts in cities under 125,000 population and towns have no Constitutional tax limit.

It may be said that the Constitutional real estate tax limit has two major components: A percentage limitation for operating purposes as listed in items (a) through (f) above, and certain exclusions of amounts required for debt service and capital improvements. Together these may be referred to as the total real property taxing power of a municipality or a school district.

Tax Limit Exclusions Challenged. To enable school districts that are coterminous with, partly within or wholly within a city having less than 125,000 population and the cities of Buffalo, Rochester and Yonkers to meet their fiscal needs, the legislature enacted a series of statutes permitting the exclusion of annual pension requirements and social security contributions from their respective tax limitations.

The constitutionality of the statute applicable to the City of Buffalo was contested in 1973 on grounds that pension payments are ordinary annual operating expenses and consequently subject to tax limitation. In *Hurd* v. *City of Buffalo* (34 NY2d 628, 355 NYS2d 369 (1974)), the Court of Appeals affirmed that the exclusionary statute specifically applying to Buffalo was unconstitutional. The court thereby cast a shadow over the other exclusionary legislation.

Beginning in 1974, the Legislature adopted a stopgap measure to forestall the immediate impact of what has come to be known as the *Hurd* ruling. A Temporary State Commission on Constitutional Tax Limitations (the Bergan Commission) was created to pursue the matter.

The commission published its findings at the beginning of 1975, recommending that the issue be handled through a constitutional amendment. An amendment excluding retirement and social security costs from the tax limit was submitted for voter approval at the 1975 general election. It was defeated.

The 1976 Legislature passed a bill (Emergency City and School District Relief Act) continuing temporary relief to the cities of Buffalo and Rochester and to certain school districts by permitting them to exclude from constitutional tax limitations certain pension and social security contributions until 1980.

In early 1978, the Court of Appeals struck down the Emergency City and School District Relief Act of 1976 and left the door open for a suit demanding a refund of tax dollars collected under the faulty legislation. In response to this decision, a special Task Force on the Financing of City School Districts was created. The Legislature implemented two principal recommendations of the task force in 1978: (1) it instituted special equalization ratios for the impacted cities and school districts, and (2) it advanced state funds to finance the "gap" on a revolving basis.

The special equalization ratios initially reduced the gap from $112 million to $20 million. However, as the growth of the cities' real property wealth has slowed down, the usefulness of these ratios has diminished. The state funds that were advanced to the districts impacted by *Hurd* were rolled over every year between 1978 and 1992-93. Pursuant to Chapter 53 of the Laws of 1991, advances to the districts have been reduced by 50 percent a year and will be phased out in 2011-12. In addition,

the state has provided these districts with grants since 1979.

Other recommendations of the Task Force were to:

- require city school districts receiving advances to make maximum use of sales and utility taxes;
- redistribute or increase county sales taxes for city school district use;
- reallocate functions;
- adopt a statewide real property tax; and
- submit constitutional amendments.

Debt Limits

The economic collapse of 1837 exposed serious weaknesses in the credit operations of local government and the speculative character of the public improvement debt of the period. One result was that the State Constitution of 1846 directed the Legislature to restrict the municipalities' power of taxation, assessment and borrowing.

Unchecked growth in the debt of local governments continued. The Civil War was followed by inflation and great economic activity. New York City provided a special example of municipal profligacy. The unbridled expansion of local debt under the corrupt rule of Boss Tweed created acute difficulties for the city during the business depression of 1873.

Debt Limit Developments. The condition of local government finance became a matter of urgent interest to the state. A constitutional amendment in 1884 imposed a debt limit of 10 percent of assessed valuation on cities with a population of over 100,000 and on counties containing a city of the same size.

In the case of New York City, the effect was a 10 percent limit on combined city and county debt, while in Brooklyn, Buffalo and Rochester the limit applied separately to city and county debt. Water debts extinguishable within 20 years were excluded.

In 1894, the 10 percent debt limitation was extended to all cities and counties in the state. No provision was made for the limitation of the indebtedness of towns, villages and school districts, although these units were restricted in their debt practices by statute.

Current Debt Limitations

In 1938, constitutional amendments extended debt limitation to towns and villages, prohibited the creation of new or novel units of local government possessing borrowing power, and required substantive guarantees for the repayment of municipal indebtedness.

Postwar changes in the debt provisions of the State Constitution have been numerous. The most significant occurred as a result of revisions in Article VIII which were approved in 1951. The 1938 and 1951 revisions resulted in the following features:

- all constitutional debt limitations tied to specified percentages of the average full valuations of taxable real estate on the last completed assessment rolls and the four preceding rolls, as follows:
  - 10 percent for Nassau County;
  - 7 percent for other counties outside New York City;
  - 10 percent for New York City for combined city and school purposes;
  - 9 percent for other cities with population of 125,000 or more for combined city and school purposes;
  - 7 percent for cities of less than 125,000 population for city purposes, exclusive of schools;
  - 7 percent for towns;
  - 7 percent for villages; and
  - 5 percent for school districts coterminous with, partly within, or wholly within a city of less than 125,000 population (with provisions for increasing the limit under certain conditions).
- a series of specific conditions governing the incurrence and management of municipal debt, such as:
  - prohibition upon the issuance of indebtedness beyond a period of probable usefulness or weighted period of probable usefulness to be specified by state law, and in no case to exceed 40 years;
  - issuance only of full faith and credit indebtedness and "tax increment financing" (Article XVI, section 6);
  - authorization for sinking fund bonds under certain circumstances and a requirement for the repayment of debt in installments, with no installment more than 50 percent in excess of the smallest prior installment, unless the governing body provides for substantially level or declining debt service payments as may be authorized by law;
  - requirement for the annual provision by appropriation for meeting principal and interest payments; and
  - prohibition upon the creation of municipal or other corporations (other than a county, city,

town, village, school district, fire district or certain river regulation and drainage districts) possessing the power both to contract indebtedness and to levy or require the levy of taxes or benefit assessments upon real estate.

- Exclusions of municipal indebtedness from constitutional debt limitation, including certain water and sewer debt, certain debt issued to finance "self-liquidating" public improvements, and, in the case of New York City, certain additional exclusions for various purposes.
- Prohibitions upon the gift or loan of the credit of counties, cities, towns, villages or school districts to or in aid of any individual, public or private corporation or association or private undertaking with specified clarifications and an exception in the case of joint or certain cooperative undertakings among municipalities.

Article XVIII of the State Constitution prescribes the conditions under which a city, town, village or certain public corporations (other than a county) may aid certain " low-income" housing and nursing home accommodations, contract indebtedness, and provide for subsidies for these purposes. This article contains a separate 2 percent debt limit for cities, towns and villages computed on the basis of average equalized full valuations of taxable real property. Various conditions are attached to indebtedness incurred under Article XVIII.

Borrowings and Debt Management

Local Finance Law

To implement the 1938 constitutional amendments, the state undertook a comprehensive revision of the laws on local government financial affairs. In 1942, this effort produced the Local Finance Law. This statute regulates the issuance of municipal bonds and notes by local governments. It addresses the objects or purposes for which debt may be incurred, the maximum terms of indebtedness for various objects or purposes, the conditions of short-term loans, and the required content of municipal obligations.

Debt Management

While there are many legal requirements surrounding municipal debt procedures, they do not exhaust the subject of local debt management. The overlapping debt limits in the State Constitution and the safeguards and requirements of the Local Finance Law are necessarily controlling, but they are not substitutes for the exercise of prudence and sound judgment by local government officials.

Local officials may exercise discretion in debt management and borrowing policies in a number of vital respects. They make judgments as to the need for public improvements and their soundness from the standpoint of design, costs and architectural or engineering features. They decide whether such improvements are within the capacity of the community as measured by future annual costs for debt service and regular maintenance.

While state laws influence debt policies, the decisions of local officials have a direct bearing upon debt management. One feature of an orderly and manageable debt structure is early retirement of substantial amounts of outstanding debt. Another feature is to keep annual obligations for the payment of interest and principal within the limits of a reasonable relationship to total budgetary requirements. Local officials also find that it is good policy to make substantial contributions to the cost of public improvements from current revenue. Many capital outlays recur regularly, such as replacing motorized equipment or resurfacing streets, and borrowing for such purposes tends to pyramid debt and debt charges.

The issuance and marketing of municipal obligations is a highly specialized subject. Since local officials wish to ensure the legality and marketability of the obligations and obtain the most favorable terms, they often utilize the services of bond counsel and other knowledgeable advisors.

Capital Programming

Capital programming and capital budgeting are recognized methods for implementing debt management policies. Practices among local governments in the state vary. In some cases there are detailed charter requirements for public improvement planning and financing. In other cases localities adhere more or less to "paper" plans. Sometimes the local practice is to bring forward public improvements piecemeal and not necessarily in relation to each other, to separately authorize the funds necessary to pay for various improvements, and to defer into the future the question of how everything fits together.

A capital program, as the term is used by the Government Finance Officers Association (GFOA), is "a plan for capital expenditures to be incurred each year over a fixed period of years to meet the need for public improvements." General Municipal Law, section 99-g contains express provision for capital programs. The capital program under section 99-g is submitted with the municipality's regular annual budget. The capital program includes descriptions of proposed projects, the proposed method of financing for each project and an estimate of

the effect, if any, on operating costs in the three years following the completion of the project. The factor of integration with the regular budget removes capital programming from the area of paper plans.

The goal of a capital program generally is to plan, in advance, how to pay for various improvements and how the improvements will affect the regular municipal budget in added debt service charges, appropriations from current revenue, and the annual expense of operating new facilities.

Debt Trends

Local government indebtedness is evaluated on an individual basis according to criteria by which financial position is customarily evaluated. Some areas of concern are growth in the amount of debt over a number of years, and purposes for which the debt is being issued. Local budgets traditionally include expenditures for which indebtedness could be issued. When local governments take expenditures that have traditionally been financed from current appropriations and begin to issue debt to finance such expenditures, it may be an indication that current revenues are not keeping pace with expenditures.

Other criteria extend beyond amounts of borrowings and debt and involve a number of factors indicative of fiscal capacity. A few such factors are the ratio of net debt to full valuations, the extent to which municipal debt is wholly or partially self-supporting, the relative amount of the municipal budget used for tax-supported debt, the amount of overlying debt, and the municipality's tax collection.

Municipal Finance Administration

The general laws of the state are fairly explicit as to the powers and duties of local officials having fiscal responsibilities in non-charter counties, towns and villages. These statutes provide options as to the manner in which these responsibilities are assigned or organized within the structure of local governments. Options include the establishment of the office of comptroller and purchasing agent in counties, the office of purchasing director in towns and the office of auditor in villages. Pursuant to home rule authority, cities, charter counties and charter villages have latitude to amend their charters with respect to organization for finance administration.

Local government accounting, bookkeeping and record management systems vary in sophistication from simple manual systems to individual personal computers, client servers or mainframe systems. Software includes off-the shelf applications and custom applications designed to accommodate specific needs. A wide variety of software products are available to provide basic aspects of fiscal management, such as budget preparation, appropriation accounting, assessment rolls preparation, payrolls, master employee records, real property tax billing and water billing.

Earlier discussion touched upon real property tax administration and municipal debt management. Further phases of municipal finance administration include budgeting, accounting, treasury functions, purchasing, contracting and audit procedures.

Municipal Budgeting

Local officials often regard the annual budget as perhaps their greatest single obligation, since budget preparation and continuing administration may be labor intensive and time-consuming. General state law spells out the principal steps in budget preparation and adoption for most local governments. For counties, cities and villages that have charters, budget provisions are generally contained in such charters.

The budget process generally entails many choices. These tend to be most apparent on the expenditure side of the local budget, but many choices may also exist on the revenue side. They include:

- magnitude of the real property tax levy and its relative burden expressed as a tax rate;
- local non-property taxes, as authorized by state law and implemented by local action;
- fees and earnings and use of special assessments, which are in the nature of charges against benefitted properties in proportion to the benefit received, to defray the cost of certain municipal improvements or services;
- payments from other governments in the form of grants-in-aid, shared revenues and reserve fund moneys for current or capital purposes (depending upon the character, scope and availability of these payments); and
- indebtedness for authorized capital purposes, paying for improvements from current revenues (pay-as-you-go), or employing a combination of these methods of financing.

Budget Administration

Budget administration is generally preceded by the preparation and submission of departmental estimates. This process is usually followed by the formulation of the budget itself, which is a balanced plan of expenditures

and revenues, normally prepared by or under the direction of the local government's executive or budget officer. The budget is then submitted to the local legislative body for review, approval or amendment, and enactment of appropriation orders giving effect to the budget.

Beyond the legislative phase of budget review and adoption is the stage of budget administration and enforcement. This process involves the maintenance of appropriation control accounts and procedures for budget transfers or modifications.

Local Initiatives

In budget preparation, presentation and subsequent administration, there are opportunities for local initiatives, consistent with the basic requirements of law. Initiatives may be expressed in budget format, supporting data and comparisons, and accompanying explanatory matter in the budget message. A budget is more than an array of figures — it is also a statement of public policy.

Quite often, budgetary allotments or expenditure quotas are established. These are often made on at least a quarterly basis, and are formulated from work programs or activity schedules and developed in consultation with operating officials. Newer developments in budgeting relate the provision of money more closely to the accomplishment of program objectives and to the efficiency with which municipal activities are performed.

Accounting Control

Another essential aspect of municipal finance administration is the maintenance of an accounting control system. Fund accounting is a basic characteristic of municipal accounting. A "fund" is a fiscal and accounting entity with a self-balancing set of accounts. It contains recorded cash, other assets and financial resources, together with all related liabilities and residual equities or balances. A fund is segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

Municipal accounting systems include a general fund and, depending upon the local government entity, such special revenue funds as highway funds, debt service funds, capital project funds, enterprise funds, internal service funds, and trust and agency funds. The central principle is that funds will be self-contained.

Accounting for municipal resources and expenditures should generally be on a modified accrual basis. A fundamental feature of budget administration is the maintenance of appropriation control accounts whereby appropriations are encumbered as obligations are incurred.

In this summary discussion, it is not feasible to outline a comprehensive system of municipal accounts or to describe prevailing practices in all the local governments of the state. For most municipalities the standard resource for governmental accounting procedures is the Office of the State Comptroller (OSC).

Financial Reporting

The systematic recording of financial information can be used "(1) as a basis for managing the municipality's affairs, (2) as a control to prevent waste and inefficiency, (3) as a check on the fidelity of persons administering municipal funds, and (4) as a means of informing interested parties of the municipality's financial condition and operations." [40]

The municipal accounting system is the source of both the municipality's fiscal year-end statements and the periodic internal reports that localities find important for management purposes. These periodic reports show whether revenues are coming in and expenditures are going out at the times and in the amounts projected by the budget plan. Monitoring of this information allows management to make appropriate budgetary modifications during the year.

General Municipal Law section 30 requires local governments to file a financial report annually with the OSC. Until 1996 the law required municipalities to file a paper report on forms provided by OSC, but an amendment that year allowed for electronic filing. Beginning with the reporting for the fiscal year ending in1996, counties, cities, towns, villages, school districts and joint activities have been able to transmit their reports electronically using the internet or through the Comptroller's Assistance Network (a 24 hour electronic bulletin board). Filing electronically with free software provided by OSC (or by the State Education Department for school districts), saves time, improves accuracy and reduces paperwork.

Other Financial Functions

Other leading aspects of local government finance administration include the functions of cash management, purchasing and property acquisition, insurance and risk management and post audit.

Cash Management. Some local governments carry cash balances in excess of those necessary for transactions. Carrying excess funds costs the income the funds would have earned if invested. In order to anticipate their cash balance needs, local government officials can prepare a cash flow analysis to forecast the cash position of the local government over the entire fiscal period. Proper

cash management can provide maximum earnings and minimum borrowing for the local government. Local government officials should be aware of investment factors including legality, safety, liquidity and yield. The Office of the State Comptroller provides guidance to local officials regarding cash management and a wide variety of other topics on local government finance.

Purchasing and Property Acquisition. Other features of financial management relate to purchasing, contracting and storage, and the problem of how far these responsibilities can or should be brought under centralized procurement policies and procedures. Counties, cities, towns, villages, school districts and fire districts purchase goods, services and real property pursuant to procedures and requirements set forth in applicable law. To reduce their purchasing costs, localities sometimes participate in cooperative purchasing endeavors and utilize assistance available from the state.

The New York State Office of General Services (OGS) offers local governments the opportunity to purchase a wide range of goods at favorable prices under state contracts. In addition, OGS offers various kinds of technical assistance for local government purchasing, and assists localities with the procurement of products made by prisoners and the blind. Through OGS, local governments are assisted in the acquisition of surplus state personal and real property and surplus federal property.

Post Audit. Municipalities are subject to audit by various federal and state government agencies. In addition, municipalities may elect on their own to have general or selective audits. A post audit is an audit made after the event, when financial transactions have been recorded and completed. Municipalities' internal auditors often conduct audits of subsidiary agencies within the municipal organization on a continuing basis.

Insurance and Risk Management. Decreasing resources and increasing insurance costs are putting greater emphasis on risk management. There is often a variance between the optimal and the maximum feasible amount of insurance coverage. While most localities need to have insurance coverage for catastrophic events, they may take a number of steps to reduce costs. An acceptable safety program, self-insurance, coinsurance, blanket insurance and competitive bids can sometimes reduce costs.

State Supervision of Local Finances

During the 1930's, there was a depression-born trend toward state scrutiny of municipal budgets and expenditure programs, review and approval of proposed municipal borrowings, and measures designed to assist in the marketing and acceptance of local bond issues. Municipal conditions inviting state intervention during these periods included persistent weaknesses in current accounts, the incurrence of large volumes of floating indebtedness, reliance upon borrowing for current expense to shore up sagging municipal budgets, debt readjustments and refunding, and actual or incipient defaults.

From these various factors and developments emerged the main ingredients commonly associated with state supervision of local finances: legal tax and debt limitation; debt regulation through uniform bond laws and their administration; reporting, auditing and accounting requirements; central review of debt proposals and expenditure programs; varying degrees of involvement in debt planning and issuance — all fortified by advisory and technical assistance.

Leading Features of State Supervision

Many of the leading features of state supervision of local finances in the State of New York derive from constitutional and statutory requirements previously discussed in this chapter Chief responsibility for state supervision of municipal finance resides in the Office of the State Comptroller. Among other services, the OSC's functions include:

- providing ongoing technical assistance through the OSC Division of Local Government and School Accountability to enable and encourage local government officials to:
  - continuously improve fiscal health
  - reduce costs and improve the effectiveness of their service delivery, and
  - to account for and protect their government's assets.

  This Division also performs periodic audits and reviews of local governments, conducts training for local officials and provides consulting services;.
- supervising compliance of local governments with legal tax and debt limitations and requiring submission by local governments of debt statements and annual budgets;
- providing technical assistance, reviewing applications requesting approval of exclusions from the local debt limit exclusions, and the formation or extension of town improvement districts, fire districts and county special districts;
- collecting and disseminating local government financial information including statistics on revenues, expenditures and debt;

- developing uniform accounting systems and providing guidance on financial management practices;
- administering the State and Local Government Employees' Retirement Systems; and
- providing advisory legal opinions to local governments pertaining to the powers and duties of the local government under state laws of general applicability including written advisory opinions on prospective actions of local government.

Annual Financial Report Reviews

A review of each local government's annual financial report is performed by the OSC to assess compliance with minimum established standards. The information from this process becomes an integral part of a Uniform Risk Assessment Process (developed in 1999). Based upon analysis of identified risk areas, assistance to improve local government operations is offered as appropriate.

Deficit Financing Legislation

Occasionally local governments accumulate deficits to a point that the only recourse left is to obtain special state legislation that authorizes the local government to issue debt to finance the deficit. This action enables the local government to pay off a portion of the debt (through annual debt service payments) over a number of years. Such legislation generally requires the OSC to certify the amount of the deficit before any such indebtedness can be issued. The OSC also reviews and makes recommendations on the proposed budgets of these municipalities while such financing is outstanding.

Oversight Boards

In extreme situations the State Legislature has determined that certain local governments needed additional oversight. This action has been prompted by periods of prolonged fiscal difficulty or, in rare instances, because the local government has lost access to financial markets. Oversight boards typically have powers to approve debt issuances, approve budgets and/or financial plans, approve contracts including employee contracts and, in rare instances, assure the payment of obligations through the intercept of state aid and tax revenues. Legislation creating control boards usually provide for members to represent interested parties such as the Governor, State Comptroller, State Legislature and generally the local government and/or local business leaders and local representatives. The legislation also establishes criteria to determine when the local government has regained its financial health. Typically, once the local government meets those criteria, the oversight board approval powers cease.

Local Government Data Base

The oversight activities rely heavily on an improved computerized data file known as the Local Government Data Base. This file is created and maintained by the OSC and contains comprehensive financial and other data on all local governments in the state from fiscal year 1977 onward. Much of this data is obtained from annual financial reports filed by each local government. The reports contain financial statement data (i.e., financial position and results of operations and changes in financial position) as well as detailed revenues and expenditures.

This data file is regularly transmitted to the Division of the Budget, the Senate Finance Committee and the Assembly Ways and Means Committee to be used as the basis for much of the program analyses and fiscal impact studies regarding state and local relations.

Generally Accepted Accounting Principles (GAAP)

Since the early 1900's the Office of the State Comptroller has prescribed Uniform Systems of Accounts for local governments. The purpose of these systems has been to provide a means of gathering financial data from local governments that is consistent in classification and content. This information is used by financial analysts in the Comptroller's Office, other agencies and the State Legislature.

These systems do not set Generally Accepted Accounting Principles (GAAP). They are promulgated by the Governmental Accounting Standards Board. GAAP is a technical term used to describe the conventions, rules and procedures that constitute accepted accounting practices on a nationwide basis.

Since the late 1970's, the Office of the State Comptroller has determined that adherence to Generally Accepted Accounting Principles is in the best interest of New York State and its local governments. Consequently, the Uniform Systems of Accounts prescribed by the Comptroller are periodically updated to reflect changes in GAAP. In addition, the Comptroller's Office issues accounting bulletins and conducts training sessions for local officials.

Chapter Endnote

40. *Municipal Finance Administration*, Sixth Edition, International City Managers' Association, Chicago, 1962, p. 205.

CHAPTER XIII

Personnel Administration

Personnel administration in New York local governments is subject in many important respects to the State Civil Service Law. In general, the law makes several options available to local governments for civil service administration. Although the specific responsibilities of a municipal personnel agency may vary, a sound personnel program rests on clearly drawn local laws, rules and regulations that include such matters as recruitment, selection, employee relations, placement, performance appraisal, position classification, pay plans, fringe benefits, working conditions, separation, training, and career development.

Personnel administration encompasses all of the activities concerned with the human resources of an organization and includes a series of functions that relate to its overall operation. These functions include position classification, determination of salary scales, fringe benefits, recruitment and selection of employees, performance appraisal, training, establishment of policies and procedures for conduct and discipline, and development of programs related to health, safety, affirmative action and retirement.

Numerous factors — economic and social resources, technological advances, intergovernmental relations, politics and political leadership, special interest groups such as employee unions and concern for career services — greatly influence personnel programs.

Historical Development

To understand the goals and purposes of public personnel administration, it is helpful to trace its historic development and, in particular, to note the major role that New York State played in the civil service reform movement. Initially, the philosophy and practices of patronage governed personnel administration in the United States almost universally. Patronage involved giving government jobs to supporters of those who won elections and resulted in the famed and controversial spoils system. Jobs were filled with party workers and with friends and relatives of elected officials. During the nineteenth century, the patronage system and its abuses produced increasing alarm. The system was blamed for lowering morale, encouraging disloyalty and dishonesty, obstructing reward for good work and discouraging competent people from entering government service.

It is no coincidence that New York generated much of the early impetus for civil service reform, since the spoils system had become most pervasive in the Empire State. As one observer noted, "It was the politicians of New York who gave it its organized impulse. It was in response to Henry Clay's taunt at the New York system that a New York senator made the famous defense that to the victor belong the spoils of his enemy."[41] It is not surprising that civil service reformers were most active in New York State, where the problems were most acute. Organized in 1877, the New York Civil Service Reform Association stimulated the rapid development of similar associations in other states. This reform movement led to the enactment of the federal Pendleton Act in January 1882. This law required establishment of a bipartisan civil service commission to conduct competitive examinations and to assure the appointment and promotion of government employees based on merit. Later that year, New York State enacted its first civil service law.

New York State Civil Service Law

New York State has the oldest civil service system of any state in the nation. Beginning in 1883 as a reaction to the spoils system, it concentrated on the development of examinations and other recruitment devices. The state subsequently adopted a special classification system in order to determine titles and salaries. As state government assumed greater responsibilities and as the state's work force grew, the civil service system was modified and refined by legislation and administrative action. It became a highly complex and sophisticated system, which is now administered by the State Department of Civil Service. Within the department, separate divisions concentrate on

specific personnel functions, such as classification, examination and placement. New York State's Civil Service Law also includes provisions for the administration of civil service at the local government level.

Forms of Local Civil Service Administration

The Civil Service Law specifies optional forms of civil service administration for the purpose of administering the law in the counties (including political subdivisions within counties), in the cities and in suburban towns of more than 50,000 population. Villages have no authority to administer a separate civil service system, but must comply with state law and with locally adopted civil service rules and the regulations of the regional or county civil service commission or personnel officer.

Municipalities can select one of two major options for direct administration of civil service law — the civil service commission or the personnel officer. The commission consists of three persons with no more than two from the same political party. They are appointed either by the governing body or by the chief executive officer of the municipality. Their six-year terms of office are staggered, with one term expiring every two years.

Like the Civil Service Commission, the personnel officer is appointed by the governing body or chief executive for six years and the responsibilities of the office include those of the municipal civil service commission. In addition, the personnel officer often has non-civil service responsibilities of personnel management and human resources administration, such as labor relations, affirmative action and staff development activities.

Other governments have developed a hybrid form of civil service/personnel administration. Typically, this joint system of administration consists of a part-time civil service commission and a personnel director. The civil service commission administers the Civil Service Law and promulgates local civil service rules and regulations, while the personnel director carries out the non-civil service functions.

In the event that a county or city chooses to not directly administer a separate civil service system, it may join with one or more other counties or cities, in the same or adjoining counties, to establish a regional civil service commission or a regional personnel officer position. This regional alternative for civil service administration may be established by written agreement approved by the governing bodies of each participating county and city. There are no regional operations in New York State at present.

Political subdivisions with populations of less than 5,000 fall into a special category. The State Civil Service Commission has standards for determining whether or not it is practical for such subdivisions to have civil service examinations for their employees.

Categories of Positions

Sections 35 and 40 of the Civil Service Law establish two major groups of municipal employee positions — the classified and unclassified services.

Positions in the unclassified service are defined by statute and include all elected officials, all officers and employees with duties and responsibilities directly related to either the legislative or elective functions, chief administrators (i.e., department heads) of government and those individuals with instructional responsibilities within school districts, boards of cooperative educational services, county vocational education and extension boards, or the state university system.

Within the classified service there are four jurisdictional classifications of positions: competitive, exempt, noncompetitive and labor. All positions that are outside of the competitive class must be specifically named by the civil service commission and approved by the State Civil Service Commission.

The basis for determining whether a position shall be in the competitive class is the practicality of ascertaining merit and fitness by competitive examination. This process may utilize any, or a combination of, several different tests: written, oral, performance, physical, and review of training and experience. If a position in the classified service is ruled to be outside of the competitive class, it is placed in one of the other three classes in accordance with criteria found in the Civil Service Law.

Exempt class positions are designated primarily for positions of a policymaking or confidential nature for which a competitive or noncompetitive examination is impractical. The appointing authority selects employees in this class without regard to civil service rules and regulations governing eligible lists. The intention is to provide executive and judicial officers with some latitude and flexibility in selecting, retaining and discharging their closest associates. Another important aspect of exempt positions is that there are no specified minimum qualifications as there are in competitive, non-competitive and labor class positions.

Noncompetitive class positions are positions for which there are established qualifications with respect to education and experience, but it is not practical to determine merit and fitness of applicants by competitive examination. The appointing authority can make appointments

without regard to relative standing on eligible lists. There are no noncompetitive eligible lists.

The labor class includes all unskilled laborers, except those for which a competitive examination can be given. The local civil service commission or personnel officer may require applicants to take examinations for labor class positions if it is practical.

Local Civil Service Administration

Scope and Responsibility

The municipal civil service commission or personnel officer administers the Civil Service Law for classified municipal employees. Rules adopted by the commission or personnel officer are subject to approval by the State Civil Service Commission. The local commission or personnel officer must maintain extensive employee records for certifying payrolls, conducting examinations required by law and preparing appropriate lists of people eligible for appointment.

Regardless of the form chosen, the civil service commission or personnel officer of a county administers the Civil Service Law for the county and the political subdivisions within the county, including towns, villages and school districts, except for suburban towns with population of 50,000 or more and cities that choose to operate independently. In the case of a city or suburban town that opts to have its own civil service commission or personnel officer, the administration covers all officers and employees of the town or city, including the city school district. The jurisdiction of a regional commission or personnel officer includes all municipal employees within the region who would otherwise be subject to the jurisdiction of the local civil service administration of the respective counties and cities within the region.

Changing the Form

The Civil Service law also makes provision for changing the system of administering civil service law in counties, cities and suburban towns. The governing body of a county, city and suburban town may elect to change from a civil service commission to the office of personnel officer or vice versa. They may choose to join with another municipality either within the county or on a regional basis to administer civil service jointly under either a commission or personnel officer. The law also establishes the effective dates of such changes, the duration of time before further changes may be made, and the authority of the governing body to revoke its action regarding changes. The advice and counsel of a municipal attorney may be helpful in interpreting and implementing the complicated procedures involved in changing the form of civil service administration.

The Functions of Personnel Administration

The specific responsibilities of a municipal personnel agency vary from one locality to another and from one level of government to another, depending upon size, jurisdiction and numbers of municipal employees. An effectively administered personnel program requires a strong legal base, a comprehensive and concise set of rules and regulations, and assistance and support from the municipality's legislative body.

These components are necessary to achieve continuity of policy and practice and to allow managers to make informed decisions and solve personnel problems. New York State's Civil Service Law includes the following elements in the personnel function: the principle of merit and fitness, rule-making authority, and a procedure for appeal. The administrative guidelines of such a program should emphasize stability of policy and flexibility of procedure.

The following paragraphs briefly describe some of the major responsibilities of a personnel organization.

Classification and Salary Plans

Two of the most important functions of a personnel department are position classification and salary administration. To administer an organization effectively, management must have relevant facts about the specific jobs required to accomplish goals and objectives. Management must determine: first, what work must be done to attain the organization's goals; second, what skills are necessary to accomplish this work; and third, how much of this work can be accomplished by one person. On the basis of this information the personnel department classifies positions, determines qualifications and salaries and recruits suitable people to do the work. The information also underlies all testing programs.

The personnel department usually administers a salary plan on the basis of position classification. Sometimes the personnel staff develops the salary plan, but it is common for the department to hire an outside consultant who specializes in the area of personnel administration. However, the final adoption of the plan, including salary and wage scales, is a legislative prerogative. Establishment of a salary policy occurs in two phases: the first determines the general level of wages in an organization; and the second devises a plan to provide consistent internal salary relations. Both social and economic factors affect wage levels in government, and the pay plan must reflect bal-

ances between these factors. Wage levels should take the following into consideration:

- financial condition of the organization;
- wage scale of competitors;
- bargaining power of the employees;
- cost of living;
- federal and state regulations;
- internal equity;
- external competitiveness;
- difficulty of work performed;
- education/license required; and
- any special situations, such as hazardous working conditions, shift pay, etc.

Recruitment, Selection and Placement

When the personnel department recruits people to perform jobs, it takes several actions that are part of a continuous process. These actions include recruitment, selection, placement and probation. The recruitment program must reach out and attract the best minds and skills without discrimination. The department may develop and implement affirmative action recruitment programs.

The department then screens applicants for jobs, most frequently by examination and/or interview, and develops lists of eligible candidates. It must plan selection programs carefully so that they include the following kinds of measurements about applicants: skills, knowledge, abilities, personality traits, interests, physical traits (where relevant) and medical conditions.

Working from the eligible list established by the selection process, the department then certifies to the appointing authority the top ranking candidates most qualified for the job. After an individual is appointed, most agencies require a probationary period and provide for periodic performance evaluation. Newly hired employees should participate in an effective orientation and training program during their probation.

The activities composing a municipal personnel program must take place within the limitations and requirements of the state's Human Rights Law as it applies to public employment. This law recognizes as a civil right the opportunity to obtain employment, including public employment, without discrimination because of race, creed, sex, color, age, disability, marital status or national origin. The following practices are among those considered unlawful and discriminatory:

- for an employer to refuse to hire or to discriminate against the employment of an individual or to discharge an employee because of the above factors;
- for an employment agency to discriminate against any individual for these reasons in receiving, classifying, disposing of, or otherwise acting on applications for services;
- for a labor organization to expel or deny membership to an individual for those reasons;
- for an employer or employment agency to promote any advertisement or publication which expresses, directly or indirectly, any prohibited limitations, specifications or discriminations; and
- for an employer, labor organization or employment agency to discharge or expel or otherwise discriminate against any person who has filed complaints pursuant to the Human Rights Law.

In addition, this law specifies that it is an unlawful discriminatory practice for an employer, labor organization or employment agency to control the selection of applicants for apprentice training programs. Numerous other discriminatory practices are listed, but those mentioned above are most specifically related to municipal personnel and training practices.

Performance Appraisal

Every supervisor in a municipal government should conduct a continuous evaluation of employees' development and whether they utilize their abilities most effectively. Periodic employee performance appraisal promotes the effective operation of an organization. A performance appraisal system:

- informs employees of what is expected of them;
- informs employees of how they are performing;
- recognizes and rewards good work;
- determines employee weaknesses and suggests alternatives for improvement;
- identifies employee training needs;
- maintains a continuing record of employee performance;
- guides promotions, transfers and appropriate placement; and
- checks the reasonableness of performance standards, the accuracy of job descriptions and classification, and the effectiveness of recruitment procedures.

There is no standard method for performance evaluation. Numerous techniques are utilized and each requires a different degree of detail. The organization's objectives

and management's concerns usually determine the chosen techniques.

Fringe Benefits and Working Conditions

Personnel administration must also be concerned with working conditions and fringe benefits, as specified in labor agreements. Such items are over and above salaries and wages; they include vacation arrangements, sick leave, insurance policies, retirement plans, physical working facilities, hours of work, and employee safety and health programs.

Training and Development

Recruiting, selecting and placing employees are only the initial steps of a personnel program. One of the most important aspects of personnel administration is employee training and development. Every employee must learn certain skills, new techniques, appropriate procedures, etc. Employees must be trained — they must be given the opportunity to learn how to effectively perform their present and future work. Training programs can:

- orient employees to a new job;
- assist employees to acquire specific skills or knowledge required to perform their jobs;
- increase the scope of the employees' experiences and prepare them for greater responsibilities;
- encourage employees to take pride in their work;
- promote concern among employees for their own personal and career development; and
- increase worker safety.

The area of employee training and development has been drawing increased concern and interest over the past several years. Many municipalities are establishing separate training units to plan and administer total training programs. Training is integral to the total personnel process; it influences productivity, morale, motivation and realization of organization goals.

Separation

Another aspect of the personnel process is the development of appropriate procedures for separation. These include such activities as reduction in work force, disciplinary suspensions, terminations and separation during the probationary period. Such procedures as required by the Civil Service Law, the Human Rights Law and several court decisions specifying that due process rights must be granted to employees.

Civil Service Law specifies the procedures for the discipline and discharge of public employees who: hold competitive class appointments, are veterans or exempt volunteer fire fighters, or have completed five years of continuous service as non-competitive employees. However, local governments may negotiate alternative disciplinary procedures to replace or modify those procedures.

Similarly, Civil Service Law governs separation due to a reduction in work force of competitive class employees and those who are veterans and volunteer firefighters. In addition, local governments may agree to establish specific layoff procedures for noncompetitive and labor class employees through collective bargaining.

Federal Acts Affecting Personnel Administration

The Americans With Disabilities Act

The Americans With Disabilities Act, commonly referred to as the ADA (42 U.S.C. section 12101 et seq.), became law in 1990. It is intended to eliminate discrimination against people with qualifying disabilities in all areas of life including employment opportunities, access to governmental services, architectural barriers and telecommunications. Title I of the ADA, Employment, is of importance to local government personnel administration since it makes significant changes to all employment related activities, from recruitment and on the job performance, to attendance at work related social functions. Since its enactment, hundreds of cases concerning the ADA have been decided in the Federal Courts. These, along with implementing regulations promulgated by the United States Equal Employment Opportunity Commission (EEOC) and United States Attorney General, provide guidance for compliance with the Act. Pending and future court cases will likely continue to shape and define ADA compliance issues.

Under Title I of the ADA, no employer, including local governments, may discriminate against an individual with a qualifying disability in the terms and conditions of employment. Under the ADA, individuals are disabled primarily if they have a physical or mental impairment (or are regarded as having such an impairment) which substantially limits one or more of the individuals major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working and moving. The term "qualified individual with a disability" is defined in section 12111(8) of the Act as:

> "...an individual with a disability who, with or without a reasonable accommodation, can perform the essential functions of the employment

position that such individual holds or desires. For purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job."

Section 12111(9) provides, with regard to the term "*reasonable accommodation*":

The term "reasonable accommodation" may include:

(A) making existing facilities used by employees readily accessible to and useable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to vacant positions, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

In essence, once a local government has made a determination that an applicant for employment or an existing employee is a qualified individual with a disability; the employer may be obligated, through an interactive process with the employee, to provide the employee with a reasonable accommodation. While there are many rules and nuances to the ADA, some key points to remember are: the employer, not the employee, makes the final decision on what the reasonable accommodation will be; pre-job offer and post-job offer questions and medical examination requirements are dictated by the Act; and if the employee cannot perform the essential duties of the job, even with a reasonable accommodation, the employer need not hire them or may take appropriate steps to separate the employee from service.

Because of the ADA's complexities, it is recommended that local governments confer with knowledgeable counsel, affirmative action officers, and other available sources when confronted with issues arising under the Act.

The Family Medical Leave Act

The Family Medical Leave Act, or FMLA, (29 U.S.C. section 2601 et seq.) became law in 1993. It is intended to balance the demands of the work place with the needs of families. By providing workers faced with family obligations or serious family or personal illness with reasonable amounts of leave, the FMLA encourages stability in the family and productivity in the workplace.

The FMLA gives eligible employees of covered employers the right to take unpaid leave, or paid leave charged to appropriate leave credits under certain circumstances, for a period of up to 12 work weeks in a 12 month period due to: 1) the birth of a child or the placement of a child for adoption or foster care; 2) the employee's need to care for a family member (child, spouse or parent) with a serious health condition; or 3) the employee's own serious health condition which makes the employee unable to do his or her job. Under certain circumstances, FMLA leave may be taken on an intermittent basis. Employees are also entitled to continuation of health and certain other insurances, provided the employee pays his or her share of the premiums during the period of leave.

The employer has a right of 30 days advance notice from the employee, where practicable. In addition, the employer may require the employee to submit certification from a health care provider to substantiate that the leave is due to the serious health condition of the employee or a member of the family. The employer may also require, as a condition of returning to work, medical documentation from an employee who has been absent due to personal illness.

The Immigration and Naturalization Act

The Immigration and Naturalization Act (Title 8 of the United States Code) provides the foundation for immigration law. It was passed in 1952 and has been amended several times. Section 1324a of Title 8 imposes requirements on employers to attest to their examination of certain documents produced by employees that verify employment authorization and identity.

State Assistance and Training

A number of state agencies and other organizations offer assistance to local governments in specific areas of staff development or personnel program administration. Training and technical assistance provided by state agencies is intended primarily to improve the capability of local employees whose activities help meet program objectives of those agencies. Summarized below are some of the kinds of training and other assistance available to local governments.

Department of Civil Service

The Department of Civil Service is the primary source of technical assistance to local governments assisting with

setting up and operating local personnel programs. Local officials can obtain a variety of specific administrative and operational assistance from the Municipal Services Division of the department. For instance, if a municipality does not have an appropriate eligible list for a position, the department can provide names from appropriate state eligible lists. The list may be limited to residents from the locality or civil division in which the appointments are to be made, and may be used until it runs out or is superseded by a list established by the municipality.

On request, the Department of Civil Service also provides on-site advice and technical assistance concerning the following:

- the State Civil Service Law and municipal rules and regulations;
- job classification systems, job standards and specifications;
- the development of procedural and training manuals;
- the establishment of salary plans and fringe benefits;
- surveys of local civil service or personnel agencies;
- training in municipal personnel practices;
- setting up and conducting examination programs; and
- minority group training and placement.

Other State Agencies

The following list indicates the scope and range of the type of local government training that is offered by other state agencies:

The Education Department provides training for local school superintendents and members of local boards of education.

The Department of Environmental Conservation provides training to help specialized local government staff, including waste water treatment plant operators and air pollution control technicians, meet certification requirements.

The Office of Real Property Tax Services provides training to help local assessment officials perform their functions and duties effectively and meet certification requirements.

The Office of the State Comptroller offers training for fiscal officers of local governments.

The Office of Mental Health offers program-related training to staff of local mental health agencies.

The Office of Mental Retardation and Developmental Disabilities makes its own staff training programs available to appropriate local employees.

The Department of Labor makes available to appropriate local government employees, where possible, its in-service training programs on such matters as placement, supervision and unemployment insurance.

The Office of Children and Family Services makes available appropriate training for local social services program staff and others, including case workers, supervisors, day care workers, parent aids, foster parents and investigators.

The Office of Alcohol and Substance Abuse Services offers training in such topics as counseling, program development and prevention to staff of local agencies it funds and other appropriate agencies.

The State Emergency Management Office (SEMO) of the Division of Military and Naval Affairs provides training for local government emergency management staff on such matters as emergency planning, communication, creative financing, decision making, hazardous materials and legal issues.

Department of State

The Department of State offers certain kinds of technical assistance and training to promote effective local government operations. To this end, the department makes available training in fire prevention and control, enforcement of the Uniform Fire Prevention and Building Code, land use planning and regulation, management of community action programs, and in specific areas of municipal management. Technical assistance is also provided in the above areas, as well as in municipal law, intergovernmental cooperation, local government organization and operations, sources of financial assistance and local waterfront revitalization.

Other Organizations

Assistance with staff development and training is offered to local governments through a number of non-state organizations. Statewide, these include the municipal associations (NYS Association of Counties, NYS Conference of Mayors and Other Municipal Officials, Association of Towns of the State of New York and the NYS School Boards Association), their affiliate groups, and such specialized organizations as the New York Planning Federation. These organizations often provide training at

their annual meetings or through special seminars, and they frequently accommodate training sessions of state agencies and other organizations at their meetings.

Summary

Effective personnel administration at the local government level requires:

- compliance with New York State Civil Service, Human Rights and Federal Laws, and local civil service rules and regulations;
- formalized personnel policy;
- strong but flexible legal framework;
- organized activities;
- clearly defined goals and objectives;
- concern for human factors as well as for operational results;
- positive personnel activities to stimulate and motivate employees;
- concern for employee development; and
- awareness of the need for, and benefits of, training and education.

Chapter Endnote

41. Jerome Lefkowitz, *The Legal Basis of Employee Relations of New York State Employees* (Association of Labor Mediation Agencies, 1973), p. 2.

CHAPTER XIV

Labor-Management Relations

Collective bargaining became a legal right of public employees at all levels in New York State in 1967. Unionization of public employees subsequently spread rapidly across the state. A set of procedures were developed within the provisions of the Taylor Law, which now regulates labor-management relations in government at the local as well as the state level.

All local governments in the State of New York are public employers. Local Government officials need to be aware of and understand the rules and procedures that apply to relations between the governmental unit and its employees.

Historical Background

Prior to 1967, public employees in New York State did not have a statutory right to bargain collectively. The only statute regulating conditions of employment for public employees, the Condon-Wadlin Act of 1947, did not give public employees any rights to participate in decisions regarding employment conditions. This act, which passed following labor disturbances among public employees in Rochester, Buffalo and New York City, prohibited strikes by public employees and established severe penalties for violating its provisions.

The Condon-Wadlin Act was flawed because it failed to make any provision for the amelioration of conditions that led to strikes. The growing realization that the Condon-Wadlin Act did not deter strikes, combined with an increasing demand by public employees for bargaining rights, generated pressure for amendment or replacement of the act. Several bills to do so were introduced in the State Legislature between 1960 and 1963, but none passed. These bills generally provided for some modification of penalties for striking and for the establishment of various forms of grievance procedures for public employees.

Several events in the 1950's and early 1960's encouraged employees of state and local governments to assert their desires for collective negotiations. In 1950, Governor Thomas E. Dewey guaranteed to state employees the right to join employee organizations and created a grievance procedure. In 1954, Mayor Robert Wagner of New York City issued an interim Executive Order that granted limited collective bargaining rights to New York City transit workers. In later years, other employee groups were also granted these rights.

Interest in collective bargaining for public employees was also stirring in the State Legislature. In 1962, a staff report to the Joint Legislative Committee on Industrial and Labor Conditions stressed the need for a "more rational labor relations program for public employees."

The strike penalties of the Condon-Wadlin Act were softened for an experimental period between 1963 and 1965. The original act was restored, however, when two serious work stoppages occurred in New York City in the following year. When the penalties prescribed by the Condon-Wadlin Act were once again circumvented, Governor Rockefeller responded by appointing a blue ribbon committee on public employee relations. The legislation proposed by this committee, and enacted in 1967, came to be known as the Taylor Law (named for its chairman, George Taylor). The Taylor Law thus became the first comprehensive labor relations law for public employees in New York State and was among the first in the country. The Taylor Law applies to the State of New York, its counties, cities, towns, villages, public authorities, school districts, and certain of its special service districts.

The Taylor Law:

- grants public employees the right to organize and negotiate collectively with their employers;
- gives public employees the right to be represented by employee organizations of their own choice;
- requires public employers to negotiate with their employees and enter into written agreements with

public employee organizations representing specific units of workers;

- establishes impasse procedures for the resolution of deadlocks in negotiations;
- mandates binding arbitration of disputes in police and fire negotiations;
- prohibits as "improper practices" certain acts by employers and employee organizations;
- prohibits strikes by public employees; and
- establishes a neutral agency — the Public Employment Relations Board (PERB) — to administer the law and "referee" public sector labor relations.

The Public Employment Relations Board

The Public Employment Relations Board (PERB) is an integral part of the Taylor Law's philosophy of labor relations. This board was created to serve as an independent, neutral agency to administer the provisions of the Taylor Law and to promote cooperative relationships between public employers and their employees. To this end, PERB has the following functions and powers:

- administration of the Taylor Law statewide within a framework of policies set by the Legislature;
- adoption of rules and regulations;
- resolution of representation disputes;
- provision of conciliation service to assist contract negotiations;
- adjudication of improper practice charges;
- determination of culpability of employee organizations for striking and order of forfeiture of dues and agency shop fee check-off privileges as a penalty; and
- recommendation of changes in the Taylor Law.

Although the Taylor Law provides local governments with the option of handling their own public employment relations matters, few have chosen to do so. At one time, there were 34 local boards (known as mini-PERBs), but only five now remain in existence. These local boards exercise most of the responsibilities of the state PERB, but have no jurisdiction over improper practice charges and do not perform research.

In New York City, the Office of Collective Bargaining (OCB) fulfills PERB functions. For several years, authority over improper practice cases in New York City resided with PERB, but in 1979 the Legislature returned this responsibility to OCB.

Elements in the Bargaining Process

The Negotiating Unit

A negotiating unit is a group of employees who are either determined by PERB to constitute a body appropriate for bargaining purposes, or who are voluntarily recognized as such by a public employer. All employees of the jurisdiction may be joined into a single unit for purposes of collective bargaining, or they may be divided into several separate units that independently negotiate with the employer. The latter is more common.

When the employer "recognizes" the unit, no legal proceedings are necessary to determine the unit's composition. However, when the employer does not recognize the unit, PERB must determine its appropriateness. The Taylor Law specifies that PERB must apply certain standards in determining negotiating units.

PERB also may exclude management/confidential personnel from negotiating units. Management personnel are employees who formulate policy, are directly involved in collective bargaining, or have a major role in administering a collective bargaining agreement or personnel administration. Confidential employees are those who assist or act in a confidential capacity to management personnel who are directly involved with labor relations, contract administration or personnel administration. Both the state and local governments that wish to exclude management/confidential personnel from existing negotiating units may apply to PERB for such exclusions. Negotiating units may also apply to PERB to have management/confidential positions reclassified as negotiating unit positions.

The Bargaining Agent

After the appropriate negotiating unit is defined by employer recognition or by PERB, employees in the unit may exercise the right to be represented by an employee organization of their choice. The chosen organization, once it is recognized or certified, is known as the "bargaining agent" and serves as the exclusive representative of all workers in the negotiating unit, whether or not they are members of the union.

Public employers may voluntarily recognize a particular employee organization as the bargaining agent for a specific negotiating unit. This action is called "recognition." If, however, the employer does not voluntarily recognize the employee organization, the union must petition PERB for certification, which designates the union as the exclusive bargaining agent for all employees in the negotiating unit for a fixed period of time.

PERB may conduct an election among the members of the negotiating unit to determine which bargaining agent should be certified. Employees face different choices in different elections: they may be asked to choose between competing employee organizations or between an organization and no bargaining agent. After an election, PERB certifies the winner as the bargaining agent. In most cases where only one union seeks bargaining agent status, an election is not held. Rather, PERB grants certification upon a showing by the employee organization that the majority of members in the negotiating unit have signed cards — generally dues check-off cards — indicating their support for the organization that is seeking certification.

Once certified, the union has the right to represent the employees in the bargaining unit without challenge by the employer or another organization until seven months before the expiration of the collective agreement between the union and the employer. One month earlier, a "window period" opens. During this period, petitions may be filed to change the negotiating unit.

Changes in the certification itself may also occur during the window period. For example, a challenging employee organization may launch a petition drive at this time to force an election against the incumbent bargaining agent. If the challenger demonstrates sufficient support (30 percent of the members of the unit), PERB will schedule an election that gives employees a choice between the challenger, the incumbent bargaining agent, and no representative.

Contract Bargaining

Once the bargaining agent has been certified, the Taylor Law requires a public employer to negotiate with the bargaining agent over the wages, hours, and other terms and conditions of employment for employees in the negotiating unit. The Taylor Law charges both employers and employee organizations to bargain in good faith. Generally, public employers should be aware that for them good faith means:

- bargaining with employee organizations at reasonable times and places;
- listening to and considering bargaining positions put forth by employee groups with respect to terms and conditions of employment; and
- working positively toward a settlement.

Good-faith bargaining does not require employers to agree to specific union proposals, either in whole or in part, nor does it require employers to make counter proposals to specific union demands. However, good faith does require that both parties negotiate with the intention of concluding an agreement.

Scope of Bargaining

The scope of negotiations — the actual subject matter that management and labor may negotiate at the bargaining table — is broad. As the New York State Court of Appeals noted in its landmark *Huntington* decision:

> "Under the Taylor Law, the obligation to bargain as to all terms and conditions of employment is a broad and unqualified one, and there is no reason why the mandatory provision of that act should be limited in any way except in cases where some other applicable statutory provision explicitly and definitively prohibits the public employer from making an agreement as to a term or condition of employment."[42]

PERB categorizes subjects of negotiations as mandatory, non-mandatory or prohibited.[43]

The parties must, upon demand, negotiate mandatory subjects of collective negotiations, and the employee bargaining agent and the employer must jointly reach a decision. Examples of mandatory subjects are:

- wages — all compensation paid to public employees;
- fringe benefits — sick and personal leave time, vacation time, and medical insurance;
- hours of work — the amount of time spent on the job;
- seniority — preference accorded employees on the basis of length of service;
- grievance procedure;
- subcontracting — a decision to let out to a private contractor services currently being performed by public employees; and
- impact on unit members of a reduction in work force.

Non-mandatory — permissive — subjects of negotiation are those issues which are negotiable on a voluntary basis. These issues do not involve working conditions and are management prerogatives. A management prerogative is an act or a decision which relates directly to the authority of a public employer to establish government policy in accordance with its public mission. Examples of non-mandatory subjects of negotiation include:

- overall policies and mission of government;
- residency requirements for future employees;[44]
- employment qualifications; and
- filling of vacancies.

Non-mandatory subjects which have been voluntarily agreed upon and incorporated into a collective bargaining agreement are deemed converted into mandatory subjects of collective negotiations.[45]

Prohibited subjects may not be negotiated under any circumstances. As noted earlier, a public employer's obligation to bargain terms and conditions of employment is broad.

Prohibited subjects of negotiation are few, but include: retirement benefits, except the negotiation of improved retirement benefits among the options offered by the state, and subjects void as against public policy.

Local governments should recognize that they may be bound not only by the terms which are spelled out in their negotiated agreements but also by practices that have developed in the workplace over a period of years. These work conditions are called "past practices," and if they constitute terms and conditions of employment they generally may not be changed without negotiation.

Resolution of Bargaining Deadlocks

Strikes or lockouts are sometimes invoked to break bargaining deadlocks in the private sector. The Taylor Law, which prohibits strikes, prescribes several forms of third party intervention to resolve bargaining deadlocks. The Taylor Law also allows negotiating parties to jointly develop their own procedures for breaking deadlocks. Either the bargaining party or PERB may declare an impasse at anytime within 120 days before the date the contract expires. Table 24 illustrates the sequence of the three different impasse procedures in the law.

TABLE 24

Steps to Resolve Bargaining Deadlocks

Step	Police and Firefighters, New York City Transit and Miscellaneous Other Public Safety Personnel	Educational Personnel	All Others
I	Impasse declared by PERB	Impasse declared by PERB	Impasse declared by PERB
II	Mediation	Mediation	Mediation
III	Binding arbitration	Fact finding	Fact finding
IV		Continued negotiations until agreement is reached	Legislative hearing
V			Legislative settlement

Mediation. A mediator, appointed by PERB, acts in a confidential capacity to each side. While acting as a buffer between the parties, the mediator attempts to revive the bargaining process. If the mediator effects an agreement, the result is the same as if the bargaining parties had successfully completed negotiations on their own.

Fact Finding. PERB may appoint a fact finder who: takes evidence; may hold hearings; receive data, briefs and other supporting information; and then makes public recommendations for a settlement. Only mandatory subjects of negotiations may be taken to fact finding, unless the parties agree mutually to do otherwise. PERB encourages fact finders to mediate after they issue their reports to help reconcile remaining differences.

Legislative Hearing and Settlement. One or both parties may reject the fact finder's recommendations. The legislative body may, after a hearing required by the law, "…take such action as it deems to be in the public interest, including the interest of the public employees involved." While the Taylor Law is silent with respect to the length of a legislatively imposed settlement, PERB has determined that one-year terms are appropriate. Legislatively imposed settlements are, in fact, extremely rare since the parties in most cases reach settlement through negotiations. A resolution imposed by the legislative body may not change the terms of an expired collective bargaining agreement without the union's consent. It may, without the union's consent, reimpose the terms of the expired agreement or impose new terms which do not change any of the terms of the expired agreement.

Board Meeting. In education disputes the Taylor Law provides that PERB may give the parties a chance to explain their positions on the fact finder's report at a meeting at which the legislative body (i.e., the school board) or its committee is present. PERB views the law to mean, however, that there is no final resolution in educational unit disputes except through agreement between the bargaining parties. In cases where the fact finder's

report does not result in agreement, PERB will make further mediation efforts at its discretion. This assistance is called "conciliation."

Binding Arbitration. In police and fire fighter disputes and miscellaneous others, a three-member tripartite panel chosen by the parties hold hearings and decide each issue by majority vote. Only mandatory subjects may be taken to binding arbitration. Issues may be returned to the parties for further negotiation. A panel's determination is final and binding on the employer and employees, subject to appropriate judicial review.

Strikes. The Taylor Law expressly prohibits "…any strike or other concerted stoppage of work or slowdown by public employees." In the event of a strike:

- PERB may order the suspension of the dues and agency shop fee check-off privileges of the employee organization upon its own finding that a strike has occurred;
- the employer may initiate disciplinary action against individual employees involved in the strike;
- the public employer is required to deduct two days' pay from each striking employee for each day (or part thereof) on strike. Employees must pay income taxes on the full amount of wages lost; and
- the public employer must seek a court injunction against the striking organization. If an injunction is ignored, the court may impose fines against the organization and jail terms of up to 30 days against union leaders.

The Agreement

The Taylor Law requires that all negotiated contacts be in writing upon demand. When negotiations are concluded, PERB's role is limited to serving as a repository for the final agreement. A 1977 amendment of the Taylor Law excludes PERB from any role involving enforcement of a negotiated agreement. PERB's authority is limited to review of actions that constitute improper employer or employee practices.

Improper Practices

The orderly conduct of labor-management relations requires that all participants conform to mutually recognized and equitable standards in fulfilling their obligations under the law. As a result, the Taylor Law prohibits certain practices of management and labor, such as interference with the representation rights of employees or the orderly flow of collective negotiations.

Practices Prohibited — *Employers*:

- interference with, restraint or coercion of public employees in the exercise of their right to form, join or participate in, or to refrain from forming, joining or participating in, any employee organization, for the purpose of depriving the employees of such rights;
- domination of or interference with the formation or administration of any employee organization, for the purpose of depriving the employees of such rights;
- discrimination against any employee for the purpose of encouraging or discouraging membership in, or participation in, the activities of any employee organization;
- refusal to negotiate in good faith;
- refusal to continue any of the terms of an expired collective bargaining agreement until a new agreement is negotiated; and
- using state funds to discourage union organizing.

Activities Prohibited — *Employee Organizations*:

- interference with, restraint or coercion of public employees in the exercise of their right to form, join or participate in, or to refrain from forming, joining or participating in, any employee organization;
- causing, or attempting to cause, a public employer to interfere with these employee rights;
- refusal to negotiate in good faith; and
- breach of its duty to fairly represent all employees in the negotiating unit.

A party that believes one of its rights has been violated may file an improper practice charge with PERB.

The Taylor Law gives PERB broad remedial authority in issues regarding a refusal to negotiate in good faith. For example, if PERB were to find that an employer has increased the hours of work without negotiation upon contract expiration, PERB might order restoration of the old work schedule and award compensation to affected employees. On some rare occasions, PERB has found that improper practices by employers were of such magnitude as to constitute a provocation of a subsequent strike. In these cases, PERB limited the length of time that the bargaining agent lost its dues and agency shop fee check-off privileges.

The major purpose of the improper practice procedure is to establish and preserve rules of fair play in the conduct of labor-management relations.

Contract Administration

It has been said that management is no more than halfway through the labor relations job when a signed agreement is achieved. While negotiation is the more visible phase of collective bargaining, the real payoff is in day-to-day working relationships.[46]

The management task is far easier when contract terms are clear and unambiguous, but even then, certain responsibilities commonly arise in all contract situations. Management shares with union officials the duty to explain and interpret new contract provisions. In addition, government officials should always be available to meet with employee representatives to learn about changing employee attitudes and problems.

Since employee organizations are the chosen representatives of the employees, government officials should take care not to bypass union agents or undermine the union's authority.

Government officials should exercise care in the administration of a contract, because failure to do so may result in employee grievances. For this reason, larger jurisdictions often retain an employee relations staff to provide expert advice in contract administration.

Grievance Procedures

Grievance procedures provide a method for settling disputes that arise concerning the meaning or application of an existing collective bargaining agreement.

The United States Department of Labor has summarized the function of a "grievance procedure" as follows:

> "The essence of a grievance procedure is to provide a means by which an employee, without jeopardizing his job, can express a complaint about his work or working conditions and obtain a fair hearing through progressively higher levels of management."[47]

The requirement that public employers in New York State establish grievance procedures predates the Taylor Law. As early as 1962, the General Municipal Law required all public employers with more than 100 employees to provide a grievance procedure conforming to specified statutory standards. Under the Taylor Law, public employers must negotiate a grievance procedure with the recognized or certified bargaining agent.

Most grievance procedures culminated in binding arbitration. This type of arbitration is called "rights arbitration," because it relates to resolution of a dispute that involves an employee's rights under an existing collective bargaining agreement. It should be distinguished from "interest arbitration" for police and firefighters in New York State, which involves resolution of a dispute over the terms of a new collective agreement. Whether or not a grievance procedure culminates in binding arbitration is a subject of negotiation.

Union Security

Union security arrangements are devices to assure the financial support of employee organizations. Union security arrangements available under the Taylor Law are the right of exclusive representation and membership dues deduction. The Taylor Law entitles all recognized or certified bargaining agents to automatic deduction of union dues from employees' wages once the agent obtains signed authorization cards. This helps an employee organization in two ways. First, it reduces dues collection expenses significantly. Second, it is easier and more likely for the organization to maintain a large membership because the organization does not have to rely on employees for periodic payment of dues. If an employee organization engages in an illegal work stoppage, PERB may withdraw the dues and agency shop fee check-off privilege for a period of time. Individual employees may withdraw their dues or agency shop fee authorization, however, at any time.

The Taylor Law requires an employer to deduct an agency shop fee deduction from the salary or wages of employees in the unit who decide not to become a member of the union. An agency shop fee requires an employee who does not join a union that represents his bargaining unit to pay a service fee substantially equal to the dues of that union. The employee need not join the union. The principal rationale of the agency shop fee is that all employees should share the costs of representation incurred by the bargaining agent.

Retirement Systems

Among the fringe benefits of public employment are retirement benefits. These are long-term liabilities upon the employer, and they are also a major element of employee concern in labor management relations.

The New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System serve as the administrators of the pension system for virtually all public employees outside of New York City except teachers.

Each jurisdiction participating in these systems was previously able to select from a broad spectrum of retirement plans. Since 1976, however, members' benefits

generally have been determined by the date an employee becomes a member of the retirement system.

The New York State Teachers' Retirement System covers academics in school districts throughout the state. New York City operates five retirement systems for the benefit of City employees.

The cost of a pension system depends on three variables: the number of employees covered by the plan; the salaries paid to these employees; and the specific terms or benefits of the pension plan.

An increase in any of these factors has the effect of creating unfunded pension liabilities that must be amortized by an increase in the amount of money contributed to the pension system and/or by increased earnings on invested assets.

While the effect of increasing the number of employees is fairly obvious, the latter two variables have a somewhat different effect. For changes in these factors, it is necessary to increase payments to the pension system in order to compensate for past payments that were based on the lower previous salary rates or benefits, as well as for future payments. Thus, changes in salaries or pension benefits have a retroactive, as well as prospective effect on the costs of a pension system.

Summary

The practice of labor-management relations has matured since passage of the Taylor Law in 1967. The Taylor Law's primary purpose was to bring order to public sector labor relations under commonly understood rules of behavior. After a period of hesitancy and confusion, this goal has, to a large extent, been achieved. New relationships have developed that previously would have been unimaginable. Future changes in labor-management relations are more likely to be incremental than fundamental.

Chapter Endnotes

42. *Board of Education of UFSD No. 3, Town of Huntington* v. *Associated Teachers of Huntington*, 30 N.Y. 2d 122, 331 N.Y.S. 2d 17 (1972).
43. The lists of mandatory, nonmandatory and prohibited subjects in this section are drawn from PERB case law and court decisions. PERB provides full summaries on request.
44. Residency requirements for current employees are a mandatory subject of negotiations.
45. City of Cohoes, 31 PERB 3020 (1998).
46. Dale Yader, et al., Handbook of Personnel Management and Labor Relations (New York: McGraw-Hill Book Co., Inc., 1958), p. 431.
47. Collective Bargaining Agreements: Grievance Procedures (U.S. Department of Labor, Bureau of Labor Statistics Bulletin No. 142501, Washington, D.C., 1964), p. 1.

CHAPTER XV

Public Services

Local governments provide services essential to daily living. Some services fulfill basic human needs for food, shelter and medical care. Others provide an attractive environment and opportunities for recreational and cultural activities. Since many public services are shared responsibilities among units of government, local officials need to understand the organization, structure and interplay of various government units to achieve better delivery of services.

State Agency Operations

State agencies are the operating arm of state government. By virtue of their many functions and services, state agencies often are in close contact with local governments. State agencies vary widely in terms of purpose, authority and nature of services. Some agencies, such as the Office of the State Comptroller and the Office of Real Property Services, have functions so extensively related to basic local government operations that they are treated in detail elsewhere in this Handbook. Others, like the Department of Health, play highly significant roles in determining how local governments provide certain services. Programs of some agencies, such as the Departments of Education, Environmental Conservation, Health, and Motor Vehicles, often touch upon citizens as they go about their daily affairs. Services of these agencies involve or affect many individuals, have an enormous fiscal impact and involve the exercise of authority over local governments that deliver these services. Other agencies, such as the Departments of Labor and Transportation, affect the public directly by channeling funds for local, state or federal purposes.

Many agencies serve the public directly through the exercise of regulatory authority. The Public Service Commission, which regulates utility rates, has a role that is almost exclusively regulatory. Many agencies provide services directly to the public and to local governments. Under Article 6-B of the Executive Law, the Department of State is authorized to provide assistance to local governments in the areas of coastal management, community development, economic opportunity, fire protection, intermunicipal cooperation, labor relations, legal assistance, organization and management improvement, and basic planning and zoning training. Other agencies and departments are primarily service-oriented, and neither regulate local activities nor administer major grant programs. Among these are the Office of General Services and the State Insurance Department. Such agencies provide help to local governments largely in the form of technical assistance, informational materials, training, inspection services and/or legal advice.

Social Service and Public Health Programs

Child and Family Services

The Office of Children and Family Services (OCFS) integrates services for children, youth, and families, and vulnerable adult populations. The purposes of the OCFS are to promote the development of its client population and protect them from violence, neglect, abuse and abandonment. The OCFS regulates and inspects child care providers and funds child care programs. It also: supervises and regulates Protective Services for Adults; inspects, supervises and monitors foster care agencies; administers the State Adoption Service; and operates the State Central Register for Child Abuse and Maltreatment.

The Commission for the Blind and Visually Handicapped within OCFS administers services to legally blind citizens and assists eligible individuals with job training and placement. OCFS also operates 42 juvenile residential facilities.

The OCFS works closely with municipalities, local social services districts and county youth bureaus to ensure adequate youth development services. A plan for youth development services is prepared through the county comprehensive planning process. The county departments of social services and New York City's Administration for Children Services administer local foster care programs and child welfare services.

Programs for the Aging

The Office for the Aging plans and coordinates programs and services for more than three million New Yorkers who are at least 60 years of age. As a primary advocate for older New Yorkers, the office is empowered to review and comment on state agencies' program policies and legislative proposals that may have a significant impact on the elderly. The office identifies issues and concerns through its two advisory committees — the Governor's Advisory Committee on Aging and the Aging Services Advisory Committee. In addition, the office conducts public forums throughout the state.

The office operates a statewide toll-free Senior Citizens Hot Line at 800-342-9871, which is staffed during normal business hours. Hot Line staff provide information, crisis intervention, problem solving assistance, and maintain current county-by-county resource files for referral of services. Further information is made available through the office's websites, its quarterly newsletter, and television programs that air on cable-access stations across the state.

The Office for the Aging cooperates with and assists local governments in developing and implementing local programs. With the exception of grants-in-aid, through which funds are appropriated by the Legislature to the Office for contracts to public and private not-for-profit agencies that provide a range of locally-determined services for older New Yorkers, the office's programs are administered through 59 local offices for the aging. Programs include: Community Services for the Elderly Program (CASE), which provides community-based, supportive services to frail, low-income elderly who need assistance to maintain their independence at home; Expanded In-home Services for the Elderly Program (EISEP), managed by local offices for the aging, which is a uniform, statewide program of case management, non-medical in-home services, respite and ancillary services for the elderly who need long term care but are not eligible for Medicaid; Supplemental Nutrition Assistance Program (SNAP), which provides home-delivered meals and other nutritional services to at-risk elderly; Retired and Senior Volunteer Program (RSVP), which recruits and places older adults and retirees in volunteer positions tailored to their talents, skills and interests; and Foster Grandparent Program, which provides an opportunity for low-income people aged 60 and over to provide companionship and guidance to children with special or exceptional needs.

The Office for the Aging also administers statewide plans under the federal Older Americans Act, including: Title III-B, which provides for advocacy, planning and coordination of services including transportation, information and referral outreach, in-home and legal services to meet specific needs of the elderly; Title III-C-1, which provides for nutritious meals and other services to the elderly and their spouses of any age, in congregate settings; Title III-C-2, which provides for nutritious meals to the homebound elderly and their spouses of any age; and Title V, which provides for part-time employment, training and placement assistance for low-income individuals aged 55 and over.

Temporary and Disability Assistance

The Office of Temporary and Disability Assistance (OTDA) promotes personal self-sufficiency through the delivery of temporary assistance, disability assistance, and the collection of child support. The OTDA is responsible for providing policy, technical and systems support to the state's 58 social services districts. The OTDA provides economic assistance to aged and disabled persons who are unable to work and transitional support to public assistance recipients while they are working toward self-sufficiency. The Division for Disability Determinations evaluates the medical eligibility of disability claimants for the federal Supplemental Security Income (SSI) and Social Security Disability Insurance. The OTDA's programs include Family Assistance, Safety Net Assistance, Supplemental Security Income, Food Stamps, Home Energy Assistance (HEAP), Child Support Services, Housing Services, and Refugee and Immigration Services.

The state is divided into 57 county and one city (New York City) social services districts for purposes of providing public assistance and care. A Commissioner heads each of the local social services districts. This official has responsibility for administration of public assistance, medical assistance and social services, and must implement the policies and programs that are formulated by the OTDA, Department of Health (DOH), OCFS, Department of Labor (DOL) and federal government. Each Commissioner also supervises the expenditure of public funds allocated to his or her district.

Community Services Block Grants

Created in 1981 by the federal Omnibus Budget Reconciliation Act, this program was re-authorized by the "Community Opportunities Accountability, and Training and Educational Services Act of 1998" for the purposes of reducing poverty, revitalizing low-income communities, and empowering low income families and individuals in rural and urban areas to become fully self-sufficient. Federal funds are allocated to provide direct ser-

vices, mobilize resources and organize community activities to assist low-income and poor individuals. Grantees provide comprehensive services to help solve problems that impede the achievement of self-sufficiency, secure employment, attain an adequate education, maintain a suitable living environment, and meet emergency needs.

Most of the Community Services Block Grant (CSBG) funds allocated to New York are awarded as statutory allocations to designated eligible entities, which include community action agencies (CAAs) serving every county in the state, and organizations serving migrant and seasonal farm workers. Funds are also allocated to four Indian tribes and tribal organizations. At the state level, funds are set aside to be used by grantees in the event of a disaster, and to provide professional development opportunities to the staff and board members of grantee agencies. Under state and federal law, one-third of the members of CAA boards of directors must be elected local officials. The local government/CAA partnership is strengthened by the direct appropriation of non-federal funds to assist in the delivery of comprehensive human services by CSBG grantees.

Public Health Programs

Shared Responsibilities. The state and local governments share responsibility for public health. Two cities and 33 counties maintain full-time health agencies. In the absence of a local health department, the district office of the State Department of Health (DOH) provides appropriate services.

Regulatory Functions. The DOH oversees and regulates all of New York's residential health facilities, adult homes, emergency medical services providers, managed-care organizations, hospitals, diagnostic and treatment centers (clinics), and home-care providers. The DOH's Office of Health Systems Management ensures that providers render services in accordance with state and federal standards. The office also reviews and certifies health-provider applications to construct, renovate, add or delete beds or services, and purchase major new equipment. Other regulatory activities relate to the provision of acceptable water, avoidance and/or elimination of environmental health problems, and control of sanitation in food establishments.

Direct Services. The DOH works closely with local health and social services agencies to fund and assist with a variety of direct services to families and individuals, including programs related to communicable disease control, child health, nutrition, dental health, and handicapped children.

Mental Hygiene Programs

Scope of Programs. The state's mental hygiene programs are operated through two independent agencies: the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD). The OMH provides special care and treatment to the mentally ill, both in state psychiatric centers and in community-based facilities, and administers a number of programs directed toward those in correctional facilities. The OMRDD provides services to more than 135,000 people with developmental disabilities in New York State. While some services are provided directly by the state, private not-for-profit agencies operate approximately two-thirds of the community living facilities and nine-tenths of the adult day support for people with developmental disabilities. This service system has evolved from one which was institutionally-based to one which is now community-based. All services are licensed and regulated by OMRDD.

The Local Role. The Mental Hygiene Law encourages local governments — specifically, counties and the City of New York — to work with the state to develop a local services program and to plan for citizens with mental retardation and developmental disabilities. Local governments develop a Local Governmental Plan, which is produced as a collaborative effort among those involved at the local level and then submitted to OMRDD for approval by the Commissioner.

Alcoholism and Substance Abuse Programs

The Office of Alcoholism and Substance Abuse Services (OASAS) is responsible for licensing and evaluating service providers, and for advocating and implementing policies and programs for the prevention, early intervention, and treatment of alcoholism and substance abuse. In cooperation with local governments, providers and communities, OASAS works to ensure that a full range of necessary and cost-effective services are provided for addicted persons and those at risk of addiction.

The Federal Role. Federal funding is provided to the State under the Substance Abuse Prevention and Treatment (SAPT) Block Grant. Block grant funds are made available to localities in accordance with OASAS funding policies and procedures.

The State Role. OASAS directly operates 13 Addiction Treatment Centers, which provide inpatient rehabilitation serves to approximately 7,000 patients annually. It also licenses, regulates and funds over 1,200 private, non-profit, local government and school district prevention and treatment service providers.

The Local Role. Local Governmental Units (LGU) are responsible for assessing local needs and developing necessary resources. Providers, counties, and the City of New York develop Local Services Plans, which form the basis for the office's Comprehensive Five-Year Plan.

Community Development

Affordable Housing

Housing and Community Renewal. The Division of Housing and Community Renewal's (DHCR) mission is to make New York a better place to live by supporting community efforts to preserve and expand affordable housing, home ownership and economic opportunities, and by providing equal access to safe, decent and affordable housing. The DHCR is responsible for the supervision, maintenance and development of affordable low and moderate-income housing. The Division performs a number of activities in fulfillment of this mission, including: oversight regulation of the state's public and publicly-assisted rental housing; administration of housing development and community preservation programs, including state and federal grants and loans to housing developers to partially finance construction or renovation of affordable housing; and administration of the rent regulation process for more than one million rent-regulated apartments in New York City and in municipalities in the counties of Albany, Erie, Nassau, Rockland, Schenectady, Rensselaer and Westchester that are subject to rent laws.

Housing Finance Agency. The New York State Housing Finance Agency (HFA) was created as a public benefit corporation in 1960, under Article III of the Private Housing Finance Law, to finance low-income housing by raising funds through the issuance of municipal securities and the making of mortgage loans to eligible borrowers. In recent years, HFA has also financed federally subsidized low-income housing developments. The agency's employees are specialists in real estate finance and law, capital market financing, asset management, construction and program development.

Housing Trust Fund. Chapter 67 of the Laws of 1985 created the Housing Trust Fund Corporation, a public benefit corporation which administers the Low-Income Housing Trust Fund (HTF) Program. The HTF Program was established under Article XVIII of the Private Housing Finance Law to help meet the critical need for decent opportunities for low-income people. This program provides funding to eligible applicants to: construct low-income housing; rehabilitate vacant or under utilized residential property; or to convert vacant non-residential property to residential use for occupancy by low-income homesteaders, tenants, tenant-cooperators, or condominium owners.

Affordable Mortgages. The State of New York Mortgage Agency (SONYMA) is a public benefit corporation created by statute in 1970. The purpose of SONYMA is to make mortgages available to low and moderate income first-time buyers and to other qualifying home buyers. Under its various programs, SONYMA purchases new mortgages from participating lenders across the state. Funds for SONYMA's low-interest mortgages are derived primarily from the sale of tax-exempt bonds, although some funding has come from the sale of taxable bonds. Since its inception through October 31, 1998, SONYMA has issued approximately $9.7 billion in mortgages.

Municipal Housing. Through a special act of the State Legislature, any city, village or town may create a housing authority. As of the end of the 1998 session, 186 municipal housing authorities have been created. A municipal housing authority has the power to investigate living conditions in the municipality and determine where unsanitary or substandard housing conditions exist. The authority may construct, improve or repair dwelling units for persons of low income. In addition, an authority can construct and revitalize stores, offices and recreational facilities in a depressed neighborhood. A municipal authority may undertake projects with funds obtained solely from the sale of its bonds to private individuals, firms or corporations, provided that the municipality approves the project. Authorities may also receive assistance from the state and federal government.

Appalachian Regional Development

The Appalachian Regional Commission (ARC) was established by the Federal Appalachian Regional Development Act of 1965, to improve the economy and quality of life in Appalachia. The program provides financial and technical assistance to the region in order to: meet its special problems; promote economic development; and to establish a framework for joint federal and state efforts toward providing the basic facilities essential to growth, attacking common problems, and meeting common needs on a coordinated and concerted regional basis.

New York State is one of the 13 states in the federally-defined Appalachian region, which also includes all of West Virginia, and parts of Pennsylvania, Ohio, Maryland, Virginia, Kentucky, North Carolina, South Carolina, Tennessee, Georgia, Alabama, and Mississippi. The

Appalachian portion of New York State ("Appalachian New York"), contains the following 14 counties: Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Delaware, Otsego, Schoharie, Schuyler, Steuben, Tioga, and Tompkins.

The Commission is formally comprised of the Governors of the Appalachian States and the Federal Co-Chairman, who is appointed by the President. The Secretary of State serves as the Governor's alternate. The Department of State (DOS) is the official agent of the State of New York responsible for administering the Appalachian Program in New York State.

The ARC Strategic Plan for 2005-2010 identifies four strategic goals to be implemented by ARC resources. The specific goals are as follows: (1) incease job opportunities and per capita income in Appalachia to reach parity with the nation; (2) strengthen the capacity of the people of Appalachia to compete in the global economy; (3) develop and improve Appalachia's infrastructure to make the region economically competitive; and (4) build the Appalachian Development Highway System to reduce Appalachia's isolation. These strategies provide the key state policy framework for investment of ARC resources in Appalachian New York. All project proposals must implement one of the state strategies developed for Area Development resources or the Commission's Regional Initiatives.The New York State Department of State is assisted in the development of projects by three Local Development Districts in the Southern Tier (Southern Tier East Regional Planning Development Board in Binghamton, Southern Tier Central Regional Planning & Development Board in Painted Post and Southern Tier West Regional Planning & Development Board in Salamanca) and cooperating State agencies. The New York State Department of Transportation also administers New York's participation in the development of the Appalachian Development Highway System (ADHS), established by Congress as the centerpiece of ARC's economic and social development programs.

The Arts

Established in 1960, the New York State Council on the Arts is a funding agency that supports activities of non-profit organizations in the state and helps to bring artistic performances and high quality programs to the state's residents. The Council invites non-profit organizations that meet eligibility requirements to apply for local assistance funds to provide cultural services to the people through cultural services contracts. These services cover a broad range of activities.

The State and Local Partnership Program (SLP) fosters the growth and development of the arts and culture at the local level. SLP primarily supports multi-arts organizations that are committed to the long-term cultural development of their communities or regions. Financial support is currently available in 16 program areas including architecture, planning and design, arts in education, capital projects, dance, electronic media and film, folk arts, literature, museum, music, theater and visual arts, and state and local partnerships.

Business Development

The State Department of Economic Development/Empire State Development (ESD) Corporation is dedicated to creating jobs and encouraging prosperity by strengthening and supporting businesses in New York. The agency maintains regional and international offices to provide one-stop access to the state's products and services for business. It also provides direct services ranging from financial incentives for joint ventures to technical expertise in site selection and development. The agency works in partnership with local governments and regional organizations which desire to attract business.

The ESD assists local governments in establishing industrial development agencies. As the state's primary agency in the development of tourism, ESD works with counties and their designees to administer a tourism matching fund program. Funds appropriated by the State Legislature for this program are apportioned to support advertising for local and regional tourism.

State-local efforts to help distressed communities achieve economic growth have been intensified under the New York State Economic Development Zones Act, Chapter 686 of the Laws of 1986. Empire State Development administers this program in cooperation with other agencies and participating counties, cities, towns and villages. Nineteen such zones may be designated over the first three years of the program by the State Zone Designation Board, and provided with special incentives to spur economic growth. The incentives offered include assistance with financing and business permits, as well as various tax and local incentives.

Campus and Institutional Housing

The Dormitory Authority is a public corporation established in 1944 to finance and construct dormitories for state teachers' colleges. Its functions have since been expanded to include design, financing and construction project management services for a wide range of higher education, healthcare and public-purpose facilities. The

authority serves: the State University of New York; the City University of New York; independent colleges and universities; community colleges; special education schools; court facilities for cities and counties; the State Departments of Health and Education; the State Offices of Mental Health, Mental Retardation and Developmental Disabilities and Alcoholism and Substance Abuse Services; the New York City Health and Hospitals Corporation; long-term health care facilities; independent hospitals, primary care facilities, diagnostic and treatment centers, medical research centers; and public-purpose institutions authorized by statute. The Dormitory Authority is also authorized to provide tax-exempt equipment leasing.

Coastal Management and Waterfront Revitalization

Administered by the Department of State with federal and state funding, the New York State Coastal Management Program guides and coordinates local, state and federal development and preservation decisions for the state's 3,200 miles of coastline. Specific guidance is provided by the program's coastal policies that address community and economic revitalization, natural resource protection and restoration, public access, and water quality. Funding through the Environmental Protection Fund and technical assistance are offered to help municipalities prepare and implement Local Waterfront Revitalization Programs (LWRPs). Through LWRPs, municipalities may refine and supplement state coastal policies to reflect local conditions and needs. Chapter 366 of the Laws of 1986 extended the LWRP concept to inland waterways in the state, including the Barge Canal System and major lakes and rivers.

Community Development Block Grants

The Office for Small Cities administers the Community Development Block Grant (CDBG) Program for the State of New York. The NYS CDBG program provides financial assistance to eligible cities, towns and villages with populations under 50,000 and counties with an area population under 200,000, in order to develop viable communities by providing decent, affordable housing and suitable living environments, and expanding economic opportunities, principally for persons of low and moderate income.

The state must ensure that not less than 70% of its CDBG funds are used for activities that benefit low- and moderate-income persons. The program objectives are achieved by supporting activities or projects that benefit low- and moderate-income families, create job opportunities for low- and moderate-income persons, prevent or eliminate slums or blight, or address a community development need that poses a serious and imminent threat to the health or welfare of the community.

The Office for Small Cities is a subsidiary public benefit corporation of the New York State Housing Trust Fund Corporation and a member of the team at the New York State Division of Housing and Community Renewal.

Parks, Recreation and Historic Preservation

New Yorkers enjoy a rich heritage of parks and historic and cultural resources that contribute to the quality of their communities. The Office of Parks, Recreation and Historic Preservation (OPRHP) is responsible for developing and implementing statewide plans for the use of recreational and historical assets. OPRHP coordinates state and federal aid for parks, recreation and historic preservation programs. It serves as the state's liaison with the federal government for matters relating to preservation provisions of the Federal Tax Reform Act of 1976 and the National Historic Preservation Act.

OPRHP administers three major pass programs allowing discounts in the use of state park and recreational facilities. In cooperation with local education systems, OPRHP operates outdoor learning programs at parks in most regions. It also administers state planning efforts for the Urban Cultural Park Program and sponsors various athletic programs including the Empire State Games, the Games for the Physically Challenged, and the Senior Games. In addition, OPRHP administers the State Navigation Law and conducts the Marine and Recreational Vehicles program. This effort includes the Law Enforcement Subsidy, the Safety and Education Programs, and the Marine Services Program. These programs provide local law enforcement agencies with assistance in the education and training of youths regarding boat and snowmobile safety, inspection of public facilities, and placement of buoys in the state's inland waterways.

Regional park, recreation and historic preservation commissions advise the OPRHP Commissioner on the promulgation of rules and regulations for park regions to ensure they are consistent with state policies and regulations. The State Council of Parks, Recreation and Historic Preservation aids the Commissioner by reviewing and making recommendations on policy, budget and state aid plans. The Council serves as the central advisory board on all matters affecting parks, recreation and historic preservation. The State Board of Historic Preservation advises the Commissioner and the Council on policy matters affecting historic preservation and the historic sites system and on priorities among historic preservation op-

portunities. The Board also reviews and makes recommendations to the Commissioner on the nomination of properties to the National or State Registers.

At the local level, counties, cities, towns and villages have concurrent powers to establish and maintain parks. They may acquire and dedicate land for park and recreational purposes and can utilize zoning powers to plan and set aside land for park purposes to meet the needs of local residents.

Weatherization Assistance

This federally funded program, administered in New York by DHCR, funds the installation of energy conservation measures to reduce the energy costs of low-income families and individuals. It has been credited with significantly reducing energy costs and increasing the health and comfort of low-income participants. Funding is provided by the U.S. Department of Energy and the U.S. Department of Health and Human Services. Under the program, DHCR funds local sub-grantees under contract to perform the work. These local sub-grantees, which deliver services on a statewide basis, include community action agencies, community-based organizations, counties, and Indian tribal organizations. Since the program commenced in 1977, over 465,000 dwelling units in the state have been weatherized.

Public Safety

Protection of life and property is one of the oldest functions of local government. In New York State most of the early municipal incorporations were little more than efforts to provide fire and/or police services to built-up areas. Today, public safety represents the third largest expense of local government. Only education and social services command a larger share of the local dollar.

Correctional Programs

Four state agencies share with local governments certain responsibilities for caring for offenders and restoring them to society.

The Department of Correctional Services (DOC) is primarily responsible for the confinement and rehabilitation of approximately 63,000 inmates held at 69 correctional facilities across New York State. More than 31,500 employees work behind prison walls to provide for the safety and security of the system. The DOC also interacts with communities, sending supervised work crews out into the community for nearly two million hours each year to perform public service projects for governments and not-for-profit organizations. Staff is responsible for the operation of an array of academic, vocational, drug treatment and work programs designed to provide all offenders with the basic skills they will need to function as responsible and law-abiding citizens upon their release from custody. The Department also operates a 900-bed drug treatment campus that serves parole violators as well as felons newly sentenced by the courts to a drug treatment program.

The State Commission of Correction is charged with general oversight responsibility for all prisons, jails and lockups throughout the state. This mandate is aimed at improving the administration of correctional facilities, and the conditions that affect the lives and safety of inmates and staff. The Commission consists of three members appointed by the Governor. One member serves as Chairperson, one serves as Chairperson of the Medical Review Board, and the last serves as Chairperson of the Citizens' Policy and Complaint Review Council. The Commission establishes minimum standards for care, custody, treatment and supervision of all persons confined in state and local correctional facilities. The Commission also inspects facilities to ensure adherence to these standards and handles grievances filed with respect to the standards.

The Division of Probation and Correctional Alternatives (DPCA) exercises general supervision over the administration of local probation agencies and the use of correctional alternative programs. The DPCA promotes and facilitates probation and other community corrections programs through funding and oversight. It administers a program of state aid funding for approved local probation services and for municipalities and private nonprofit agencies that have approved alternative-to-incarceration service plans that enable localities to maintain inmates in local correctional facilities more efficiently. It also funds designated demonstration and other specialized programs.

The State Director of Probation also adopts rules concerning methods and procedures used in the administration of local probation services, and develops standards for the operation of alternative-to-incarceration programs. The Director also serves as the Chair of the State Probation Commission. The Commission members, appointed by the Governor, provide advice and consultation to the Director on all matters relating to probation.

The State Board of Parole, an administrative body within the Division of Parole, is responsible for the release of certain prisoners in state correctional institutions. The Division is responsible for community protection and

offender risk control through the administration of parole services.

Criminal Justice

The Division of Criminal Justice Services (DCJS) seeks to increase the effectiveness and vitality of the criminal justice system in New York State. The Division's Identification and Criminal History Operation, a data bank of criminal records, provide even the smallest department with access to a massive record system. Through DCJS, local police may also obtain criminal information from the Federal Bureau of Investigation. The Division's Bureau for Municipal Police advises all municipal police agencies in the state.

Emergency Medical Services

Both the public and private sectors provide pre-hospital emergency medical services. In some cities, a single commercial ambulance service provides paramedic services. In other cities, fire departments provide paramedic services while commercial ambulance services provide basic life support and transportation services. In small communities and suburban and rural areas, ambulance services are largely provided by volunteer organizations, which are under the auspices of fire departments or districts, independent squads or (in a few cases) hospitals. Voluntary services are sometimes supported by fire or special improvement district taxes, but more often rely upon donations from the public and/or fees under contract from local governments. All commercial and volunteer ambulance services must be certified by the State Health Department. To receive certification, ambulance services must meet specific training and equipment requirements and quality assurance mandates.

Fire Protection

Firefighting service in New York State is provided through a variety of municipal and intermunicipal arrangements. About 20,000 full-time career firefighters and over 100,000 volunteer firefighters work in more than 1,800 fire protection/prevention organizations (federal, state, and local) across the state.

In cities and villages, firefighting is commonly provided by a municipal fire department, composed either of career or volunteer firefighters, or a combination of the two. In larger communities that utilize volunteers, the local department generally contains several independent fire companies. Each has its own officers, buildings and apparatus. The fire chief is usually appointed by the local chief executive upon nomination by members of the fire company. In instances where a village maintains no fire department, it contracts with a neighboring community or fire district for fire protection services.

Unlike villages and cities, towns are not legally empowered to provide direct firefighting services. Generally, town boards create one or more fire districts or fire protection districts to cover all or part of a town. A few areas have no fire service protection. These arrangements are more fully described in Chapters VII and IX. Although towns do not directly provide firefighting services, they do provide valuable fire protection services. Many larger towns have a fire prevention and inspection staff. Others, particularly those with a large number of fire districts or fire protection districts, provide central dispatching and/or training facilities.

County Role. Counties, guided by their Fire Advisory Boards, provide valuable services for fire protection, including radio communications systems, fire department dispatch services and the maintenance of specialized firefighting equipment for departments within their jurisdiction. Most counties have a fire coordinator, who is a key link between state and local activities. Appointed by the county's legislative body, under section 225-a of the County Law, the coordinator has the responsibility of coordinating mutual aid responses by fire departments within the county and of administering education and training programs.

State Role. The state, through the Department of State's Office of Fire Prevention and Control (OFPC), directed by the State Fire Administrator, provides a broad range of programs to assist entities that provide fire services directly to the public. OFPC annually trains approximately 40,000 career and volunteer firefighters, other emergency response personnel and government officials. Training sites include the New York State Academy of Fire Science in Montour Falls, the Academy's Peekskill Annex at Camp Smith, and local sites throughout the state. OFPC implements statewide minimum training standards for firefighters.

The OFPC provides fire and arson investigation services to municipalities, assists in the stabilization/mitigation of hazardous materials spills, and works with fire departments and other emergency response agencies to prepare for responding to terrorist incidents. OFPC operates the Capital District Urban Technical Search and Rescue Team which provides special, technical rescue services to fire departments. The office mobilizes the State Fire Mobilization and Mutual Aid Plan to cope with major disasters and assumes the command function. Coor-

dination of forest fire response is handled by the Division of Forest Protection and Fire Management in the Department of Environmental Conservation.

OFPC maintains the State Fire Reporting System and the State Burn Injury Reporting System, through which information relating to fire and arson prevention and control is collected, compiled and disseminated. The staff conducts fire inspections of state office buildings, colleges and universities and other state facilities and enforces the Uniform Fire Prevention and Building Code. OFPC developes and administers fire safety standards for cigarettes and is responsible for the state wireless 911 system. The office provides fire safety education to the public, schools, colleges, universities, and state employees, and assists fire departments, schools and community groups in providing fire prevention, fire survival, burn injury and accident prevention education.

Fire Boards and Commissions. The Fire Safety Advisory Board, a 12 member unpaid body appointed by the Governor, assists the Secretary of State and State Fire Administrator in all aspects of fire protection and legislation. A 15 member Arson Board has been established to advise and assist the Secretary of State and State Fire Administrator on arson problems. The New York State Emergency Services Revolving Loan Board reviews and makes recommendations to the Secretary of State for low-interest loans to municipalities and fire districts that meet specific criteria.

The Fire Fighting and Code Enforcement Personnel Standards and Education Commission recommends training standards to the Governor which establishes minimum qualifications for firefighters and code enforcement personnel. The Commission consists of the Secretary of State, State Fire Administrator, and five members appointed by the Governor with the consent of the Senate.

The 16 member Emergency Services Council, comprised of representatives from the emergency services, law enforcement, the State Fire Administrator and key State agencies is charged with developing and coordinating state emergency services, recommending emergency services policy and eliminating duplication of efforts with the emergency services community. The New York State 911 Board, comprised of 13 members and chaired by the Secretary of State, has been given the job of assisting the counties of New York State in providing the best possible 911 service to its residents.

Building Code Administration and Enforcement. The New York State Uniform Fire Prevention and Building Code (Uniform Code), which became effective January 1, 1984, superseded all existing local fire and building codes except in New York City, which was permitted to retain its own code. Municipalities may, however, adopt and enforce more stringent local provisions with State approval.

Except in a minority of municipalities, administration and enforcement of the Uniform Code is carried out directly by local governments through local laws, and in accordance with minimum standards promulgated by the Secretary of State. Those municipalities must enforce the Code through locally-appointed officers, although support services may be contracted out to private organizations. Some municipalities have entered into cooperative agreements with other municipalities under Article 5-G of the General Municipal Law. Such a pooling of resources has been especially attractive to municipalities in rural areas. A municipality or a county may choose not to enforce the Uniform Code by enacting a local law providing that it will "opt out" of enforcement. Responsibility for enforcement is then automatically transferred to the county, or, where the county has "opted out," to the State.

The Department of State's Division of Code Enforcement and Administration is charged with administration of the Uniform Code in relation to local governments, state agencies and the public. Effective July 13, 1996, additional responsibilities were transferred to the Department of State from the Division of Housing and Community Renewal, including interpreting the Uniform Code; providing staff to the Code Council; overseeing a HUD sponsored mobile home oversight and complaint program; certifying manufacturers, retailers, installers and mechanics of manufactured housing (effective 7-1-06), including warranty seal placement by manufacturers and installers (effective 1-1-06); approving modular home construction plans as well as non-residential building construction plans (effective 1-1-03), and maintaining a third party plant inspection program, issuing Certificates of Acceptability for construction materials, methods and devices, and performing other associated functions. Effective January 1, 1999, the Department assumed responsibility for the State Energy Conservation Construction Code.

The Department has 11 regional field service offices providing technical assistance and coordinating variance requests with local government officials. Through its regional field service offices, the Department of State conducts reviews of local code enforcement programs and administers a complaint resolution program. The regional field service offices employ state code enforcement officers in municipalities or counties where the state has code enforcement responsibility. Municipalities and coun-

ties may regain their local enforcement authority by repealing their opt-out enactment. The Secretary of State is also empowered to investigate local administration and enforcement of the code and take remedial actions as warranted.

Responsibility for formulating and amending the Uniform Code rests with the State Fire Prevention and Building Code Council, a 17 member body chaired by the Secretary of State, and composed of the State Fire Administrator, Commissioner of Health, Commissioner of Labor and 13 members appointed by the Governor (7 with the consent of the Senate). In 2001, the Code Council recommended adoption of the: Residential Code, Building Code, Plumbing Code, Mechanical Code, Fuel Gas Code, Fire Code, Property Maintenance Code and Energy Code as published by the International Conference of Building Officials with modifications for New York State. These codes were effective January 1, 2003.

The Department of State's Educational Services Unit provides a statewide code enforcement training program, having as its priority the basic training and continuing education of code enforcement officers. The Department's services are available to elected and appointed officials, the general public, contractors, architects, engineers, and manufacturers.

Emergency Management

An integrated emergency management system is the legal responsibility of the state and local governments, pursuant to Article 2-B of the Executive Law and the New York State Defense Emergency Act.

The State Role. The State Disaster Preparedness Commission, through the New York State Emergency Management Office (SEMO), is responsible for coordinating and implementing emergency management programs, financial assistance and work plans at the state and local levels of government. This includes provisions for hazard identification and analysis, coordination and conduct of emergency and disaster management training programs, comprehensive emergency management planning, and statewide communications and warning systems.

The Local Role. The responsibility for disaster preparedness rests with the chief executive of each county, city, town and village. Every county, city, town and village should develop comprehensive emergency management plans. In the event of a disaster or emergency, the local chief executive may declare a local state of emergency, which permits the use of wide-ranging emergency powers as long as the proper procedures are followed to govern their invocation. A local chief executive may also request that the Governor declare a state disaster emergency, which would result in implementation of the State Comprehensive Emergency Management Plan to support county response and recovery operations. Before such a request is made, all county resources must be fully involved with the disaster and considered insufficient to cope with it. Cities, towns and villages should first request aid from their counties before approaching the state.

Police Services

Over 400 separate county, city, town and village police agencies share responsibility for the enforcement of state and local laws in New York. These agencies range in size from New York City's Department, with over 37,000 sworn officers, to 11 agencies with only one or two part-time police officers. Communities in New York State employ over 55,000 full-time and over 1,800 part-time municipal police personnel at a cost of almost five billion dollars annually.

State Police. Executive Law established the Division of State Police on April 11, 1917. The agency's vision is to continue a tradition of service, through its mission to protect, serve and defend the people of New York State while preserving the rights and dignity of all. Its sworn officers strive to preserve peace, protect life and property, detect crime, enforce laws and arrest violators.

New York State is geographically divided into 10 troops, plus a troop dedicated exclusively to the New York State Thruway. Each troop is further broken into zones that contain stations and satellite offices. The uniformed trooper is the field officer who promotes safety and security, enforces laws, conducts investigations, and fosters relationships with the community and its citizens. The Bureau of Criminal Investigation (BCI) and associated special units provide investigative services. These special units include the Special Investigations Unit (SIU), Violent Felony Warrant Squad (VFW), Gun Investigations Unit (GIU), Office of Counter-Terrorism (OCT), Internet Crimes Unit, Drug Enforcement Task Force (DETF), Community Narcotics Enforcement Team (CNET), and Casino/Gaming Unit.

Numerous specialized and support units assist with unique abilities and investigative techniques. They include the Canine Unit, Marine Unit, SCUBA Unit, Bomb Disposal Unit (BDU), Contaminated Crime Scene Emergency Response Team (CCSERT), Aviation, and Mobil Response Team (MRT). The State Police also provides community based and public service programs through our Schools and Community Outreach Unit, and with School Resource Officers.

State Police Troopers and Investigators work closely with local, state, and federal agencies to provide the best possible police services to the citizens of New York State. Other law enforcement agencies often call upon the State Police for assistance and to provide investigative and technical resources. One such resource is the state-of-the-art Forensics Investigation Center (FIC), one of the most scientifically advanced forensic law enforcement laboratories in the world.

Environmental Protection

Conservation Councils and Boards

Many counties, cities, towns and villages have established advisory councils or conservation boards under Article 12-F of the General Municipal Law to help protect and manage local environmental and scenic resources. These agencies provide a focus for local environmental overview and advocacy and perform functions assigned by their local legislative bodies, including environmental education, review of development proposals, technical assistance to other agencies and sponsorship of improvement projects. The Department of Environmental Conservation (DEC) provides technical assistance to county environmental management councils and municipal conservation advisory councils and commissions.

Environmental Facilities

The Environmental Facilities Corporation (EFC) is a public benefit corporation that promotes environmental quality by providing low-cost capital and expert technical assistance to municipalities, businesses and state agencies for environmental projects throughout New York State. Its purpose is to help public and private entities comply with federal and state environmental requirements.

The EFC oversees several major programs designed to promote environmental quality at an affordable cost. The EFC currently has two Revolving Loan Funds. The Clean Water State Revolving Loan Fund is used to make low-interest loans to municipalities to help pay for water pollution control facilities, such as wastewater treatment plants, and for water quality remediation measures associated with landfill closures. The Drinking Water State Revolving Loan Fund is operated jointly by the EFC and the Department of Health to provide low-interest loans to public and private water systems to undertake needed drinking water infrastructure improvements. Grants are available for drinking water projects in communities facing financial hardship.

The Technical Advisory Services program helps business and government understand and comply with state environmental requirements, and provides services for protecting the New York City Watershed and helping small businesses comply with air pollution standards. The Industrial Finance Program provides low-cost loans to private entities seeking to borrow for capital facilities that deal with solid waste, sewage treatment, drinking water, limited hazardous waste disposal and site remediation. The Financial Assistance to Business program helps businesses comply with air and water quality environmental regulations and provides grants to small businesses for specific pollution control or prevention projects.

Flood Control and Water Resources

Much of early New York developed around waterways, with the result that some 1,400 communities are either wholly or partially in areas subject to a significant flood hazard. These communities seek to mitigate that hazard through such strategies as implementation of floodplain regulations, construction of flood control structures, and participation in: local flood warning systems, flood preparedness plans and in the National Flood Insurance Program. The latter is available to property owners and tenants in communities that regulate the use of their floodplains.

The DEC assists localities with these activities, helps obtain funds for flood control measures, coordinates the National Flood Insurance Program and works with the State Emergency Management Office to help communities prepare for flood emergencies. The Department also helps local governments develop small watershed protection projects, and plan and implement strategies to protect, develop and use local water resources.

Forest Resources

Many local governments have significant rural and/or urban forest resources to protect and manage. The DEC provides technical assistance for the establishment and management of county forests, watershed forestry development, parks, and street tree programs. As many rural volunteer fire companies must protect forest resources in their jurisdictions, DEC also provides technical assistance and training in the control of forest, brush and grass fires and helps these rural companies obtain small federal grants for rural fire protection. The forest tax program, administered under section 480-a of the Real Property Tax Law, authorizes DEC to approve forestry management programs undertaken by private landowners who thereby become eligible for lower property tax assessments.

Hazardous Wastes

With the help of local health and environmental agencies, DEC has identified more than 1,600 sites where hazardous wastes may have been improperly disposed of in the past. When an inactive hazardous waste disposal site is determined to pose a significant threat to public health or the environment, action is required. If no responsible party can be identified, the DEC seeks federal or State Superfund assistance for site investigation and remediation.

The DEC also manages portions of the Clean Water/ Clean Air Bond Act Fund, providing reimbursement grants to municipalities for the investigation and remediation of contaminated sites. In addition, New York's Voluntary Cleanup Program encourages volunteers to use private funds to clean up sites to specified levels in exchange for a release from state liability for the work done.

Treatment, storage and disposal of more than one million tons of hazardous waste, which is generated each year by New York industries, is controlled by stringent state and federal regulations. The DEC enforces these controls, and studies the possible need for environmentally sound disposal of future hazardous wastes. Communities are involved in the search for suitable sites and in planning for possible facilities.

Natural Resources Programs

New Yorkers enjoy an abundance of natural resources, including the majestic Adirondack and Catskill mountains, a 3,200-mile coastline, thousands of square miles of public and private forest lands, immense surface and ground water resources and a wide variety of wildlife and mineral resources. Primary responsibility for protecting and managing the state's natural resources rests with the DEC, but some of that responsibility is shared with other state agencies and local governments. The Department of State's Coastal Management Program has already been discussed in this Chapter. Other programs are discussed below.

Oil Spill Prevention and Control

Legislation passed in 1977 provides for the licensing of major petroleum facilities and the collection of fees to establish a fund, now known as the Environmental Protection and Spill Compensation Fund. The DEC is designated as the administering agency to investigate and clean up oil spills. The Department establishes environmental priorities and provides advice on cleanup activities. All spills must be reported to DEC, and may be reported via a special hotline. The spiller is responsible for cleanup. When the spiller is unknown, or uncooperative, the Department initiates and implements cleanup activities through a series of standby contracts with recognized firms. The DEC may also use the Emergency Oil Spill Network that includes units of state and local government. The spill compensation fund, which is administered by the State Comptroller's Office, reimburses the costs incurred by cleanup activities that are directed by DEC.

SEQRA

The State Environmental Quality Review Act (SEQRA) requires state and local governments to determine whether or not certain proposed actions may have any significant adverse impacts on the environment and seeks to mitigate such impacts. The DEC provides technical assistance to municipalities in the administration of this law. The procedures for SEQRA review are spelled out briefly in Chapter XVI.

Solid Waste Management

Solid waste management is administered in New York through "planning units," as defined in the Environmental Conservation Law. "Solid waste" generally refers to garbage, refuse, sludge and other discarded materials resulting from industrial, commercial, mining or agricultural operations, and from residential and other community activities. A "planning unit" is a county or group of counties acting jointly, a local government agency or authority established by law for the purpose of managing solid waste, or two or more municipalities that have been determined by the DEC to be capable of implementing a regional solid waste management program. Plans are developed to promote an integrated system that provides for or considers the management of all solid waste generated within the planning unit and embodies sound principles of solid waste management, natural resource conservation, energy production and employment creation.

Local governments are responsible for implementing integrated planning at the local level, adopting local laws and ordinances requiring source separation for materials for which there are economic markets, implementing separation, collection, recycling, transportation, storage and disposal, and promoting reduction, reuse and recycling. Local governments can also zone to permit or prohibit the siting of solid waste facilities in their communities. Towns have independent authority under sections 130 and 136 of the Town Law, to regulate solid waste transfer stations. The DEC provides policy direction, technical assistance and long-range planning, and regulatory oversight.

Water and Wastewater Services

Water and sewerage services have long been available in urbanized areas and are also available in many suburban areas. The extension of these facilities has major impacts on the extent and direction of development.

Localities utilize several organizational mechanisms to provide sewerage and water services. The most prevalent are the municipal water or sewer departments in cities and villages and the water or sewer districts in towns. Most cities and many villages have developed their own sources of water supply and have constructed sewage treatment plants. While some town districts have developed these capital facilities, many purchase the services from adjoining localities. Town districts frequently purchase water or sewage treatment services as a part of a growing regionalization of such services.

State and federal grant requirements often dictate intermunicipal action regarding sewerage. County sewer districts frequently provide major capital facilities for multimunicipal sewage treatment projects. The creation of county districts and other intermunicipal arrangements allow for the use of sophisticated techniques, often at considerably lower unit costs than could be obtained by a number of smaller, independent facilities.

In addition to county districts, local governments have occasionally established authorities to provide water or sewage service over a wide area. An example is the Monroe County Water Authority, which serves a large area around the city of Rochester.

In some areas the private sector plays a large role in the delivery of water and sewage service. Even in an urban area such as New York City, the Borough of Queens is served by a private water company. In a number of suburban developments, the developer often creates small water or sewage companies. Towns or villages control the rates that private companies charge for sewage service. The State Public Service Commission regulates the price that private water firms charge for their services.

The State plays a role in the regulation of municipal water and sewer agencies. The Department of Health enforces water supply standards and the Department of Environmental Conservation enforces sewage treatment standards. Both departments, through the use of aid programs, strongly encourage intermunicipal approaches to water and sewage services.

Transportation

Aviation

Many counties, cities, towns and villages in New York State own and operate airports that provide a variety of air services to their communities. The Department of Transportation (DOT) coordinates the state's overall aviation improvement program with local communities. In addition to providing state funds for capital improvements to local airports and aviation facilities, DOT provides guidance and assistance to local communities seeking to obtain federal aid for airport improvements.

Mass Transit

The DOT is concerned with ensuring the provision of public transportation at a reasonable cost, while conserving energy and attending to the needs of such groups as commuters, the elderly, young people, the needy and the disabled. The DOT's role in local public mass transit activities encompasses short-range mass transit planning, as well as the provision of state aid for capital and operating costs to local governments and other entities operating local transit service.

Railroads

The DOT has general statutory authority over all railroads, except the Metropolitan Transportation Authority (MTA). The DOT Commissioner is empowered to examine railroad facilities and operations, and to order compliance with the Railroad Law.

Municipalities that have jurisdiction over a highway may petition the DOT Commissioner for the replacement or reconstruction of an existing bridge that separates a non-state public highway and a railroad. If the DOT determines that the bridge should be replaced or reconstructed, plans are developed, a contract is prepared, and costs are shared on a percentage basis.

The Transportation Law permits the governing body of any municipality in which a highway- railroad at grade-crossing is located to petition the DOT Commissioner to institute procedures for the elimination of the crossing at grade. If the DOT determines that the crossing should be eliminated, plans are developed, a contract is prepared, and the state bears all costs. Localities also may apply to the DOT for funding from the federal Active Grade Crossing Improvement Program. This program identifies projects for grade-crossing safety improvements, including the installation of flashing lights, protective gates and smoother, more reliable crossing surfaces. Since 1974, over 500 grade-crossing sites in need of improvement have been identified, and approximately half have been improved.

State Programs

As of the printing of this publication, the state transportation network includes: a state and local highway

system which annually handles over 100 billion vehicle miles, encompassing over 110,000 miles and 17,000 bridges; a 5,000-mile rail network over which 42 million tons of equipment, raw materials, manufactured goods and produce are shipped each year; a 524-mile canal system; 456 public and private aviation facilities through which more than 31 million people travel each year; five major ports, which annually handle 50 million tons of freight; and over 130 public transit operators, serving over 5.2 million passengers each day.

The DOT focuses on the state's growing transportation needs and is responsible for developing and coordinating statewide transportation policy. To carry out that responsibility, the DOT develops strategic transportation plans to enhance the state's economy, preserve the transportation infrastructure and ensure basic personal mobility for New Yorkers. It coordinates this planning activity with those of federal, state and local entities, and other organizations.

The DOT coordinates and assists with the development and operation of transportation facilities and services, and plans for the development of commuter and general transportation facilities. It also administers public safety and regulatory programs for rail and motor carriers in intrastate commerce, and oversees the safe operation of bus lines and commuter rail and subway systems that are subsidized by state funds.

The DOT certifies municipal applications for the state funding of local highway improvements under the Consolidated Local Street and Highway Improvement Program (CHIPS), and coordinates with Metropolitan Planning Organizations (MPOs) to administer the federally-funded Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was enacted in 2005. There are currently 13 MPOs across the state. Each is responsible for developing, in cooperation with the State and affected transit operators, a long-range transportation plan and a Transportation Improvement Program (TIP) for its area.

Metropolitan Planning Organizations

By federal law, a Metropolitan Planning Organization (MPO) is designated by the governor for every urban area with at least 50,000 residents. The MPO devises solutions to regional transportation problems, which involves addressing other important issues such as land use, air quality, energy, economic development and commerce. To do this, the MPO develops a long range regional transportation plan. The MPO also maintains a short-range program of projects to fund with federal transportation money. For these activities and many others, it is the duty of the MPO to engage as many stakeholders, including the general public, as possible in the planning process. By creating a vision for the region in the Plan and by identifying projects and investments that help achieve that vision, the MPO ensures that scarce public funds are spent to move the region toward its planning goals. Each MPO also offers a variety of technical assistance opportunities to the communities they serve.

SAFETEA-LU was enacted in August 2005. Like preceding federal transportation legislation, SAFETEA-LU underscores the importance of a participatory, integrated, regional transportation planning process and re-affirms the MPO's central role in the process. SAFETEA-LU also adds some new areas of emphasis, including: the importance of security in transportation planning; the linkage between transportation and economic development; and the need for efficient system management and operations.

In New York State, the thirteen MPOs are:

- Adirondack/Glens Falls Transportation Council
- Binghamton Metropolitan Transportation Council
- Capital District Transportation Committee
- Elmira-Chemung Transportation Council
- Genessee Transportation Council
- Greater Buffalo-Niagara Regional Transportation Council
- Herkimer-Oneida Counties Transportation Study
- Ithaca-Tompkins County Transportation Council
- Orange County Transportation Council
- New York Metropolitan Transportation Council
- Poughkeepsie-Dutchess County Transportation Council
- Syracuse Metropolitan Transportation Council
- Ulster County Transportation Council

Streets and Highways

The state has responsibility for the state and interstate highway systems. It does not, however, maintain those portions of state highways within cities. Within towns, state highways are a state responsibility, although counties and towns may provide snow and ice control under contract.

County governments maintain a county road system that is designated by the county's legislative body. Like the state, counties do not maintain roadways within cities. The degree to which counties actually perform maintenance on the county road system varies. Some coun-

ties maintain large and well-equipped maintenance organizations and perform most of the needed work. Others maintain only a small work force and contract with towns for much of the maintenance.

New York State Canal Corporation

The New York State Canal Corporation is responsible for the oversight of four historic waterways: the Erie, the Champlain, the Oswego and the Cayuga-Seneca Canals. Spanning 524 miles across New York State, these canals link the Hudson River, Lake Champlain, Lake Ontario, the Finger Lakes, and the Niagara River with communities rich in history and culture.

To date the Canal Corporation, in conjunction with other state agencies, has helped implement over $250 million dollars in local projects along the Canal system, including $13 million for 7 Canal harbors. In addition, $18 million has been invested for 24 Canal trail projects, including 107 miles of construction, under the Canal Revitalization Program.

A new vison for the future of the Canal System was unveiled in May 2005. It calls for establishing an Erie Canal Greenway and, ultimately, an Empire State Greenway, connecting the Niagara, Erie and Hudson River Greenways. The Greenway, which will comprise one of the largest Greenways in the nation, is being developed under the auspices of the Canal Corporation to partner with local communities and assist them in grassroots planning that balances their economic and environmental resources.

Consumer Protection Services

New York State and its local governments work together to protect consumers from questionable or illegal practices in certain businesses and occupations. Many state agencies which have regulatory responsibilities operate consumer protection programs to assist citizens and local officials.

Coordination of consumer protection at the state level is provided by the Consumer Protection Board. At the local level, many counties and some cities, towns and villages have established agencies for consumer protection. These local agencies look to the State Consumer Protection Board for support. The Board is empowered to conduct investigations, receive and refer consumer complaints, intervene in proceedings before the Public Service Commission and other agencies, and coordinate the consumer protection activities of state agencies. In addition, the Board recommends new legislation for consumer protection, initiates and encourages consumer protection programs, conducts outreach activities, surveys significant consumer issues and distributes publications on consumer matters, including the *New York State Consumer Law Help Manual*.

Among state agencies' consumer protection programs are the following:

The Department of Agriculture and Markets, in cooperation with county and city officials, enforces the law relating to weights and measures.

In 1995, the Public Service Commission (PSC) took over regulatory authority of cable television from the former Cable TV Commission. The PSC responds to complaints by cable television consumers, and provides information and technical assistance to local officials concerning cable television franchise questions. Cities, towns and villages have the responsibility of granting franchises to cable television companies and monitoring their operations, but the PSC sets standards and provides assistance to local franchising authorities. The PSC also regulates other modes of communications as well as electric, gas and water utilities. It operates a consumer outreach and education program, and responds to consumer complaints concerning the regulated entities.

The State Board of Regents and State Education Department license and/or regulate practitioners in a number of professions, including architecture, dentistry, engineering, land surveying, medicine, nursing, occupational therapy, optometry, pharmacy, physical therapy, psychology, public accountancy, social work, speech pathology and veterinary medicine. Regulation is carried out through the Office of Professional Discipline and the respective licensing boards. Regulation of physicians and their assistants is carried out jointly with the State Health Department.

The Department of Health regulates the delivery of health care by institutions and individual providers, and responds to consumer complaints. Its Professional Medical Conduct Unit investigates complaints about physicians and their assistants.

The Insurance Department licenses and regulates insurers, agents, brokers, bail bondsmen, adjusters and others. Its Consumer Services Bureau responds to consumer questions and complaints.

The Office of the Attorney General offers, through its Consumer Frauds and Protection Bureau, help for consumers in the form of public education and mediation, as well as legal action in cases of repeated fraud. The Attorney General prosecutes criminal violations by licensed or registered professionals, fraudulent sales of stocks and

securities, frauds against consumers, and monopolies in restraint of trade. Major charities which solicit in the state are registered by the Attorney General's Charities Bureau.

The Department of State licenses and/or regulates certain nonprofessional businesses and occupations. Its Division of Licensing Services regulates armored car carriers and guards, barbers, estheticians, natural hair stylists, cosmetologists, waxing practitioners, nail specialists, bedding manufacturers, coin processors, hearing aid dispensers and dealers, notaries public, private investigators, watch, guard and patrol agencies, real estate brokers and salespersons, and apartment information vendors. Its Division of Cemeteries regulates non-sectarian cemeteries as well as pet cemeteries.

Labor and Working Conditions

The Department of Labor ensures the safety and health of all public and many private employees in the workplace, and administers unemployment assistance programs. The Department also serves as the principal source of labor market information in the state, including current and predicted economic trends affecting the state's economy. The Department also enforces state labor laws and federal laws relating to working conditions and compensation.

The Division of Employment Services administers job placement assistance, skill assessment and career counseling services. Local and state agencies and not-for-profit organizations are encouraged by the Division to co-locate and coordinate services provided by on-site staff assistance to customers. The Unemployment Insurance Division provides unemployment insurance benefits, which are funded by a tax paid by employers.

The Department administers the worker protection provisions of the State Labor Law. The Labor Standards Division administers the provisions of the Labor Law concerning minimum wage, hours of work, child labor, payment of wages and wage supplements, industrial homework, farm labor and the apparel industry. The Division of Safety and Health enforces occupational safety and health standards for employees of the state and local governments. The Bureau of Public Work enforces the payment of prevailing wages and supplements on public construction projects and building service contracts. The Welfare-to-Work Division oversees state and local programs under the Temporary Assistance for Needy Families program (TANF), the Food Stamp Employment and Training program (FEST), the Welfare-to-Work Block Grant program and the Safety Net program. Oversight includes policy development, technical assistance to local social services districts and provider agencies, contract reporting and monitoring, program oversight of state level programs and supervision of local social services districts. The Workforce Development and Training Division administer federal and state funds for programs that offer employment and training services.

Other Services

State-local partnerships are also involved in the following services and programs areas:

The Office of Advocate for the Disabled works with local governments to ensure that the state's estimated 2.5 million disabled citizens have access to public services and equal opportunity. The Office, established by Executive Order and given a legislative base by Chapter 718 of the Laws of 1982, provides technical assistance and information to help local governments, service providers and others to integrate disabled residents into all facets of community life. The Office also keeps the Governor, Legislature, and state agencies informed about the needs of the disabled, promotes cooperative efforts to develop employment opportunities, helps develop innovative strategies to meet special needs, and operates an information and referral service.

Local governments control dogs pursuant to a combination of state and local laws and in accordance with regulations of the Department of Agriculture and Markets, which maintains a master list of licensed dogs. The Department also promulgates and maintains a uniform code of weights and measures for use in commerce throughout the state.

Counties, cities, towns and villages are authorized to establish commissions on human rights, and many have done so. They work closely with the State Division of Human Rights in eliminating and preventing discrimination based on race, creed, color, national origin, sex, age, disability, marital status, or arrest and/or conviction record; in credit transactions, employment, housing and public accommodations.

The New York State Energy Research and Development Authority (NYSERDA) develops innovative energy-efficient technologies to help enhance environmental quality. The Authority assists businesses, residents, municipalities and institutions in becoming more energy-efficient by investing funds into cost effective energy efficiency deployment strategies, renewable energy sources and clean-fuel technologies.

The State Department of Motor Vehicles (DMV) shares responsibility with county clerks for the issuance

of drivers' licenses and registration of motor vehicles. Under the Vehicle and Traffic Law, cities, towns and villages are required to issue handicapped parking permits to eligible individuals. The DMV also registers and regulates motor vehicle repair shops. Its Division of Vehicle Safety Services responds to consumer complaints.

The Future

An interlocking network of federal, state and local participation exists in the provision of governmental services. More and more local governments are seeking better ways to perform the essential services for which they have primary responsibility. They are exploring available alternatives with a view toward decreasing waste, increasing efficiency, and avoiding overlap or duplication of services. Local governments should continually examine their traditional methods of carrying out their responsibilities in order to constantly improve, and reduce the cost of, the delivery of services to citizens.

CHAPTER XVI

Land Use Planning and Regulation

One of the most powerful tools in the local government arsenal is the power to regulate the physical development of the municipality. This power is exercised through a variety of available authorizations and regulatory mechanisms. Through control of land use and development, each community is able to develop and display the most desirable physical features of the community.

The Police Power

Police power is the power that government has to provide for public order, peace, health, safety, morals and general welfare. It resides in the sovereign state, but may be delegated by the state to its municipalities. Land use controls are an exercise of the police power long recognized by the United States Supreme Court. In New York, the power to control land use is granted to each municipal government by Article IX, section 2, of the State Constitution and by the various state enabling statutes.

With few exceptions, the exercise of the police power to control land use is a city, town or village function in New York State. This includes the decision whether to control land use, and, if so, to determine the nature of the controls. When exercised, the power to control land use is governed by the state enabling statutes which have granted the power to local governments: the General City Law, the Town Law, the Village Law, the General Municipal Law, and the Municipal Home Rule Law and its companion Statute of Local Governments.

The Planning Board

The local legislative bodies of cities, towns and villages may create planning boards in a manner provided for by state statute or municipal charter, and may grant various powers to the planning board (General City Law section 27; Town Law section 271; Village Law section 7-718). The statutes authorize municipal legislative bodies to provide for the referral of any municipal matter to the planning board for its review and report prior to final action. While the functions of a planning board may extend beyond land use, in most municipalities the planning board performs primarily a land use control function. Many local zoning laws or ordinances establish a procedure for referral to the local planning board of all applications for rezoning, variances and special use permits. Such planning board reports and recommendations are often of vital importance in deciding these matters. In addition, the local planning board can have an advisory role in preparing and amending comprehensive plans, zoning regulations, official maps, long-range capital programs, special purpose controls and compliance with the State Environmental Quality Review Act (SEQRA). Further, the local legislative body may grant the planning board such regulatory functions as control of land subdivision, site plan review and issuance of special use permits. Where these and related functions are effectively administered, the local planning board can do much to advance the land use and development policies of the local legislative body.

Comprehensive Planning

Comprehensive planning can (and should) be performed by all municipalities, whether or not it results in a set of land use controls. Comprehensive planning logically forms the basis of all efforts by the community to guide the development of its governmental structure as well as its natural and built environment. Nonetheless, the most significant feature of comprehensive planning in most communities is its foundation for land use controls.

Most successful planning efforts begin with a survey of existing conditions and a determination of the municipality's vision for the future. This process should not be confused with zoning or other land use regulatory tools. Instead, the comprehensive plan should be thought of as a blueprint on which zoning and other land use regulations are based.

The state statutes define a comprehensive plan as "the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other

descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development" of the municipality (General City Law section 28a(3)(a); Town Law section 272-a(2)(a); Village Law section 7-722(2)(a)). While the use of the state comprehensive plan statutes is optional, they can guide boards through the comprehensive plan process (General City Law section 28-a; Town Law section 272-a; Village Law section 7-722). An important component of the process is public participation. Under the statutes, this occurs both formally, through mandatory hearings held by the preparing board and by the legislative body prior to adoption of the plan, and informally, through the participation of the public at workshops and informational sessions.

Communities which do not have professional planners on staff to assist in the preparation of a comprehensive plan have several resources available to them. They may be able to receive assistance from their county or regional planning agency. They may also be able to contract with a professional planning or engineering firm that provides planning services. Also, municipal residents may possess expertise in planning or other environmental or design disciplines. However long or detailed the plan is, its real value is in how it is used and implemented. Since each municipality that has the power to regulate land use has a different set of constraints and options, the final form of each comprehensive plan will be unique. The size and format of the comprehensive plan will vary from municipality to municipality (and possibly from consultant to consultant). It may consist of a few pages or may be a thick volume of information.

County Planning

New York's counties have the statutory power to create planning boards (General Municipal Law section 239-c). The county legislative body may prepare a county comprehensive plan or delegate its preparation to the county planning board or to a "special board" (General Municipal Law section 239-d). Prior to adopting or amending a county official map, the county legislative body must refer the proposed changes to the county planning board and other municipal bodies (General Municipal Law section 239-e). In addition, the county legislative body may authorize the county planning board to review certain planning and zoning actions, including certain subdivision plats, by municipalities within the county (General Municipal Law section 239-c(3)).

State laws require that any city, town or village located in a county possessing a "county planning agency" or "regional planning council" must refer to that agency certain zoning matters before taking final action on those matters. In addition, where authorized by the county legislative body, certain subdivision plats must be referred to the county by the town, village or city planning board before taking final action. Generally, referral must be made where a proposed zoning matter or subdivision plat affects real property within 500 feet of one or more enumerated geographic features, such as a municipal boundary. Referral to the county planning agency or regional planning council is an important aid to the local planning and zoning process. It provides local planning and zoning bodies with advice and assistance from professional county and regional staff and can result in better coordination of zoning actions among municipalities by interjecting inter-community considerations. In addition, it allows other planning agencies (county, regional and state) to better orient studies and proposals for solving local as well as county and regional needs.

Zoning and Related Regulatory Controls

Zoning

Zoning regulates the use of land, the density of land use, and the siting of development. Zoning is the most commonly used local land use technique for regulating the use of land, accomplishing municipal goals and implementing comprehensive plans. According to a 1994 survey by the Legislative Commission on Rural Resources, 100 percent of cities, 67 percent of towns and 87 percent of villages in New York have adopted zoning laws or ordinances.

Zoning commonly consists of two components: a zoning map and a set of zoning regulations. The zoning map divides a municipality into various land use districts, such as residential, commercial, industrial or manufacturing. The land use districts that a municipality establishes can be even more specific, such as high, medium and low density residential, general commercial, highway commercial, light industrial, heavy industrial, or other. Mixed-use districts may also be appropriate, depending upon local planning and development goals as set forth in a comprehensive plan. Zoning regulations commonly describe the permissible land uses in each of the various zoning districts identified on the zoning map. They also usually include dimensional standards for each district, such as the height of buildings, minimum distances (setbacks) from buildings to property lines, and the permissible density of development. These are referred to as "area" standards,

as opposed to "use" standards. Zoning regulations will also set forth the steps necessary for approval by the type of use, the zoning district involved, or by both. For example, a single-family home is often permitted "as-of-right" in a low-density residential zoning district. "As-of-right" uses, if they meet the dimensional standards, require no further zoning approvals and need only a building or zoning permit in order for construction to begin.

The Zoning Board of Appeals

Zoning boards of appeals (ZBAs) are a basic part of zoning administration. The state zoning enabling statutes prescribe that zoning boards of appeals must be created when a municipality enacts zoning (General City Law section 81; Town Law section 267; Village Law section 7-712). ZBAs serve as "safety valves" in order to provide relief, in appropriate circumstances, from overly restrictive zoning provisions. In this capacity, they function as appellate entities, with their powers derived directly from state law. In addition to this inherent appellate jurisdiction, municipal legislative bodies may give ZBAs "original" jurisdiction over other specified matters, such as special use permits and site plan reviews.

By state law, the ZBA must serve to provide for relief from the strict application of regulations that may affect the economic viability of a particular parcel or that may obstruct reasonable dimensional expansion. The state statutes give two varieties of appellate jurisdiction to ZBAs. An appeal seeking an *interpretation* of provisions of the zoning regulations is an appeal claiming that the decision of the administrative official charged with zoning enforcement is incorrect. It is a claim that the zoning enforcement officer misapplied the zoning map or regulations, or wrongly issued or denied a permit. By contrast, in an appeal for a *variance*, there is no dispute over the enforcement officer's application of zoning provisions. Instead, the applicant feels there should be an exception made in his or her case, and that some of the zoning rules should not apply in a particular circumstance. A ZBA must then apply the criteria set forth in the state statutes in determining whether to grant the requested variance.

Board of Appeals' members are appointed by the municipality's legislative body in a manner provided by state statute or municipal charter. ZBAs function free of any oversight by the municipal legislative body. Where the zoning board of appeals has final decision-making authority, the legislative body may not review the grant or denial of variances, special use permits, or any other decisions; the statutes provide for review of ZBA decisions by state courts in Article 78 proceedings.

Related Controls

In some communities, the basic use and density separation provided by traditional zoning is all that is necessary to achieve municipal development goals and objectives. Many communities desire, however, development patterns that may be only partially achieved through traditional zoning. For example, a municipality may wish to strongly encourage a particular type of development in a certain area, or may wish to limit new development to infrastructure capacity. There are other land-use regulatory techniques available to address those objectives. Use of one or more particular techniques can serve to encourage and "market" the type of development and growth a municipality desires, thus more closely linking a municipality's comprehensive plan with the means to achieve it. Six of these techniques (special use permits, site plan review, subdivision review, cluster development, incentive zoning, and transfer of development rights) are provided for in the enabling statutes and briefly discussed below.

Special Use Permits

In most municipal zoning regulations, many uses are permitted within a zoning district as-of-right, with no discretionary review of the proposed project. On the other hand, municipalities may require a closer examination of certain designated uses. The special use permit zoning technique (sometimes referred to as conditional uses, special permits or special exceptions) allows a board discretionary authority to review a proposed development project in order to assure that it is in harmony with the zoning and will not adversely affect the neighborhood.

A special use permit is applied for and granted by the reviewing board if the proposal meets the special use permit standards found in the zoning regulations. Typically, the standards are designed to avoid possible negative impacts of the proposed project with adjoining land uses or with other municipal development concerns or objectives, such as traffic impacts, noise, lighting, or landscaping. State statutes prescribe the procedure for all special use permit applications.

Site Plan Review

Site plan review is concerned with how a particular parcel is developed. A site plan shows the arrangement, layout and design of the proposed use of a single parcel of land. Site plan review can include both small and large-scale proposals, ranging from gas stations, drive-through facilities and office buildings, to complex ones such as shopping centers, apartment complexes, and industrial parks. Site plan review can be used as a regulatory pro-

cedure standing alone, but is also often required in connection with other needed zoning approvals, such as special use permits.

The authority to require site plan review is derived from the state enabling statutes (General City Law section 27-a; Town Law section 274-a; Village Law section 7-725-a). A local site plan review requirement may be incorporated into the zoning law or ordinance, or may be adopted as a set of separate regulations. As in the case of special use permits, the local legislative body has the power to delegate site plan review to the planning board, zoning board of appeals, or another board. Alternatively, the legislative body may retain the power to exercise such reviews.

The local site plan review regulations or local zoning regulations identify the uses that require site plan approval. Uses subject to review may be (1) identified by the zoning district in which they are proposed; (2) identified by use, regardless of the zoning district or proposed location within the community; or (3) located in areas identified as needing specialized design restrictions by way of an overlay zone approach, such as a flood zone or historic preservation district.

Site plan issues should be addressed through a set of general or specific requirements included in the local site plan review regulations. As an alternative to the installation of required infrastructure and improvements, the site plan statute allows a municipality to require the applicant to post a performance guarantee to cover their cost.

Subdivision Review

There is probably no form of land use activity that has as much potential impact upon a municipality as the subdivision of land. The subdivision process controls the manner by which land is divided into smaller parcels. While a subdivision is typically thought of as the division of land into separate building lots that are sold to individual buyers, subdivision provisions may also apply to a simple division of land offered as a gift or which changes lot lines for some other reason. Subdivision regulations should ensure that when development does occur, streets, lots, open space and infrastructure are properly and safely designed, and the municipality's land use objectives are met.

Planning boards, when authorized by local governing bodies, may conduct subdivision plat review. A "plat" is a map prepared by a professional which shows the layout of lots, roads, driveways, details of water and sewer facilities, and, ideally, additional useful information regarding the development of a tract of land into smaller parcels or sites. The state enabling statutes contain specific procedures for the review of both preliminary and final plats (General City Law sections 32, 33; Town Law sections 276, 277; Village Law sections 7728, 7-730). Most municipalities use the two-step (preliminary and final plat) process.

Subdivision review is a critical tool in a municipality's land use management scheme and has important consequences for overall municipal development. The subdivision of large tracts may induce other related development in the neighborhood, produce demands for rezoning of neighboring land, or trigger the need for additional municipal infrastructure.

Cluster Development

Cluster development is a technique that allows flexibility in the design and subdivision of land (General City Law section 37; Town Law section 278; Village Law section 7-738). By clustering a new subdivision, certain community planning objectives can be achieved. The use of cluster development can greatly enhance a municipality's ability to maintain its traditional physical character while at the same time providing (and encouraging) new development. It also allows a municipality to achieve planning goals that may call for protection of open space, scenic views, agricultural lands, woodlands and other open landscapes, and may limit encroachment of development in, and adjacent to, environmentally sensitive areas. Cluster development is also attractive to developers because it can result in reduced development expenses relating to roadways, sewer lines, and other infrastructure, as well as lower costs to maintain that infrastructure.

When it is used according to the enabling statutes, cluster development is a variation of conventional subdivision plat approval. Cluster development concentrates the overall maximum density allowed on property onto the most appropriate portion of the property. The maximum number of units allowed on the parcel must be no greater than that which would be allowed under a conventional subdivision layout for the same parcel.

Incentive Zoning (Bonus Zoning)

The authority to incorporate incentive zoning into a municipality's zoning regulations is also set forth in the state planning and zoning enabling statutes (General City Law section 81-d; Town Law section 261-b; Village Law section 7-703). Incentive zoning is an innovative and flexible technique; it can be very effective in encouraging

desired types of development in targeted locations. Conceptually, incentive zoning allows developers to exceed the dimensional, density, or other limitations of zoning regulations in return for providing certain benefits or amenities to the municipality. A classic example of incentive zoning would be an authorization to exceed height limits by a specified amount, in exchange for the provision of public open space, such as a plaza.

If a municipality desires a certain type of development in particular locations, it can usually only wait to see if a developer will find it economical to build. Incentive zoning changes this dynamic by providing economic incentives for development that otherwise may not occur. Incentive zoning is also a method for a municipality to obtain needed public benefits or amenities in certain zoning districts through the development process. Local incentive zoning laws can even be structured to require cash contributions from developers in lieu of physical amenities, under certain circumstances.

Transfer of Development Rights (TDR)

Transfer of development rights (TDR) is an innovative and complex growth management technique. It is based on the real property concept that ownership of land gives the owner a "bundle of rights," each of which may be separated from the rest. For example, one of these rights is the right to develop land. With a TDR system, landowners are able to retain their land, but sell the development rights for use on other properties.

Under the state zoning enabling statutes (General City Law section 20-f; Town Law section 261-a; Village Law section 7-701), areas of the municipality that have been identified through the planning process as in need of preservation (e.g., agricultural land) or areas where development should be avoided (e.g., municipal drinking water supply protection areas) are established as "sending districts." Development of land in such districts may be heavily restricted, but owners are granted rights under the TDR regulations to sell the rights to develop their lands. Those development rights may thereby be transferred to lands located in designated "receiving districts."

Transferable development rights usually take the form of a number of units per acre, or gross square footage of floor space, or an increase in height. The rights are used to increase the density of development in a receiving district. Receiving districts are established after the municipality has determined that they are appropriate for increased density based upon a study of the effects of increased density in such areas. Such a study is best incorporated within the community's comprehensive plan.

The state zoning enabling statutes require that lands from which development rights are transferred are subject to a conservation easement limiting the future development of the property. The statutes also require that the assessed valuation of properties be adjusted to reflect the change in development potential for real property tax purposes.

Other Land Use Controls

In addition to the six techniques described above, four others are often employed: overlay zoning, performance zoning, and floating zones and planned unit development. They are not treated specifically in the enabling statutes, but have been considered to be lawful within the general statutory grants of zoning power.

Overlay Zoning

The overlay zoning technique is a modification of the system of conventionally-mapped zoning districts. An overlay zone applies a common set of standards to a designated area that may cut across several different conventional or "underlying" zoning districts. The standards of the overlay zone apply in addition to those of the underlying zoning district. Some common examples of overlay zones are the flood zones administered by many communities under the National Flood Insurance Program, historic district overlay zones, areas of very severe slopes, waterfront zones and environmentally sensitive areas. The state enabling statutes do not contain provisions dealing with overlay zoning, but it is employed most often in conjunction with special use permits.

Performance Zoning

Some communities have enacted zoning regulations that establish performance standards, rather than strict numerical limits on building size or location, as is the case with conventional zoning. Performance zoning regulates development based on the permissible effects or impacts of a proposed use, rather than by the traditional zoning parameters of use, area and density. Under performance zoning, proposed uses whose impacts would exceed specified standards are prohibited unless the impacts can be mitigated.

Performance zoning is often used to address municipal issues concerning noise, dust, vibration, lighting, and other impacts of industrial uses. It is also used by communities to regulate environmental impacts, such as stormwater runoff, scenic and visual quality impacts, and defined impacts on municipal character. The complexity and sophistication of these performance standards vary widely from one municipality to another, depending on the ob-

jectives of the program and the capacity of the locality to administer it.

The Floating Zone

Floating zones allow municipalities flexibility in the location of a particular type of use and allow for a use of land that may not currently be needed, but which may be desired in the future. The floating zone is also a way of scrutinizing significant projects for municipal impacts. The local legislative body must approve floating zones.

The standards and allowable uses for a floating zone are set forth in the text of the municipality's zoning regulations, but the actual district is not mapped; rather, the district "floats" in the abstract until a development proposal is made for a specific parcel of land and the project is determined to be in accordance with all of the applicable floating zone standards. At that time, the local legislative body maps the floating zone by attaching it to a particular parcel or parcels on the zoning map. Because the floating zone is not part of the zoning map until a particular proposal is approved, the establishment of its boundaries on the zoning map constitutes an amendment to the municipal zoning regulations.

Planned Unit Developments (PUDs)

Planned Unit Developments (PUDs) describe a zoning technique that allows development of a tract of land (usually a large tract of land) in a comprehensive, unified manner where the development is planned to be built as a "unit." As a mapping designation, they are also known as Planned Development Districts (PDD), and are often a form of floating zone; they are not made a part of the zoning map until a PUD project is approved. The PUDs that are shown on a zoning map may require approval by special use permit.

The PUD concept allows a combination of land uses, such as single and multiple-family residential, industrial, and commercial, on a single parcel of land. It also may allow a planned mix of building types and densities. For example, a single project might contain dwellings of several types, shopping facilities, office space, open areas, and recreation areas. In creating a PUD, a municipal legislative body would need to follow the procedure for amending zoning to create a new zoning district or to establish special use permit provisions. An application for a PUD district is typically reviewed by the planning board, and a recommendation is made to the legislative body, which may then choose to rezone the parcel.

Supplementary Controls

The following is a discussion of "stand alone" laws that are commonly adopted to address specific municipal concerns, although they may also be usefully incorporated into zoning, site plan review or subdivision regulations.

Official Map

For any municipality to develop logical, efficient and economical street and drainage systems, it must protect the future rights-of-ways needed for these systems. Such preventive action saves a municipality the cost of acquiring an improved lot and structure at an excessive cost or resorting to an undesirable adjustment in the system. To protect these rights-of-ways, state statutes allow a municipality to establish and change an official map of its area, showing the streets, highways, parks and drainage systems (General City Law sections 26, 29; Town Law sections 270, 273; Village Law section 7-724; General Municipal Law section 239-e). Future requirements for facilities may be added to the official map. Without the consent of the municipality, the reserved land may not be used for other purposes.

The official map is final and conclusive in respect to the location and width of streets, highways, drainage systems, and locations of parks shown on it. Streets shown on an official map serve as one form of qualification for access requirements that must be met prior to the issuance of a building permit (General City Law sections 35, 35-a, 36; Town Law sections 280, 280-a, 281; Village Law sections 7-734, 7-736; General Municipal Law section 239-f).

Sign Control

The use and location of signs are typically subject to municipal regulation, either as part of a zoning law or as a separate regulation. Attention is focused on the number, size, type, design and location of signs.

The issues that a municipality considers important can be brought together in a sign control program. Without a program, signs can overwhelm a municipality, damaging its character and reducing the effectiveness of communication, including traffic safety messages. With an effective program, signs can aesthetically enhance a locality and effect municipal character.

A municipality is generally free to prescribe the location, size, dimensions, and manner of construction and design of signs. However, the U.S. Supreme Court has examined the constitutional questions concerning freedom of speech with respect to sign controls, and has placed

limits on the authority of municipalities to control the *content of the message* conveyed on signs.

Historic Preservation

The development of a community policy to protect historic resources, and an identification of the particular resources to be protected in the community are the first steps to providing recognition of the historic value of property or a collection of buildings. Once a community has established a policy of historic preservation, it can seek to formally recognize individual historic structures or groups of structures. The first level of recognition can be achieved through the adoption of a local historic preservation law which enables the community to designate individual properties as local historic landmarks, or groups of properties as local historic districts. Such a local law is also likely to provide standards for protection of these designated properties.

The historical importance of a building can also be recognized at the state or national level through listing on the State or National Register of Historic Places. These listings are managed, respectively, by the State Office of Parks, Recreation, and Historic Preservation, and the Federal Department of the Interior, in cooperation with the property owner and local municipality. The National Register listing includes recognition of the historical importance of a single property, a group of properties, or a set of properties related by a theme.

Listing on the National Register of Historic Places is an important recognition of a property or an area's historic and cultural significance. Designation makes the property eligible for grants and loans and, possibly, federal tax credits. Additionally, any federal action that might impact such property must undergo a special review that is designed to protect the property's integrity. Similarly, listing on the State Register of Historic Places means that State agency actions that effect a designated property are subject to closer review, and makes the property eligible for grant assistance. Neither a listing on the National nor State Register of Historic Places will protect a structure from the owner's interest in redesigning or demolishing the historic structure. Only a locally-adopted historic preservation law can control such actions.

If a municipality does not wish to adopt a local historic preservation law, it may want to consider a demolition law. Such a law could require review or a delay before demolition of a historically significant building. This allows time for a community to examine alternatives to demolition, such as purchase of the property by a government or not-for-profit group.

Architectural Design Control

Many aspects of a building's design are regulated through standards for siting, orientation, density, height and setback within a municipality's zoning code. Some municipalities wish to go beyond dealing with the general size and siting of a building and its physical relationship with adjacent properties, to dealing with the appropriateness of the architectural design of the building. The review may include examining such design elements as facades, roof lines, windows, architectural detailing, materials and color.

Architectural review generally requires a more subjective analysis of private development proposals than is possible within most zoning codes. To do this, communities often establish an architectural review board, which should be able to offer guidance on design issues to other boards, such as the planning board or zoning board of appeals. Where authorized, an architectural review board may conduct an independent review of the architectural features of a proposed project. Often, a community chooses to link design review to historic preservation controls, with a focus on the design of new buildings and alterations to existing buildings within historic districts.

Junk Yard Regulations

If a municipality does not have its own junk yard regulations or zoning regulations addressing the siting of junk yards, it must apply the standards set forth in General Municipal Law section 136 for automobile junk yards. This law regulates the collection of junk automobiles, including the licensing of junk yards and regulation of certain aesthetic factors. The application of this state law is limited to sites storing two or more unregistered, old or secondhand motor vehicles that are not intended or in condition for legal use on public highways. The law also applies to used motor vehicle parts, which, in bulk, equal at least two motor vehicles. A municipality may expand the state definition of "junk yard" to encompass other types of junk, such as old appliances, household waste, or uninhabitable mobile homes, in order to regulate aspects of junk not covered by state law and to ensure greater compatibility with surrounding land uses.

Control of Mining

The New York State Mined Land Reclamation Law (Environmental Conservation Law section 23-2703 *et seq.)* regulates mining operations that remove more than one thousand tons or 750 cubic yards (whichever is less) of minerals from the earth. Mines that meet or exceed such thresholds require approval by the New York State

Department of Environmental Conservation (DEC). Smaller mines may be regulated by a local mining or zoning regulation. However, even though DEC regulates larger mines, a municipality may regulate the *location* of all mines through its zoning regulations.

When a municipality permits state-regulated mining to occur within its borders through a special use permit process, conditions placed on the permit may pertain to entrances and exits to and from the mine on roads controlled by the municipality, routing of mineral transport vehicles on roads controlled by the municipality, enforcement of the reclamation conditions set forth in the DEC mining permit, and certain other requirements specified in the state permit (ECL § 23-2703).

Scenic Resource Protection

Scenic resources are important in defining community character. These resources can be threatened by development and many communities are now seeking ways to mitigate the impacts of development on the landscape. High priority is often placed on protecting specific scenic views or the general quality of a landscape. Policies to protect scenic resources may be included in a community's comprehensive plan, along with maps illustrating the scenic resource. Once this has been done, it is important to integrate policies into regulations. Appropriate use, density, siting and design standards can protect scenic resources by such methods as limiting the height of buildings or fences in important scenic areas.

Open Space Preservation

Many communities are now recognizing the value of "open space," i.e. vacant land and land without significant structural development. A good way for a municipality to assess the importance of its open space resources is to produce an open space plan or to include an assessment of open space resources as part of its comprehensive plan. Here, a community decides how to categorize its open space resources, examine their use and function within the community, set priorities for their protection, and consider the best way to use and protect open spaces. When a community has identified its open space resources, it can develop policies to protect them. Those policies should be expressed in the open space plan and in the community's comprehensive plan, along with the maps showing open spaces. Once this has been done, it is important to ensure that the open space policies of the comprehensive plan are implemented through the municipality's land use controls.

Protection of Agricultural Land

One of the critical issues involved in land use planning decisions for agricultural uses is to ensure that agriculture protection deals primarily with the preservation of agriculture as an *economic activity* and not just as a use of open space. Traditionally, agricultural uses are part of large lot, low density, residential zoning districts. With increased residential development, however, conflicts between agricultural and residential uses have increased. Complaints about noise, odors, dust, chemicals, and slow-moving farm machinery may occupy enough of the resources of a farmer so as to have a negative impact on the viability of his or her farming activities.

Article 25-AA of the Agriculture and Markets Law is intended to conserve and protect agricultural land for agricultural production and as a valued natural and ecological resource. Under this statute, territory can be designated as an agricultural district. To be eligible for designation, an agricultural district must be certified by the county for participation in the state program. Once a district is designated, participating farmers within it may receive reduced property assessments and relief from local nuisance claims and certain forms of local regulation.

Agricultural district designation under Article 25-AA does not generally prescribe land uses. However, under section 305-a of Article 25-AA, municipalities are restricted from adopting regulations, applicable to farm operations in agricultural districts, that unreasonably restrict or regulate farm structures or practices, unless such regulations are directly related to the public health or safety (Agriculture and Markets Law, section 305-a(1); Town Law section 283-a; and Village Law section 7-739). The law also requires municipalities to evaluate and consider the possible impacts of certain projects on the functioning of nearby farms.

Projects that require "agricultural data statements" include certain land subdivisions, site plans, special use permits, and use variances.

Farm operations within agricultural districts also enjoy a measure of protection from proposals by municipalities to construct infrastructure such as water and sewer systems, which are intended to serve nonfarm structures. Under Agriculture and Markets Law, section 305, the municipality must file a notice of intent with both the state and the county in advance of such construction. The notice must detail the plans and the potential impact of the plans on agricultural operations. If, on review at either the county or state levels, the Commissioner of Agriculture and Markets determines that there would be an un-

reasonable adverse impact, he or she may issue an order delaying construction, and may hold a public hearing on the issue. If construction eventually goes forward, the municipality must make adequate documented findings that all adverse impacts on agriculture will be mitigated to the maximum extent practicable.

"Right-to-farm" is a term that has gained widespread recognition in the state's rural areas within the past several decades. Section 308 of the Agriculture and Markets Law grants protection from nuisance lawsuits to farm operators within agricultural districts or on land outside a district that is subject to an agricultural assessment under section 306 of the Law. The protection is granted to the operator for any farm activity that the Commissioner has determined to be a "sound agricultural practice." Locally, many rural municipalities have used their home rule power to adopt local "right-to-farm" laws. These local laws commonly grant particular land-use rights to farm owners and restrict activities on neighboring non-farm land that might interfere with agricultural practices.

A purchase of development-rights (PDR) system involves the purchase by a municipal or county government of development rights from private landowners whose land it seeks to preserve in its current state without further development. The PDR system, which has been used extensively in Suffolk County to preserve farmland, can also protect ecologically important lands or scenic parcels essential to rural character of the community. Under PDR, the land remains in private ownership and the government acquires non-agricultural development rights. These development rights, once purchased by the government, are held and remain unsold. The farmer receives payment equal to the development value of the farmland. In return, the farmer agrees to keep the land forever in agriculture. The owner typically files property covenants similar to a conservation easement limiting the use of the property to agricultural production. The nation's first purchase of development rights program to preserve farmland was in Suffolk County in 1974.

The Commissioner of the Department of Agriculture and Markets is authorized to administer two matching grant programs focused on farmland protection. One assists county governments in developing agricultural and farmland protection plans to maintain the economic viability of the state's agricultural industry and its supporting land base; the other assists local governments in implementing their farmland protection plans and has focused on preserving the land base by purchasing the development rights on farms (Article 25-AAA of the Agriculture and Markets Law).

The PDR system may have advantages over the TDR system, in that there is a ready market for the purchase and sale of development rights at all times. In addition, the prices of various categories of development rights may be more easily maintained at or near market value, and kept uniform under the PDR system.

Floodplain Management

Floodplain regulations are land use controls governing the amount, type and location of development within defined flood-prone areas. Federal standards, applicable to communities that are eligible for Federal Flood Insurance Protection, include identification of primary flood hazard areas, usually defined as being within the 100-year floodplain. Within flood hazard areas, certain restrictions are placed on development activities. Such restrictions include a requirement that buildings be elevated above flood elevations or be flood-proofed, and also include prohibitions on the filling of land within a floodplain. Municipalities can adopt their own floodplain regulations which may be more stringent than the federal standards. Local floodplain regulations can identify a larger hazard area (such as a 500-year floodplain), and may prohibit certain types of construction within flood hazard areas. Municipalities must adopt local floodplain regulations in order to be eligible for participation in the National Flood Insurance Program.

Wetland Protection

"Wetlands" are areas that are washed or submerged much of the time by either fresh or salt water. In state regulations, they are defined chiefly by the forms of vegetation present. Wetlands provide a number of benefits to a community. Besides providing wildlife habitat, wetlands also provide habitat protection, recreational opportunities, water supply protection, and provide open space and scenic beauty that can enhance local property values. Wetlands also serve as storage for storm water runoff, thus reducing flood damage and filtering pollutants. In coastal communities, they also serve as a buffer against shoreline erosion. The preservation of wetlands can go a long way toward protecting water quality; increasing flood protection; supporting hunting, fishing and shell fishing; providing opportunities for recreation, tourism and education; and enhancing scenic beauty, open space and property values.

State wetland regulations protect freshwater wetlands greater than 12.4 acres (1 acre in the Adirondack Park), freshwater wetlands of unusual local importance, and tidal wetlands. The state has established adjacent wetland

buffer zones, prohibiting or restricting certain activities within such areas, and has established standards for permit issuance. Under the Environmental Conservation Law (ECL), DEC shares concurrent jurisdiction with local governments to regulate tidal wetlands.

With respect to freshwater wetlands, three regulatory possibilities are present:

1) All wetlands that are smaller than 12.4 acres and that are not deemed of "unusual importance, " are subject to the exclusive jurisdiction of the municipalities where the wetlands are located (ECL section 24-0507).

2) Under ECL, section 24-0501, a local government may enact a Freshwater Wetlands Protection Law to fully assume jurisdiction over *all* freshwater wetlands within its jurisdiction from DEC, provided its law is no less protective of wetlands than Article 24 of the ECL and provided that DEC certifies that the municipality is capable of administering the Act. There is also a limited opportunity for counties to assume wetlands jurisdiction if the local government declines.

3) Under ECL, section 24-0509, local governments can now adopt freshwater wetland regulations applying to wetlands already mapped and under the jurisdiction of DEC, provided that the local regulations are *more* protective of wetlands than the state regulations in effect. No pre-certification by DEC is required.

The United States Government, through the Army Corps of Engineers, also regulates federally-defined wetlands. The Corps does not, however, map wetlands in advance of development proposals. When a proposal is made that may impact a wetland falling within federal definitions, the Corps will make a permit determination and impose appropriate conditions to protect the wetland.

Water Resource Protection

One of New York's greatest resources is its abundant water supply, which is safeguarded to: protect municipal and private drinking water supplies from disease-causing microorganisms, protect fishery resources, enhance recreational opportunities, prevent erosion and harmful sedimentation, and to protect the environmental quality of adjacent land. Failure to adequately protect drinking water supplies can result in public health hazards and lead to the need for treatment of drinking water at great expense to municipalities.

Municipalities may adopt laws to protect groundwater recharge areas, watersheds and surface waters. Local sanitary codes can be adopted to regulate land use practices that have the potential to contaminate water supplies. Sanitary codes may address the design of storm water drainage systems, the location of drinking water wells, and the design and placement of on-site sanitary waste disposal systems. Water resources can be further protected through the adoption of land use laws that prohibit certain potentially polluting land uses in recharge areas, watersheds, and near surface waters. Site plan review laws and subdivision regulations may also be used to minimize the amount of impervious surfaces, and to require that storm water systems be designed to protect water supplies.

Municipalities also have authority under the Public Health Law (PHL) to enact regulations for the protection of their water supplies, even if located outside of the municipality's territorial boundaries. Such regulations must be approved by the New York State Department of Health. Also, under state statutes, "realty subdivisions" — those containing five or more lots that are five acres or less in size–must undergo approval of their water supply and sewerage facilities by the county health department (PHL, Art. 11, Title II; ECL, Art. 17, Title 15).

The Federal Safe Drinking Water Act (SDWA) Amendments of 1996 established stringent water-supply capacity and quality standards for all public drinking water sources eligible for Federal assistance or otherwise falling under Federal regulatory jurisdiction. Originally, the SDWA focused primarily on treatment as the means of providing safe drinking water at the tap. The 1996 amendments greatly enhanced the existing law by recognizing source water protection, operator training, funding for water system improvements, and public information as important components of safe drinking water. This approach ensures the quality of drinking water by protecting it from source to tap.

Erosion and Sedimentation Control

Development, earth-moving and some agricultural practices can create significant soil erosion and the sedimentation that frequently follows. Through the adoption of proper erosion, sedimentation, and vegetation-clearing controls, a community can protect development from costly damage, retain valuable soils, protect water quality, and preserve aesthetics within the community. Such regulations can be specifically directed at grading, filling, excavating and other site preparation activities, such as the clear-cutting of trees or the removal of vegetation.

Local regulations may require the use of particular methods and compliance with minimum standards when carrying out construction and other activities.

New York State has a program for the control of wastewater and storm water discharges in accordance with the Federal Clean Water Act, known as the State Pollutant Discharge Elimination System (SPDES). Article 17 of the Environmental Conservation Law (ECL) entitled "Water Pollution Control" authorized creation of the SPDES program to maintain New York's waters with reasonable standards of purity. The program is designed to eliminate the pollution of New York waters and to maintain the highest quality of water possible, consistent with: public health, public enjoyment of the resource, protection and propagation of fish and wildlife, and industrial development in the state. New York State's Law is broader in scope than that required by the Clean Water Act in that it controls point source discharges to groundwater as well as surface water.

Environmental Review

The State Environmental Quality Review Act (SEQRA) was established to provide a procedural framework whereby a suitable balance of social, economic and environmental factors would be incorporated into the community planning and decision-making processes. SEQRA applies to all State agencies and local governments when they propose to undertake an "action" such as constructing a public building, or when approving or funding projects proposed by private owners. (Environmental Conservation Law Article 8; Title 6, NY Codes, Rules & Regulations, Part 617). The intent of SEQRA is to review the environmental impacts of a proposed project and to take those impacts into account when deciding whether to undertake, approve, or fund it. Impacts that cannot be avoided through modification of the project should be mitigated by conditions imposed on such project.

State regulations categorize all actions as either "Type I" (more likely to have a significant environmental impact), "Type II" (no significant impact), or "Unlisted", with differing procedural requirements applicable to each.

SEQRA review can serve to supplement local controls when the scope and environmental impacts of a project exceed those anticipated by existing land use laws. SEQRA is a far-reaching statute that can provide a municipality with critical information about the impacts of a land development project, so that a more informed decision may be made on the project. The SEQRA review process also helps to establish a clear record of decision-making should the municipality ever have to defend its actions. Several publications that thoroughly explain the SEQRA process are available from the Department of Environmental Conservation.

Moratoria

A moratorium is a local law or ordinance used to temporarily halt new land development projects while the municipality revises its comprehensive plan, its land use regulations, or both. In some cases, moratoria are enacted to halt development while a municipality seeks to upgrade its public facilities or its infrastructure. Moratoria, or interim development regulations, are designed to restrict development for a limited period of time. The courts have placed strict and detailed guidelines on the enactment and content of moratorium laws.

Conclusion

It is apparent from the foregoing discussion that a panoply of land use techniques are available to local governments to assist them in carrying out their comprehensive planning goals to enhance community development and character.

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CHAPTER XVII

Public Authorities, Regional Agencies and Intergovernmental Cooperation

Historically, New York has been and continues to be a true defender of home rule. Under certain conditions and situations, however, have been issues which are of a statewide concern that cannot be managed under the narrow view of local authority and financial capability in order to bring forward a regional solution.

Public Authorities

The Era of the Authority

A public authority is a public benefit corporation established by the State Legislature to construct and/or operate a public improvement, such as a building, bridge, and road or ski area, usually financed by user charges. Public authorities have the power to incur debt and collect user charges, but not to levy taxes or benefit assessments on real estate. Officials are appointed or serve by virtue of another office. The public authority however is independent and autonomous and has legal flexibility not otherwise permitted to a state department or agency.

Public authorities usually raise money through the sale of bonds and operate on little or no state dollars. In theory, a public authority must be self-supporting and able to meet debt obligations through revenues obtained from its own valuable assets, such as fares and user fees. To prevent the State from assuming public authority debt as a moral obligation, the New York State Constitution explicitly empowers public authorities to issue bonds and incur debt, but prevents the State from assuming that liability. (New York Constitution, Art X, section 5)

In *Schulz v. State of New York*, 84 NY2d 231, 616 NYS2d 343, 350 (1994), the Court of Appeals held that the state is not legally or technically liable on authority bonds nor for authority debt. The state may, however, choose to honor a public authority liability as a moral obligation.

The first public authority having a regional or statewide purpose was created in 1921. The Port Authority of New York and New Jersey was the first of its kind in the Western Hemisphere. It was created under a clause of the United States Constitution permitting compacts between states and approved by the United States Congress. However, the public was slow to accept the idea of public authorities. In 1960, only 13 authorities existed in the state which, for the most part, focused upon the construction or management of facilities that had regional significance or were of high economic importance such as ports, bridges, tunnels and highways. The ensuing years, however, might be called "the era of the authority" during which many authorities, having a variety of functions were created. As of December 31, 2005 there were 266 statewide, regional, interstate or international authorities in existence in New York.[48]

Regional authorities carry out such diverse functions as operating regional transportation systems, managing airports, regulating rivers, constructing facilities for colleges and hospitals, developing and operating ports and carrying out urban and economic development activities.

TABLE 25

Major Public Authorities By Date Created

1920's	Date
The Port Authority of New York & New Jersey (5 subsidiaries)	1921
Albany Port District Commission	1925
1930's	
Buffalo and Fort Erie Public Bridge Authority	1933
Industrial Exhibit Authority	1936
NYS Bridge Authority	1939
Triborough Bridge and Tunnel Authority[1]	1939
Power Authority of the State of NY	1939
1940's	
Dormitory Authority of the State of New York (2 subsidiaries)	1944
1950's	
NYS Thruway Authority (1 subsidiary)	1950
Ogdensburg Bridge and Port Authority	1950

New York City Transit Authority and Manhattan & Bronx Surface Transit Operating Authority[1]	1953
Port of Oswego Authority	1955
Hudson River-Black River Regulating District	1959
1960's	
NYS Housing Finance Agency (3 subsidiaries)	1961
New York Job Development Authority (1 subsidiary)[4]	1961
State University Construction Fund	1962
Metropolitan Transportation Authority (10 subsidiaries)	1965
Metropolitan Suburban Bus Authority[1]	1965
Metro-North Commuter Railroad[1]	1965
Staten Island Rapid Operating Authority[1]	1965
Long Island Railroad[1]	1965
City University Construction Fund	1966
Niagara Frontier Transportation Authority (1 subsidiary)	1967
Battery Park City Authority	1968
NYS Urban Development Corporation (107 subsidiaries)[4]	1968
Natural Heritage Trust	1968
Facilities Development Corporation — part of Dormitory Authority[5]	1968
United Nations Development Corporation	1968
Community Facilities Project Guarantee Fund	1969
Rochester-Genesee Regional Transportation Authority (11 subsidiaries)	1969
1970's	
State of New York Mortgage Agency	1970
Central New York Regional Transportation Authority (7 subsidiaries)	1970
Capital District Transportation Authority (5 subsidiaries)	1970
NYS Environmental Facilities Corp.	1970
Municipal Bond Bank Agency (1 subsidiary)	1972
NYS Medical Care Facilities Finance Agency — part of Dormitory Authority[5]	1973
NYS Project Finance Agency	1975
NYS Energy Research and Development Authority	1975
Municipal Assistance Corporation for the City of New York	1975
Jacob Javits Convention Center Operating Corporation	1979
Jacob K. Javits Convention Center Development Corporation	1979
NAR Empire State Plaza Performing Arts Center Corporation	1979
1980's	
NYS Science and Technology D/B/A Empire State Development Corp.	1981
NYS Olympic Regional Development Authority	1981
NYS Quarterhorse Breeding and Development Fund Corportion[3]	1982
NYS Thoroughbred Breeding and Development Fund Corporation	1983
Agriculture and NYS Horse Breeding and Development Fund	1983
NYS Thoroughbred Racing Capital Investment Fund	1983
Roosevelt Island Operating Corp.	1984
Development Authority of the North Country	1985
Housing Trust Fund Corporation[2]	1985
NYS Affordable Housing Corporation[2]	1985
Long Island Power Authority (1 subsidiary)	1986
1990's	
Homeless Housing Assistance Corp.	1990
New York Local Government Assistance Corp.	1990
NYS Theatre Institute Corporation	1992
Executive Mansion Trust	1993
Municipal Assistance for the City of Troy	1995
Nassau Health Care Corporation	1997
Roswell Park Cancer Institute Corporation	1997
Westchester County Health Care Corporation	1997
Hudson River Park Trust	1998
2000's	
Nassau County Interim Finance Authority	2000
Buffalo Fiscal Stability Authority	2003
Erie County Medical Center Corporation	2004
NYS Foundation for Science, Technology and Innovation	2005
Erie County Fiscal Stability Authority	2005

NOTES:

[1] Subsidiary of MTA or an agency under its jurisdiction

[2] Subsidiary of Housing Finance Agency

[3] Inactive

[4] UDC, JDA, and part of NYS Science & Technology Foundation operate under a joint business certificate (D/B/A) using the name Empire State Development Corporation

[5] Dormitory Authority took over operation of MCFFA and FDC, but they retain their separate legal status.

Establishment of Authorities

Authorities having the power to incur debt and collect charges can be established only by special acts of the State Legislature even though an authority's jurisdiction may be exclusively local. Most statewide and regional authorities are created by special acts spelling out in detail their organization, powers and limitations. As a result, authorities display wide variation with respect to their powers and limitations. More uniform patterns have been followed recently, and general provisions have been added to the Public Authorities Law, applies to authorities or classes of authorities established under such laws.

Advantages and Disadvantages

While authorities have been a valuable tool in accomplishing many public purposes, their relative autonomy and freedom from electoral control often cause concern. The growth in the number and power of public authori-

ties resulted in the creation of the Public Authorities Control Board (PACB) in 1976.[49]

PACB has approval authority over the financing, acquisition or construction commitments of a number of state public authorities, including the Dormitory Authority, Housing Finance Agency, Urban Development Corporation, Job Development Authority and Environmental Facilities Corporation. The Public Authorities Control Board consists of five members appointed by the Governor, four of whom are recommended by the Senate and Assembly leadership. The Governor appoints the Chair.

A 2006 Report by the Office of the State Comptroller found that the State's largest public authorities had outstanding debt of over $124 billion, including more than $42 billion in State-supported debt.[50]

Although debt service on State-supported debt is paid by taxpayers, such debt has not been approved by voters. Additionally, another report by the Office of the State Comptroller noted that only 11 of the state's public authorities have their borrowing reviewed by the Public Authorities Control Board.

While critics acknowledge that authorities in New York State have achieved significant accomplishments, the need for increased oversight of authority activities has resulted in far-reaching regulatory and statutory changes.

Recent Oversight Changes

The Public Authority Reform Act (Chapter 766 of the Laws of 2005) represents meaningful reform that recognizes the differences between state agencies and public authorities and the importance of those distinctions.[51] At the same time, the Reform Act acknowledges that public authorities are created by, and would not exist but for their relationship with, New York State. As a result of this relationship with state government, public authorities must exhibit a commitment to protecting the interests of New York taxpayers and meet the highest standards of effective and ethical operation.

Accordingly, the Public Authority Reform Act created a new Public Authority Budget Office to report on the operations of authorities and to assess their compliance activities. The legislation also established an inspector general, banned procurement lobbying, strengthened provisions for public access to information; provided new rules for the disposing of public authority property, and established codes of ethical conduct for authority directors, officers and employees. The Reform Act includes the following provisions:

- **Identification of Public Authorities**
  - defines public authorities as state, local, interstate or international, and affiliates or subsidiaries thereof.
- **Improved Governance**
  - requires independent board members on State and local authorities;
  - establishes roles and responsibilities of board members for State and local authorities;
  - mandates audit and governance committees for all State and local authorities;
  - disallows board members from serving as chief executive officers or any other senior management position;
  - mandates training for board members;
  - bans personal loans to board members, officers and employees; and
  - requires financial disclosure.
- **Improved Independent Audit Standards**
  - requires independent audits;
  - requires rotation of auditors every five years;
  - prohibits non-audit services, unless receiving previous written approval by the audit -committee; and
  - prohibits a firm from performing an authority audit if any executive officer was employed by that firm and participated in any capacity in the audit of such authority during the one-year period preceding the date of the initiation of the audit.
- **Increased Transparency**
  - continues reporting requirements for state authorities and includes new requirement for local authorities to submit reports to the chief executive officer, chief fiscal officer and chairperson of the legislative body of local government.

TABLE 26

Revised Breakdown of Public Authorities By Class

Class	Description	Number
A	Major public authorities with statewide or regional significance and their subsidiaries	190
B	Entities affiliated with a State agency, or entities created by the State that have limited jurisdiction but a majority of Board appointments made by the Governor or other State officials	68
C	Entities with local jurisdiction	474
D	Entities with interstate or international jurisdiction and their subsidiaries	8
Total		**740**

In 2006, the New York State Office of the State Comptroller issued regulations that dramatically reformed the budget practices of 215 statewide and regional public authorities. Generally, these regulations require public authorities to provide more accurate financial reports, develop four-year financial plans, operate under Generally Accepted Accounting Principles (GAAP) rules and significantly increase the accountability and transparency of their financial operations.

In particular, these regulations include the following:

- **Budget and Financial Plan Requirements:** requires consistency of financial presentations, development of four-year financial plans, document preparation in accordance with (GAAP) and greater transparency, with detailed estimates of revenues and expenditures, quarterly updates to each authority's board, and certifications signed by each authority's Chief Operating Officer.
- **Expanded Reporting by More Public Authorities:** increases the number of entities required to report financial information annually to the Office of the State Comptroller to 215. These 215 authorities are required to provide financial statements, procurement reports, investment reports and annual reports, as well as other information as detailed in the annual data request.
- **Stronger Investment Guidelines:** requires each governing board and authority management to develop written investment policies, to review them annually and to follow prudent investor standards and will also require each authority to establish a pre-qualified list of firms eligible to transact business with them.
- **Accounting and Reporting for Authorities that Issue State-Supported Debt:** requires the timely release of budgetary and debt information to allow for more timely and complete reporting of financial information to the public.

Regional Agencies

In the course of the state's population growth and the expansion of towns, cities and villages there arose concern among the population that some of the state's natural resources could be threatened. There also arose a concern that under certain circumstances, nature itself would unleash its destructive power upon the urbanizing areas of the state. In response to these concerns, the state established a number of agencies with a regional focus to the issues that transcended political boundaries.

Port Authority of New York and New Jersey

Several interstate regional authorities exist in the New York metropolitan area, the most important being the Port Authority of New York and New Jersey. This authority, often cited nationally as a model interstate compact agency, is operated by a 12 member board of commissioners, half of whom are appointed by the State of New York and half by the State of New Jersey. The Port Authority is responsible for all aspects of port commerce in and around New York City, the Hudson River bridges and tunnels, as well as for the operation of Kennedy, LaGuardia and Newark Airports and numerous other transportation facilities. In addition, the Port authority operates the Port Authority Trans-Hudson Corporation Rapid Transit system (PATH) under the Hudson River between the two states.

Adirondack Park Agency

The Adirondack Park Agency is an independent, bipartisan state agency responsible for developing long-range park policy in a forum that balances statewide concerns and the interests of local governments in the park. It was created by New York State law in 1971. The legislation defined the makeup and functions of the agency and authorized the agency to develop two plans for lands within the Adirondack Park. The approximately 2.5 million acres of public lands in the park are managed according to the State Land Master Plan. The Adirondack Park Land Use and Development Plan regulates land use and development activities on the 3.5 million acres of privately owned lands in the park.

The agency also administers the Adirondack Park Agency State Wild, Scenic and Recreational Rivers System Act for private lands adjacent to designated rivers in the park, and the State Freshwater Wetlands Act within the park.

The Agency Board is composed of 11 members, eight of whom are New York State residents appointed by the Governor and approved by the State Senate. Five of the appointed members must reside within the boundaries of the park. In addition to the eight appointed members, three members serve in an *ex-officio* capacity. These are the Commissioners of Departments of Environmental Conservation and Economic Development, and the Secretary of State. Each member from within the Park must represent a different county and no more than five members can be from one political party.

The agency provides several types of service to landowners considering new land use and development within the park which include:

Jurisdictional advice: The agency will provide a letter informing a landowner whether a permit is needed for a new land use and development or subdivision, or whether a variance is needed from the shoreline standards of the agency. In many cases the letter advises that no permit or variance is needed. This determination is often helpful in completing financing and other arrangements related to new development in the park.

Wetland advice: The agency will determine the location of regulated wetlands on a property or the need for a wetland permit.

Permit application: A landowner proposing new land use or development who knows an agency permit is required may initiate a permit application without first receiving jurisdictional advice.

Changes to the Park Plan Map: agency staff will advise on criteria, boundaries, and the process for amendment of the Official Map.

Tug Hill Commission

The Tug Hill Region lies between Lake Ontario and the Adirondacks. Larger than the states of Delaware or Rhode Island, its 2,100 square miles comprise one of the most rural and remote sections of New York State and the Northeast. A scattering of public lands covers a tenth of the region, with most of that land used extensively for timber production, hunting, and recreation. The rest is privately owned forest, farms, and homes, all of it working land that supports the region's way of life.

Tug Hill's total population is just over 100,000, two-thirds of which is concentrated in villages around its edge. Its densely forested core of about 800 square miles is among New York's most remote areas, with a population of just a few thousand and few public roads.

The uniqueness of the Tug Hill region and its natural resources were recognized by New York State in 1972 when it created the Temporary Commission on the Tug Hill, a non-regulatory state agency charged with helping local governments, organizations, and citizens shape the future of the region, especially its environment and economy. In 1992, the State Legislature passed the Tug Reserve Act, further recognizing the statewide importance of the region's natural resources. Congress has recognized the region as an integral part of the Northern Forest Lands area.

In 1998, new state legislative authorization for the Tug Hill Commission (permanently establishing the Commission within New York State's Executive Law, Article 37, section 847) noted Tug Hill's "lands and waters are important to the State of New York as municipal water supply, as wildlife habitat, as key resources supporting forest industry, farming, recreation and tourism and traditional land uses such as hunting and fishing." Other legislation in 1998 (Chapter 419, Laws of 1998) supported the State's purchase of conservation easements in the Tug Hill region, adding it to similar provisions that apply in New York's Adirondack Park, Catskill Park and watershed of the City of Rochester.

The commission uses a grassroots approach to help create a sound environment and economy for this special rural region of New York State. The commission's approach is viewed by many as a model for fostering environmental protection and appropriate rural economic development in a way that retains "home rule." The nine members of its governing body are all residents of the region.

Lake George Park Commission

The Lake George Park and the Lake George Park Commission are established by Article 43 of the Environmental Conservation Law. The purpose of the Commission generally is to preserve, protect, and enhance the unique natural, scenic and recreational resources of the Lake George Park, which consists of Lake George and its land drainage areas. It is entirely within the Adirondack Park. The Commission has specific regulatory and enforcement powers relating to activities on the lake, along the shoreline and within the land drainage basin.

Among other duties, the commission: operates the Lake George Park Commission Marine Patrol (a law enforcement and public safety function); administers regulations governing wharfs, docks and moorings, marinas, navigation, and recreational activities; and administers regulations for the preparation of local storm water management plans and storm water regulatory programs for areas within the park where development is occurring. It must also develop and administer regulations for the discharge of treated sewage effluent, conduct a water quality monitoring program and investigate, identify and abate sources of ground and surface water contamination.

Hudson River Valley Greenway

The Hudson River Valley Greenway Act of 1991 established a program to encourage municipalities and other entities to develop a Greenway system in the Hudson River Valley. The legislation also established two entities, the Hudson River Valley Greenway Communities Coun-

cil and the Greenway Conservancy for the Hudson River Valley, to administer the program. The area encompassed by the legislation consists of all of: the municipalities with the counties of Albany, Columbia, Dutchess, Orange, Putnam, Rockland, Westchester, and municipalities in Ulster and Greene Counties outside the Catskill Park; the Village and Town of Waterford in Saratoga County; Bronx County; and the Hudson River waterfront in New York County.

The statute is set out as Article 44 of the Environmental Conservation Law, which establishes the further purposes of the legislation as the establishment of "a voluntary regional compact among the counties, cities, towns and villages of the greenway to further the recommended criteria of natural and cultural resource protection, conservation and management of renewable natural resources, regional planning, economic development, public access and heritage education".

Long Island Pine Barrens Commission

New York's most southeastern county, Suffolk County, occupies the eastern end of Long Island, and comprises over 900 square miles of terrestrial and marine environments. Three of Suffolk County's ten townships are host to a 100,000+ acre, New York State designated region known as the Central Pine Barrens.

A rich concoction of terrestrial and aquatic ecosystems, interconnected surface and ground waters, recreational niches, historic locales, farmlands, and residential communities, this region contains the largest remnant of a forest thought to have once encompassed over a quarter million acres on Long Island.

In 1993, New York State's Long Island Pine Barrens Protection Act officially defined this region at the junction of the Towns of Brookhaven, Riverhead, and Southampton, and started a process for regional planning and permitting that continues today. The 1993 Act created a five member Central Pine Barrens Joint Planning and Policy Commission, an Advisory Committee, and a "planning calendar" (now completed), which led to the June 1995 adoption of the Central Pine Barrens Comprehensive Land Use Plan.

The Regional Planning Councils

Unlike state-created regional agencies, regional planning councils are locally formed by the agreement of adjoining counties. The primary function of regional planning councils is to study the needs and conditions of an entire region and to develop strategies that enhance the region's communities. Recognition was given to the regional council concept when the federal government authorized the establishment of area-wide planning agencies. These agencies were permitted to receive federal planning funds. The federal government then required proposals for federal funding to be reviewed on a regional level to determine district-wide significance and potential conflict with master planning. This review was undertaken by the regional planning councils. The federal government later rescinded this requirement, but in the interest of regional planning, New York State continued the program.

Very few of us today live, work, and enjoy leisure time in the same neighborhood. Most of us live one place, work in another and enjoy recreational facilities in yet other places. This leads to a sharing of lifestyles, employment, and recreational/cultural opportunities, which can affect more than one local government in an area. A regional approach can be the best way to address these concerns, usually in a geographic area with interdependent social, economic, and physical environments.

Regional councils were created to provide a regional approach to concerns that cross the lines of local governments' jurisdictions. Nationwide, there are over 670 of these regional councils, representing almost all 50 states. The councils are a vehicle for local governments to share their resources, and to make the most of funding, planning, and human resources.

Most are voluntary associations, and do not have the power to regulate or tax. They are primarily funded by local governments, as well as by state and federal funds. The councils are responsible to the representatives of the communities in their regions.

The regional view encourages an impartial, bipartisan conduit for the exchange of information. This exchange allows for objective recommendations for the resolution of problems, including the ability to interrelate many key areas such as housing, transportation, and economic development. Joint municipal presentation also gives local governments more influence with funding sources and legislative bodies.

Planning services provided by regional councils include transportation, housing and community development, groundwater protection, water resource management, wastewater treatment, solid waste disposal, land use, and rural preservation planning. Information services provided by regional councils include the operation of regional data centers, public education and information, and maintenance of regional Geographic Information Systems (GIS). Other services provided by regional councils may include

special services for low-income and aging populations, job training and employment services, economic development activities, and small business promotion.

Technical assistance to local governments may also be offered, and can include supplementation of local planning efforts, preparations of grant applications and coordination, cost effective regional purchasing, public administration, financial expertise, and information systems.

Legislation

Articles 12-B and 5-G of the New York State General Municipal Law give affiliated municipalities the legal authority to create regional or metropolitan planning boards and joint-purpose municipal corporations.

Programs

New York's regional planning councils provide comprehensive planning for the coordinated growth and development of their regions. This involves conducting regional studies to assess needs, promoting the region's economic climate, environmental health, recreational opportunities, etc., and providing technical assistance to communities within the region.

By presenting a regional perspective on issues, regional councils promote intergovernmental cooperation and serve as a liaison between the State and federal governments and municipalities.

Regional Councils in New York State consist of nine locally created regional planning boards in New York State, and represents 45 of the State's 62 counties. The regional councils in New York are as follows:

TABLE 27
Regional Planning Commissions and Councils

Capital District Regional Planning Commission
Counties: Albany, Rensselaer, Saratoga, & Schenectady

Central New York Regional Planning & Development Board
Counties: Cayuga, Madison, Onondaga, & Oswego

Genesee/Finger Lakes Regional Planning Council
Counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, & Yates

Herkimer-Oneida Counties Comprehensive Planning Program
Counties: Herkimer & Oneida

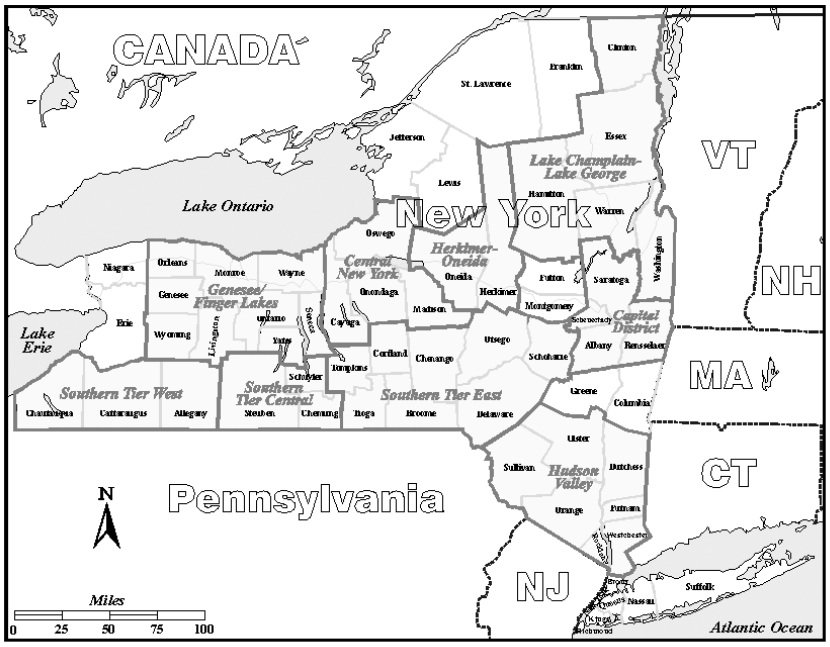
Hudson Valley Regional Council
Counties: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, & Westchester

Lake Champlain-Lake George Regional Planning Board
Counties: Clinton, Essex, Hamilton, Warren, & Washington

Southern Tier Central Regional Planning & Development Board
Counties: Chemung, Schuyler, & Steuben

Southern Tier East Regional Planning Development Board
Counties: Broome, Chenango, Cortland, Delaware, Otsego, Schoharie, Tioga, & Tompkins

Southern Tier West Regional Planning & Development Board
Counties: Allegany, Cattaraugus, & Chautauqua



Prepared by The Capital District Regional Planning Commission

Regional Solutions Through Intergovernmental Cooperation

Voter approval in 1959 of an amendment to the New York Constitution's prohibition on gifts and loans of credit by one local government to another paved the way for general legislative authorization for local governments to participate in a wide variety of intermunicipal endeavors.[52] Article 5-G of the General Municipal law was soon enacted to provide municipal corporations and districts with the power to enter into cooperative or joint agreements between or among them to provide any function, power or duty that each has authority to undertake on its own.

The term "municipal corporation" includes counties (outside of New York City), cities, towns, villages, boards of cooperative educational services, fire districts and school districts. The term "district" includes certain county and town improvement districts;[53] therefore, a very large number and broad range of local government entities are authorized to undertake cooperative activities. Since these local governments are empowered to undertake together any activity each may undertake alone, the opportunity to use an intergovernmental agreement to provide services or projects is only limited by the powers of each participant.[54]

Undertaking a cooperative or joint venture is essentially a business arrangement, and Article 5-G provides substantial leeway for contracting parties to address the many issues that typically are addressed in a business arrangement. Generally, an intermunicipal agreement may contain "any matters as are reasonably necessary and proper to effectuate and progress the joint service"[55] and typically include:

- a description of the joint service or project, an identification of the participants and the authority pursuant to which each will be undertaking the service or project;
- descriptions of the roles of each of the participating entities, and the identification of the managing participant, if any;
- fiscal matters, such as the method for allocating costs;
- the manner for employing and compensating employees;
- timetables and processes for contract review and renegotiation;
- methods for dispute resolution during a contract term; and
- responsibility for liabilities.

Agreements entered into pursuant to Article 5-G require the approval of a majority vote of the full strength of the governing body of each participating municipal corporation or district, unless the governing bodies have adopted mutual sharing plans that allow their respective officers or employees to undertake or authorize the receipt of a joint service in accordance with the plan. A mutual sharing plan can anticipate the potential need to obtain assistance from another eligible local government, either on a routine or extraordinary basis. It contemplates the "handshake" deal between cooperating local governments.

Fashioning a cooperative agreement frequently necessitates the identification and resolution of many, sometimes complex, issues. Water, sewer and other joint construction projects will require resolution of design issues and permitting needs in addition to fiscal and operational matters. Participating local governments may choose to form joint committees charged with developing preliminary consensus through the development of recommendations to the involved governing bodies.

Some intermunicipal agreements require implementation through the adoption of complementary local laws. When a joint planning board is created, for instance, the participating local governments will need to adopt, in addition to the cooperative agreement, compatible local laws that reflect the existence of the joint planning board and provide its authority and responsibilities.

Intermunicipal agreements allow local governments to seek regional, and sometimes creative, solutions to common problems without giving up their underlying authority or jurisdiction. For this reason, they are popular vehicles for achieving cost savings or service improvements in a wide variety of ways. The following is a partial list of examples of topics that may be the subject of Intermunicipal agreements:

- joint water and sewer projects;
- garbage collection;
- recycling centers;
- highway maintenance;
- snowplowing;
- shared recreational and cultural facilities;
- shared government offices;
- computer / data processing;
- joint purchasing;
- shared code compliance personnel;

- joint zoning boards;
- joint land use planning activities;
- joint economic development planning;
- coordinated assessment services; and
- shared public safety functions.

Chapter Endnotes

48. 2006 Comptroller's Report on the Financial Condition of New York State, Office of the State Comptroller.
49. Laws of 1976, Chapter 39, as amended.
50. 2006 Comptroller's Report on the Financial Condition of New York State, Office of the State Comptroller.
51. Chapter 766 of the Laws of 2005.
52. Amendment to Article VIII, §1 of the New York State Constitution, approved by the electors in 1959; Chapter 102 of the Laws of 1960 implemented this change.
53. General Municipal Law, §119-n(a) and (b).
54. General Municipal Law, §119-n(c).
55. General Municipal Law, §119-o(2).

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New York State Department Education

New York State Department of Environmental Conservation

New York State Library

New York State Senate Research Service

New York State Department of Transportation

New York State Thruway Authority and Canal Corporation

Office of Court Administration

Office of the State Comptroller

Office of Real Property Services

WEBSITES FOR LOCAL GOVERNMENT OFFICIALS

Planning WebSites of Interest

State Web Sites

Governor's Office of Regulatory Reform
http://www.gorr.state.ny.us/gorr/index.html

GORR - Business Permit Assistance Team
http://www.gorr.state.ny.us/Main_GORR_Pages/Business-Permit-Assistance.html

Office of the Governor
http://www.state.ny.us/governor

Office of the New York State Comptroller
http://www.osc.state.ny.us

Office of the State Comptroller - Links
http://www.osc.state.ny.us/localgov/links.htm

Office of the State Comptroller - Local Government Audits
http://www.osc.state.ny.us/localgov/audits/index.htm

New York State Assembly
http://assembly.state.ny.us

NYS Department of Environmental Conservation
http://www.dec.ny.gov

NYS DEC - SEQR
http://www.dec.ny.gov/public/357.html

NYS Government Information Locator Service
http://www.nysl.nysed.gov/ils/

NYS Department of State
http://www.dos.state.ny.us

NYS Department of State - Local Government Services
http://www.dos.state.ny.us/lgss/index.htm

NYS Department of Transportation
http://www.dot.gov/portal/page/portal/index

New York State Senate
http://www.senate.state.ny.us/senatehomepage.nsf/home?openform

Federal Web Sites

State and Local Governments on the Web
www.statelocalgov.net/

Global Information Locator Service
www.gpoaccess.gov/index.html

U.S. Census Bureau
http://www.census.gov

The Federal Web Navigator
http://Lawdbase.law.villanova.edu/Fedweb/

General Services Administration
www.gsagov/Portal/gsa/ep/home.do?tabID=0

U.S. Governments Online Services
www.usa.gov/Government/Government_Gateway.shtml

National Contact Center
www.info.gov/phone.htm

Public Technology, Inc.
http://pti.nw.dc.us

U.S. State and Local Gateway
www.usa.gov/Government/State_Local.shtml

Other Web Sites

Albany Law School Library
http://www.albanylaw.edu/sub.php?navigation_id=8

American Planning Association
http://www.planning.org

Association of Towns of the State of New York
http://www.nytowns.org

Cyburbia
www.cyburbia.org

New York City Link
http://www.ci.nyc.ny.us/portal/site/nycgov/?front_door=true

New York State Association of Counties
www.nysac.org/

New York State Conference of Mayors and Municipal Officials
http://www.nycom.org

Planning Commissioner's Journal
www.pcj.typepod.com

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