

COMMENTARY ON ARTICLE II

The *Model recommends* the county council-manager form in which the council, elected by, representative of, and responsible to the citizens of the county is the fundamental democratic element.

Recognizing that all of the powers that can be exercised by the county rest in the popularly elected county council, the charter must provide for a council which is truly representative of the county's citizens. Therefore, the *Model* presents several alternatives without expressing an absolute preference for any one. Each county's population pattern - economic level, racial, geographical, etc. - has implications for the method of electing the council to ensure equitable representation. While all jurisdictions are governed by the Voting Rights Act, in some counties the problem of compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing competent and effective legislators, there is no absolute pattern which will assure equitable representation.

The Model does not list as charter agencies any citizen advisory boards and commissions. The council has the power to establish such agencies. As the body charged with making county policy, the council can create all appropriate mechanisms, permanent or ad hoc, to assist in that process (e.g., planning board, recreation board, study committees). Likewise it can create agencies with quasi-legislative or quasi-judicial status (e.g., human rights commission, zoning appeals board).

The *Model does* provide that the chairman of the council shall be the presiding officer and a voting member of the council and shall perform certain specific duties which will enhance the chairman's role as policy leader.

§2.01. General Powers and Duties.

This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see note to §1.02).

§2.02. Composition, Eligibility, Election and Terms

In all but a few states the county governing bodies are small. The most common size is three, the next most common number of members is five. The *Model* does not specify the exact number of council members. It considers three too small to provide adequate representation, but does recommend that the council be relatively small - an odd number ranging from five to nine members. Although in the largest counties a greater number of council members may be necessary to assure equitable representation, there is wide agreement that smaller councils are more effective instruments for the development of programs and conduct of legislative business than large local governing bodies. In the United States there have been exceptional situations where a large council, broken into many committees handling specific subjects, has been able to discharge its responsibilities promptly and effectively. Large councils usually have been elected from relatively small districts with the frequent result that parochialism and "log-rolling" distract attention from the problems of the whole county. Some contend, however, that members of larger governing bodies more clearly perceive their role as legislators (i.e., policy makers) and are less inclined to become involved in management of operations than members of small governing bodies who may be inclined to perform in the historic role of county commissioners with administrative responsibilities. In determining the size of and method of electing the council, consideration should be given to the diversity of population and geographical elements to be represented as well as to the size of the county and the municipal subdivisions within the county.

Alternative I: Nomination and Election At Large

(a) The *Model* recognizes the value of the at-large principle in designing the composition of a council, while recognizing the necessity of providing for representation of geographical areas under certain circumstances. The at large system has allowed citizens to choose council members best qualified to represent the interests of the county as a whole. In larger counties, however, citizens may feel isolated from and unconnected with their government without some geographical basis of representation. This may be true particularly when a county has both urban and rural areas. In considering the appropriateness of using the at-large system, each county must assess its own situation. Counties with significant differences in or conflicts among ethnic, racial or economic groups may wish to consider whether one of the alternative systems may achieve more equitable representation of the county's population and avoid legal challenges under the Voting Rights Act without sacrificing council effectiveness.

(b) No special requirements on length of residence are included because in this era of highly mobile population and frequent disparity between place of work and place of residence, length of residence requirements lose what little validity they may once have had. The simple eligibility requirement is being a registered voter of the county.

(c) It is recommended that, where state election law allows it, elections should be scheduled in odd-numbered years to avoid confusion with state and national elections. The *Model* recommends four-year terms. If staggered terms are used, elections of council members would be held every two years. Model language for both staggered and non-staggered term provisions is included. There are two basic questions which must be raised when staggered terms are under consideration. First, is it desirable to maintain continuity and avoid radical swings in council composition? Second, should citizens be able to change the direction of their government at any election, not wait another two years to complete the change? The issue of whether staggered terms have a discriminatory effect continues to be litigated.

Alternative II: Nomination and Election At-Large with District Residence Requirement

(a) A complaint frequently lodged against the all at-large council system is that a majority of the council may live in the same **area** of the county. This may give rise to questions concerning the equitable distribution of services with allegations that particular sections receive partial treatment. This objection can be met while still maintaining a council elected at large by establishing districts of equal population and requiring that one council member be resident in each district.

Although this alternative does build geographical representation into an at-large system, depending upon the local situation, it may be subject to the same objections under §2 and §5 of the Voting Rights Act as Alternative I.

(b) and (c): See comments under Alternative I.

Alternative III: Mixed At-Large and Single-Member District System

(a) The mixed system for a council with members elected at large and members elected by and from districts has become increasingly popular in recent years. One reason for this is the approval it has received from the United States Department of Justice as a method of electing the county council which

complies with the requirements of the Voting Rights Act in places where the at-large system has been challenged and where change to a single-member district system is opposed. The mixed system combines the wide perspective of the at-large council members with the local concerns and accountability of district council members. It can allow in minorities who live in concentrated areas to influence or even determine the outcome of elections in their districts.

A problem can arise when at-large council members consider their position to be superior in importance to district members. It is essential that at-large and district council members have equal status with respect to offices and services, and that there be no difference in length of terms.

There is disagreement as to the correct ratio of at-large to district members. Opinion ranges from favoring a majority being elected at large to a majority being elected by and from districts. This is a matter of local preference. It should be noted, however, that for jurisdictions concerned about scrutiny by the U. S. Department of Justice or the courts under either §2 or §5 of the Voting Rights Act, a clear preference has been indicated for the formulation where a majority of the council is elected by and from districts.

(b) and (c): See comments under Alternative 1. Note that staggered terms are not recommended for the mixed system.

Alternative IV. Single-Member District System

(a) The *Model* includes an alternative providing the single-member district system for electing the council. The growing recognition that membership on councils should represent all racial and ethnic groups more adequately has spurred increased use of the single-member district system. With racial minorities concentrated in particular sections of a city or county, it is easier to elect minority council members when single-member districts are used. In addition, single-member districts can open the way for greater diversity among candidates because the costs of running a district campaign are so much less than those of running at-large. Citizens feel closer to district elected council members, whom they can hold responsible for addressing their community concerns.

In places where the at-large method of electing the council has been ruled in violation of the Voting Rights Act, the single-member district system has regularly received approval from the courts and the Justice Department as a replacement system.

The single-member system does have its drawbacks. An inherent problem is the danger that parochial problems of district elected members will mean that inadequate attention is given to countywide concerns. The potential for the classic problem of "log-rolling" or vote swapping is ever-present. Whenever districts are used, the drawing of district lines to provide "fair and equal" districts is of utmost importance. Article VI of the *Model* provides districting procedures and criteria designed to prevent gerrymandering and unequal districts, which are unconstitutional under the one person-one vote doctrine.

(b) and (c): See comments under Alternative I.

Alternative V: Proportional Representation

The first edition of the *Model County Charter* and the first five editions of the *Model City Charter* recommended the Hare system of proportional representation (PR) as the preferred method of electing councils. It had been used in 22 American cities but by the early 1960s had been discarded in all but one of them. It was never used by an American county. Unquestionably, it can be shown that PR can provide

the greatest equity in representing all sectors of the community. However, the complexity of PR and the long and expensive counting system confused the voters where it was used and prevented it from becoming a widespread reform measure.

PR is included as an alternative method for electing the council. There is a renewed interest in PR because of its potential usefulness as a means to assure representation of minority populations. Technological developments hold out the prospect for development of a computerized voting and counting system which eliminates some of the objections to PR. A complete explanation of the PR system of voting is available in the fifth edition of the *Model City Charter* (New York- National Municipal League, 1941). When considering the PR Alternative, charter reviewers may also wish to investigate the so-called "semi-proportional" representation systems - the limited vote and cumulative vote -both of which are designed to assure minority representation.

§2.03. Chairman of the Council.

The office of council chairman assumes a different character from county to county depending upon local political, economic and social conditions. He or she is uniquely positioned to be the political and policy leader of the county. As the presiding officer of the council and ceremonial head of the county, the chairman of the council is the most conspicuous county official. Not being the executive responsible for the day-to-day county operations allows the chairman to focus attention on major policy issues, an important facilitative activity. The chairman can function in the same manner as the mayor in a council-manager plan city, and may even be given the title of *mayor*.

The chairman fills three facilitative roles that offer enormous leadership opportunities. First, the chairman can coordinate the activities of other officials by providing liaison between the manager and the council, fostering a sense of cohesion among council members and educating the public about the needs and prospects of the county. Second, the chairman can provide policy guidance through setting goals for the council and advocating the adoption of policies that address the county's problems. Third, the chairman is an ambassador who promotes the county and represents it in dealing with other governments as well as the public.

The specific responsibilities of the chairman listed in the *Model* enhance the chair maxes leadership position. Presiding at council meetings is a traditional responsibility with great potential impact on setting the tone for county government and helping the council make decisions. Designation as intergovernmental representative reflects the increased importance of relationships with other local governments as well as the state and federal governments. Appointment of boards and commissions with council advice and consent creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity. When the state of the county message includes the setting out of needs and goals for the county, it should reflect the thinking of the council and information provided by the staff as well as the chairman's own priorities. In presenting the state of the county message, the chairman can act as spokesperson, educator, team leader, goal setter, and policy advocate. It is important that the timing of the message be such that it will not be confused with the presentation of the budget by the manager.

The *Model* provides two alternative methods for electing the chairman.

Which one is used will depend on local preference and tradition. In most counties the chairman is chosen by and from the governing body. In some counties it is believed that the direct election method increases the potential for leadership by giving the chairman a county-wide popular support base. This is particularly important when all or most of the council members are elected from districts. A disadvantage of this method is the possibility that the chairman will be at variance with the council majority on some

important issues. When the chairman is elected by and from the council, the possibility of conflict between the chairman and the council majority is avoided. Some counties follow practices which may diminish the prospect of effective leadership. For example, rotation of the office of chairman among members may preclude the emergence of a respected leader who will be able to acquire experience and increase his or her competence in the exercise of leadership skills. An awkward alternative is to automatically designate as chairman the council member who receives the largest number of votes. In councils elected from districts, council selection of the chairman may present the chairman with conflicting roles - district and countywide.

Whatever the method of election or the strength of the chairman's leadership role, the chairman is preeminently a legislator, a member and leader of the council - not an executive. However, the office does require some special staff support, which generally can be provided by the manager. This can often be arranged as part of a system whereby the chairman and the manager function as a team. An extensive independent staff could lead to the chairman's encroachment on the executive responsibilities of the manager.

There is no structural arrangement for government which will assure effective leadership. The person who occupies the chairman's office must understand the nature of the job - its possibilities, interdependencies and limitations - and have the personal inclination, energy, and talent to exercise necessary leadership. Without that, no amount of structural support will produce a leader. However, the method of selection and the statement of responsibilities provided in the charter should be designed to help assure the selection of a capable person with recognized leadership abilities who could make a significant contribution to the operation of the county.

§2.04. Compensation; Expenses.

In general, salaries of council members should not be substantial but sufficient to permit individuals with limited means to serve. It is assumed that council members will earn their major income from private employment. In determining the compensation of council members, it should be recognized that under this charter they are part-time officials and are not involved in day-to-day management as is the case when commissioners (or council members) under the commission plan actually direct the operation of departments. A salary too close to a full-time salary could encourage council members to think of their positions as managerial and thus detract from their role as legislators or policy-makers. It is important, however, that council members be compensated for expenses incurred in performing their duties (p.g., travel to the state capital to testify on behalf of the county).

The *Model* rejects the setting of the actual amount of compensation in the charter except for the salary of the first council after the charter goes into effect (see §9.05(f)). The delay in the effective date of any salary increases provides ample protection. In some counties, the delay is only to the beginning of the next fiscal year after the increase was voted.

Extra compensation should be provided for the chairman because, in addition

NOTES ON CITY LEGISLATIVE ORGANIZATION

A discussion of the municipal legislative body can be divided into the following subject areas:

- (1) Size
- (2) Composition
- (3) Term of Office.

1. Size of the Body

The National Municipal League Model Charter recommends a council of seven members, all to be elected at large. They state their position on Council election as follows:

There is general agreement that smaller city councils are more effective instruments for development of programs and conduct of municipal business than large local legislative bodies. In the United States it has been the exceptional situation when a large municipal council, broken up into many committees handling specific subjects, has been able to discharge its responsibilities promptly and effectively. Large councils usually are elected from relatively small wards with the frequent result that narrow ward interests and the attendant log-rolling obscure the problems of the whole city.

In some cities there may be a demand for representation of geographical areas to assure that major segments of the population be represented ...

Seven is suggested as the optimum number of councilmen. In determining the size of the council, however, consideration should be given to the diversity of population elements to be represented as well as to the size of the city. Five should be considered as minimum and more than nine appropriate only in the largest cities.

The "optional charters" found in Chapter 43 of the Massachusetts General Laws envision relatively small legislative bodies as follows:

Plan A	9 members
Plan B	11 members if seven wards or less 15 members if more than seven wards in the city
Plan C	5 members
Plan D	7 members if seven or less wards
& E	9 members if more than seven wards
Plan F	7 to 15 depending on number of wards

The Municipal Reference Bureau of the University of Minnesota, discussing council size in a monograph entitled *Principles And Problems Of Charter Making*, avers as follows:

The legislative body should be fairly small, probably not over fifteen even for the largest cities, and from that on down to five or seven for small places. Small bodies do not need a large number of committees to diffuse both power and responsibility, they are also more practical and business like, less given to long speeches, and more speedy if less formal in procedure. A few of the ablest men in the city can do better work than a large number of men of small capacity.

The attached tables show the number of members of city councils in Massachusetts.

2. Composition of the Body

The second question concerning a municipal legislative body is: How should its members be elected - at-large, by districts, or by some combination of the two?

Statistics prepared by the International City Management Association (ICMA) show that on a national basis councilmen in almost 60% of all cities are nominated at large and in nearly 70% they are elected at large. The Minnesota monograph, referred to above, in its discussion of this question states as follows:

Election of the council at large will in the long run assure the election of abler aldermen, will establish majority rule, and will put the interests of the city as a whole above those of any part. Something can be said for electing part but not all of the council by the ward system in large cities, but almost nothing can be said for a ward system in small places.

Council Election - Ward or At-Large?

Election from districts, or wards, was the traditional method of electing members of a municipal legislative body until the advent of the municipal reform movement in the early part of this century. The reformers, in the early 1900's, began to agitate for at-large elections and, in general, have been successful in substitution of at-large elections in "reform" charters adopted since that time.

Mr. Richard S. Childs, perhaps the most eloquent and prolific writer of the municipal reform movement, summarized the reform argument in the publication *The First Fifty Years of the Council Manager Form of Municipal Government*, New York: National Municipal League, 1965, 127 pages, at page 37) as follows:

1. Ward elections confine each voter's influence over the governing body to a single member from but one ward. The voter is denied the opportunity to have anything to say about the majority.

2. Ward elections notoriously produce political 'small fry' who intrigue in the council for small favors and seek appropriations for their wards in reckless disregard of city wide interest and the total budget.

3. Ward boundaries get deliberately shifted, or, retained to favor one faction or party, or, become obsolete by shifts of population, resulting in gross inequalities of representation and elections of a majority of the council by minorities of population.

4. The obscurities of ward politics elude scrutiny by press and public, and facilitate development of self-serving political cliques.

Despite these criticisms, there is a growing interest in resurrecting the ward electoral system, especially in large cities, in view of the fact at-large elections generally do not provide representation for all geographical areas of a city, and basic policy decisions may be made by a city council which is unaware of, or insensitive to the problems of particular areas of the city.

Following is a brief summary of arguments for and against election from 'districts':

In Support of Election from Wards or "Districts"

Proponents advance four basic arguments in support of ward elections.

First, a ward councilman is closer to his/her constituents and this makes it easier for the constituents to judge the performance of their councillor and to elect a replacement if they are dissatisfied-with that performance. Campaigning can be confined to a small geographic area reducing the cost in time and money permitting people of average means to serve.

Second, citizens are less hesitant to call upon a ward councilman for assistance since the councillor is more likely to be personally known to them than an at-large councilman is likely to be. This argument is particularly important if the primary role of the councilman is viewed as that of an official who performs constituent services, in the nature of an "ombudsman" for the residents of the ward or 'district'. On the other hand, this service function can be performed by an information and complaint bureau in city hall and/or neighborhood city halls.

Third, the ballot is shortened as the voter now has to elect only one councilman instead of a group of councilmen. This means that greater attention can be focused on the ward councilman and, therefore, the voting will be more informed. Interestingly,

one tenet of the municipal reform program was a short ballot, yet the at-large council adds to the length of the ballot.

Fourth, ward elections guarantee direct representation for geographically concentrated minority groups in proportion to their voting strength, however, a geographically dispersed minority group may be unable to elect a single candidate to the council.

Arguments Against Election from Wards or "Districts"

Proponents of at-large elections have developed several strong arguments against ward elections.

First, it is contended that ward councilmen are concerned only with the needs of their own wards and no one examines overall municipal needs and establishes priorities for municipal action. "Back scratching" is common with one councilman agreeing to vote for a pet project of a second councilman in exchange for support of a pet project of the first councilman. The result of this narrow views approach is that city-wide needs are neglected. What is needed, according to the proponents of at-large elections, is a council composed of individuals with a citywide orientation who can develop priorities to ensure that the needs of all areas collectively and individually are taken care of on an objective and rational basis.

Second, the argument is advanced that the quality of the councilmen is lower when they are elected on a ward basis as this system facilitates the election of petty politicians. Successful business and professional men and women, lacking a political support base in a ward, it is maintained, will not seek election to the city council and the city is the poorer for the failure to secure their services.

Third, ward elections are objected to on the ground they afford the opportunity for deliberate gerrymandering. The majority party, or, faction, may follow the United States Supreme Court's one-person, one-voting ruling, yet still redraw ward lines in such a manner as to concentrate the opposition in as few wards as possible and may even be able to disperse the opposition voters to such an extent that they are unable to elect a single councilman.

Fourth, the one-person, one-vote principle will necessitate continuous redrawing of ward lines to avoid silent gerrymanders which result from population shifts. This means a councilman will have a shifting rather than a constant constituency over a period of time.

The city of Newton (Massachusetts) utilizes a compromise position on the question of ward or at-large (a method that accounts for the difference of 10% cited above between number of cities that nominate at-large and those who elect at-large). In that city the legislative body (termed a board of aldermen) consists of twenty-four members, eight of

these members are elected by the voters in their wards, there are also sixteen aldermen at-large elected by the voters at-large but two such aldermen at-large are elected from each of the eight wards of the city. This system assures that each ward will have an equal number of representative members, but, requires, that two-thirds of the board have popular support throughout the city. This system also puts the balance of power in the members elected at-large as opposed to the those members elected specifically and solely by the voters of the ward. The National Municipal League Model Charter provides a similar alternative (i. e. nomination by district and election at large).

3. Term of Office

Presently, all of the forty 'cities' in Massachusetts and the ten 'towns' which have adopted city forms of government, under 'home rule' charters, except three (Barnstable, Southbridge and Winthrop) elect their councillors for concurrent terms of two years -with the entire council coming up for re-election at the same time.

The town of Barnstable elects the councilors from odd districts and the councillors from even numbered districts at elections held two years apart, in November, for terms of four years.

The town of Southbridge elects three members of a nine member town council for terms of three years each, annually, at an annual town election held in June. Councilors take office on the first secular day of July.

The town of Winthrop elects one councilor at large and four district councilors for terms of four years each at each biennial town election held in November. A council president is also elected at each biennial town election for a term of two years.

Except Southbridge, see above, all of the cities and 'towns' operating with city forms hold their elections biennially on the first Tuesday after the first Monday in November in odd numbered years. In Barnstable and Franklin the 'winners' take office on the day following the election. In all other places, except Southbridge, see above, the victors take office in January of the following year.

The standard practice in Massachusetts 'cities' of co-terminus election, is in marked contrast with the procedure followed in the representative town meetings in the commonwealth, which, in all cases (but one, Saugus), provide that only one-third of the membership comes up for re-election at a time.

While only two 'cities' in Massachusetts elect their legislative body for a four year term, on a national basis the four year term has become the standard practice. The towns of Barnstable and Winthrop presently elects councilors for terms of four years each.

The NML Model Charter recommends a four year term with a special overlap provision so that a majority of the council can be replaced at elections held every two years. In the

NML Model four of seven council members run every two years, the three highest vote getters are awarded four year terms, but, the fourth highest candidate is only given a two year term, hence, the majority of the council is 'up' for election every two years.

The Municipal Reference Bureau of the University of Minnesota's monograph entitled *Principles And Problems Of Charter Making*, sums up the arguments for the longer term as follows:

Members of the council should hold office for definite and fairly long terms. Four years is not too long a term and good councilmen should be rewarded by at least one re-election. Experience is an invaluable asset in all public business. Freedom from politics is also very important: A man who has to run for re-election every year or two has less time for public duties. If the voters may recall their officers, there is little danger either in long official terms or in vesting the members with great power.

Municipal Councils in Massachusetts

Agawam	27,492	11	Malden	53,709	11
Amesbury	15,980	9	Marlborough	23,591	9
Attleboro	27,118	11	Medford	60,429	7
Barnstable	42,759	11	Melrose	32,105	11
Beverly	38,135	9	Methuen	40,669	9
Boston	616,326	13	New Bedford	100,176	11
Brockton	83,449	11	Newburyport	14,732	11
Cambridge	92,667	11	Newton	88,514	24
Chelsea	27,098	11	North Adams	19,805	9
Chicopee	58,377	13	Northampton	27,062	9
Easthampton	15,512	9	Peabody	47,387	11
Everett	34,139	25	Pittsfield	46,437	11
Fall River	89,425	9	Quincy	84,040	9
Fitchburg	36,726	11	Revere	42,394	11
Gardner	20,463	11	Salem	40,112	11
Gloucester	26,744	9	Somerville	86,332	11
Greenfield	18,026	27	Southbridge	16,122	9
Haverhill	43,249	9	Springfield	174,463	9
Holyoke	40,370	15	Taunton	51,624	9
Lawrence	69,070	9	Waltham	54,791	15
Leominster	29,729	9	Westfield	28,020	11
Lowell	96,054	9	W Springfield	26,192	9
Lynn	92,653	11	Weymouth	54,859	11
			Winthrop	17,179	9
			Woburn	35,149	9
			Worcester	165,387	11

Profile of the City Council in United States

Average number of council members

2,500 to 4,999	6
5,000 to 9,999	6
10,000 to 24,999	7
50,000 to 99,999	7

all elected at-large

2,500 to 4,999	67.3
5,000 to 9,999	65.1
10,000 to 24,999	62.3
25,000 to 49,999	55.6
50,000 to 99,999	50.5

all elected from districts

2,500 to 4,999	9.3
5,000 to 9,999	20.3
10,000 to 24,999	17.3
25,000 to 49,999	16.6
50,000 to 99,999	17.1

combination district & at-large

2,500 to 4,999	12.4
5,000 to 9,999	17.6
10,000 to 24,999	21.1
25,000 to 49,999	27.3
50,000 to 99,999	35.0

councils with term limits

U. S.	8.6
New England	5.9

75.9 % of cities report elections are non-partisan

82.6 % of cities report staggered or overlapping terms

a majority of jurisdictions report a 4 year for council members

about 70% of cities report the council meets regularly twice a month

Source: ICMA Report, Special Data Issue, 1998

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all elected at-large

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5,000 to 9,999	65.1
10,000 to 24,999	62.3
25,000 to 49,999	55.6
50,000 to 99,999	50.5

all elected from districts

2,500 to 4,999	9.3
5,000 to 9,999	20.3
10,000 to 24,999	17.3
25,000 to 49,999	16.6
50,000 to 99,999	17.1

combination district & at-large

2,500 to 4,999	12.4
5,000 to 9,999	17.6
10,000 to 24,999	21.1
25,000 to 49,999	27.3
50,000 to 99,999	35.0

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Source: ICMA

"DIRECT DEMOCRACY"

Voter participation in government at times other than during election cycles is made possible by three devices that grew out of the government reform movement which took place at the close of the nineteenth century. There are (1) the initiative, by which voters may cause a law to be enacted over the objections of a majority of their elected representatives, (2) the referendum, by which voters may rescind a law which was adopted by their elected representatives, and (3), the recall, by which an elected official can be removed from office before the term for which such official was elected has expired.

The Initiative

The initiative is a method by which a defined number of voters may propose to the legislative body that some measure be adopted, and, should the legislative body fail to enact the measure within a prescribed period of time, provides that the matter must then be referred to the voters (for a ballot vote) to determine if it will be adopted.

Typically an initiative provision would provide that a certain number of signatures of voters (say 10%) might present a matter to the legislative body for its consideration. The legislative body is then given a period of time (say 30 days) within which to consider adopting the measure. If the legislative body fails to adopt the measure within the time period allowed, the proponents may then gather the signatures of an additional number of voters (say 5%) within the next, say 20 days. If the additional signatures are submitted within the time established, the legislative body must then either call a special election at which the measure will be submitted to the voters for a final determination, or provide for the measure to appear on the ballot at a regular election for final determination by the voters. Some initiative provisions provide if a certain percentage of additional signatures are filed (say 10 percent) the legislative body must call a special election to deal with the question.

The Referendum

The referendum is a method by which a predetermined number of voters may protest against a measure which has been adopted by the legislative body and seek to have the adoption rescinded. If the legislative body fails to rescind the measure within the time allowed for it to do so, then the matter is referred to the voters (by ballot) to decide if the measure should remain in effect, or be

rescinded. Typically a referendum provision would provide that if, within a certain period of time after a measure is adopted (say 21 days), a petition signed by a certain number of voters (say 20%) is filed with the legislative body, the legislative body must then again vote on the measure. If the legislative body fails within the time allowed to rescind its prior vote then the measure is suspended from taking effect until the matter is decided finally by the voters. The legislative body, in its discretion, may either call a special election for such determination, or may allow the matter to remain suspended until the next regular municipal election for a determination.

ARGUMENTS CONCERNING INITIATIVE AND REFERENDUM

Proponents argue that low quality legislative bodies which are either unable or unwilling to respond to public needs, or, which are too easily influenced by pressure groups, makes it necessary for the voters to have the ultimate authority to make or repeal all laws.

Proponents argue that where there is a concentration of authority in elected or appointed officials these devices are necessary to assure that some form of 'checks and balances' is maintained in the system. The voters are empowered to be the ultimate decision makers.

Proponents also argue that these devices (I & R) permit the voter to have a direct say in the way in which the business and affairs of the community are managed. If a voter is at any time dissatisfied with either what is, or what is not being done, I & R provides a method by which the voter can take a specific action towards redressing that situation.

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Opponents argue that I & R confuse legislative responsibility and participatory politics. Contemporary issues are complex and intricate and the voters must put their trust in the officials they elect to make these decisions.

Opponents argue that I & R measures serve to lengthen an already over long ballot and may cause additional costs when special elections must be called.

Opponents argue that the system presumes that every voter is rational, intelligent and capable of fully understanding all of the nuances implicit in complicated legislation and that this assumption is false. Ballot questions decided in this way are more often made by uninformed and uninterested citizens, or by a vociferous minority which organizes and rallies to an issue which affects it directly.

Opponents argue that complex questions are apt to be decided by catchwords and slogans rather than on the true merits of the matter under consideration.

Opponents argue that technical flaws contained in such legislation are difficult, if not impossible to correct, during the process and that as a result 'bad' legislation sometimes becomes law.

RECALL OF ELECTED OFFICIALS

The RECALL is a method by which citizens may petition for a special election to be held to determine whether, or not, an incumbent public official should be removed from office prior to the time the term of office for which such person was elected would normally expire.

ADVANTAGES: Proponents cite five major arguments in favor of inclusion of recall provisions in a charter:

1. The recall provides a means by which voters may remove officials simply because they have lost confidence in them.

2. The recall improves the performance of public officials by constantly reminding them that corruption and inefficiency may be punished by removal from office. The theory of the recall is that public officials must be responsive to popular opinion at all times rather than only at election time. This is the "gun behind the door" theory.

3. The recall increases popular interest in public affairs because it permits citizens to participate more directly in them. Citizens are better informed when public officials take pains to explain the reasons for an important governmental action before it is initiated, which recall forces them to do.

4. Political scientists assert that the terms of office of public officials, generally, are too short and should be lengthened. Voters, who traditionally have been in favor of frequent elections, are inclined to disapprove the establishment of longer terms of office unless, concomitantly, they are given the right to recall officials before the expiration of their terms of office.

5. Voters are more willing to grant increased powers to public officials if they know they can be removed by the recall.

DISADVANTAGES: Opponents of the recall advance five principal arguments against it.

1. The recall imposes an additional burden upon the voters and lengthens a ballot that already is too long, and also increases the number of elections.

2. Dynamic public officials may be unduly restrained and their independence weakened. The recall forces public officers to consider the immediate public reaction to a program rather than its long-term effect. An official, for example, may hesitate to initiate an action that is in the public interest for fear that in the short term the action may be misunderstood by the voters. Furthermore, competent individuals may refuse to run for public office because they dislike the idea of having the treat of recall held over their heads like the sword of Damocles.

3. Governmental expenses are increased if special elections are held.

4. The recall is superfluous since other constitutional provisions and laws permit the removal of public officials, for cause, by less expensive and less fickle methods.¹

5. The recall can be utilized for partisan political purposes. A party which has lost an election by a close margin may be tempted to invoke the recall at the first opportunity in order to win the office.

¹ This argument is made but, unfortunately, it is not really true. There are no efficient, speedy means of removing officials from office when charges are brought against them and before a final determination of guilt is reached.

GENERAL COMMENTS

Each of these devices comes with a panoply of provisions which by the way in which they are structured may make the desired result easy, or difficult, to initiate and easy, or difficult, to see through to the end.

The number of days within which signatures are to be gathered, the number of signatures which are required, whether the signatures should come, essentially, equally from all corners of the town by requiring a percentage of the signatures to come from each precinct, by prohibiting the preponderance from coming from only one precinct or containing no such requirement are all worthy of attention by anyone who seeks to make available any one of these devices.