

Submitted by
Atty. Mike Curran to
Committee on 7/17/13

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 1.

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.

effecting change that will improve the ability of regional government to do its job today and tomorrow.

Questions for Michael Curran:

1. What is the basis under the Massachusetts constitution for supporting the "weighted vote" as an example of the principle of one man one vote?
2. As follow up has this question ever been posed to the AG or the SJC in Massachusetts?
3. In your response to the Charter review committees request for examples of regional government structures you have included a description of a single body that combined district and at large representatives, could you elaborate on why you think this could be successful?
4. The commissioners have suggested a governance structure that merges the AofD (the legislature) and the Board of Commissioners (the executive) into a single Legislative body with seven members to be elected by districts and a hired manager who is the executive, can this be done within the present Charter and if not what specific steps must be taken to do this?
5. What is your opinion of the choice between an elected and appointed Executive?
6. The head of the Cape Cod Commission has expressed concern that changes in population concentrations could further reduce the ability of the total population to express their will with regard to DRI and DCPCs. Presently 4 of the AofD delegates representing a majority vote can override the interest of the remaining 11 members. What remedies are available within the present structure of regional government to fairly treat the legitimate interests of those 11 towns?
7. Also among the examples cited so far to the Charter of governance structure which one has the best chance of addressing that issue?
8. We have supplied a copy of the draft clarification of the language in the statement of the Commissioners position (also attached). In your opinion what impression does it leave with you?
9. And further what opinion do you have of the AofD resolution to increase the Board of Commissioners to 5 (elected by districts) and retaining the present structure of the AofD?
10. There is always a path to yes, what is that path for any change in governance structure on Cape Cod?

*Handout from
Bill Doherty
Committee Member
7/17/13*