

STATE OF MINNESOTA

**REPORT OF
THE LEGISLATIVE COMMISSION
ON
METROPOLITAN GOVERNANCE**

March, 1983

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I. THE WORK OF THE COMMISSION

The Legislative Commission on Metropolitan Governance was created by Laws 1981, Chapter 250. The charge of the Commission was to review government arrangements in the metropolitan area and recommend to the Legislature a comprehensive policy on metropolitan governance, with special emphasis on the interrelationships of governmental units.

Between the first meeting of the Commission, in September, 1981, and the last, in March, 1983, the Commission conducted nearly twenty-five hours of public discussion in eleven hearings. Two of these hearings were held away from the Capitol, one in Shakopee in the southern part of the metropolitan area, the other in Brooklyn Center, in the north.

Approximately fifty-five persons testified before the Commission, and others presented written comments and recommendations.

The Chair chosen by the Commission was Representative John Brandl, and the Vice-Chair was Senator Robert Schmitz. Other members were Senators William Belanger, Don Frank, Franklin Knoll, and Myrton Wegener, and Representatives Walter Hanson, Connie Levi, Carolyn Rodriguez, and William Schreiber.

II. SUMMARY OF RECOMMENDATIONS

External Accountability. The Legislature should strengthen and clarify the accountability of metropolitan agencies in order to improve their responsiveness to the various groups and government agencies interested in metropolitan government.

Appointment of Members. The Legislature should improve the procedures for selecting the members of the metropolitan agencies so that the appointment process plays a more important and visible part in educating people about metropolitan affairs.

Policy and Program Evaluation. The Legislature should strengthen its own oversight of metropolitan agencies and their policies and programs by requiring a more systematic and regular accounting of agency activities to the Legislature and by establishing either a permanent joint commission on metropolitan affairs or permanent subcommittees or divisions of the appropriate House and Senate committees.

Metropolitan-Local Disputes. The Legislature should not create elaborate administrative proceedings to deal with disputes between metropolitan and local agencies, nor should the Legislature rely on the courts to settle disputes. For disputes which cannot properly be resolved at the metropolitan level, the Legislature should consider creating a process whereby a record of the issues in dispute can be made and brought before a legislative forum. For disputes which do not warrant legislative intervention, the Legislature should establish a procedure for administrative review or reconsideration of agency decisions.

Metropolitan Finance. Without increasing the power of the Metropolitan Council or requiring a unified metropolitan budget, the Legislature should create a procedure whereby the separate agency budgets could be assembled and summarized together for the purpose of improving public understanding and discussion. In addition, the Legislature should require long-range budget projections from metropolitan agencies.

III. EXTERNAL ACCOUNTABILITY OF METROPOLITAN AGENCIES

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

Although the Commission listened to much thoughtful advice on the subject of external accountability, it nonetheless failed to detect any unity of opinion. The proposals for reform were as multilateral as the parties in interest. The lines of external responsibility now run from the metropolitan agencies in many different directions: to the people of the metropolitan area, to the great diversity of local governments variously situated in the metropolitan area, to many places in the state executive branch, to the state Legislature, and to the federal government. In the course of its work, the Commission received recommendations that each of these several and diverging lines of accountability should be strengthened, and that this should be accomplished through a great variety of means: the eligibility and appointment of members, internal staff reorganizations, improved agency administrative procedures, legislative reorganization, outside evaluation and review, better budgeting, etc. In short, focus of subject was offset by disparity of recommendation.

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

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

IV. APPOINTMENT OF MEMBERSHIP ON METROPOLITAN AGENCIES

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

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

The Commission also reemphasizes here its view that the Legislature should preserve what must, in justice, be a carefully constructed and intricately balanced network of accountability to diverse interests at all levels of government. The appointment process is an important element in establishing responsiveness. All naturally want to preserve or enhance

their influence in that process. But to strengthen the influence of one is to weaken the influence of another. Hence the Commission believes that great care must be exercised, in altering the selection and appointment process, to ensure a fair balance of influence among all the parties whose interests and responsibilities are affected by the decisions of metropolitan agencies.

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

V. POLICY AND PROGRAM EVALUATION

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

Testimony before the Commission was united in suggesting that systematic metropolitan policy and program evaluation is not as strong as it should be. Although some of the metropolitan agency programs are now subject to intensive scrutiny, there is no systematic or regular external evaluation of many others. The only generally applicable reporting requirement, the formal annual report of each agency to the Legislature, will not serve as an evaluation document.

To help remedy this deficiency, and to correct what appears to be a gradual decline and fragmentation in substantive communication between the metropolitan agencies and the Legislature, the Commission recommends that the Legislature improve its own oversight of the metropolitan agencies and their policies and programs. The Legislature should require the Council and the other metropolitan agencies to reexamine and justify their plans, their activities, and their priorities on an on-going basis. This regular internal policy and program evaluation should be accompanied by direct and continual legislative scrutiny.

The Commission believes that this improvement in policy and program evaluation by the agencies and the Legislature cannot and will not occur unless a point of focus is established in the legislative arena. Therefore the Commission recommends that the Legislature create either a permanent joint commission on metropolitan affairs or permanent subcommittees or divisions of the appropriate committees of the House and Senate. This commission, or these committees (often meeting jointly), would initiate and supervise agency policy and program evaluations and would serve as the center of legislative oversight, experience, and knowledge. All legislation pertaining to metropolitan agencies, their structure, programs, budgets, taxes, and policies, should go before this commission or these committees.

Half the population of the state is directly affected by the activities of the metropolitan agencies, and important and complex policies and laws affecting the whole state regularly arise from metropolitan affairs. Under these conditions it is imperative that the Legislature work to improve its oversight and understanding of the activities of the metropolitan agencies

and to bring about a real and lasting improvement in communication and shared knowledge between the Legislature and metropolitan agencies.

VI. METROPOLITAN-LOCAL DISPUTES

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

Local resentment about these conflicts is nonetheless very real and deserving of attention, because it is damaging to the metropolitan comity, the furtherance of which is one of the Council's reasons for being. The Commission therefore has taken the evidence of metropolitan-local conflict very seriously indeed and has sought, within the limitations of the situation, to discover better means of reducing its occurrence and resolving it when it appears.

In order to reduce the occurrence of conflict, the Legislature should take care to limit the intrusiveness of metropolitan functions to the minimum level necessitated by interdependency. That is the overwhelming recommendation made in testimony to the Commission, and the Commission concurs in it. It has not been the Commission's purpose to evaluate

whether the proper boundary of metropolitan interest has been transgressed in each of the multitude of metropolitan agency activities. Yet the testimony alleging transgressions is too strong and too widespread to discount. Therefore the Commission recommends that the Legislature pay particular attention to finding and eliminating such transgressions, so as to reduce the occurrence of conflict which is not endemic to the metropolitan situation.

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

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

The Commission believes that elaborate administrative proceedings, either of the rule-making or contested case variety, are hardly better suited to the needs of governmental adversaries than courtroom proceedings. It

appears to the Commission that these quasi-judicial, legalistic processes are inconsistent with the primary function of the Council--which all agree should be planning, the furtherance of public learning and political consensus, and intergovernmental coordination, not the adjudication of the rights and liabilities of others. Introducing an administrative court into the quest for a metropolitan perspective would create a great inconsistency between process and purpose. This would be unwise, in the Commission's judgment, for in such matters it is not always substance that wins. Experience elsewhere suggests that the administrative court would encourage what we seek to avoid: the arrogance and power of staff experts, attention to legal nicety and technical detail in decision-making, formality, strict separation of fact-finding and decision-making functions, an adversarial interest in burden of proof, the transfer of agency discretion to administrative judges, a greater role for state staff agencies such as the Office of Administrative Hearings and the Attorney General, and the isolation of agency boards from the public. Therefore, the Commission rejects procedural elaboration, on the grounds that it might well promote the problem rather than the solution.

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

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

If these two governmental forums--the judiciary and the administrative court--are generally inappropriate to metropolitan-local disputes, it is upon the third forum, the Legislature, that we must primarily rely. And so, in fact, we have: the prevailing practical method of settling these disputes over the years has been to bring the issue to the Legislature for resolution. On the whole, it has worked. The examples of this are legion; taken together, they strongly suggest that the mechanism is as effective as any other that might be devised, and surely in most cases a more appropriate venue than the administrative or judicial tribunal. The Commission therefore concludes that the Legislature should consider means of improving, legitimating, and regularizing access to the legislative forum for disputes which cannot properly be resolved at the metropolitan level.

The Commission believes that the regular program evaluation is a promising method of exposing and resolving the policy issues which give rise to many of these disputes.

The Commission also recommends that the Legislature consider expanding the application of one device now in the statutes for resolving planning disputes between the Council and metropolitan commissions, boards, and agencies. The relevant provision reads as follows: "If the council and the affected commission, board, or agency are unable to agree as to an

adjustment of the plan, so that it may receive the council's approval, then a record of the disagreeing positions of the metropolitan council and the affected commission, board, or agency shall be made and the metropolitan council shall prepare a recommendation in connection therewith for consideration and disposition by the next regular session of the legislature." (M.S. 473.165) The Legislature should consider some variation of this provision for disputes between metropolitan agencies and local governments.

Of course the Legislature cannot and should not allow itself to become the routine and customary court of appeals from decisions of the Council, by this or any other means. A nice discrimination must be maintained between disputes which should be resolved by the agencies involved and disputes which raise policy issues requiring legislative resolution. The Commission concedes that the Legislature has not yet distinguished itself by its discrimination in such matters. That, in fact, is part of the problem. Subject to appropriate limits, the Commission believes that much can be gained in fairness, legitimacy, and peace--not only in the metropolis but in the Legislature itself--by effecting regular access to the legislative forum for issues which now reach it almost certainly but by devious and random routes.

Although the Legislature should continue to resolve basic issues of governmental policy, governmental structure, and public finance, it cannot and should not intervene in most metropolitan-local disputes. Often such disputes do not raise issues warranting legislative intervention, because the conflict is not over the metropolitan policies themselves so much as the interpretation and application of those policies in specific situations.

Here, in the absence of APA procedures, the metropolitan agencies are essentially unrestrained; they are by definition not dispassionate but rather parties at interest who are nonetheless privileged to sit as legislature, executive, judge, and jury. In these situations there exists at least the appearance, if not the reality, of conflicting interests and functions. Yet local jurisdictions that would question the unrestrained will of the agency have no remedy short of desperate appeals to the Legislature or the courts. In order to correct this fundamental unfairness in such "contested cases" and to eliminate the anger born of it, the Commission recommends that the Legislature establish a procedure for administrative review or reconsideration of final decisions in disputes between a metropolitan agency and a local jurisdiction.

VII. METROPOLITAN FINANCE

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

considered together. The existing arrangements--the wholly separate metropolitan agency budget processes, the partial and negative capital spending reviews by the Council, and the fragmented consideration by the Legislature--are not sufficient to this purpose.

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

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

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

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

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