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REPORT OF THE  
MUNICIPAL LAWS REVIEW STUDY COMMITTEE

MUNICIPAL LAWS REVIEW STUDY COMMITTEE  
Progress Report

NOTE: This report was received without formal action by the Legislative Council, since it contains no recommendations. In answer to a question from the Council, Study Committee Chairman Senator Ralph W. Potter expressed the opinion that the \$25,000 appropriation made by H.J.R. 15 of the 63rd General Assembly will be sufficient to complete the study.

House Joint Resolution 15, passed by the First Regular Session of the Sixty-third General Assembly, established a twelve-member study committee for the purpose of making a comprehensive study and reviewing the statutes relating to municipal corporations. Seven legislative members and five nonlegislative members were appointed to the Committee, in accordance with the provisions of H.J.R. 15. The members are:

Senator Ralph W. Potter  
Senator Alan Shirley  
Senator John W. Walsh  
Representative William H. Huff III  
Representative Stanley T. Shepherd  
Representative Ed Skinner  
Representative Nathan Sorg  
Mayor Loren Hickerson, Iowa City  
Mayor Chester Lee, Clarinda  
Mayor Harold Gartner, Titonka  
City Attorney Philip T. Riley, Des Moines  
Mr. Howard Bell, Ames

The Committee was further charged with the duty to:

1. Review state statutes as they apply to city and town government.
2. Recommend appropriate revisions which will implement home rule and facilitate the solution of local problems by local initiative.
3. Make comprehensive recommendations to the general assembly by way of code revision bills and other reports.
4. Submit a report to the governor and to the general assembly no later than thirty days after convening of the general assembly in 1970, unless it is impossible to complete the project by that date, but no later than thirty days after convening of the general assembly in 1971.

Because of the complexity of the present municipal statutes, and because of the Committee's duty to submit comprehensive recommendations to implement home rule, the Committee finds that it is impossible to complete the project within thirty days after the convening of the General Assembly in 1970. Therefore, the Committee submits this progress report to inform the General Assembly of its accomplishments to date, and its plans for completion of the project during 1970.

The Committee's organizational meeting was held on August 11, 1969, with Representative Nathan F. Sorg serving as temporary Chairman. The Committee adopted rules and elected Senator Ralph W. Potter as permanent Chairman, Representative William H. Huff III as Vice Chairman, and Thane Johnson, Research Analyst, Legislative Service Bureau, as Secretary. JoAnn Brown, Legal Counsel, Legislative Service Bureau, serves as staff assistant to the Committee.

In order to adequately consider the extensive volume of municipal statutes, consisting of seventy-two chapters of the Iowa Code in Title XV, plus many other miscellaneous chapters and sections, Chairman Potter appointed four Subcommittees as follows:

Municipal Organization . . . . .	Senator Potter, Chairman
Municipal Facilities . . . . .	Senator Walsh, Chairman
Municipal Streets and Transportation . .	Representative Huff, Chairman
Municipal Utilities and Housing . . . .	Representative Sorg, Chairman

The Committee members agreed to postpone any study of municipal budgeting procedures in Iowa, until it receives the results of another study currently being made on that subject.

At its second meeting, on motion by Representative Skinner, the Committee adopted a definition of home rule, in order to establish direction for the revision project. The Committee defines home rule to mean that cities and towns may exercise any powers that are not limited by the General Assembly through the enactment or retention of law setting guidelines for, or limiting the powers of cities or towns.

Subsequent meetings of the full Committee have included a meeting with the Executive Board of the League of Iowa Municipalities on September 10, general meetings on October 9 and November 6, and a two-day meeting November 20 and 21, at which time the Committee met with a number of Iowa city managers. Other guests were Professor Robert J. Martineau, College of Law, University of Iowa, and Mr. Eugene Elkins, Senior Analyst, Advisory Commission on Intergovernmental Relations.

In addition to the regular Committee meetings, each Subcommittee has held from two to four meetings. A complete compilation of Iowa Code sections relating to cities and towns was prepared by the Legislative Service Bureau, and each member received two or more copies of the Code sections relating to his Subcommittee assignment. In general, each Subcommittee studied its portion of the Code section by section, determining where deletions, revisions, and consolidations of existing law are needed.

The Municipal Streets and Transportation Subcommittee also undertook an extensive study of all present Code sections authorizing some form of bonding by cities and towns. This Subcommittee

met twice with bonding attorneys and finance consultants from Des Moines and Chicago. Several other Committee members also attended these meetings. The Subcommittee has received recommendations from some of these experts for changes in the present municipal bonding statutes, and hopes to obtain further assistance in order to draft a revised and considerably shortened general bonding statute for cities and towns.

The other Subcommittees also are working toward the consolidation of many of their chapters and sections into one or more concise chapters or divisions. In addition, the Municipal Organization Subcommittee is considering the possibility of authorizing Iowa's cities and towns to adopt their own charters, instead of being limited to the optional forms of government now prescribed by the Code. Future plans of the Municipal Organization Subcommittee include a meeting in Davenport, Iowa, with representatives of Iowa's four special charter cities.

The Committee has examined the law of Maryland relating to cities and towns, which consists primarily of one short chapter and another chapter providing a model city charter. The Maryland Code is considered a model of brevity in state municipal Codes. The Committee and staff plan to study the laws of other states as well.

It appears to be the consensus of the Committee members at this time that the basic framework of Iowa's municipal law should be entirely rewritten into a group of chapters or divisions which would include all necessary state regulation relating to the basic elements of municipal law, such as organization, elections, powers, bonding, and finance. The members have frequently expressed a desire to have a municipal Code which can be easily understood by citizens and municipal officials.

The members agree that cities and towns should be free to govern themselves under home rule concepts, subject only to state restrictions in areas where statewide control and uniformity is considered essential, such as, for example, areas related to public health. To accomplish this, the Committee hopes to delete from the Code many restrictions now placed upon cities and towns, and perhaps delete or revise many of the permissive statements in the present Code describing powers of cities and towns, since it has been pointed out that under home rule, even a permissive statement may operate as a restriction upon the self-governing powers of cities and towns. In particular, the members agree that most classifications of city powers according to population should be deleted.

Copies of bills presently in legislative committees or on the Senate Calendar for consideration by the 1970 session of the Sixty-third General Assembly have been distributed to members for study and for possible Committee recommendations.

As soon as possible, the Legislative Service Bureau will begin to prepare an outline and tentative drafts of a revised municipal Code. These drafts will be submitted to Subcommittee members

for study and revision, and upon receiving Subcommittee approval will be submitted to the full Committee. As portions of the proposed revised Code are approved by the full Committee, they will be made available to city and town officials, and other interested persons throughout the state, in order to obtain further suggestions. The Committee expects to integrate and complete its work in the fall of 1970, in order to have a proposed revised municipal Code ready for submission to the General Assembly in January of 1971.

Persons who have offered continued assistance to the Committee include Mr. Robert E. Hays and Mr. Edwin H. Allen of the League of Iowa Municipalities, Mr. Lawrence A. Touchae of the Iowa Association of Municipal Utilities, and Mr. Kenneth Henke of the Office for Planning and Programming. Professor Robert J. Martineau presented a written statement of his suggestions for implementation of the home rule amendment, and offered continuing assistance to the Committee. His statement is attached to the minutes of the October 30 meeting of the Municipal Organization Subcommittee.

The Legislative Service Bureau has prepared and distributed to Committee members the following materials:

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These materials, as well as the minutes of all Committee and Subcommittee meetings, are available in the Legislative Service Bureau office, and are by this reference made a part of this progress report.

The Committee intends to initiate a concentrated effort immediately following the Second Session of the Sixty-third General Assembly in order to complete its assignment while at the same time making available to interested citizens reports of its efforts. A great amount of work will have to be accomplished in a relatively short time. The staff of the Legislative Service Bureau will have to concentrate its efforts in aiding the Committee. The need for hearings will be desirable as the Committee formulates its recommendations. Such hearings will most likely have to be held in the various geographical areas of the state in order that as many citizens as possible will be given the opportunity to judge and comment upon the work of the Committee.

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See Synopsis of Proposed Municipal Code  
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MUNICIPAL LAWS REVIEW STUDY COMMITTEE  
Chairman's Report to Legislative Council

The twelve-member Committee, including seven legislative members and five nonlegislative members, has been functioning since its organizational meeting on August 11, 1969. Former Representative Stanley T. Shepherd resigned from the legislature in September of 1970 and the remaining eleven Committee members plan to complete the Committee's work and present a final report, and a draft of a Proposed Municipal Code, with conforming amendments to the Sixty-fourth General Assembly in January, 1971.

Senator Ralph W. Potter has served as Chairman of the Committee and much of the Committee's work has been conducted through Subcommittees appointed by the Chairman. The Subcommittees and their membership are as follows:

Organization Subcommittee:	Senator Potter Mayor Chester Lee of Clarinda Mr. Philip T. Riley, City Attorney of Des Moines
Facilities Subcommittee:	Senator John W. Walsh Representative Shepherd Councilman Howard Bell of Ames
Streets and Transportation Subcommittee	Representative William H. Huff III Representative Ed Skinner Mayor Harold Gartner of Titonka
Utilities and Housing Subcommittee:	Representative Nathan Sorg Senator Alan Shirley Mayor Loren Hickerson of Iowa City
Finance Subcommittee:	Members of the Facilities and Utilities Subcommittees with Councilman Howard Bell serving as Chairman.

The Committee's general philosophy was established during early meetings by agreement on certain major premises, as follows:

1. After studying the home rule amendment to Iowa's Constitution, the Committee determined that it would define home rule to mean that Iowa cities and towns may exercise any powers that are not limited by the General Assembly through the enactment or retention of law setting guidelines for or limiting the powers of cities or towns.

2. Based on its definition of home rule, the Committee determined that much of the present law relating to cities and towns, mainly contained in Title XV of the Code and originally designed to increase city power, now serves as a limitation on the power which cities and towns would otherwise have under the home rule amendment.

3. In order to "implement home rule and facilitate the solution of local problems by local initiative", the duty given to the Committee in its establishment under House Joint Resolution 15, Sixty-third General Assembly, First Session, the Committee undertook to replace the major portion of the chapters now contained in Title XV of the Code with a revision which is referred to as the Proposed Municipal Code.

4. The Proposed Municipal Code attempts to remove many restrictions and limitations presently placed upon cities and towns, and substitute a broad general grant of home rule power, restricted only in those areas where state control seemed essential. Accordingly, the restrictions based upon size have generally been removed and the population distinction between cities and towns has been eliminated. Also, many permissive statements and enabling statutes have been eliminated, as permission for most city actions is considered implicit in the grant of home rule.

Early in 1970 the Legislative Service Bureau began to prepare drafts of proposed Divisions for the Municipal Code. The Subcommittees had previously studied all present Code sections relating to cities and towns, and had made initial recommendations for each proposed Division. On April 28, shortly after the work of the Sixty-third General Assembly was completed, the Committee met and embarked upon a series of frequent, intensive Subcommittee and full Committee meetings to study, draft, review, and redraft each Division of the proposed Code. Included were meetings with representatives of the special charter cities, in Davenport, Iowa, meetings with bond attorneys, city administrative and finance officers, representatives of municipal utilities, libraries, and hospitals, and other interested persons.

In June, Professor Robert J. Martineau, College of Law, University of Iowa, Iowa City, was appointed a special consultant to the Committee. Professor Martineau has attended many Committee and Subcommittee meetings and given invaluable assistance in the drafting and reviewing processes.

Others who have been consistently helpful are Mr. Robert E. Hays and Mr. Edwin H. Allen, Jr., of the League of Iowa Municipalities, and Mr. L. A. "Pat" Touchae, of the Iowa Association of Municipal Utilities.

Mrs. JoAnn Brown, Legal Counsel, Legislative Service Bureau, has served full-time as staff assistant to the Committee from April through October, with the assistance of Mr. Paul Vos, a researcher and law student from Drake University, throughout the summer months, and Mrs. Sandra Githens, as Committee secretary.

In late August and September the work of the Committee to date culminated in a series of hearings throughout the state at which the Proposed Municipal Code, tentatively approved by the Committee for the purpose of the hearings, was presented to city officials, legislators, and other interested persons.

Committee member Mr. Philip T. Riley, with the assistance of Mr. William Suepple, Attorney from Iowa City, after sending invitations to nearly five hundred city attorneys throughout the state, met with these officials in four meetings conducted August 20 through August 26 at Fairfield, Red Oak, Waterloo, and Storm Lake. The full Committee then conducted a series of five hearings, at the same four cities and finally at Des Moines in connection with the annual meeting of the League of Iowa Municipalities. These hearings were arranged and city officials were invited by the League. Invitations were also extended to all legislators and candidates for the legislature.

The hearings were well attended and many valuable suggestions were made to the Committee members and taken under advisement by them. Since then the Committee has been engaged in studying all criticisms and suggestions and making the many decisions necessary before a final draft of the Proposed Municipal Code will be ready for the 1971 General Assembly.

Although the Proposed Municipal Code contemplates the repeal and replacement of major portions of Title XV of the Code, the Committee decided that certain chapters in Title XV, because of their special significance or technical detail, should (not) be revised at this time. However, the Committee will strongly recommend that subsequent sessions of the General Assembly undertake to revise these chapters in order to make them modern and consistent with home rule principles wherever possible. According to present Committee plans, the following chapters of Title XV will be left intact: Chapters 365, Civil service; 367, Mayor's and police courts; 403, Urban renewal law; 403A, Low-rent housing law; 409, Plats; 410, Disabled and retired firemen and policemen; 411, Retirement systems for policemen and firemen; 412, Municipal utility retirement system, and, possibly, portions of 419, Municipal support of industrial projects, and 420, Cities under special charter.

The entire area of municipal bonding powers and restrictions has not yet been resolved. Early in the Committee's work, the area of bonding law was assigned to the Streets and Transportation Subcommittee, and the Chairman of the Subcommittee, Representative Huff, called upon bond counsel who serve Iowa cities to work with the Committee in an attempt to draft one simplified body of bonding law to replace the many sections relating to bonding now proliferated throughout the Code, including Title XV. The Subcommittee members have met several times with bonding attorneys and financial consultants from Des Moines and Chicago, and some

tentative drafts have been prepared, but the work has not yet progressed far enough to make a statement as to how it will be handled in the Committee's final proposal. However, Committee member Philip T. Riley, and Committee Consultant, Professor Robert J. Martineau, have recently agreed to assist the Streets and Transportation Subcommittee with this work, and it is still the Committee's hope that the final draft of the Proposed Municipal Code will include a concise body of bonding law which cities may follow for all purposes.

A Synopsis of the Proposed Municipal Code, as prepared and presented at the hearings throughout the state in September, is attached and by reference made a part of this report. As indicated, the Committee is presently in the process of considering revisions to all Divisions, but in general the proposed revisions will not change the basic substance of each Division, but will clarify meaning, and add subsidiary matter where desirable. All Committee and Subcommittee minutes, including all drafts proposed to the Committee, are available for reference in the Legislative Service Bureau offices.

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Synopsis of  
Proposed Municipal Code

August 17, 1970

Basic to the Municipal Laws Review Study Committee's work has been its concept of the meaning of "home rule" -- that a city has all power related to local government except taxing power, unless the General Assembly limits a city power or prescribes a specific procedure to be used in the exercise of a city power. Because of this concept, the Committee concluded that a large portion of present Title XV of the Code is no longer useful and, in fact, acts as a restriction upon a city's exercise of home rule power. Therefore, the proposed municipal code will replace Title XV, with the exception of certain chapters, which the Committee feels require further and more intensive study before revision. The chapters which will remain with almost no change, if the proposed municipal code is adopted, are Chapter 365, civil service; Chapter 367, mayors' and police courts; Chapters 403 and 403A, urban renewal and low-rent housing; Chapter 409, plats; and Chapters 410, 411, and 412, which relate to public employee retirement systems. The proposed Code to date does not include any revision of chapters and sections relating to municipal bonding procedures, since the Committee has requested the assistance of several firms of bonding attorneys, who are presently working on recommendations for these important areas, nor does it include provisions for special charter cities, which are to be prepared in cooperation with city officials. The Committee's final proposal to the General Assembly will also necessarily include many amendments to other sections of the Code outside of Title XV, in order to bring these scattered sections in conformity with the new proposed municipal code and the home rule amendment.

Several important considerations developed from the Committee's concept of home rule, and form a basis for all divisions of the proposed municipal code. Since the Committee believes that cities have home rule under the Constitution, the proposed code does not grant powers, except in a broad general way, but is primarily a statement of the limits upon home rule power. The chapters remaining in Title XV are also limits upon a city's power. These limits arise in areas where this Committee and former legislatures have found statewide uniformity and control necessary or desirable.

limits  
uniformity

The Committee feels that it is not desirable for the state to impose restrictions on certain cities based upon their population, but rather believes that each city may decide, based upon practical and local considerations, what services and facilities it should undertake to provide. For this reason, most restrictions in the present Code based upon population have been removed and even the distinction between a city and town, based upon the 2,000 population limit, has been removed. The word "city" is used to mean a city or town, of whatever size.

The Committee also agrees that no city should be obliged to make immediate changes in its operation as a result of the en-

actment of this proposed municipal code. On the other hand, if home rule is to have meaning, a city should be able to make changes which seem appropriate to its governing body or its citizens. For these reasons, the present optional forms of city government are retained, as well as authority for a city to move to a home rule charter, and present agencies and procedures of city government may be continued or may be altered as provided.

The League of Iowa Municipalities has assured the Committee that it will be prepared, when this proposed municipal code is enacted, to make available model ordinances which will aid a city in the exercise of its home rule powers.

#### Division I. Definitions and General Provisions.

Words used repeatedly in the proposed municipal code are defined in this section. Included under general provisions applicable to the entire code are those relating to publication and petition requirements. Provisions relating to a city's extraterritorial jurisdiction, authority for joint action, procedure for abatement of a nuisance or repair of sidewalks by a city after notice to the property owner, limits on disposing of an interest in real property, and procedures by which a city may require a railroad to construct and maintain overpasses and underpasses are all included in this Division.

#### Division II. Powers of Cities.

A city's constitutional home rule power is described in broad, general terms in the first sections of this Division. No specific powers are listed, because such a listing might be construed as a limitation upon cities. Instead, certain limits are listed, and in general effect the remainder of the proposed code is also a series of limitations upon the general powers of a city under home rule. This Division indicates that when the state has established limits on conduct, such as those related to health and traffic safety, a city may make the limits more restrictive within its jurisdiction, but not less restrictive, and that state procedures are to be substantially followed by a city in the exercise of its powers, where applicable state procedures are given.

The city's duty to maintain streets and other public ways and grounds in a safe condition, and a property owner's duty to remove snow and ice accumulations are also included in this Division.

#### Division III. City Development.

In order to permit better long-range planning and orderly development in the interest of all cities, a city development board is created in this Division to study and rule upon petitions and

plans for incorporation of new cities, discontinuance or consolidation of cities, and annexation or severance of territory. The board is a state agency which meets with local representatives from the cities and territories involved to determine if proposals are in the public interest. This concept, while not in the present Code, is a part of Suggested State Legislation proposed by the Advisory Commission on Intergovernmental Relations, and similar legislation was introduced in a recent session of the General Assembly.

This Division also includes, under General Provisions, procedures for a city to change its name, for cities to agree not to annex specific territory, and for annexation on application of all owners of a territory.

#### Division IV. Organization of City Government.

The present optional forms of city government are described in this Division, including mayor-council, commission, and council-manager forms. Only very minor changes were made in any of these forms, but much repetitious or ambiguous language was removed. In addition, a city is provided the option of adopting a home rule charter to control its form of government. The home rule charter may be proposed by the council, or on petition of the voters a charter commission shall be established. A city may change its form of government not more often than once in six years.

The Committee has sought the assistance of Iowa's four special charter cities in drafting proposals to enable them to continue under their present form of government, but these proposals are not yet complete.

This Division also includes a description of the major powers and duties of the council and mayor in all cities.

#### Division V. Elections.

Since most of the general election law of the state is applicable to city elections, this Division is brief and spells out those provisions which are especially applicable to city elections. Procedures for a nonpartisan primary or a run-off election in lieu of a primary are included, as well as procedures for determining those elected from a slate of council candidates who run at large.

#### Division VI. City Legislation.

Legislative measures of a city, including ordinances, amendments to ordinances, resolutions, and motions, are the subject of this Division. The measures are defined in Division I, and methods of adoption are prescribed here. In addition, a city is required to compile and adopt a city code, which includes all

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ordinances in effect, at least once in five years. However, the city code need not be published in bound volumes. The requirement is only that it be compiled in a form accessible to the citizens. A city is also permitted to adopt other codes, such as a standard building code, by reference.

Division VII. Finance.

Parts 3 through 6 of this Division, relating to bonding and contract letting procedures, have not yet been completed but experts in bonding law are working diligently with Committee members to prepare these sections.

Parts 1 and 2 of this Division deal with city taxes, funds, budgets, and accounts. It is not the intent of this Committee to suggest any change in present city taxing authority by this proposed municipal code. Rather, the Committee has retained the present thirty-mill limit on general fund levies, and has listed certain special levies which it considers to be presently outside the thirty-mill limit, or at least arguably so. Other funds required or authorized under the present Code, such as debt service, trust and agency, and emergency funds are retained.

A study of municipal financing, commonly called the "Dubuque Study", and conducted by Baxter-McDonald Company under the combined sponsorship of the City of Dubuque, the League of Iowa Municipalities, and the Office for Planning and Programming, has been the basis for most of the changes made in city budgeting and accounting procedures by this proposal. The Dubuque Study recommends that the seven functional funds be eliminated and their functions combined into the general fund. This recommendation has been incorporated into this Division.

Another innovation in municipal funds is the capital improvements reserve fund, which is limited to an annual levy of two and one-half mills. If the combined general fund and capital improvements reserve fund will exceed thirty mills, the question of establishment of the reserve fund must be submitted to the voters. However, most members of the Committee believe that such a fund would be a saving to the property taxpayer, because it would eliminate the need to issue bonds and pay high interest rates for some necessary capital improvements.

Other recommendations of the Dubuque Study are incorporated in Part 2 of this Division. The Study urged that all cities move to a program-performance type of budgeting, and prepare an operating budget for three years and a capital improvement plan for five years. While conceding the desirability of such provisions, the Committee feels that it is impractical to make such changes an immediate requirement, and so provided for the establishment of a state-level city finance committee, with broad representation of city officials knowledgeable in city accounting, to assist cities to move gradually toward these desirable goals.

The city finance committee would also establish guidelines to permit transfers of city moneys between or within programs and funds although major transfers will require a budget amendment process. The committee would hear budget protests. Since these procedures are different to some extent from the present budget process, cities would not be covered by Chapter 24 of the Code if this proposal is adopted.

#### Division VIII. Municipal Utilities.

The municipal utilities Division is based upon four present Code chapters which regulate municipal utilities and utility boards of trustees. This Division requires the question of the original establishment or discontinuance of a municipal utility, or the formation or dissolution of a board to administer a municipal utility, to be submitted to the voters. If a utility board is established, it has all powers of a city relating to the administration of the utility, with the exception of taxing and bonding powers, and with the exception that the council must approve the sale of real property. The board is also required to make complete reports to the council. It would be permitted to issue revenue bonds. Special provisions now in the Code for the transfer of excess utility funds are retained. Presently functioning utility boards may continue to function with the added powers in this Division, unless dissolved by the voters.

#### Division IX. Administrative Agencies.

All agencies established by a city except those to administer municipal utilities, zoning commissions, and boards of adjustment, or others which may be separately controlled by state law, are subject to the provisions of this Division. Generally, it provides that the council may establish or dissolve agencies, and designate their powers and duties, as needed. The Committee feels that this approach is more in accordance with home rule concepts, and permits each city flexibility to establish agencies which are desirable, and which are not insulated by state law from control by the citizens of the city, through their elected representatives. As in the case of municipal utilities boards, present administrative agencies may continue to function until altered as provided in this Division.

#### Division X. City Zoning.

This Division is a shortened version of the present chapter on city zoning, and because of the constitutional issues inherent in zoning ordinances, it is not the Committee's intent to alter any substantive portions of the present law on city zoning.