

7/9/92

6/17/92 Draft Charter Changes
Recommended by Larry Derr
(incomplete list)

BOUNDARIES AND BOUNDARY COMMISSION

Section 3 acknowledges the existing boundary and purports to give Metro future boundary change authority to the exclusion of the Boundary Commission. Section 9(4) attempts to combine the Subcommittee recommendation for a study preceding any change in the Boundary Commission structure and operation with the need for voter approval of a takeover.

There are problems in both Sections. The charter probably cannot empower Metro to change its own boundary since the process is now governed by State law and the constitutional amendment did not delegate boundary authority to the charter. The only charter functions available are to be the voter approval vehicle for Metro assumption of Boundary Commission functions, and to limit or describe those functions if desirable and permissible.

Recommendation:

1. Replace Section 3 with the Section 3 language of the 6/26/92 Metro Charter draft (prepared by Dan Cooper).

Eliminates the non-emergency clause language because the operative act is that of the Boundary Commission or of Metro acting as the Boundary Commission, not a Metro ordinance initiating the process.

Eliminates the prohibition of State involvement as being beyond the authority of the Charter.

2. Rework Section 9(4) to provide a present assumption of the Boundary Commission by Metro, but provide that Metro will at the same time delegate the function except for Metro boundary changes to a commission appointed by Metro. Leave functions otherwise unchanged until the study and considerations now described in 9(4) are undertaken.

The effect would be to give Metro control over its own boundary through the State mandated boundary commission process and to permit the Subcommittee's recommended study to be completed before any other Boundary Commission changes are implemented. <Implementation could then occur without further voter approval.> If those changes would require statutory amendment, it would also allow time for legislative action.

FUNCTIONS AND POWERS

Jurisdiction

Section 4 states that Metro has jurisdiction over those matters of metropolitan concern which are assigned by the Charter or subsequently authorized under Charter procedures. The description is too narrow since Metro also has authority over matters addressed in State statute. These fall into two categories: A) functions mandated by State law that Metro must carry out; B) functions permitted by State law that Metro may carry out. There is no requirement that functions in either category be a matter of metropolitan concern.

The 6/26/92 Metro Charter draft attempts to recognize this broader authority by defining matters of metropolitan concern to include matters designated by State law. It would be more accurate to recognize the two sources of authority as distinct. Note that the Metro Charter draft assumes all available authority, leaving the decision to undertake any non-mandated function to the Council, subject to any other approval requirements of the relevant State law. The Committee's draft Charter is necessarily more complicated because it imposes additional approval processes. But, as discussed in other paragraphs below, the description of those processes can be streamlined.

Recommendation:

1. Replace Section 4 with a hybrid of the two draft documents, as follows:

"Section 4. Jurisdiction of Metro. Metro has jurisdiction over matters of metropolitan concern. Metro has jurisdiction over and shall exercise those powers and duties imposed upon it by the Constitution and laws of this state. Metro ~~shall~~ has jurisdiction over and may exercise those powers and duties granted to it by the Constitution and laws of this state. The Metro Council shall determine by ordinance whether a subject area is a matter of metropolitan concern and to what extent Metro should exercise its jurisdiction over such matters, subject to the additional requirements of this Charter. The Metro Council shall determine by ordinance to what extent Metro should exercise its jurisdiction over powers and duties granted to it by the Constitution and laws of this state, subject to the additional requirements of this Charter."

This paragraph introduces the distinction between home rule authority, State mandated authority and State permissive authority. By clarifying the three types of authority, some of the ambiguities of our current draft will be easier to address.

Description of Functions

Sections 5 through 9 describe functions assigned and procedures for assuming additional functions. The intent is to carry forward the current statutory scheme of a government of limited rather than general powers, but to permit the assumption of new powers of metropolitan concern without the necessity of voter approval that now limits most expansion authority. This is a significant empowerment for effective regional government. The Committee's approach to implementing this process has some flaws and opportunities for future confusion.

These problems can be largely, if not entirely, eliminated by two types of change: A) simplifying the lists of subject areas at the risk of over broadening the immediate empowerment; B) authorizing activities through intergovernmental agreement outside of the otherwise applicable approval processes. The second change must be accompanied by a safeguard against financial imposition on region citizens not receiving benefit from the contracting.

Recommendation:

1. (Tune in next meeting. I ran out of time)