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Notes

It's Time to Create a Bay Area Regional Government

by

KENNETH A. BRUNETTI*

The San Francisco Bay Area is comprised of nine counties¹ with a land area of 6957 square miles.² More than six million people live in this region³ and are governed by ninety-eight municipalities⁴ and dozens of large special districts.⁵ Each of these counties, municipalities, and special districts has its own system of government, resulting in a balkanization of government authority that impedes the ability to solve

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1. The nine counties that uniformly are recognized as part of the Bay Area are Alameda, Contra Costa, Marin, Napa, San Mateo, San Francisco, Santa Clara, Solano, and Sonoma. *E.g.*, J. BOLLENS, *THE PROBLEM OF GOVERNMENT IN THE SAN FRANCISCO BAY REGION* ii-iv (1948) ("The concept of a nine-county region is accepted to a marked extent in the official and unofficial literature concerning local government in California.").

Stanislaus County, which is located east of Santa Clara County, recently has indicated that it would like to join the traditional nine Bay Area counties in attempting to solve regional problems related to growth. *Stanislaus County Says It Might as Well Join Bay Area*, San Francisco Chron., Feb. 28, 1990, at A1, col. 5.

2. Each of the nine Bay Area counties has the following land area in square miles: San Francisco, 46; San Mateo, 447; Santa Clara, 1293; Solano, 834; Sonoma, 1604; Marin, 523; Napa, 744; Alameda, 736; and Contra Costa, 730. *THE WORLD ALMANAC AND BOOK OF FACTS* 573 (1989).

3. The population of the nine-county region according to early 1990 census figures is 6,023,577. *Census Confirms Huge Jump in State Population*, San Francisco Examiner, Jan. 26, 1991, at A1, col. 5. This ranks the Bay Area as the fourth largest metropolitan area in the United States. *Bay Area to Top 6 Million During 1990*, San Francisco Chron., Feb. 14, 1990, at A2, col. 5. The top three American metropolitan areas are New York, with 18.1 million people, Los Angeles, with 13.7 million people, and Chicago, with 8.1 million people.

4. *Growth: A Chance to Recapture Planning Leadership*, San Francisco Chron., Oct. 26, 1989, at B2, col. 1; *Bay Area's Rough Road to Regional Government*, San Francisco Chron., Oct. 23, 1989, at A4, col. 1.

5. "Special Districts are defined as legally constituted governmental entities that are neither cities, counties or school districts. Special Districts have substantially the same general governmental powers as those shared by most other local governments under the State Constitution and State Statutes." 1986-1987 CAL. STATE CONTROLLER ANN. REPORT, FINANCIAL TRANSACTIONS CONCERNING SPECIAL DISTRICTS OF CAL. I-6 to -7 (1987).

For examples of special districts in the Bay Area, see *infra* notes 13, 16.

urban problems impacting the entire region. Modern urban problems are common to everyone who lives in the Bay Area. Examples include traffic, ineffective public transportation, growing mounds of garbage with decreasing availability of dump sights, air and water pollution, a lack of affordable housing, and a decreasing amount of open space.⁶

In an attempt to address some of these problems, Bay Area representatives formed Bay Vision 2020 on December 14, 1989.⁷ Bay Vision 2020 (the Commission) is a coalition of business, environmental, and local community leaders who were appointed by Bay Area political leaders.⁸ The Commission was given one year to study the urban problems facing the Bay Area, create a general vision for future development of the region, and recommend specific actions to address the problems.⁹ Because the Commission recognizes that no single present authority adequately can address problems that cross municipal and county borders, one of its goals was to examine the feasibility of creating a form of regional government. In its draft report, Bay Vision 2020 recommends that a temporary regional commission be created by merging several of the Bay Area's present single purpose agencies. The new regional commission would then have four years to prepare a Bay Area regional plan and design a permanent regional agency that could carry out the plan.¹⁰

The idea of regional government is not new to the Bay Area; the area has a long history of attempts to create a regional authority.¹¹ Despite the enthusiasm of their proponents, however, these attempts have failed, largely because of political obstacles.

Ira Heyman, former Chancellor at the University of California, Berkeley and Chairman of Bay Vision 2020, was an active proponent of forming a Bay Area regional government more than twenty years

6. See *Growth: A Chance to Recapture Planning Leadership*, San Francisco Chron., Oct. 26, 1989, at B2, col. 1.

7. *New Board for Bay Area to Seek Regional Answers*, San Francisco Chron., Dec. 15, 1989, at A1, col. 1.

8. The committee that appointed all 30 Commission members was composed of Santa Clara County Supervisor Ron Diridon, Oakland Mayor Lionel Wilson, Bay Area Air Quality Management District Chairwoman Shirley Campbell, Mill Valley City Councilwoman Kathleen Foote, San Mateo Supervisor Mary Griffin, and Association of Bay Area Governments President Warren Hopkins. *Id.*

9. *Id.* The Commission was faced with a difficult task in overcoming the "endless bickering between municipal and county politicians that has prevented the creation of a single plan for Bay Area growth." *Id.* The Commission, however, "has the collective weight to make waves, with members from key regional business, environmental and nonprofit organizations." *Id.*

10. Bay Vision 2020 Review Draft Report 14-18, Jan. 1991. The report recommends the merger initially of three agencies: the Bay Area Air Quality Management District, the Metropolitan Transportation Commission, and the voluntary agency, the Association of Bay Area Governments. Other agencies might be merged with the new super agency in the future. *Id.* at 14; see also *New Commission on Bay Area Future*, San Francisco Examiner, Dec. 15, 1989, at A4, col. 1.

11. See *infra* Part IA.

ago. In 1967, Heyman wrote that "a more formal metropolitan government is necessary for solving the more complicated problems in the San Francisco Bay Area."¹² Heyman noted that problems afflicting the Bay Area such as transportation, pollution, and waste disposal could not be solved by the single purpose special agencies that existed at the time.¹³ Instead, Heyman said that these problems "require treatment of the metropolitan area as an entity in order to maximize coordination, minimize municipal competition, and equalize financial capacities. Such treatment is possible only through a powerful regional government."¹⁴ Despite a population increase of 1.39 million people since 1970,¹⁵ the creation of a plethora of new agencies,¹⁶ and persistent problems of urban sprawl,¹⁷ no form of regional government exists today in the Bay Area.

12. Heyman, *Symposium: The San Francisco Bay Area—Regional Problems and Solutions*, 55 CALIF. L. REV. 695, 698 (1967).

13. *Id.* at 697-98. Heyman noted for example that there were "at least five separate and often warring" transportation agencies in the Bay Area. *Id.* By 1989, the Bay Area had as many as 23 transportation agencies, all of which compete for common state and federal transportation funds and many of which compete for passengers. See *Regional Transit Service Consolidation: Interim Hearing Before the Senate Committee on Transportation, State of California*, Dec. 16, 1988, at 2 [hereinafter *Regional Transit Service Consolidation Hearing*] (proposed California Senate bill to consolidate Bay Area transportation districts). The San Francisco Chronicle reported that as many as 28 separate transit agencies exist in the Bay Area. *Bay Transit Federation Proposed*, San Francisco Chron., June 14, 1990, at A1, col.1.

Examples of special districts in the Bay Area mentioned by Heyman include the Bay Area Rapid Transit District (BART), AC Transit, which deals with public transportation in Alameda and Contra Costa Counties, the San Francisco Bay Conservation and Development Commission (BCDC), the Bay Area Air Pollution and Control Board, the Regional Water Quality Control Board, the East Bay Municipal Utilities District (EBMUD), and the East Bay Regional Park District. Heyman, *supra* note 12, at 697-98.

14. Heyman, *supra* note 12, at 699.

15. The population of the nine-county region in 1970 was 4.63 million (discounting Santa Cruz). BUREAU OF THE CENSUS, U.S. DEPT. OF COMM., STATISTICAL ABSTRACT OF THE UNITED STATES (1989) [hereinafter *STATISTICAL ABSTRACT*]. This figure is based on the general concept of a metropolitan statistical area (MSA), which is defined as "a large population nucleus together with adjacent communities which have a high degree of social and economic integration with that nucleus." *Id.* at 3. The Bay Area is defined as a consolidated metropolitan statistical area (CMSA), the largest type of MSA unit and one that is reserved for "large metropolitan complexes." *Id.* Although Santa Cruz is considered part of the Bay Area CMSA, its population has been deleted from this figure because it is not part of the traditional nine-county region. See *supra* note 1.

The 1990 population for the nine-county region was 6,023,577, a net increase of 1.39 million. See *supra* note 3.

16. The number of transportation districts in the Bay Area increased from five in 1967 to between 17 and 23, depending upon which figures are used, in 1989. See *Regional Transit Service Consolidation Hearing, supra* note 13. In addition to transit districts, the following special agencies were created since 1967: BCDC, 1969 Cal. Stat. 1400-01 (codified at CAL GOV'T. CODE § 66620 (West 1983)); and the Metropolitan Transportation Commission (MTC), 1970 Cal. Stat. 1624-28 (codified at CAL. GOV'T CODE §§ 66500-66522 (West 1983)).

17. Urban sprawl generally is defined as uncontrolled urban growth and the resulting

The purpose of this Note is to examine the implications of creating a regional form of government for the Bay Area. After exploring the various forms of limited regional government that exist in cities such as Toronto and Minneapolis-St. Paul,¹⁸ this Note argues that a limited form of regional government for the Bay Area not only could be successful, but is required to solve any of the problems associated with urban sprawl.

Past efforts to create some form of regional government have failed due to political reasons. Despite its value, a regional government remains very unpopular to the general public and to existing municipalities. Regional government too often is viewed as another layer of bureaucracy that will require additional tax revenues.¹⁹ Further, municipalities and existing agencies regard regional government as a threat to their very existence.²⁰ These short-sighted viewpoints fail to recognize the significant advantages regional government has for a large metropolitan area such as the Bay Area.

The only way to circumvent these political hurdles is for the California Legislature to take strong, decisive action in creating a limited but effective form of regional government. This is not an issue that should be voted on by the general public. History in the Bay Area,²¹ as well as in other states,²² demonstrates that if such an issue were put to a vote, it would have virtually no chance of passing.

"unhappy consequences," including dissipation of open space, unnecessarily high costs for the extension of services and utilities, wasteful use of land, air pollution, and total reliance on the automobile without adequate provision of public transportation facilities. See STANFORD ENVIRONMENTAL LAW SOC'Y, A HANDBOOK FOR CONTROLLING LOCAL GROWTH 1 (1973).

18. See *infra* notes 175-225 and accompanying text.

19. See *New Regional Panel Told Its Task Is a Tough One*, San Francisco Chron., Jan. 30, 1990, at A3, col. 1.

20. *Id.*; see also Bruzzone, *De-Romanticizing Bay Area Regionalism*, San Francisco Chron., Feb. 15, 1990, at A29, col. 5 (criticizing regional government and mandatory regional planning and asserting that polls indicate the majority of Bay Area residents oppose regional authority over local decisions such as growth, land use, and housing development).

21. Several attempts at creating a regional form of government in the Bay Area were defeated by popular vote. See *infra* notes 29-50 and accompanying text.

BART was approved by a narrow margin in 1962, after the California Legislature reduced the voter approval requirement to 60% rather than the traditional two-thirds approval required in bond elections. The voters of the three-county district (Alameda, Contra Costa, and San Francisco counties) approved BART by 61.22%, although BART actually was defeated in Contra Costa County. R. GREFE & R. SMART, A HISTORY OF THE KEY DECISIONS IN THE DEVELOPMENT OF BAY AREA RAPID TRANSIT (BART) 56-59 (prepared by McDonald & Smart, Inc. for the U.S. Department of Transportation and U.S. Department of Housing and Urban Development, Sept. 1975, Doc. No. FR 3-14-75, revised by the Metropolitan Transportation Commission, Mar. 1976) [hereinafter KEY DECISIONS].

22. See J. HORAN & I. TAYLOR, EXPERIMENTS IN METROPOLITAN GOVERNMENT xiv-xviii (1977); M. MOGULOF, FIVE METROPOLITAN GOVERNMENTS 125-31 (1972).

Any legislative attempt to create a regional government will face a legal challenge under the home rule clause of the California Constitution.²³ The home rule doctrine preserves the right to self-determination for cities,²⁴ thereby granting cities freedom from state interference with regard to matters of "local concern."²⁵ Local matters include, for example, maintenance of streets, sidewalks, and parks; provision of police and fire departments; and local zoning laws.²⁶ Issues having an effect outside the borders of a city, however, are considered matters of "general" or "statewide" concern and are controlled by state law.²⁷ Thus, a regional government should survive a home rule challenge as long as it concentrates on issues that are truly regional in scope and does not attempt to expropriate from cities and counties the power to rule on local matters.²⁸

Part I of this Note describes the background of the Bay Area's past efforts to create a regional government. Part I also explores the urban problems facing the Bay Area, which arguably can be addressed effectively only by a regional form of government. Part II examines the various types of regional governments developed in other cities and suggests which form is most suitable for the Bay Area. Part III of this Note addresses the inevitable legal challenge that a regional government will face. Specifically, it analyzes how such a government can survive a challenge under the municipal home rule section of the California Constitution.

I. The Bay Area Region

To fully appreciate the need for a regional government in the Bay Area, it is important not only to understand the problems that plague the area today, but also to understand the problems that existed when past efforts were made to create a regional government. As these efforts failed and the region further developed, the urban problems facing the region intensified.

23. See CAL. CONST. art. XI, §§ 1-3, 5, 7-8, 11; see also 8 B. WITKIN, SUMMARY OF CALIFORNIA LAW § 799 (1988) (explaining doctrine of municipal home rule).

24. B. WITKIN, *supra* note 23, § 799. Counties also are given limited home rule protection under the California Constitution. See CAL. CONST. art. XI, §§ 1, 3-4. The protection of cities under home rule, however, is stronger than that of counties. See *id.* § 5(a). Cities, unlike counties, have "municipal affairs" protection. For a discussion of municipal affairs, see *infra* text accompanying notes 240-247.

25. B. WITKIN, *supra* note 23, § 799.

26. See *id.* §§ 799-803; see also *infra* note 272 and accompanying text (zoning traditionally has been considered a local matter).

27. B. WITKIN, *supra* note 23, § 800.

28. See *infra* Part III.

A. Past Efforts At Creating a Regional Government in the Bay Area

(1) Alameda County

Efforts at creating a regional government began as early as 1916 in the East Bay. The City and County Government Association, an organization created by the Tax Association of Alameda County, proposed that all of the cities of Alameda County be combined as boroughs into one large city.²⁹ The borough governments were to retain local powers such as maintenance of local police and fire departments, maintenance of streets and subsidiary sewer lines, and the power to make local ordinances.³⁰ Powers not given to the boroughs were to remain with the city-county government.³¹ Proponents believed that a consolidated government would be more efficient than ten separate municipalities and more effectively could address problems facing the growing region.³² Opponents of the plan, however, claimed that a new, all-powerful government would destroy the autonomy of their cities and even labeled it "un-American."³³ Each of the major newspapers in Oakland and Berkeley also strongly opposed the plan.³⁴ The proposal lost by a three-to-two vote of the Alameda County electorate in November 1921.³⁵

(2) San Francisco-San Mateo

While the East Bay was losing out in its quest for a regional government, another side of the Bay was experiencing a similar development. The population in San Francisco had swelled to 506,676 in 1920³⁶ and the city was rich with industry,³⁷ but the area was confined to only forty-two square miles.³⁸ With ample undeveloped land,³⁹ San Mateo

29. J. BOLLENS, *supra* note 1, at 65-66.

30. *Id.* at 66.

31. *Id.*

32. *Id.* at 67.

33. *Id.* at 68.

34. *Id.* at 67.

35. *Id.* at 69.

36. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, FOURTEENTH CENSUS OF THE UNITED STATES, 3 POPULATION 127 (1922) [hereinafter FOURTEENTH CENSUS].

37. J. BOLLENS, *supra* note 1, at 71.

38. FOURTEENTH CENSUS, *supra* note 36, at 95. The current land area of San Francisco is 46 square miles. THE WORLD ALMANAC AND BOOK OF FACTS 573 (1989). This difference can be attributed to landfill in San Francisco Bay, which has increased the land area of the City. For a thorough discussion of bay fill in San Francisco, see G. DOW, BAY FILL IN SAN FRANCISCO: A HISTORY OF CHANGE (1973).

39. See J. BOLLENS, *supra* note 1, at 71. The land area of San Mateo County in 1920 was 447 square miles. FOURTEENTH CENSUS, *supra* note 36, at 96.

County had the opposite problem: its small municipalities were unable to provide adequate services for their populations.⁴⁰ San Francisco needed space to continue growing; San Mateo needed improved municipal services. Some political leaders saw an ideal match.

Numerous proposals were brought forward for consolidating all or part of San Mateo County with the City and County of San Francisco.⁴¹ The peak of this activity occurred between 1928 and 1932.⁴² One of the plans envisioned unified transportation system, including rapid transit, which would allow people to reside in San Mateo and commute to work into San Francisco.⁴³ San Francisco would be able to provide the necessary water, power, industrial, and port development resources.⁴⁴

An extensive study completed by the San Francisco Bureau of Government Research provided the arguments for a more efficient government and for better and cheaper services for the residents of San Mateo County.⁴⁵ Most San Mateo residents, however, opposed consolidation.⁴⁶ One commentator noted that the arguments against consolidation were largely emotional, based on the fear that San Mateo would lose its autonomy to San Francisco.⁴⁷ The vote for consolidation never reached the polls. Instead, San Mateo voted itself a new county charter, effectively killing any hope for consolidation.⁴⁸ A few more attempts at consolidation were made during the mid-forties, but each time the issue came up, opposition formed and the idea again was shelved.⁴⁹ Although San Francisco supported the idea of consolidation, it could never overcome the political opposition generated in San Mateo County.⁵⁰

(3) *Bay Area Rapid Transit District*

The next major attempt to create a regional agency in the Bay Area began when the California Legislature passed the San Francisco Bay

40. J. BOLLENS, *supra* note 1, at 71.

41. *Id.* at 70-94.

42. *Id.* at 82-92.

43. *Id.* at 74, 76.

44. *Id.* at 74-77.

45. *Id.* at 77-82.

46. *Id.* at 91-92.

47. *Id.* at 92.

48. *Id.* at 89.

49. *Id.* at 92-94.

50. *Id.* at 94. There is no way of knowing whether such a proposal would succeed today, but after the growth of the past few decades such a merger would do little to address the region's problems.

Area Metropolitan Rapid Transit District Act in 1949.⁵¹ This act provided the legal framework for developing a transit system traversing the entire nine-county Bay Area. In 1951 a Bay Area Rapid Transit Commission (BART Commission) was formed to begin planning a rail system.⁵² After studying the transportation situation for several years, the BART Commission released a preliminary report recommending development of a rapid transit system that would include all nine counties.⁵³

The BART Commission then hired a New York engineering firm to design a complete Bay Area transit system. In 1956 the BART Commission released the engineering report, recommending a rapid transit system that ultimately would circumnavigate San Francisco Bay and reach all nine counties.⁵⁴ The system was to be built in three separate stages; the first stage was to include construction in San Francisco, San Mateo, Marin, and parts of Alameda and Contra Costa counties.⁵⁵ One member of the BART Commission, Marvin Lewis, said that creation of a borough system of government for the entire Bay Area would be studied as one way to successfully implement the new transit system.⁵⁶ Although Lewis did not specify how such a borough system would operate in the Bay Area, he noted that "[e]veryone agrees we need some sort of regional organization to handle our regional problems."⁵⁷

After reviewing this report the California Legislature quickly passed a bill creating the Bay Area Rapid Transit District, which included San Francisco, Alameda, Contra Costa, Marin, and San Mateo counties, and providing that Santa Clara, Napa, Solano, and Sonoma counties would join later.⁵⁸ The bill allowed a county to withdraw from the system by a vote of its board of supervisors.⁵⁹ This procedural provision

51. San Francisco Bay Area Metropolitan Rapid Transit District Act, 1949 Cal. Stat. 2173.

52. San Francisco Bay Area Metropolitan Rapid Transit District Act, 1951 Cal. Stat. 4187.

53. Griffith & Holmes, *BART and the Victoria Line: A Comparison of New Commuter Transport in California and London*, 55 CALIF. L. REV. 780, 784-86 (1967).

54. *SF-Oakland Tube Key to Six-County Plan, Urged as Bar to Traffic Strangulation*, San Francisco Chron., Jan. 6, 1956, at 1, col. 1.

55. The report recommended that the first stage be built by 1962, including a line down the San Mateo Peninsula extending as far south as Palo Alto and a line on the east side of the Bay extending as far south as Decoto (presently Union City). The first stage also would include a line extending north into Marin County and lines extending to Richmond and Concord in the East Bay. The second stage would be built by 1970 and would connect the Decoto and Palo Alto lines in San Jose; it also would provide further extensions into Santa Clara, Sonoma, Napa, and Contra Costa Counties. A third stage was to be built by 1990 and would include further extensions into Napa, Sonoma, and Solano counties. *Id.* at 8-9.

56. *Borough System Suggested for Bay Area Rapid Transit*, San Francisco Chron., Apr. 24, 1956, at 2, col. 1.

57. *Id.*

58. San Francisco Bay Area Rapid Transit District Act, 1957 Cal. Stat. 2290 (codified at CAL. PUB. UTIL. CODE §§ 28500-29757 (West 1983)).

59. *Id.* at 2335.

proved fatal to the attempt to ensure participation by all nine counties. If membership had been mandatory, today BART would be the truly regional transit system once envisioned.

Santa Clara County asked the legislature to exclude it from the BART District, claiming that it would not benefit from the system for many years and did not want to suffer a higher tax rate in the interim.⁶⁰ Powerful lobbying by manufacturing and agricultural interests opposed to increased taxes was instrumental in mounting opposition to BART in Santa Clara County.⁶¹

San Mateo was the second county to withdraw from BART, largely for political reasons.⁶² The sentiment in the county was that BART was designed to promote the development of San Francisco as an economic center and that San Mateo would become a bedroom community.⁶³ San Mateo politicians and developers opposed this idea; they were interested in developing San Mateo both as a retail and industrial center and as a residential community.⁶⁴ San Mateo also was bothered by the fact that many Santa Clara County residents would use BART; its termination point would be Palo Alto, on the Santa Clara border, yet San Mateo taxpayers would be paying for its construction.⁶⁵ A higher tax rate also would put San Mateo County at a competitive disadvantage to Santa Clara County. Real estate developers who feared that businesses would be driven to Santa Clara "made it clear that supervisors with further political ambitions should not favor BART's plans."⁶⁶ Southern Pacific Railroad also influenced San Mateo supervisors to vote against BART. Southern Pacific, which operated a passenger rail line from San Francisco to San Jose, feared that it would be forced to operate the remaining Santa Clara County portion of the line at a significant loss.⁶⁷

Finally, Marin County withdrew from BART in 1962,⁶⁸ following more political haggling that continues to this day. BART planned to run trains over the Golden Gate Bridge on a new deck built exclusively for the trains, which BART engineers concluded was feasible.⁶⁹ But the

60. See KEY DECISIONS, *supra* note 21, at 35. The Santa Clara portion of the system was not scheduled to be constructed until the second stage of construction, approximately eight years after completion of the first stage. See *supra* note 55.

61. KEY DECISIONS, *supra* note 21, at 36.

62. *Id.* San Mateo County seceded from BART in 1961. *Id.*

63. *Id.* at 37.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 38. One of the San Mateo County supervisors was a retired Southern Pacific vice president. *Id.*

68. *Id.*

69. *Id.* at 39.

Golden Gate Bridge and Highway District (GGBHD), a public agency that controls the bridge, intended to build a second deck for automobiles and viewed BART as a threat to its political autonomy.⁷⁰ The GGBHD discounted a BART engineering study which concluded that the bridge could structurally support BART trains, and instead it retained its own engineers who reached the opposite conclusion.⁷¹ One San Francisco newspaper charged the GGBHD with doctoring its engineering report by omitting information that would establish the bridge as structurally able to support trains.⁷² A second engineering report later confirmed that the bridge could not structurally support the trains.⁷³ This report also received substantial criticism, particularly from BART directors representing Marin County.⁷⁴ Several BART directors suggested that the GGBHD be disbanded and the bridge be placed under the same state authority that controlled the other toll bridges in the Bay Area.⁷⁵ Faced with the unresolved bridge-train dispute and financially infeasible alternatives, the Marin County supervisors voted to withdraw from BART.⁷⁶

With technological and engineering advances such as the availability of lighter weight roadbed as well as lighter trains, it is likely that the bridge could accommodate trains today.⁷⁷ But the independent authority of the GGBHD still presents difficulties. Although a large majority of residents from Marin County and the entire Bay Area favor extending BART into Marin County,⁷⁸ Marin County supervisors who also serve on the GGBHD have refused to adopt such a plan.⁷⁹ Despite the views of his own constituents, the president of the GGBHD appears particularly hostile to BART, stating that "BART still thinks of San Francisco and the East Bay as being the ultimate destination of every person on the face of the Earth."⁸⁰

70. *Id.*

71. *Id.*

72. *Strauss' OK on Trains Omitted*, San Francisco News-Call Bulletin, Oct. 5, 1961, at 1, col. 6.

73. *Engineers Reject Gate Span Trains*, San Francisco Chron., Apr. 13, 1962, at 1, col. 6.

74. KEY DECISIONS, *supra* note 21, at 40.

75. *Id.*

76. *Id.*

77. *How Trains Would Place Strain on the Bridge*, San Francisco Chron., Jan. 17, 1989, at A4, col. 1.

78. *Bay Area Wants New Bay Bridge, BART Extension*, San Francisco Chron., July 19, 1989, at A1, col. 5.

79. *Marin Supervisor Spurns BART Plans*, San Francisco Chron., July 7, 1989, at A3, col. 4.

80. *Id.* (statement of Robert Stockwell, who at the time was chairman of the Marin County Board of Supervisors in addition to serving as president of the GGBHD).

These supervisors instead favor creating a new transit system between Marin and Sonoma counties consisting of light rail or diesel-powered trains.⁸¹ One plan calls for a line from Santa Rosa in Sonoma County to Larkspur in Marin County.⁸² Passengers travelling to San Francisco would be forced to transfer to a ferry in Larkspur. If the final destination of these passengers were not in the immediate vicinity of the ferry terminal in San Francisco, they would have to transfer to another line in San Francisco. Passengers travelling between Marin County and the East Bay or San Mateo County conceivably could take four or five different transit lines to reach their final destination.⁸³ One regional transportation agency could avoid such an inefficient fragmented public transportation system.

The regional transportation system serving the entire Bay Area, envisioned in 1956, has never come close to being realized. Today, eighteen years after BART first began operating, it still serves only parts of three of the nine Bay Area counties and not a single extension has been added.⁸⁴

(4) *Bay Conservation and Development Commission*

Unlike the attempts to create a more limited form of regional agency or government, the idea of a true Bay Area-wide regional government became very popular in the mid-sixties. Encroachment on San Francisco Bay was a major impetus for this interest. In 1850 the Bay covered approximately 680 square miles; by 1960 it covered only 430 square miles as a result of landfill and diking.⁸⁵ A study completed by the Army Corps of Engineers in 1959 determined that if landfill continued at the

81. *Id.*

82. *Id.*

83. For example, people travelling from Marin County to San Francisco International Airport first would take a Marin-Sonoma line to Larkspur, where they would transfer to the ferry. Upon arriving in San Francisco, they would transfer to a Municipal Railway bus line, which would take them to a BART or Caltrain Station to take them to the airport. *Cf. New Regional Spirit Springs up in Bay Area*, San Francisco Chron., Feb. 8, 1989, at A4, col. 1 (commuter from Vallejo to San Francisco spends two hours commuting in each direction over four different transit lines).

The voters of both Marin and Sonoma Counties recently rejected a proposed sales tax increase that would finance a light rail line in those counties. *Marin Voters Tounce Transit Plan*, San Francisco Chron., Nov. 7, 1990, at A10, col. 1.

84. *But see Agreement to Extend BART to Airport Officially Signed*, San Francisco Chron., Mar. 2, 1990, at A2, col. 1. (San Mateo County has joined the BART district, and an extension to San Francisco International Airport from Daly City has been approved, to be completed in 2001. Two extensions in the East Bay also have been approved. *Id.*)

85. Baum, *San Francisco Bay Conservation and Development Commission*, 5 LINCOLN L. REV. 98, 102 (1970).

rate of filling that occurred between 1940 and 1957, the Bay would be reduced to a mere channel within 100 years.⁸⁶ In 1965 the McAteer-Petris Act was passed by the California Legislature, creating the San Francisco Bay Conservation and Development Commission (BCDC).⁸⁷ The BCDC was given four years to form a comprehensive plan for conservation of the Bay⁸⁸ and the power to regulate all Bay filling during this period.⁸⁹

The BCDC recommended creating "a multi-purpose limited regional government, concerned with other regional matters in addition to the Bay."⁹⁰ The BCDC armed itself with a study showing that a regional government could effectively protect the Bay and also be responsible for solid waste disposal, acquisition and operation of regional parks and open space, air and water pollution control, and the satisfaction of the entire region's transportation needs.⁹¹ The authors of the study believed that since "most problems affecting the Bay do not stop at the water's edge (e.g. ports, airports, freeway routes, industrial sites), a multi-purpose agency could do a better job of coordinating and accommodating competing uses" while avoiding further fragmentation of the Bay Area with yet another special purpose district.⁹² As an alternative to creating a regional government, the BCDC recommended that it become a special purpose agency with authority over all landfill and development on the Bay.⁹³ The California Legislature chose this latter course.⁹⁴

(5) *Multipurpose Regional Government*

Although the California Legislature chose not to create a regional government for the Bay Area in 1969, it had studied the feasibility of

86. Berke, *San Francisco Bay: A Successful Case of Coastal Zone Planning Legislation and Implementation*, 15 URB. L. 487, 490 (1983).

87. 1965 Cal. Stat. 2940 (codified as amended at CAL. GOV'T CODE §§ 66600-66607 (West 1983 & Supp. 1985)).

88. 1965 Cal. Stat. 2946 (codified at CAL. GOV'T CODE §§ 66630-66631 (West 1983 & Supp. 1991)). The California Legislature amended this statute in 1969 when the BCDC became permanent. 1969 Cal. Stat. 1395.

89. 1965 Cal. Stat. 2943 (codified as amended at CAL. GOV'T CODE § 66632 (West 1983 & Supp. 1991)).

90. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION, SAN FRANCISCO BAY PLAN 35 (1969) [hereinafter SAN FRANCISCO BAY PLAN].

91. S. SCOTT & J. BOLLENS, GOVERNMENT: REGIONAL ORGANIZATION FOR BAY CONSERVATION AND DEVELOPMENT 2 (included in the Supplement to SAN FRANCISCO BAY PLAN, *supra* note 90, at 501, 504).

92. *Id.*

93. *Id.*

94. See *supra* note 16.

regional government. In 1967 the legislature formed a Joint Committee on Bay Area Regional Organization.⁹⁵ In 1967 and 1968 the Joint Committee held public meetings in the nine Bay Area counties during which local government representatives and community members presented their views.⁹⁶ In addition, the Joint Committee conducted three hearings at which it sought expert commentary regarding the specific legal and structural requirements of a regional government.⁹⁷ After hearing from hundreds of witnesses, the Joint Committee summarized its findings. There was support for some type of regional control in the areas of air pollution, water quality, solid waste disposal, parks and open space, Bay conservation, and transportation, including bridges and roads.⁹⁸

Despite the findings of the Joint Committee and the realization by many community leaders that regional control was needed, the legislature accomplished nothing. Assemblyman John Knox of Richmond, chairman of the Joint Committee, introduced several pieces of legislation between 1969 and 1974 that sought to create a limited regional government, but none of these bills made it to the governor's desk.⁹⁹

The 1974 bill provides an example of the strong opposition this legislative effort encountered. The bill called for creating a new planning agency for the Bay Area which would take over the responsibilities of the voluntary planning agency, the Association of Bay Area Governments (ABAG).¹⁰⁰ The new agency ultimately would become the governing board of several Bay Area special purpose districts, including the Metropolitan Transportation Commission, and the Bay Area Sewage Services Agency, the San Francisco Bay Conservation and Development Commission, and the Bay Area Air Pollution Control District.¹⁰¹ The bill would not have affected independent transportation districts such as BART or the many other Bay Area special purpose districts. The agency would have had the power to review and comment upon

95. *California Legislature, Joint Committee on Bay Area Regional Organization: Public Hearings, A Summary* iii (1968) [hereinafter *Joint Committee Public Hearings*].

96. *Id.*

97. *Id.*

98. *Id.* at 3-18.

99. A.B. 711, Cal. Legis., Reg. Sess., Final Calendar of Legis. Business, Assembly Final History, Part 2, at 242 (1969); A.B. 1057, Cal. Legis., Reg. Sess. (1971) (as amended by the senate on Oct. 13, 1971); A.B. 220, Cal. Legis., Reg. Sess., Final Calendar of Legislative Business, Assembly Final History, Part 2, at 138 (1972); A.B. 2040, Cal. Legis. Reg. Sess. (1974) (as amended by senate on Aug. 5, 1974); *California State Legislature, Senate Local Government Committee, Hearing on A.B. 2040—Bay Area Regional Planning Agency*, May 17, 1974, San Francisco [hereinafter *Hearing on A.B. 2040*]; see also Marks & Taber, *Prospects for Regional Planning in California*, 4 PAC. L.J. 117, 136 (1973) (discussion of A.B. 1057, introduced in 1971).

100. A.B. 2040, Cal. Legis. Reg. Sess., *supra* note 99, at 3.

101. *Id.* at 35 (Article 12).

any application by a city, county, or special district for state or federal funds for any project that might have a regional impact.¹⁰² In this manner the agency would assume a planning role for the Bay Area.

Despite the bill's relatively innocuous provisions, it met significant political resistance from cities, counties, special purpose districts, and other groups opposed to another layer of government.¹⁰³ The bill passed the assembly in 1974, but the state senate defeated it with the help of southern California senators who were concerned that such an agency would become a model for Los Angeles and San Diego, something to which they were strongly opposed.¹⁰⁴ The defeat of Knox's latest bill was the end of "regionalism" in the Bay Area for the next fourteen years.¹⁰⁵

B. Urban Problems Facing the Bay Area that Only a Metropolitan Form of Government Can Address Effectively

Every large urban area has its share of problems. What makes the Bay Area unique is not the large number of municipalities, but the fragmentation of authority among so many different districts and agencies.¹⁰⁶ Though it is beyond the scope of this Note to cover every urban problem that needs addressing, regional government could go a long way toward solving problems in the following areas of particular importance: transportation, land use planning, water supply, and disposal of liquid and solid waste.

(1) Transportation

The state of the Bay Area's public transportation system today is dismal. The existing problems result from twenty years of repeated failure to implement proposals for improving public transit. In 1970 the

102. *Id.* at 27-28.

103. See *Hearing on A.B. 2040*, *supra* note 99. The following people spoke in opposition to A.B. 2040: Joseph C. Houghteling, BCDC, *id.* at 10-15; Theresa Dietrich, American Independent Party, *id.* at 44-45; Tim Leslie, County Supervisors Association of California, *id.* at 45-65; John Tuteur, Supervisor, Napa County, *id.* at 108-13; Richard Brann, Supervisor, Solano County, *id.* at 114-16; Dorothea Keener, No Bay Area Government Committee, *id.* at 157-61; Billie Bowles, California Republican Assembly, *id.* at 161-82; James Groom, President, Sonoma County Taxpayers Association, *id.* at 184-90.

104. See *Senate Kills Bill for Bay Superagency*, San Francisco Chron., Sept. 13, 1975, at 2, col. 6; see also *New Regional Spirit Springs Up in Bay Area*, San Francisco Chron., Feb. 8, 1989, at A4, col. 1 (regionalism is back for the first time since southern California legislatures defeated bill in the seventies).

105. *New Regional Spirit Springs Up in Bay Area*, San Francisco Chron., Feb. 8, 1989, at A4, col. 1.

106. For a partial list of Bay Area agencies, see *supra* notes 13, 16.

state legislature created the Metropolitan Transportation Commission (MTC) to provide "comprehensive regional transportation planning" for each of the nine Bay Area counties.¹⁰⁷ The MTC's first task was preparing a comprehensive regional transportation plan by 1973.¹⁰⁸ The MTC plan proposed a number of improvements for Bay Area public transit, which the MTC considered important for creating an effective regional transit system. These improvements included the following:

(1) Creating a rapid transit system on the Geary Corridor in San Francisco¹⁰⁹ (the report stressed that a San Francisco Municipal Railway "Metro" light rail system would be preferred to a BART system);

(2) Creating a rapid transit system between Marin County and San Francisco, either by having trains travel through an underwater tube between the two counties, or by having trains travel along the Geary Corridor of San Francisco and then transferring passengers to buses that would cross the Golden Gate Bridge;

(3) Extending BART to San Francisco International Airport and eventually down the San Mateo corridor to San Jose;

(4) Improving the Southern Pacific Commuter Service between San Jose and San Francisco to a level at which the service could become an integral part of a regional transportation system.¹¹⁰

None of these five goals has been met. Despite extensive discussion, with the exception of the recently approved BART extension to San Francisco International Airport,¹¹¹ there have been no attempts to implement them.¹¹²

107. See CAL. GOV'T CODE § 66502 (West 1983 & Supp. 1990).

108. See METROPOLITAN TRANSPORTATION COMMISSION, REGIONAL TRANSPORTATION PLAN FOR THE SAN FRANCISCO BAY AREA (June 27, 1973, revised Aug. 28, 1974) [hereinafter REGIONAL TRANSPORTATION PLAN].

109. Geary Boulevard is a major thoroughfare extending east-west between downtown San Francisco and the Pacific Ocean. Although the San Francisco Municipal Railway's "Metro" light-rail system extends between downtown San Francisco and other parts of the city, there is currently no Muni-Metro rail line on the Geary Corridor. Recent plans have been proposed to extend a rail line on Geary Boulevard. *What A Boost in S.F. Sales Tax Would Do for Public Transit*, San Francisco Chron., Oct. 16, 1989, at A6, col. 1.

110. REGIONAL TRANSPORTATION PLAN, *supra* note 108, at 57-65.

111. See *supra* note 84.

112. See *supra* notes 68-80 and accompanying text (regarding proposed rapid transit between San Francisco and Marin); see also *Funds OK'd to Extend Cal Train in S.F.*, San Francisco Examiner, Sept. 20, 1990, at A1, col. 6 (regarding a proposed extension of CalTrain into the Financial District of San Francisco); *What A Boost in S.F. Sales Tax Would Do For Public Transit*, San Francisco Chron., Oct. 16, 1989, at A6, col.1 (regarding a proposal to construct a Muni-Metro extension on the Geary Corridor); *BART Director Urges Phased-in Marin Extension*, San Francisco Chron., Sept. 9, 1989, at A2, col. 3 (noting it would cost \$3 billion for an underwater tube between Marin and San Francisco for BART trains and that it would be built in stages); *Bart Extension to Marin Might Cost \$3 Billion*, San Francisco Chron., Aug. 31, 1989, at A5, col. 1 (engineering consultants estimating that new extension would cost more than \$3 billion).

Furthermore, the proposals often faced political barriers. For example, when BART proposed developing a plan to extend to Marin County, the GGBHD and the Marin County supervisors suggested that they were not interested in BART and could take care of their own transportation problems.¹¹³ When State Senator Quentin Kopp suggested that a train line should be constructed between San Francisco and Santa Rosa and that the GGBHD should be run by the state agency that runs other Bay Area bridges, one GGBHD member suggested that transit in Marin and Sonoma counties was not the concern of a San Francisco senator.¹¹⁴ When BART proposed building a station within its own district it ran into other political problems. Upon discovering that BART might build a station in the East Bay town of Hercules, a group of Hercules residents protested, fearing that the station would adversely affect Hercules' growth pattern. The Hercules City Council threatened to sue BART.¹¹⁵ Because Hercules also is served by AC Transit and because there was some doubt whether BART was necessary to serve the needs of Hercules alone, BART decided not to carry out its plans.¹¹⁶

A single agency with the authority to plan an efficient transportation system for the entire region could deal more effectively with political fighting that now occurs between transit agencies and local governments. Counties and municipalities might challenge the regional agency's plans, but they would be unable to block implementation of transit improvements as long as the agency established that its proposals were necessary for the entire region. A town such as Hercules would be unable to use a separate transit agency, such as AC Transit, as leverage to prevent a rapid transit station from being constructed. The California Legislature has made efforts to try to consolidate at least some of the region's many transit districts to form a more efficient system.¹¹⁷ These efforts have failed.

(2) *Land Use*

Combining the Bay Area's transportation systems into one regional agency is not enough if that agency does not have some control over physical planning in the region. To plan an efficient transportation sys-

113. See *supra* notes 68-80 and accompanying text.

114. See *Kopp Proposes Transit System for North Bay*, San Francisco Chron., Jan. 14, 1989, at A4, col. 3 (statement of Robert Stockwell, a GGBHD member and Marin County Supervisor).

115. *Bay Area 'Turf Wars' Stymie Regional Planning*, San Francisco Chron., Feb. 9, 1989, at A1, col. 1.

116. *Id.*

117. See *Regional Transit Service Consolidation Hearing*, *supra* note 13.

tem, it is necessary to know in what direction high concentrations of people will be traveling. An example of how flawed land use planning can interfere with an efficient transportation system is demonstrated by the mammoth office complexes built over the past decade in the San Ramon Valley or Interstate 680 Corridor, located in the East Bay counties of Alameda and Contra Costa.¹¹⁸ Two complexes in particular, Bishop Ranch in San Ramon and Hacienda Business Park in Pleasanton, have brought tens of thousands of daily commuters into an area that fifteen years ago was nothing more than a quiet suburban town.¹¹⁹ As a result there is virtually no public transportation to serve these complexes, which were designed to accommodate automobiles.¹²⁰ Tremendous traffic congestion clogs the Interstate 680 Corridor every morning and evening, an obvious result of too many cars on roads not designed for their numbers.¹²¹ Many drivers are lower-income office workers who were transferred from central city offices in San Francisco.¹²² The San Ramon Valley is an upper-middle-class, low density community without affordable housing,¹²³ forcing many of these workers to drive very long distances from areas where affordable housing is available.¹²⁴

Such development results in greater overall commute time, increased air pollution, and worse urban sprawl.¹²⁵ If one agency in charge of transit for the Bay Area also had some control over land use development, it could plan for suburban work communities. Public transportation could be built to connect the work community with surrounding population centers, thereby providing a mass transit alternative to cars and shortening commute time. Furthermore, development could be more dense, allowing more businesses to locate in a smaller area and making public transportation to the area more efficient. Additional affordable housing, including apartment buildings, could be built in the vicinity

118. This region extends from Walnut Creek, where Interstate 680 intersects with State Highway 24, south to Interstate 580 in Pleasanton. See Danner, *Bishop Ranch, then Hacienda Turned I-680 into a Job Center*, San Francisco Business Times, Oct. 19, 1987, § 1, at 29.

119. *Id.*; see also SENATE URBAN GROWTH POLICY PROJECT, DOES CALIFORNIA NEED A POLICY TO MANAGE URBAN GROWTH? 24-27 (1989) (the migration of companies from center cities to suburban office parks such as Bishop Ranch and Hacienda Business Park has contributed to urban sprawl).

120. See Sweeney, *Commuting Woes Plague Contra Costa County*, The Business Journal-San Jose, Apr. 20, 1987, § 2, at 3 [hereinafter *Commuting Woes*]; Sweeney, *Contra Costa Corridor: A Growing Problem?*, SAN FRANCISCO BUS., Sept. 1986, at 6 [hereinafter *Contra Costa Corridor*].

121. See *Commuting Woes*, *supra* note 120, at 3; *Contra Costa Corridor*, *supra* note 120, at 6.

122. See *Commuting Woes*, *supra* note 120, at 3.

123. *Id.*

124. *Id.*

125. See *id.*

of the business parks, allowing more people to live closer to their jobs and decreasing the number of commuters.¹²⁶

Large office complexes are not the only types of developments that lead to urban sprawl. New housing sub-divisions, shopping centers, airport expansions, entertainment centers, and other types of large developments that attract a large number of people all have a regional effect. A regional government must have some level of control over these types of developments or its efforts to plan for the region will be futile.

(3) *Water Supply*

Other problem areas for the Bay Area and its balkanized government concern the disposition of water, garbage, and raw sewage. The regional impact of a recent drought has brought management of the area's water supply to the forefront of regional concerns.¹²⁷ The drought does not affect all Bay Area residents equally. The severity of water rationing in the Bay Area ranges from drastic in Marin County,¹²⁸ to severe in San Francisco and Santa Clara Counties,¹²⁹ to mild in Alameda and Napa Counties.¹³⁰ Still other locations such as Sonoma County have not imposed any rationing.¹³¹ Furthermore, until this past year, southern California was not nearly as adversely affected by the present drought as the Bay Area,¹³² an ironic result in light of the fact that southern California imports a large portion of its water from northern California.¹³³

126. Bay Area Council policy analyst Thomas Cook suggested that the best way to correct congested highways is to build affordable housing, particularly apartment buildings. *Id.*

127. See *Bay Area Drought Plans Are Dusted Off*, San Francisco Chron., Jan. 24, 1990, at A1, col. 1.

128. *Marin Water Board OKs 50 Gallons-a-Day Ration*, San Francisco Chron., Feb. 8 1991, at A3, col.1.

129. *City Water Rationing: No More Nice Guys*, San Francisco Examiner, Feb. 25, 1991, at A4, col. 1.

130. See *Wilson Orders Water Reduced for All*, San Francisco Examiner, Feb. 15, 1991, at A1, Col.1.

131. *Id.* But see *Severe Water Rationing OKd for S.F.*, San Francisco Chron., Feb. 27, 1991, at A1, col. 1 (Sonoma County calls for voluntary 15% rationing even though it has abundant supplies of water, mainly to fend off any state move to impose tough drought measures on it).

132. *No Drought Down South*, San Francisco Chron., Mar. 16, 1989, at A34, col. 1; *Bay Area to Buy Water from Southern California*, San Francisco Chron., Feb. 24, 1989, at A1, col. 1; *Why Bay Area is Short of Water and Southern California Isn't*, San Francisco Chron., Apr. 25, 1988, at A1, col. 1; see also *Making Water History*, L.A. Times, Mar. 3, 1989, pt. 2, at 6, col. 1 (Metropolitan Water District of southern California to sell water to Bay Area districts). But see *Big Southern California Water Cutback*, San Francisco Chron., Feb. 13, 1991, at A1, col.4 (southern California now facing water rationing during this fifth year of drought).

133. *Every Drop Matters*, L.A. Times, Mar. 20, 1989, pt. 2, at 4, col. 1 (Library ed.).

Greater Los Angeles and San Diego have much of their water supplies coordinated by one water district,¹³⁴ while the Bay Area, a much smaller region, divides its water responsibilities among several different water agencies.¹³⁵ One large district is better able to coordinate water supplies. Because a large district needs to plan for a much larger number of people, it receives its water from several different sources.¹³⁶ Thus, if one particular source is having a dry year, water from other sources will continue to provide all customers with an adequate water supply.¹³⁷ If more than one source is having a dry year, the district can impose uniform rationing restrictions on its customers. In the Bay Area if a district's water source is having an extremely dry year, it must impose rationing and possibly make expensive water purchases from other districts.¹³⁸

(4) *Disposal of Liquid and Solid Waste*

The waste disposal and raw sewage conditions also are worsening as the Bay Area grows. Almost every county either has exhausted or

134. The Metropolitan Water District in southern California controls all water for the multicounty Los Angeles Basin, as well as for San Diego County. W. CROUCH, J. BOLLENS & S. SCOTT, *CALIFORNIA GOVERNMENT AND POLITICS* 258-59 (1977). The Metropolitan Water District currently serves more than 14 million customers. *Every Drop Matters*, L.A. Times, Mar. 20, 1989, pt. 2, at 4, col. 1 (Library ed.).

135. The Bay Area water departments are the following: The San Francisco Water Department, which serves San Francisco, San Mateo, and parts of Santa Clara and Alameda counties; EBMUD, which serves the rest of Alameda and parts of Contra Costa counties; the Santa Clara County Valley Water District, which serves all of the South Bay not served by the San Francisco Water Department; the Marin Municipal Water District, which serves Marin County; and the county water departments of Contra Costa, Sonoma, Solano, and Napa. See W. CROUCH, J. BOLLENS & S. SCOTT, *supra* note 134, at 258-59; *Bay Area Drought Plans are Dusted Off*, San Francisco Chron., Jan. 24, 1990, at A1, col. 1.

136. The Metropolitan Water District currently acquires its water from four different sources: the Colorado River; the Owens Valley and Mono Lake in the eastern Sierra range; the State Water Project (through the Sacramento River and Sacramento Delta); and from the Federal Central Valley Project, which takes water from several Sierra rivers. *If Drought Continues, Scenarios Run From Benign to Apocalyptic*, L.A. Times, July 29, 1990, at A1, col. 5. The San Francisco Water Department gets 85% of its water supply from the Hetch Hetchy Reservoir in Yosemite National Park. *Bay Area Drought Plans Are Dusted Off*, San Francisco Chron., Jan. 24, 1990, at A1, col. 1. The Marin Municipal Water District depends on local rainfall for its water supply. *Id.*

137. In 1989, for example, while the Bay Area suffered through continuing drought, the Metropolitan Water District in southern California had an ample supply of water because the Colorado River was having a particularly wet year. *Every Drop Matters*, L.A. Times, Mar. 20, 1989, pt. 2, at 4, col. 1 (Library ed.).

138. *Bay Area Drought Plans Are Dusted Off*, San Francisco Chron., Jan. 24, 1990, at A1, col. 1; see also *State Hopes to Buy Yuba River Water to Help Relieve Drought*, L.A. Times, Mar. 15, 1989, pt. 1, at 3, col. 4 Valley ed. (several Bay Area water districts plan to purchase water through the state from Yuba County, which has excess supplies).

almost exhausted its available dump site for solid waste.¹³⁹ Meanwhile, cities are dumping unsatisfactorily treated sewage into the Bay, rivers, and other tributaries, affecting the drinking water of other communities.¹⁴⁰ Despite repeated calls to address these problems on a regional scale,¹⁴¹ counties and municipalities continue to seek short-term solutions. Furthermore, the Bay Area is without a uniform recycling plan.¹⁴² Materials meant to be recycled often end up at dumping sites because there is no coordinated effort to market recycled materials.¹⁴³

A regional government is needed to locate available dumping sites for the entire Bay Area, to develop an incinerator if necessary, and perhaps most importantly, to implement a uniform Bay Area recycling plan that will include every city and county in the region. Simultaneously, a regional government could establish a sewage plan for the entire area, set minimum standards for treatment before dumping, and determine where treated sewage should be disposed. Planning powers would enable this regional government to increase sewer capacity prior to development of less populated areas to end the common practice of overloading the capacity of present sewer systems.¹⁴⁴

As the Bay Area approaches the twenty-first century, it still is without a true regional government that can address adequately region-wide urban problems. This result is not because Bay Area citizens have lacked vision. Numerous attempts were made throughout the twentieth century to create a regional government,¹⁴⁵ multipurpose regional agencies,¹⁴⁶ and a unified Bay Area transportation system,¹⁴⁷ but each of these efforts failed. The executive director of the Association of Bay Area Governments, Revan Tranter, said in 1984, "The San Francisco Bay Area can boast of a remarkable record in the art of planning—that is identifying a problem and proposing possible solutions. Unfortunately it

139. *A Standoff Between Trash and Trout*, San Francisco Chron., Dec. 18, 1988 (This World Magazine), at 17, col. 1; *Bay Area Could Face a Crisis Over Garbage*, San Francisco Chron., Aug. 8, 1988, at A5, col. 1; see *Sonoma County Sues Dairies Over Soil Tests*, San Francisco Chron., Aug. 17, 1989, at A8, col. 1.

140. *Reports Warn About Toxins in S.F. Bay*, San Francisco Chron., Aug. 10, 1989, at B7, col. 3.

141. See, e.g., *Garbage Crisis*, San Francisco Chron., Aug. 9, 1988, at A18, col. 1 (editorial calling for a regional plan to solve region's solid waste problem).

142. See San Jose Mercury News, Feb. 2, 1990, at 1, col. 1.

143. See *Id.*

144. See *Dwindling Sewer Capacity May Bar S.F. in Pleasanton*, San Francisco Examiner, Jan. 29, 1990, at A8, col. 4 (proposed development in Pleasanton could be blocked by already overburdened sewer system; Oakland's threat to block new sewer line to bay).

145. See *supra* notes 29-50, 90-94, and accompanying text.

146. See *supra* notes 95-105 and accompanying text.

147. See *supra* notes 51-84 and accompanying text; see also *supra* note 13 (regarding senate proposal to consolidate transportation systems in Bay Area).

seldom gets beyond the planning stage.”¹⁴⁸ As the Bay Area continues growing without a regional plan, its corresponding urban problems are growing at an even faster rate.¹⁴⁹ As one commentator noted, “There’s not a local community in the Bay Area that doesn’t want clean air, unpolluted water, or a better transportation system. How best to accomplish these goals? It can be done with aggressive regional leadership without eroding local control.”¹⁵⁰

II. What Type of Regional Government Would be Most Suitable for the Bay Area?

Certainly the Bay Area does not suffer alone from the problems of regional growth. Every major metropolitan region in the country suffers from similar problems, although the number and severity vary. Metropolitan Los Angeles, for example, which includes several counties and hundreds of cities, also is calling for some type of regional government to handle problems concerning transportation, air quality, and waste disposal.¹⁵¹ Throughout the country, efforts to combine governmental functions are moving forward as people realize that many urban problems are regional, not local.¹⁵² In the New York City metropolitan area, which encompasses three states and a multitude of counties, cities, towns, and special purpose districts, there also are calls for some type of regional control. There is, however, a realization that a true regional government could never be created over such a large, multistate area.¹⁵³ The Bay Area’s problems are acute because the Bay Area is the fourth

148. R. TRANTER, *BEYOND PLANNING: A CALL TO ACTION 1* (1984) (available in Institute of Government Studies Library, University of California, Berkeley).

149. See, e.g., *BART Strike Commute Could Preview 2002*, San Francisco Examiner, Sept. 25, 1988 at A14, col. 1 (estimates that increased traffic during present BART strike will be routine by the year 2002). *Every Drop Matters*, L.A. Times, Mar. 20, 1989, pt. 2, at 4, col. 1 (Bay Area relying increasingly on Sacramento-San Joaquin Delta for water supplies, which is exacerbating erosion of Delta and San Francisco Bay); *The Outlook for Bay Area’s Industrial Waste*, San Francisco Chron., Sept. 17, 1988, at A5, col. 1 (Association of Bay Area Governments says local governments are expected to generate six million tons annually of hazardous waste materials by the year 2000 without the facilities for proper disposal); *Bay Area Could Face a Crisis Over Garbage*, San Francisco Chron., Aug. 8, 1988, at A5, col. 1 (serious shortage of available dumping sites in Bay Area); *A Chance to Recapture Planning Leadership—Reconstruction Driven by Regional Vision*, San Francisco Chron., Oct. 26, 1989, at B2, col. 1 (chart demonstrates how tax structure favoring industrial and commercial development throughout the Bay Area will create a tremendous housing and labor force by 2005, and will contribute to millions of annual commuting hours and further suburban sprawl).

150. R. TRANTER, *supra* note 148, at 10.

151. *For Regional Government*, L.A. Times, Sept. 23, 1989, pt. 2, at 8, col. 1 (Editorial).

152. *As Problems Grow, So Does the Push for Regional Government*, N.Y. Times, Dec. 27, 1986, § 1, at 25, col. 2.

153. *Id.*

largest metropolitan area in the country¹⁵⁴ and one of the most fragmented with nine counties, ninety-eight municipalities, and several hundred special purpose districts.¹⁵⁵ It does have the advantage, however, of being located entirely within one state.

A. Types of Metropolitan Government

Although regional government rarely has been implemented in the United States, it has been studied thoroughly and scholars have developed several basic models for regional government.¹⁵⁶ The one-government approach involves consolidating all the smaller government entities in an area into one large supergovernment.¹⁵⁷ The "two-tier" approach retains local governments to handle local matters but creates a secondary government to handle matters of regional concern.¹⁵⁸ Two examples of a two-tier approach are the "urban county," in which some powers are transferred to the county level, and the "federation," in which a new metropolitan government is created with powers to address regional matters and municipal governments retain control over local matters.¹⁵⁹ A third type of metropolitan government is the regional umbrella agency which creates a regional plan of development and then coordinates the different single-power special districts in the area to ensure compliance with the plan.¹⁶⁰ This type of agency usually will have indirect powers, such as the power to veto any major development projects or the power to block state or federal funds to the special purpose agencies.¹⁶¹

154. See *supra* note 3.

155. See *supra* notes 1, 4-5, 13, 16, and accompanying text.

156. See, e.g., C. ADRIAN, *GOVERNING URBAN AMERICA, STRUCTURE, POLITICS, AND ADMINISTRATION* 242-56 (1955); ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM* 85-113 (1966) [hereinafter *METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM*]; J. HORAN & I. TAYLOR, *supra* note 22, at xi-xxii; S. SCOTT & J. BOLLENS, *supra* note 91, at 5-10.

157. *METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM*, *supra* note 156, at 98-101; J. HORAN & I. TAYLOR, *supra* note 22, at xii-xiv; S. SCOTT & J. BOLLENS, *supra* note 91, at 5.

158. C. ADRIAN, *supra* note 156, at 249-54; *METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM*, *supra* note 156, at 90-93, 104-06; J. HORAN & I. TAYLOR, *supra* note 22, at xiv-xix; S. SCOTT & J. BOLLENS, *supra* note 91, at 5-7.

159. C. ADRIAN, *supra* note 156, at 249-54; *METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM*, *supra* note 156, at 90-93, 104-06; J. HORAN & I. TAYLOR, *supra* note 22, at xiv-xix; S. SCOTT & J. BOLLENS, *supra* note 91, at 5-7.

160. J. HORAN & I. TAYLOR, *supra* note 22, at xxii; S. SCOTT & J. BOLLENS, *supra* note 91, at 14.

161. J. HORAN & I. TAYLOR, *supra* note 22, at xxii; S. SCOTT & J. BOLLENS, *supra* note 91, at 14.

(1) *The Single Government Approach*

There are basically three ways to establish a single government for a metropolitan area: annexation of unincorporated land to form a larger city, consolidation of two or more cities to create a larger city, or consolidation of all the cities in a county into a city-county government.¹⁶² None of these alternatives is a realistic possibility for the Bay Area, which encompasses ninety-eight municipalities and nine counties.¹⁶³ To form a single government for the Bay Area, all nine counties and all ninety-eight municipalities would have to consolidate into one Bay Area city-county supergovernment. The California Constitution would require a popular vote at both the county and city levels,¹⁶⁴ meaning that the measure would have to be passed in 107 separate elections. It is unlikely that the measure would pass in a single one of these elections; the chance of it passing in all 107 is virtually nonexistent. Furthermore, such a supergovernment would be too large to be effective.

(2) *The Two-Tier Government Approach*

a. *The Urban County*

In an urban county the county government takes on matters of regional concern and the municipal governments retain their autonomy, exercising control over local issues.¹⁶⁵ In essence, the urban county is the same as a federation, explained below, except that the urban county does not require the creation of a new government.¹⁶⁶ This type of regional government is politically much easier to establish; the county simply authorizes amendment of its charter to allow the transfer of certain powers from the municipal governments to the county government.¹⁶⁷ The urban county would be completely ineffective, however, in a metropolitan region that extends beyond the boundaries of a single county, as is the case in the Bay Area.

One example of an urban county government in the United States can be found in metropolitan Miami, Florida. In 1957 the voters of

162. J. HORAN & I. TAYLOR, *supra* note 22, at xiii.

163. See *supra* notes 1, 4 and accompanying text.

164. CAL. CONST. art. XI, §§ 1(a), 2(b).

165. C. ADRIAN, *supra* note 156, at 249-50, 253-54; METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM, *supra* note 156, at 90-93; J. HORAN & I. TAYLOR, *supra* note 22, at xiv-xvii; S. SCOTT & J. BOLLENS, *supra* note 91, at 5-6.

166. See METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM, *supra* note 156, at 90-93; J. HORAN & I. TAYLOR, *supra* note 22, at xvi; S. SCOTT & J. BOLLENS, *supra* note 91, at 5-7.

167. METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM, *supra* note 156, at 90-91.

Dade County, in which the entire Metropolitan Statistical Area¹⁶⁸ of Miami was located, passed a new county charter transferring many of the powers of the twenty-six existing municipalities to a new county government.¹⁶⁹ The county government took charge of expressways, public transportation (including airports), traffic control, air pollution control, construction of an integrated water and sewer system, and regulation of building codes in unincorporated areas;¹⁷⁰ the municipalities retained control of local services not specifically transferred over to the County government.¹⁷¹ The Dade County Metropolitan Government has had its share of hurdles,¹⁷² but it generally has been considered successful in addressing many of the regional problems of that area.¹⁷³ Although such a government is not a possibility in the Bay Area,¹⁷⁴ it demonstrates how a regional government successfully can address regional problems.

b. The Federation

A federation essentially is no different than an urban county except that a new layer of government is created to assume control of matters of regional concern. Numerous attempts to create federation-type regional governments in United States cities have failed to pass in referendum votes.¹⁷⁵ A good example of a metropolitan federation is found in Toronto, Ontario. In 1953 the Ontario Legislature passed a bill cre-

168. See *supra* note 15 (definition of Metropolitan Statistical Area).

169. See J. HORAN & I. TAYLOR, *supra* note 22, at 87, 90, 94.

170. See METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM, *supra* note 156, at 92; J. HORAN & I. TAYLOR, *supra* note 22, at 95-97, 100-01.

171. The county government was authorized to set minimum standards for municipalities in providing basic services. Should a municipality fail to meet these standards, the county was authorized to take control of the service. Examples of local matters that municipalities were authorized to control were police and fire protection, local zoning controls, garbage collection, maintenance of local parks, playgrounds, recreational programs, and public library service. Many municipalities have transferred their control over these matters to the county government. See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, REGIONAL GOVERNANCE: PROMISE AND PERFORMANCE, SUBSTATE REGIONALISM AND THE FEDERAL SYSTEM, VOL. II, CASE STUDIES 9 (1973) [hereinafter REGIONAL GOVERNANCE: PROMISE AND PERFORMANCE]; J. HORAN & I. TAYLOR, *supra* note 22, at 95-97, 100-01.

172. See, e.g., J. HORAN & I. TAYLOR, *supra* note 22, at 98-105.

173. See J. HORAN & I. TAYLOR, *supra* note 22, at 98-105; REGIONAL GOVERNANCE: PROMISE AND PERFORMANCE, *supra* note 171, at 10-15.

174. This type of government, under which the cities retain their autonomy, would be easier to create than a supergovernment. See *supra* notes 162-164 and accompanying text. Creating an urban county government only would require a consolidation of the Bay Area's nine counties and not a consolidation of the 98 municipalities. Although still virtually impossible, theoretically, a referendum is easier to pass in nine elections than in 107.

175. C. ADRIAN, *supra* note 156, at 251; see also *supra* notes 29-50 and accompanying text (describing attempts to create regional governments in the Bay Area).

ating a metropolitan federation government for the Toronto metropolitan area.¹⁷⁶ The federation then consisted of thirteen municipalities: Toronto and twelve suburban municipalities.¹⁷⁷ In 1967 the federation act was amended to consolidate the thirteen municipalities into Toronto and five boroughs.¹⁷⁸

Because "home rule traditions are not nearly as strong in Canada as they are in United States,"¹⁷⁹ and also because there was no requirement of a popular vote,¹⁸⁰ the Ontario Provincial Government did not give the people of metropolitan Toronto an opportunity to vote on the creation of a regional government.¹⁸¹ In fact, in 1967 the Provincial Government even rearranged city lines and eliminated certain smaller cities without a popular vote.¹⁸² Thus, one of the main reasons for the successful implementation of Toronto's federation government is that it was created without the referendum process, something that has foiled many attempts at government reorganization in the United States.¹⁸³

When it was first created, the Metropolitan Government of Toronto (Metro) consisted of an executive council composed of twelve members from Toronto, one member from each of the twelve suburbs, and an independent chairperson to be elected by the council.¹⁸⁴ Membership on the executive council since has increased to forty, with a much higher number representing the boroughs.¹⁸⁵

Initially, Metro's power was limited. Its major responsibility was borrowing money to finance the construction of a sewer system for the suburbs, new expressways, sidewalks, and schools.¹⁸⁶ Eventually, Metro

176. Municipality of Metropolitan Toronto Act, 1953, 2 ELIZ. 2, ch. 73 (Ont. 1953) (amended as 4 & 5 ELIZ. 2, ch. 53 (Ont. 1956)); see also J. HORAN & I. TAYLOR, *supra* note 22, at 113; Milner, *The Metropolitan Toronto Plan*, 105 U. PA. L. REV. 570, 577-78 (1957).

177. J. HORAN & I. TAYLOR, *supra* note 22, at 109.

178. *Id.* at 120. Bill 81-A, "An Act to Amend the Municipality of Metropolitan Toronto Act" (1967) (Incorporated into Municipality of Metropolitan Toronto Act, ONT. REV. STAT., ch. 314 (1980)).

179. J. HORAN & I. TAYLOR, *supra* note 22, at 114. For a discussion of home rule, see *supra* notes 23-28 and accompanying text; *infra* Part III.

180. See J. HORAN & I. TAYLOR, *supra* note 22, at 114.

181. *Id.*

182. *Id.* at 120-22. Eliminating cities and rearranging borders without a popular vote would be unconstitutional in California. See CAL. CONST. art. XI, §§ 1(a), 2(b).

183. C. ADRIAN, *supra* note 156, at 251; J. HORAN & I. TAYLOR, *supra* note 22, at 114; see also *supra* notes 29-50 and accompanying text (describing attempts to create regional governments in the Bay Area).

184. J. HORAN & I. TAYLOR, *supra* note 22, at 115.

185. MUNICIPALITY OF METROPOLITAN TORONTO, ANNUAL REPORT 4 (1986) [hereinafter ANNUAL REPORT].

186. NATIONAL ASSOCIATION OF REGIONAL COUNCILS, SPECIAL REPORT, METROPOLITAN TORONTO COUNCIL: A UNIQUE REGIONAL APPROACH, Report No. 13, at 2 (1978) [hereinafter SPECIAL REPORT]; see also Milner, *supra* note 176, at 579 (regarding debenture borrowing for municipal purposes).

began taking over more and more regional responsibilities, including development and operation of a unified transportation system, provision of water for the entire region, disposal of solid waste, operation of a metropolitan police force, operation of emergency services, housing for the elderly, developmental control, and operation of regional parks.¹⁸⁷

Metro has been widely regarded as a great success.¹⁸⁸ By the mid-seventies Metro had developed an integrated system of highways and public transportation, including subways, streetcars, and buses.¹⁸⁹ Its handling of sewage and water supply problems has been even more impressive. Before Metro existed, Toronto's water supply was very limited and demand was increasing rapidly as the region continued to grow.¹⁹⁰ Raw sewage was being dumped into rivers because the few treatment plants in the region could not handle the increased amount of sewage.¹⁹¹ With its financial clout Metro was able to undertake the massive project of building reservoirs, water purification plants, and sewage treatment plants.¹⁹² Within a few years metropolitan Toronto had more than enough available water and a complete sewage treatment system able to handle the area's rapid growth over the past three decades.¹⁹³

Metro also consolidated solid waste disposal operations in the region beginning in 1966.¹⁹⁴ Before 1966 each municipality disposed of its own solid waste. This was not a significant problem because there was ample open space on which to deposit the waste.¹⁹⁵ As the population grew, however, available dump sites began filling up and land for disposal sites no longer was available.¹⁹⁶ When Metro took control of operations, it located large disposal sites far beyond its geographical limits.¹⁹⁷ As people began moving near these sites, Metro located dis-

187. ANNUAL REPORT, *supra* note 185, at 3; SPECIAL REPORT, *supra* note 186, at 2.

188. See J. HORAN & I. TAYLOR, *supra* note 22, at 131-33; ANNUAL REPORT, *supra* note 185, at 2; SPECIAL REPORT, *supra* note 186, at 1-3; see also 5 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, A LOOK TO THE NORTH: CANADIAN REGIONAL EXPERIENCE, SUBSTATE REGIONALISM AND THE FEDERAL SYSTEM 34 (1974) [hereinafter A LOOK TO THE NORTH] (in the 20 years following the creation of Metro Toronto, "the achievements of Metro Toronto were extensive, particularly in the physical provision of services, which were necessary to a doubling population"); PUBLIC ADMINISTRATION SERIES: BIBLIOGRAPHY, TORONTO AND ITS METROPOLITAN GOVERNMENT: A BIBLIOGRAPHY 1-2 (1986) (the metropolitan government "can work, and work superbly").

189. J. HORAN & I. TAYLOR, *supra* note 22, at 131.

190. *Id.*

191. *Id.*

192. *Id.*

193. See *id.*; A LOOK TO THE NORTH, *supra* note 188, at 34, 41.

194. A LOOK TO THE NORTH, *supra* note 188, at 40.

195. *Id.*

196. *Id.* at 40-41.

197. *Id.* at 41.

posal sites further and further away from the Metro limits.¹⁹⁸ Solid waste disposal always will be a problem because people do not like living near garbage dumping sites. With its greater financial resources, however, Metro was able to purchase bigger disposal sites, located beyond its boundaries,¹⁹⁹ and to operate several incinerators.²⁰⁰

Metro also has authority to plan residential subdivisions and large developments. Metro is required to submit plans for the region to the Ontario Provincial Government. As soon as these plans are accepted by the Provincial Government, they become binding and Metro may enforce them.²⁰¹ This authority enables Metro to control urban sprawl. Rather than allowing municipalities to build huge subdivisions or office parks at their own discretion, Metro has planned for certain large suburban office developments and has provided the transportation necessary to serve these developments. Metro also has been able to plan for dense housing and office development in the city of Toronto,²⁰² allowing more people to walk to work or take public transportation. Although Metro has had problems,²⁰³ overall it provides an excellent example of how a regional federation government can succeed in a large metropolitan area.

(3) *The Regional Umbrella Agency*

The regional umbrella agency is not so much a government as it is a planning agency and coordinating body with limited powers to enforce its regional plan.²⁰⁴ The best example of this type of regional body

198. *Id.*

199. *Id.*; see also *Make Metro Keep Trash, Pollution Probe Urges*, Toronto Globe and Mail, Dec. 19, 1990, at A7, col. 2 (proposed deal for Metro to ship garbage to an abandoned mine 600 kilometres north of Toronto over a 20-year period).

200. ANNUAL REPORT, *supra* note 185, at 11.

201. J. HORAN & I. TAYLOR, *supra* note 22, at 126.

202. *Id.*

203. One of the biggest problems facing Metro is that of waste disposal, as it finds outlying communities increasingly resistant to receiving garbage from Metropolitan Toronto. A Look to THE NORTH, *supra* note 188, at 41; see also *Make Metro Keep Trash, Pollution Probe Urges*, Toronto Globe and Mail, Dec. 19, 1990, at A7, col. 2 (environmental group opposed to proposed deal to ship Metro garbage to an abandoned mine in northern Ontario).

Another problem Metro faces is increasing costs for welfare, even though the Provincial Government pays 80% of Metro's welfare costs. Record numbers of welfare cases are being filed and consequently Metro is facing a budget deficit. *Welfare: Quiet Issue but a Big Problem*, The Toronto Star, Sept. 1, 1990, at D4. The problem over which Metro has the least control, however, is the increasing number of people who live beyond Metro's boundaries, but who are still very much a part of Toronto's Greater Metropolitan Area. See, *The Future of Greater Metro: Will You Be Living in a Megalopolis of 6 Million or One of Several Satellite Cities?*, The Toronto Star, Oct. 7, 1990, at B1.

204. See J. HORAN & I. TAYLOR, *supra* note 22, at xxii; S. SCOTT & J. BOLLENS, *supra* note 91, at 14.

is found in the Minneapolis-St. Paul metropolitan area (Twin Cities), which encompasses seven counties and close to 200 municipalities.²⁰⁵ The Minnesota Legislature created a Metropolitan Council (Metro Council) in 1967.²⁰⁶ Like Toronto's Metro government, Metro Council was not put to a referendum vote.²⁰⁷

Metro Council has three basic functions: to review all metropolitan plans and projects of municipalities and special districts, and to suspend any project that it finds not in compliance with its development guidelines; to review and comment on any long-term municipal comprehensive plans that will have a substantial effect on metropolitan area development; and to review applications of local governments for federal grants, and to reject an application if Metro Council does not approve of the project.²⁰⁸

The main purpose of Metro Council is to plan for the region and to oversee other agencies, cities, and counties, which implement actual operations.²⁰⁹ Examples of agencies that operate under Metro Council are a waste control commission, a unified transit commission, and an airport commission.²¹⁰ Metro Council does not have the authority to create any operating agencies;²¹¹ all operating agencies are created by the Minnesota Legislature.²¹²

Perhaps the most important element of Metro Council's success is a fiscal disparities law, which reduces competition between municipalities for new development.²¹³ The law requires every municipality to contribute forty percent of its commercial-industrial tax base growth since 1971 into a common pool that then is redistributed to every municipality in the region according to its population and overall tax base.²¹⁴ This law enables Metro Council to implement its plan for the region by avoiding the political fighting of municipalities eager to overdevelop their communities to increase their tax bases.

Despite its progress, Metro Council has faced some difficulties. For example, Metro Council did not participate in the battle between Bloomington, the largest suburb of the Twin Cities, and Minneapolis

205. J. HORAN & I. TAYLOR, *supra* note 22, at 173.

206. *Id.* at 180; Whiting, *Twin Cities Metro Council: Heading for a Fall?*, 4 *PLANNING* 4, 5 (1984).

207. J. HORAN & I. TAYLOR, *supra* note 22, at 177-80.

208. *Id.* at 182.

209. *Id.*

210. Whiting, *supra* note 206, at 5.

211. See J. HORAN & I. TAYLOR, *supra* note 22, at 184.

212. *Id.*

213. MINN. STAT. ANN. §§ 473F.01-.13 (West 1977 & Supp. 1991); see Whiting, *supra* note 206, at 6-7.

214. Whiting, *supra* note 206, at 6.

over which city would build a new stadium.²¹⁵ The Minnesota Legislature bypassed Metro Council and appointed a sports commission to decide where the new stadium should be located.²¹⁶ Thus, Metro Council had no control or input on an important regional issue. More recently, Metro Council failed to exert any control over Bloomington's plans to construct the world's largest shopping center.²¹⁷ Minneapolis Planning Director Oliver Byrum criticized Metro Council for failing "to look at the socioeconomic impacts or the long-range impacts on transportation. It's treating one of the largest development proposals in the area's history as a question of whether we do or don't need another freeway interchange."²¹⁸

Byrum believes that a massive shopping center in the suburbs will undermine the vitality of the two downtowns in the Twin Cities and is inconsistent with the long-term plans of Metro Council for the region.²¹⁹ Exactly why Metro Council was not more involved in the decision to build the Bloomington shopping center is unclear. Although Metro Council technically has the power to veto large development projects,²²⁰ it often appears reluctant to do so.²²¹

Overall, however, Metro Council is considered successful.²²² With the help of the waste control commission, Metro Council established an efficient sewage network throughout the entire metropolitan area.²²³ Also, despite some disagreement between Metro Council and its subsidiary transit commission, they have implemented an effective regional bus system and now are planning construction of a light rail line.²²⁴ The Council also has taken control of selecting sites for dumping the region's solid waste and sewage.²²⁵ Like the Miami urban county government and the federation government of Toronto, the regional umbrella agency of the Twin Cities demonstrates how regional government can succeed.

B. What Type of Regional Government Should the Bay Area Adopt?

After eliminating the supergovernment—which is neither desirable nor feasible—and the urban county—which though desirable, is not a

215. *Id.* at 10.

216. *Id.*

217. See *Megamall, a New Fix for Future Shopping Addicts*, N.Y. Times, June 9, 1989, at A14, col. 1.

218. Whiting, *supra* note 206, at 10.

219. *Id.*

220. See J. HORAN & I. TAYLOR, *supra* note 22, at 182.

221. See Whiting, *supra* note 206, at 9-10.

222. See J. HORAN & I. TAYLOR, *supra* note 22, at 193.

223. *Id.* at 189.

224. Whiting, *supra* note 206, at 7, 10.

225. *Id.* at 10.

realistic possibility for the nine-county Bay Area—two alternatives remain: the federation government and the umbrella agency models. The umbrella agency is easier to establish because it leaves intact many existing agencies and simply requires the formation of a new agency with limited powers over the other agencies. An umbrella agency will not be successful, however, if the number of competing subsidiary agencies is too large.

The Twin Cities Metro Council is successful because it deals with one agency for each problem area; there is only one waste control commission, one transportation commission, and one airport commission. These agencies do not compete against each other since they serve different functions; competition between municipalities is limited due to the shared tax pool. Yet Metro Council still faces some political fighting with these agencies as well as with municipalities.²²⁶ In the Bay Area an umbrella agency could not be successful if it had to deal with twenty-three transportation districts,²²⁷ three major airports,²²⁸ and a multitude of water districts, sewer districts, park districts, and other special purpose agencies.

The California Legislature would have to consolidate the many different agencies of the Bay Area into a few large agencies for an umbrella agency to succeed. In addition, legislation would be needed to form some type of tax-sharing pool, like that of the Twin Cities. The umbrella agency thus could carry out its plan without municipalities competing for tax revenues. The necessity of this legislation complicates its normally relatively simple creation, eliminating the main advantage of an umbrella agency. The federation government then becomes a more attractive alternative because it is more powerful and more efficient.²²⁹

The California Legislature should adopt a limited federation regional government for the Bay Area. The new government could be modeled after Toronto's Metro government, which has been successful for the most part.²³⁰ Each large special district of the Bay Area, including transportation districts, water districts, sewage districts, and waste disposal districts, would be consolidated into departments of the

226. See *id.* at 7-10.

227. See *supra* notes 13, 16.

228. San Francisco, Oakland, and San Jose airports.

229. See *supra* notes 175-225, and accompanying text. An umbrella agency is a planning and coordinating agency with indirect powers. It must work with other agencies, counties, and municipalities to see that its policies are met. This indirect power leads to weakness. See *supra* notes 217-221 and accompanying text (noting the reluctance of Metro Council to veto large projects even though doing so arguably is part of its mission). The federation government has direct power over regional issues. It has the power to implement the projects it plans for the region, rather than trying to coordinate its plans through independent agencies, counties, and municipalities.

230. See *supra* note 188.

new metropolitan government. All cities and counties in the Bay Area would retain their autonomy and continue governing matters of local concern. Since neither the city nor the county status would change, a popular election would not be required.²³¹

The new metropolitan government would be responsible for all matters of regional concern, including water supply, transportation, sewage and waste disposal, airport and seaport development, Bay conservation, and large-scale land use development. The experience in Toronto has shown that a regional, federation government on this scale can work.²³²

The Bay Area is certainly far more complex now than metropolitan Toronto was when Metro was formed in 1953. Toronto then was in the beginning stages of metropolization,²³³ whereas the Bay Area already has experienced years of urban growth. Toronto was the central city and only twelve other municipalities were in the region,²³⁴ whereas the Bay Area has three central cities²³⁵ and a total of ninety-eight municipalities. The Bay Area also has an established, though piecemeal, infrastructure, whereas Toronto had the luxury of planning its development when there was little established infrastructure.

Still, there is a strong need to take regional control of these problems before they become considerably worse. The Bay Area already has more than six million people²³⁶ and can be expected to absorb more than one million more by the year 2000.²³⁷ This will require more water, disposal of more sewage and waste, and an extensive overhaul of the region's public transportation system. A regional entity would tackle most efficiently these concerns.

Once established, a metropolitan Bay Area government, without political haggling and delays, immediately could begin planning a transportation system for the unified region. A new tube could be constructed under the Bay so that BART could be extended from San Francisco to Marin County. Simultaneously, BART could be extended into San Mateo County, not just to San Francisco International Airport, but further south to Santa Clara County.²³⁸

231. The California Constitution requires an election for any change in county lines or for any consolidation or annexation of one city into another. CAL. CONST. art. XI, §§ 1(a), 2(b). The proposed regional government would not require any change in city or county borders.

232. See *supra* note 188.

233. J. HORAN & I. TAYLOR, *supra* note 22, at 111-13.

234. See *supra* note 177 and accompanying text.

235. San Francisco, Oakland, and San Jose.

236. See *supra* note 3.

237. *Bay Area Will Grow Despite Itself*, San Francisco Chron., May 16, 1989, at A1, col. 1.

238. A single agency in charge of all Bay Area transportation could avoid some of the

Another bridge between San Francisco or San Mateo and the East Bay finally might be built, an idea heavily favored by the Bay Area public.²³⁹ This bridge could be designed to carry BART trains. Eventually, another underwater tube could connect the two airports of San Francisco and Oakland, so that instead of competing with each other, they can serve the region's needs as one large unified airport. If and when the legislature does create such a regional government, however, it inevitably will confront a legal challenge.

III. The Legal Barrier to Creating a Regional Government

The doctrine of "municipal home rule" gives cities in California the power to govern their own affairs without state interference.²⁴⁰ Several sections in article eleven of the California Constitution provide municipal home rule protection for cities and counties.²⁴¹ Section 5(a) provides in part:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.²⁴²

The section further provides that "[c]ity charters adopted pursuant to this Constitution . . . with respect to municipal affairs shall supersede all laws inconsistent therewith."²⁴³ Thus, if a regional government interfered with the "municipal affairs" of a city, it would violate the

political controversy over whether to extend BART into San Francisco International Airport or to build a station a mile away from the airport. See *Controversy Revives BART Airport Plan*, San Francisco Chron., Sept. 14, 1990, at A4, col. 1. Currently, airport commissioners and officials from BART, San Mateo Transit, the Metropolitan Transportation Commission, and San Francisco and San Mateo Counties are embroiled in a debate over where to locate the station. San Mateo officials want the station located a mile away from the airport terminals so that it can be connected to other forms of transportation in the county. San Francisco and BART officials, however, fear that people will not take BART to the airport unless the trains go directly to the terminal. In October 1990, the Metropolitan Transportation Commission began a 16-month study to examine both alternatives. *MTC to Study BART Airport Extension Options*, San Francisco Chron., Oct. 6, 1990, at C11, col. 3. A single agency in charge would be more efficient because it would concentrate on what is best for the entire region rather than just a single county. Furthermore, if a plan for extending BART to Santa Clara County was already in place, San Mateo County officials might not object to a station in the airport because they would be assured that the system would be extended down the Peninsula.

239. *Bay Area Wants New Bay Bridge, BART Extension*, San Francisco Chron., July 19, 1989, at A1, col. 5.

240. B. WITKIN, *supra* note 23, § 799.

241. CAL. CONST. art. XI, §§ 2-3, 5, 7, 11.

242. *Id.* § 5(a).

243. *Id.*

California Constitution. Also applicable is section seven of article eleven, which provides that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."²⁴⁴

To determine whether a city is entitled to home rule protection, courts examine whether the matter at issue is a "municipal affair" or a matter of "statewide concern."²⁴⁵ If the matter is a municipal affair, city laws will take precedence over state laws.²⁴⁶ Otherwise, a matter is considered to be of general interest or state concern, and state laws will prevail over city laws.²⁴⁷ Thus, a regional government violates local home rule powers when its functions cannot be classified as municipal affairs. Since the constitution does not define "municipal affair," state courts have discretion to define the term. Although the cases have not developed a set formula, the courts have been fairly lenient in finding a "statewide concern" if the purpose of the law was to address an issue that is regional in scope.

In *City of Santa Clara v. Von Raesfeld*,²⁴⁸ the California Supreme Court upheld a state "urgency measure" that permitted certain Bay Area municipalities to sell bonds at a higher rate of interest than approved by the cities' voters, even though the cities' charters required that voters approve of the higher interest rate.²⁴⁹ In this case Santa Clara had issued the bonds to finance construction of a regional sewer system.²⁵⁰ The court acknowledged that both sewage control and the issuance of municipal bonds to finance sewer projects were historically "municipal affairs," but also noted that "sewer projects may transcend the boundaries of one or several municipalities" and "also may affect matters which are acknowledged to be of statewide concern."²⁵¹ The project, therefore, "ceases to be a municipal affair and comes within the proper domain and regulation of the general laws of the state."²⁵²

California courts actually have never addressed the constitutionality of a regional government, but in *Younger v. County of El Do-*

244. *Id.* § 7. This section was formerly section 11 of article XI of the California Constitution prior to the 1970 amendment.

245. *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61-62, 460 P.2d 137, 140, 81 Cal. Rptr. 465, 468 (1969).

246. *Id.*

247. *City of Santa Clara v. Von Raesfeld*, 3 Cal. 3d 239, 245-46, 474 P.2d 976, 979, 90 Cal. Rptr. 8, 11 (1970); *Bishop*, 1 Cal. 3d at 61-62, 460 P.2d at 140, 81 Cal. Rptr. at 468; B. WITKIN, *supra* note 23, §§ 800-804.

248. 3 Cal. 3d 239, 474 P.2d 976, 90 Cal. Rptr. 8 (1970).

249. *Id.* at 243-45, 474 P.2d at 977-79, 90 Cal. Rptr. at 9-11.

250. *Id.* at 243, 474 P.2d at 977, 90 Cal. Rptr. at 9.

251. *Id.* at 246, 474 P.2d at 979-80, 90 Cal. Rptr. at 11-12.

252. *Id.* (quoting *Wilson v. City of San Bernardino*, 186 Cal. App. 2d 603, 611, 9 Cal. Rptr. 431, 436 (1960)).

rado,²⁵³ the California Supreme Court upheld the constitutionality of the Tahoe Regional Planning Agency (TRPA), which essentially is a regional government.²⁵⁴ In that case El Dorado and Placer counties raised the home rule issue when the state attorney general sought a writ of mandate commanding the two counties to pay TRPA their share of TRPA's budget.²⁵⁵ To understand the effect of the supreme court's decision, it is essential to discuss the background of the TRPA.

TRPA is a regional agency with jurisdiction over the entire Tahoe Basin, which in 1971 included two counties in California and three in Nevada. Located within these five counties were two municipalities, ten general improvement districts, and several sewer and sanitation districts.²⁵⁶ TRPA is responsible for designing and maintaining a comprehensive regional plan for the Tahoe Basin and for adopting ordinances and regulations setting forth minimum standards that are necessary to enforce its plan, as long as the regulations are confined to matters that are regional in nature.²⁵⁷ Specific areas over which TRPA has authority include transportation, land use development, conservation, sewage and waste disposal, air and lake pollution, recreation, and public service and facilities.²⁵⁸ One of TRPA's primary purposes is to preserve the aesthetic quality of the Tahoe Basin.²⁵⁹ The state law creating TRPA originally provided that violation of any TRPA regulation was a misdemeanor.²⁶⁰ TRPA also is given the power to assess each of the five counties for a portion of its operating expenses.²⁶¹ Thus, TRPA is designed to work in much the same way as the proposed Bay Area federation government.

TRPA itself does not operate any government entities such as a transit authority or a waste and sewage disposal district. The actual operations are left to the individual counties and municipalities.²⁶² In this way, TRPA differs from the proposed Bay Area regional government. This is not a crucial difference, however. Most large-scale services in the Bay Area, such as water provision, sewage disposal, and trans-

253. 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971).

254. *Id.* at 501-02, 487 P.2d at 1207, 96 Cal. Rptr. at 567.

255. *Id.* at 485, 487 P.2d at 1194, 96 Cal. Rptr. at 554.

256. *Id.* at 493 n.15, 487 P.2d at 1200 n.15, 96 Cal. Rptr. at 560 n.15; *see also* Note, *Regional Government for Lake Tahoe*, 22 HASTINGS L.J. 705, 706 (1971) (authored by Gary J. Spradling) (general background on the formation and legality of TRPA).

257. *Younger*, 5 Cal. 3d at 488, 487 P.2d at 1196, 96 Cal. Rptr. at 556.

258. *Id.*, 487 P.2d at 1196-97, 96 Cal. Rptr. at 556-57; Note, *supra* note 256, at 715.

259. Note, *supra* note 256, at 719-20.

260. 1967 Cal. Stat. 1589, art. VI, § F (formerly CAL. GOV'T CODE § 66801, art. VI, § F (West 1968). The law presently states that violation of TRPA regulations is a civil penalty and will result in a fine. CAL. GOV'T CODE § 66801, art. VI, § 1 (West Supp. 1991).

261. *Id.* at 489, 487 P.2d at 1197, 96 Cal. Rptr. at 557.

262. Note, *supra* note 256, at 719.

portation, are provided by the counties or by large agencies such as BART, AC Transit, and the East Bay Municipal Utilities District. Thus, if a Bay Area government took over these services, it would affect the large agencies and counties, but not cities. Although certain agencies may not like abdicating their power, they are not protected by municipal home rule, unlike cities and counties.²⁶³

Furthermore, it is unlikely that a county would stage a municipal home rule challenge because of the obvious regional nature of providing these large-scale services. These large-scale services are matters of state concern, not municipal affairs. Municipal home rule becomes more significant when the regional government dictates what actions cities and counties must take, such as imposing land-use restrictions or mandatory recycling.

TRPA is similar to the proposed Bay Area regional government because it has authority over the counties and municipalities in its region. It can block construction of a large-scale project that a city may want to build.²⁶⁴ For example, if Stateline, Nevada, wants to build more large casinos to increase tourism, TRPA can veto such a plan.²⁶⁵ A Bay Area federation government could have the same type of authority to block large developments that do not conform with a Bay Area development plan. In one sense, TRPA's authority is even greater because it can prevent construction of a single casino building that would alter the aesthetic quality of the region. The proposed Bay Area government would not have the power to block construction for aesthetic purposes. Only projects having a regional impact could be affected; one building is not likely to have such an effect.²⁶⁶

In *Younger v. County of El Dorado*,²⁶⁷ the California Supreme Court upheld the constitutionality of TRPA because it found that the agency was clearly regional in scope. The court found:

The water that the Agency is to purify cannot be confined within one county or state; it circulates freely throughout Lake Tahoe. The air which the Agency must preserve from pollution knows no political boundaries. The wildlife which the Agency should protect ranges freely from one local jurisdiction to another. Nor can the population and

263. Article XI of the California Constitution does not provide any degree of protection for legislatively created agencies.

264. Note, *supra* note 256, at 719-20.

265. *Troubles at Tahoe: Water, Air and Traffic*, L.A. Times, May 12, 1985, pt. 4, at 3, col. 4 (TRPA actually has denied permission to build additional casinos).

266. If one building were the size of Bishop Ranch or Hacienda Business Park in the San Ramon Valley, each of which contains millions of feet of office space and tens of thousands of employees, then that building certainly would have a regional impact. See *supra* notes 118-125 and accompanying text.

267. 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971).

explosive development which threaten the region be contained by any of the local authorities which govern parts of Tahoe Basin. Only an agency transcending local boundaries can devise, adopt and put into operation solutions for the problems besetting the region as a whole.²⁶⁸

The court also noted that when deciding whether a government function is a municipal affair, the court gives great weight to the declared purpose of the legislature.²⁶⁹ From the clear language of the statute creating TRPA, as well as from the general ecological situation in the Tahoe Basin, the court had no difficulty finding that TRPA served a regional purpose and therefore did not violate any home rule provisions of the California Constitution.²⁷⁰

The court considered it important that the enabling statute left to local jurisdictions all local matters, including the ability to enact their own ordinances, regulations, and policies as long as they conformed to the regional plan.²⁷¹ Although zoning and planning traditionally have been considered exclusively local matters,²⁷² the court was not deterred. First, it pointed out that only regional zoning and planning were under the purview of TRPA, not local zoning and planning.²⁷³ Regional zoning and planning indisputably are not "local in nature and purpose."²⁷⁴ Second, the court noted that "'municipal affairs'" is not a static concept; "[i]t changes with the changing conditions upon which it is to operate."²⁷⁵ Thus, planning and zoning, which at one time may have been municipal affairs,²⁷⁶ have become regional affairs because of the changed circumstances in the Tahoe Basin.

The same rationale would apply to the Bay Area. Although zoning traditionally has been a municipal affair,²⁷⁷ when cities begin zoning for large office parks and subdivisions in an already crowded metropolitan area, there is an obvious regional effect. As long as a regional government does not interfere with local government authority to govern local affairs, which would include small-scale zoning, it is unlikely that a court would find a home rule violation.

268. *Id.* at 493-94, 487 P.2d at 1201, 96 Cal. Rptr. at 561.

269. *Id.* at 493, 487 P.2d at 1200, 96 Cal. Rptr. at 560; *see also* *Bishop v. City of San Jose*, 1 Cal. 3d 56, 63, 460 P.2d 137, 141, 81 Cal. Rptr. 465, 469 (1969) (recognizing that courts will give great weight to legislative purpose when deciding whether a matter is a municipal affair).

270. *Younger*, 5 Cal. 3d at 497, 487 P.2d at 1203, 96 Cal. Rptr. at 563.

271. *Id.*

272. B. WITKIN, *supra* note 23, § 826; Note, *Land-Use Control, Externalities, and the Municipal Affairs Doctrine: A Border Conflict*, 8 Loy. L.A.L. Rev. 432, 447-51 (1975) (authored by David R. McEwen).

273. *Younger*, 5 Cal. 3d at 497, 487 P.2d at 1203-04, 96 Cal. Rptr. at 563-64.

274. *Id.*, 487 P.2d at 1204, 96 Cal. Rptr. at 564.

275. *Id.* at 498, 487 P.2d at 1204, 96 Cal. Rptr. at 564 (quoting *Pacific Tel. & Tel. Co. v. City & County of S.F.*, 51 Cal. 2d 766, 771, 336 P.2d 514 (1959)).

276. *See supra* note 272 and accompanying text.

277. *Id.*

In *Creed v. California Coastal Zone Conservation Commission*,²⁷⁸ for example, the California Court of Appeals confronted a challenge to the constitutionality of the Coastal Zone Conservation Act of 1972.²⁷⁹ This Act created regional coastal commissions that had authority over any development along the California coastline. The Act required any developer who wanted to build within the coastal region to obtain a permit from a regional commission.²⁸⁰ Before issuing a permit, the commission had to determine that the proposed development would not have an adverse environmental or ecological effect, and the applicant had the burden of proof to make this showing.²⁸¹ The suit was brought to test the constitutionality of the Act and did not arise out of any factual circumstances.²⁸² One of the contentions was that the Act interfered with the municipal affairs of chartered cities, in violation of article eleven, section 5(a) of the California Constitution.²⁸³

The court acknowledged that zoning, planning, and issuance of permits for land development were areas in which chartered cities traditionally had plenary power. Under these circumstances, however, the court held they were clearly a matter of statewide concern, reasoning that "it can be safely said that where the activity, whether municipal or private, is one which can affect persons outside the city, the state is empowered to 'prohibit or regulate the externalities.'"²⁸⁴ Although in this case protecting the coastal zone was considered a matter of state concern rather than of regional concern, the court compared this state interest to the regional interest found in *Younger*, and relied on *Younger* to reach its decision.²⁸⁵

There seems to be little doubt that courts would uphold a limited regional government in the Bay Area as long as it did not interfere with matters of truly local concern. Affairs such as operating police and fire departments, operating libraries, implementing small-scale zoning, issuing liquor licenses, maintaining streets and city parks, issuing municipal bonds for capital improvements, and running local elections are matters that could be left to municipalities. Counties could continue to operate the court system, the district attorney's office, and the sheriff's

278. 43 Cal. App. 3d 306, 118 Cal. Rptr. 315 (1974).

279. This Act, otherwise known as Proposition 20, was passed by California voters in the November 7, 1972 general election. *Id.* at 311, 118 Cal. Rptr. at 319; CAL. PUB. RES. CODE §§ 27000-27650 (West 1972), *repealed by* California Coastal Act of 1976, ch. 1330, §1 (codified at CAL. PUB. RES. CODE §§ 30000-30900)(West 1986 & Supp. 1991).

280. *Creed*, 43 Cal. App. 3d at 311-12, 118 Cal. Rptr. at 319.

281. *Id.* at 312, 118 Cal. Rptr. at 319.

282. *Id.*, 118 Cal. Rptr. at 318-319.

283. *Id.* at 320, 118 Cal. Rptr. at 325.

284. *Id.* at 321, 118 Cal. Rptr. at 326 (quoting Sato, "Municipal Affairs" in *California*, 60 CALIF. L. REV. 1055, 1085, (1972)).

285. *Id.* at 322, 118 Cal. Rptr. at 327.

department. Truly regional affairs, however, including transportation, regional land use planning, water supply, and waste disposal, could be transferred over to a new regional government that then could combine planning and operations.

Conclusion

Fortunately, the members of Bay Vision 2020 are recommending that a temporary form of regional government be created to address the increasing urban problems facing the Bay Area until a more permanent plan can be imposed.²⁸⁶ Although it is too early to judge, the political response to such a recommendation is likely to be negative.²⁸⁷ As one Bay Area politician explained, "[i]t's a risky thing, endorsing regional government."²⁸⁸ Unfortunately, an all too common attitude of politicians in the Bay Area is "change is necessary, but not in my election year."²⁸⁹

It is inevitable that at some point there no longer will be any choice in the matter. As the population of the Bay Area continues to grow, the need for a regional government becomes more apparent. When the gridlock on area highways doubles in the next five years²⁹⁰ and when public transportation has not improved by any appreciable degree, people will begin to demand change. The Bay Conservation and Development Commission will realize that its efforts to conserve the Bay are useless, because courts continue to give Bay Area cities permission to dump less-than-fully-treated sewage into the Bay.²⁹¹ The drought no longer will be unusual. Water rationing will be a way of life.²⁹²

286. See *supra* note 10 and accompanying text.

287. The Marin County supervisors initially voted to refuse to back Bay Vision 2020's proposed regional agency. *Supervisors Oppose Regional Agency*, San Francisco Chron., Feb. 13, 1991, at B6, col. 1. After reconsideration, however, Marin supervisors decided they wanted to be included in Bay Area planning efforts and voted to back most of the Bay Vision 2020 findings. *Marin Board Backs Bay Superagency Plan*, San Francisco Chron., Feb. 20, 1991, at B7, col. 2; see also *Proposal for 9-County Agency Faces Lots of Local Squabbling*, San Francisco Chron., Feb. 21, 1991, at A6, col. 4 (initial reaction by Bay Area Counties and agencies to Bay Vision 2020 draft proposal is lukewarm).

288. *Bay Area 'Turf Wars' Stymie Regional Planning*, San Francisco Chron., Feb. 9, 1989, at A1, col. 2 (quoting Contra Costa County Supervisor Tom Powers, one of the few Bay Area politicians who has endorsed regional government).

289. *Id.* at 4 (Revan Tranter, executive director of the Association of Bay Area Governments, noting that this response is the private concession of local officials).

290. See *Sweeping Plan to Solve Bay Traffic Mess*, San Francisco Chron., Feb. 15, 1990, at A4, col. 1.

291. See *supra* note 140.

292. For most Bay Area residents, rationing is already a way of life as the drought continues into its fifth year. See *Wilson Orders Water Reduced For All*, San Francisco Examiner, Feb. 15, 1991, at A1, col.1.

California legislators need to look beyond the negative image of regional government as another layer of bureaucracy that will usurp power for local government. Leaders should realize that the municipal government system designed by the 1879 California Constitution no longer can address adequately the problems facing the metropolitan areas of modern times. A regional government is the only hope the Bay Area has of addressing these problems, and it must be created now.

