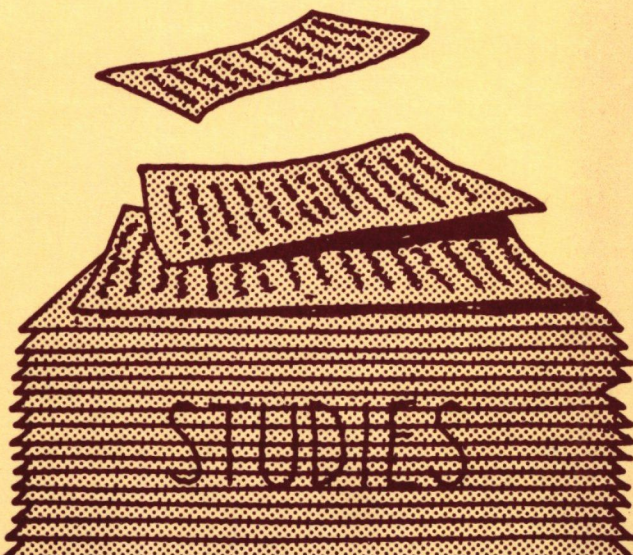
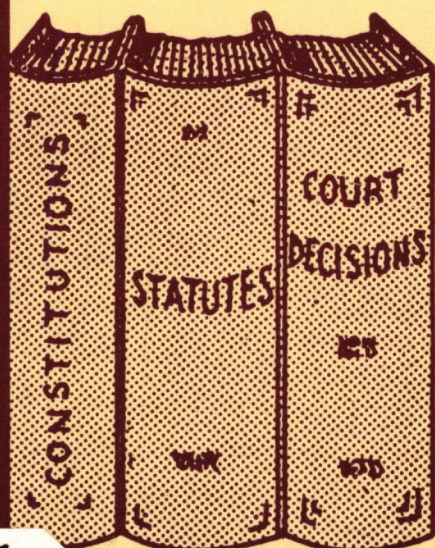
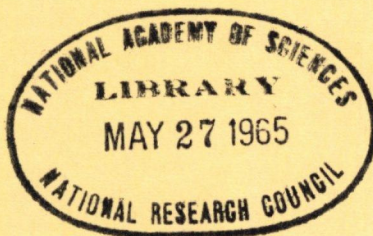


HIGHWAY RESEARCH BOARD

Special Report 84

HIGHWAY MAINTENANCE

A SURVEY OF STATE LAWS



**National Academy of Sciences—
National Research Council**

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PREFACE

This report is one of a series of special reports by the Highway Research Board on selected aspects of State highway laws. In this report the major provisions of State legislation relating to highway maintenance are reviewed, analyzed, and compared. The scope of this report includes statutory definitions, jurisdictional control over road systems, remedies for failure of public agencies or officials to meet statutory obligations to maintain roads, joint maintenance arrangements, contractual agreements for maintenance, maintenance provisions in laws relating to controlled-access facilities, and related matters. By presenting a comparative analysis of existing legislation, this study offers reference material for the lawmaker and others interested in legislative approaches to the problems of highway maintenance.

Other reports published in the Highway Research Board's series of legal studies include the following: "Relocation of Public Utilities Due to Highway Improvement, An Analysis of Legal Aspects" (Special Report 21); "Expressway Law, An Analysis" (Special Report 26); "Acquisition of Land for Future Highway Use, A Legal Analysis" (Special Report 27); "Condemnation of Property for Highway Purposes, A Legal Analysis," Parts I (Special Report 32), II (Special Report 33), and III (Special Report 59); "Legislative Purpose in Highway Law, An Analysis" (Special Report 39); "Outdoor Advertising Along Highways, A Legal Analysis" (Special Report 41); "Highway System Classification, A Legal Analysis," Part I (Special Report 42); "Federal-Aid Provisions in Highway Laws, An Analysis" (Special Report 48); "Intergovernmental Relations in State Highway Legislation, An Analysis" (Special Report 49); "State Constitutional Provisions Concerning Highways, A Legal Analysis" (Special Report 50); "Highway Contracts, A Legal Analysis" (Special Report 57); "Traffic Engineering, A Legal Analysis" (Special Report 64); "Highway Programming: An Analysis of State Law" (Special Report 70); and "Law of Turnpikes and Toll Bridges, An Analysis" (Special Report 83).

An extensive body of research findings on highway maintenance engineering has also been published by the Highway Research Board, and provides much data of collateral interest and value to a study of legislation and court decisions on this subject. Particularly pertinent are the Board's Special Report 65, "Iowa State Highway Maintenance Study: Time, Utilization, Productivity, Methods and Management—1959-1960"; and Special Report 61C, "The AASHO Road Test: Report 3—Traffic Operations and Pavement Maintenance."

This report was researched by George D. Becker, Legal Assistant with the Special Studies Staff of the U. S. Bureau of Public Roads. The photographs used are by courtesy of the U. S. Bureau of Public Roads and the Highway Research Board. Publication of this report was made possible through a special grant by the Automotive Safety Foundation, Washington, D. C.

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SUMMARY AND CONCLUSIONS

Maintenance is an essential function in the administration and operation of all highway systems as a means of protecting public investment in these systems, and preserving the standards of safety and economy to which the highway was originally built. Assignment of responsibility for maintenance is a matter of primary concern to the State legislatures because it is from this source that jurisdiction is given to the administrative agencies and political subdivisions of the State. The State legislatures have recognized the need for legislation pertaining to maintenance and have, to varying degrees, enacted statutes authorizing or imposing the duty to make repairs on the various agencies under their control. Because even within a State there are a multitude of circumstances affecting the maintenance needs of various roadways, it is impossible for a legislative body sitting in the State capital to pass laws dealing with every aspect of maintenance of every road. Therefore, most laws have had to be general, applying to entire systems of roads and streets. Detailed maintenance practices have been left to the responsible authorities.

Most States have enacted very few statutes pertaining to the repair of highways, thereby relying on the discretion of the highway authority to determine what action will be necessary to achieve adequate maintenance. All States appear to have acknowledged the need for permitting engineering judgment to be exercised in meeting maintenance problems. Some States have sought to establish specific conditions under which certain action may be taken by highway authorities.

The problems of legislatures are increased by the fact that they must deal with three different jurisdictional levels: the State, the counties, and the cities.

This problem becomes even more complex in those States that distinguish between cities, townships, towns, or boroughs. The lawmaker is thus faced with the necessity of recognizing the nature of the various jurisdictional levels and passing laws that are equipped to meet their needs. Legislative organization of this activity must take into account the influential features of localities such as area, population, miles of road, physical terrain, and financial capabilities.

An important element of the legislative problem is that of time. Unfortunately for the lawmaker, as the national highway system has developed and population shifted, road maintenance problems have developed new characteristics and magnitudes. As a result, new laws frequently have created conflict with old laws, or have left gaps not covered by either the old or new law. Statutory organization has suffered as a result of a piecemeal approach. Moreover, statutes regarding a given area are to be found throughout the highway laws rather than consolidated in one place. Inevitably, questions and conflicts have arisen.

The problem of gaps is of particular concern in legislation. A piecemeal approach to maintenance enactments encourages the passage of laws framed to meet a specific problem. As a result, when a similar problem arises in an area not covered by statute, the courts tend to presume that the legislature did not intend that the authority responsible for action should take action without specific statutory permission. While the legislature may have intended this to be the case, it is also possible that it did not. Statutory gaps can create problems in that they will authorize activities up to a certain point, and then leave unattended certain areas which should have legislative direction. An example of such a

situation is one in which not all of the road mileage in a State is assigned to particular governmental units for maintenance. It is obviously undesirable that any part of the public highway system should suffer for lack of maintenance; but without statutory direction there is always a danger of conflict over who should maintain a given roadway, with the result that no one is willing to accept responsibility.

Partly as a result of legislative gaps and partly because a great many maintenance activities do not lend themselves to statutory direction, agencies responsible for highway maintenance sometimes undertake activities that are not authorized by any statute. Such administrative initiative is necessary in many instances; but where basic authority is challenged, it would be better to have specific provisions under which public officials operate. Where this is the case, there will be less likelihood of questions concerning the scope of an agency's basic authority.

THE NEED FOR DEFINITIONS

One of the primary needs of the agencies responsible for road maintenance is an adequate definition of what the activity entails. In most States, however, such definitions do not exist, with the result that two disadvantages frequently arise. First, with many different agencies maintaining roads, there is apt to be a wide disparity in maintenance standards if each agency determines for itself what constitutes adequate repair. Second, the various agencies tend to reach dissimilar conclusions as to what matters are appropriate objects of maintenance responsibility. One may determine that lighting is within its ambit and traffic signs are not, while another may determine that traffic signs should be maintained but lighting fixtures should not. In making a determination of what comes within the scope of a maintenance directive, there

may, of course, be statutory provisions that expressly grant the authority over such areas as lighting, traffic signs, obstructions, snow removal, or roadside beautification. However, they are usually so specific as to direct such activities only on certain road systems.

A good definition of maintenance, then, is one that sets forth a basic standard that must be met, such as the performance of those activities necessary to preserve a road in its originally constructed condition. It should also enumerate those features or aspects other than the road surface that are to be encompassed by the definition. In this way the scope of the function is defined.

JURISDICTION OVER ROAD SYSTEMS

Legislatures cannot enumerate every road or street, and assign official responsibility for its maintenance. Therefore, they make broad road system classifications for purposes of assigning maintenance duties. Usually, the basic classification includes State highways, county roads, and city streets, with city streets being those that fall within the limits of the city and county roads being those within the boundaries of the county. Three problems may arise, however, in this ostensibly logical system of classification. First, jurisdictions of smaller units are included in those of larger political bodies, thus creating the danger of overlapping jurisdictions. Secondly, road systems cross political boundary lines and may encourage fragmentation of jurisdictional control. Thirdly, there are special road systems that need individualized legislative attention.

The legislatures tend to deal with the first two problems primarily through system designations. A major highway artery is determined to be under the care of the State officials no matter where it runs, while country roads are all roads not in the State system or within cities.

The county designation is, however, somewhat different when there is a township classification. Typically, all areas of a county that are not comprised of cities are included in townships. Even with this basic method of designation, problems remain. Some States feel that all roads within a city should be maintained by the city. Others feel that if a city street is a part of the county or State system, it should be maintained by the county or State.

In the process of delegating authority to maintain road systems, the legislatures of many States have created overlapping control. Sometimes this takes the form of legislation in which a city is given control of a State highway within its limits. Such legislation often has a proviso that the State authorities may maintain it if the city fails to do so. Cases are also found where two statutes give two political bodies jurisdiction over the same roads. To the extent that jurisdiction overlaps, maintenance may suffer by virtue of both agencies hesitating to take charge of the roads involved.

A more serious problem is that of special road systems not included in the basic systems. Road categories such as rural post roads, farm-to-market roads, free-ways, expressways, and municipal connecting links to State highways—to mention only a few—fall into this class. With these special systems, the legislatures must start again allocating the maintenance function to the appropriate jurisdiction.

The range of approaches to the problem of proper system classification is large. Some States have established State, county, and city systems without any attempt to subclassify their roads; while others have created a large number of subclasses, crossing clear-cut jurisdictional lines many times in doing so.

REMEDIES FOR NONPERFORMANCE

Throughout the statutes giving jurisdiction for highway maintenance to various political bodies, there is a variety of language regarding the mandatory or permissive nature of this duty. No matter which type of phraseology is used, the agency to whom the statute is directed is legally liable for failure to perform road maintenance once this duty has been accepted. The use of different types of words does have an effect on whether the remedy of mandamus will be available to enforce maintenance duties, and may explain why legislatures have chosen to use particular language.

Permissive words have generally been held to create a discretionary duty in which highway authorities shall determine for themselves whether a road shall be maintained; whereas, mandatory words direct that it shall be maintained leaving to the discretion of the responsible officials the determination as to what standard it shall be repaired. It has also been held that mandamus will lie to remedy an abuse of discretion; so that even under permissive statutes it is arguable that if the abuse of discretion is flagrant, mandamus will lie.

It is important that there be some remedy an individual or group of private citizens can invoke against officials compelling them to carry out their functions. Where oversights or errors in engineering judgment occur, the law generally allows the incident to be challenged for possible abuse of discretion. There must, however, be limits to this remedy because public officials should not be subject to continual litigation by dissatisfied citizens who question their judgment. Mandamus has proved to be capable of providing a remedy that is available in proper cases; and, at the same time, be subject to legislative control over the circumstances under which it will be used.

There are also a few specific statutory remedies for failure of an agency to perform its maintenance function. These include suits by one unit of government jurisdiction against another, fines, criminal sanctions against public officials, and quasi-legal procedures. The extent to which they supersede mandamus is uncertain. It is probable that they are used in conjunction with mandamus.

AGREEMENTS AND CONTRACTS

Execution of the requirement that a highway agency maintain specified roads would be difficult were it not for the authority granted by the legislature for said agency to enter into agreements or contracts with other agencies either of the same or different political levels, and to execute contracts with nongovernmental organizations. This type of power is important for the sake of efficiency and economy, and to ameliorate jurisdictional problems where two jurisdictions have control over the same road.

Not all local governmental highway agencies have been granted the power to enter maintenance contracts and agreements. However, they may still exercise it under their general powers with respect to contracts. Whether they do or not is a matter of local practice and not within the scope of this study. To the extent that specific contractual power has been granted and to the degree that it is specific, the enactment of these statutes may foreclose the possibility of entering into agreements in areas not specifically referred to by the legislature. This may work to the detriment of individual agencies and political subdivisions because of special needs that arise.

One of the most important types of statutory provision is that which enables the various jurisdictions, usually of the same governmental level, to enter agreements for the joint maintenance of roads. A majority of States have provisions of

this type. Generally, the roads provided for are those that fall on boundary lines and which, as a result, are not clearly the responsibility of any one jurisdiction. Joint maintenance provisions allow neighboring units of government to divide maintenance work either according to statutory directive or as they see fit.

Another type of provision, pertinent either to the road systems mentioned in the statute or to all roads in their jurisdiction, allows governmental units to enter into contracts which provide that one will maintain the roads of another. Usual contractual principles apply in such agreements. The value of this type of statute is that it enables the most efficient maintenance operations to be carried on in instances where one unit of government is too small to be able to keep a road crew and equipment on hand at all times. This type of agreement is also useful when an area of maintenance overlaps jurisdictional lines.

Many States have authorized the use of cooperative agreements for maintenance. These differ from contractual agreements by allowing agencies or units of government to assume concurrent jurisdiction over the same road, use funds from both treasuries, and maintain according to the methods they determine will best fit their needs. It is useful where both derive benefits from the road involved, and where the determination of which has the primary responsibility is uncertain.

Another type of contractual arrangement to be found is that which enables a political body's highway authorities, usually the State, to enter agreements with the Federal Government. These agreements are most frequently enacted as one means of insuring that the State and its subdivisions get the maximum amount of Federal aid available. It is almost always general enough to give the responsible authorities broad discretion in entering agreements.

The final contractual device is that by which a highway agency is enabled to enter contracts with nongovernmental bodies for the maintenance of roads. Most legislatures have enacted authority of this sort for State and county jurisdictions. A number of legislatures have also done so for their cities. The fact that no provision pertaining to maintenance is found in the statute law does not necessarily foreclose public agencies from the right to enter such contracts. They may often do so under some general contractual power. The principal rationale behind such provisions is that they enable a public agency to avoid employing its own maintenance forces, and to contract for maintenance through competitive bidding if this is deemed most economical.

With respect to all of the contractual tools mentioned, some of the legislatures have made the provisions mandatory, while others have made them permissive. One reason for this is to take advantage of the mandamus remedy. Perhaps a more important reason is to control the amount of discretion the various highway authorities have in entering such agreements.

No attempt is made to suggest which legal devices are best, for local laws and constitutional provisions govern this question. Experience does suggest, however, that the more devices available to an agency, the better its chance of making arrangements which will enable maintenance to be performed most economically and efficiently.

RELATIONS WITH THE FEDERAL GOVERNMENT

Because Federal grants to aid State highway construction are made upon condition that certain standards are met, numerous States have enacted legislation to assure that State highway agencies can and will comply with these standards.

Some of these States have enacted laws enabling one or more of their agencies or political subdivisions to enter contractual arrangements, for maintenance purposes, with the appropriate agency of the Federal Government. Some of these provisions refer to all roads while others designate the system that is covered specifically. Another type of statute designates the agency which has the duty or authority to maintain roads constructed with Federal aid. It is by nature less flexible than the first. The legislature in a third type of law pledges the good faith of the State to meet the Federal-aid requirements attached to Federal grants. This kind of enactment is the most flexible of all because under it the responsible authorities may, at their discretion, perform those acts necessary to secure Federal aid.

MISCELLANEOUS

A number of States have enacted provisions under which specified agencies (usually at the State level) are called on either to investigate the best methods of maintenance, establish the best standards of repair, or both. This type of provision is useful because it enables the designated agencies to carry on research regarding maintenance. In a number of States this research statute is in addition to one calling for investigation or the establishment of standards, thereby enabling one unit of government to pass on to other political bodies the knowledge it has gained from research. For those agencies which do not have an investigation or standard-making provision, this type of enactment is most useful in making any knowledge gained from experience or research in other enabling laws available to all highway authorities.

CONCLUSIONS

Because of the many road systems and agencies responsible for highway repairs,

the legislative bodies are faced with the difficult task of enacting adequate laws guaranteeing proper maintenance. They have the responsibility to see that all roads are provided for, and that there is an equitable distribution of the maintenance burden among the various jurisdictions involved. To achieve this, the legislatures of the several States have utilized various legislative approaches. A review of these approaches suggests that a good legislative scheme for the maintenance of highways should deal with the following matters:

1. *Adequate Definitions of Maintenance.*—Special provisions of this kind will enable highway agencies to undertake the many desirable road maintenance functions with the assurance that they are working within the scope of legislative intent. Borderline areas of the maintenance function will be clearly defined for them.

2. *Placement of All Road Systems Under Some Jurisdiction.*—An important objective of legislation should be the elimination of the danger that some roads are not specifically designated for maintenance by any State or local agency. The effect of such legislation would enable the road authorities to act with the assurance that they are performing properly delegated duties when they maintain any given road. Such a legislative scheme assumes, of course, that each State also has all-inclusive street and highway system designations.

3. *Broad Interjurisdictional Agreement Authority.*—Comprehensive legislation will include grants of power to all political bodies responsible for the maintenance of roads to enter agreements for joint maintenance, to maintain the roads of some other jurisdiction, to enter cooperative agreements, and to enter agreements with the Federal Government. Such laws should not be so specific that they preclude activities of a similar nature by other

agencies due to restrictive statutory interpretation which thwarts legislative intent. The effect of such provisions will enable the various authorities responsible for road maintenance to invoke several alternate road maintenance methods, thereby creating more efficient operations.

4. *General Contractual Authority with Nongovernmental Bodies.*—Provisions on this subject supplement interjurisdictional agreements, and are another useful device for seeing that roads are maintained as efficiently and economically as possible. The same dangers that are involved with interjurisdictional agreements regarding too much specificity are involved here.

5. *Ability to Deal with the Federal Government.*—The Federal grant-in-aid laws require State road construction to meet certain standards, and have led many States to enact permissive legislation allowing State agencies and local governments to cooperate with the Federal Government. The most flexible laws of this type are those that allow the agency referred to in them to use broad powers and discretion in dealing with the Federal Government to secure the advantages offered.

6. *Adequate Provisions for the Investigation of Maintenance Methods, the Setting of Standards of Maintenance, and the Giving of Advice to Other Jurisdictions.*—Research is an important aspect of maintenance, and necessary in the setting of maintenance standards. Permissive enactments that allow some agency in the State to carry on research and set standards are advantageous in that they should lead to greater efficiency and better roads. For these functions to be carried out properly, it is advisable that the responsible agency or unit of government also be given authority to advise other agencies of its findings so that all may benefit. Legislation that permits several jurisdictions to investigate methods and set standards for maintenance may lead to unnecessary duplication of effort.

INTRODUCTION

In modern highway engineering, the concept of maintenance includes all those measures and activities necessary to preserve roadways, structures, and other highway facilities as nearly in the condition of their original construction and subsequent improvement as possible. Also included are additional measures which may be needed to keep traffic moving safely and expeditiously in periods of unusually adverse conditions of nature.¹ Maintenance of modern highways thus involves patching pavements, filling ruts and holes, removing surface corrugations, cleaning ditches, repairing bridges and culverts, removal of debris from floods, and the like. The agency performing highway maintenance also is generally responsible for erecting route signs and traffic controls, painting center stripes, cutting grass and weeds, restoring shoulder surfaces, and removing snow and ice in season. Complicating the task of highway maintenance is the fact that different types of roadways require differing types of treatment, and that the same type of highway built in different locations requires different maintenance operations. The fact that highway maintenance is not an exact science and requires the application of judgment based on experience is a factor of importance in understanding the framework of laws which has been developed for carrying on this function.

Experience in highway maintenance has revealed other factors which must be considered in providing a legal and administrative framework within which such programs are carried on. A study sponsored jointly by the Iowa State Highway Commission and U.S. Bureau of Public Roads has noted several of these factors as follows:

From the beginning of highway maintenance, its heritage has included taking care of problems unknowingly or neglectfully perpetuated by design and construction engineers. Correcting these problems in future construction, unfortunately, does not provide a cure for the part. Some of these problems end up as perpetual obligations, such as the necessity to clean sediment from drainage structures at regular intervals. Others, such as erosion and shoulder repair, may require special attention for a period of several years after construction.

The bulk of work done by maintenance forces is in connection with the primary responsibility for routine work which preserves investments or provides the public with a desired service. This work includes a host of operations: patching many types of roadway surfaces; keeping drainage structures and ditch lines free of obstruction; controlling vegetation; controlling snow and ice; erecting or replacing traffic signs; marking pavements; and picking up litter.

Many routine processes are used in performing maintenance work. Under the conditions encountered, however, only a small portion of the work is characterized by uniformity. Controlling snow and ice, for example, is routine in the sense that it is carried out every winter, but it is rarely accomplished under identical circumstances. The variables are numerous and often difficult to comprehend and measure or to predict with accuracy.²

Full appreciation of the present state of the law is aided by recalling the history of road maintenance in the United States. During the Colonial Period and most of the nineteenth century, a major part of American highway law followed the pattern of the older English common law requiring the owner of roadside lands to perform such maintenance duties as scouring ditches, trimming roadside foliage, and, if necessary, cutting drainage ditches into his own land to channel surface water run-off from the roadway. These duties of abutting landowners to prevent ob-

¹ WOODS, K. (ed.), *HIGHWAY ENGINEERING HANDBOOK*, McGraw-Hill, New York (1960), p. 27-4.

² "Iowa State Highway Maintenance Study." HRB Special Report 65, p. 7, (1961).



1858—E. W. Blake's stone crusher was a major advance in road building and road repair technology.

structions to travel represented all the maintenance needed for most of the road mileage of the American States in the early nineteenth century. Such roads were little more than horse paths widened and cleared of stumps. In the most populous areas of the Nation, where streets and roads received more attention, the chief tools of the roadbuilder were the ox-drawn plow; the horse-drawn scoop, for moving earth; the wheelbarrow; the drag, or scraper; and those hand tools customarily available to the farmer (axe, rake, hoe, spade, shovel, and harrow).

The labor needed for repair and reconstruction of roads was supplied locally by provisions of State law requiring all able-bodied men between specified ages to work a certain number of days each year on the roads of the district in which they resided. This so-called "statute labor

system" continued to be the prevailing method of performing road maintenance in rural areas of the United States throughout the nineteenth century, despite a growing body of complaint from engineers and economists who criticized its inefficiency and inherent unfairness.³

Relatively early in the nineteenth century the major cities came to regard the statute labor system as too cumbersome for their needs, and began to finance professional road repair by taxation. By the end of the nineteenth century most states had shifted from complete reliance on statute labor to a combination of labor in person; commutation of labor to a tax payment; and, where the nature of the repair or reconstruction was such as to be beyond the capabilities of casual labor,

³ See, for example: HAUPT, L. (ed.), *ESSAYS ON ROAD-MAKING AND MAINTENANCE AND ROAD LAW*, Philadelphia (1891), pp. 74 ff.

public contract. The last half of the nineteenth century also saw the invention of certain labor-saving devices which further decreased the justification for using the statute labor system.⁴

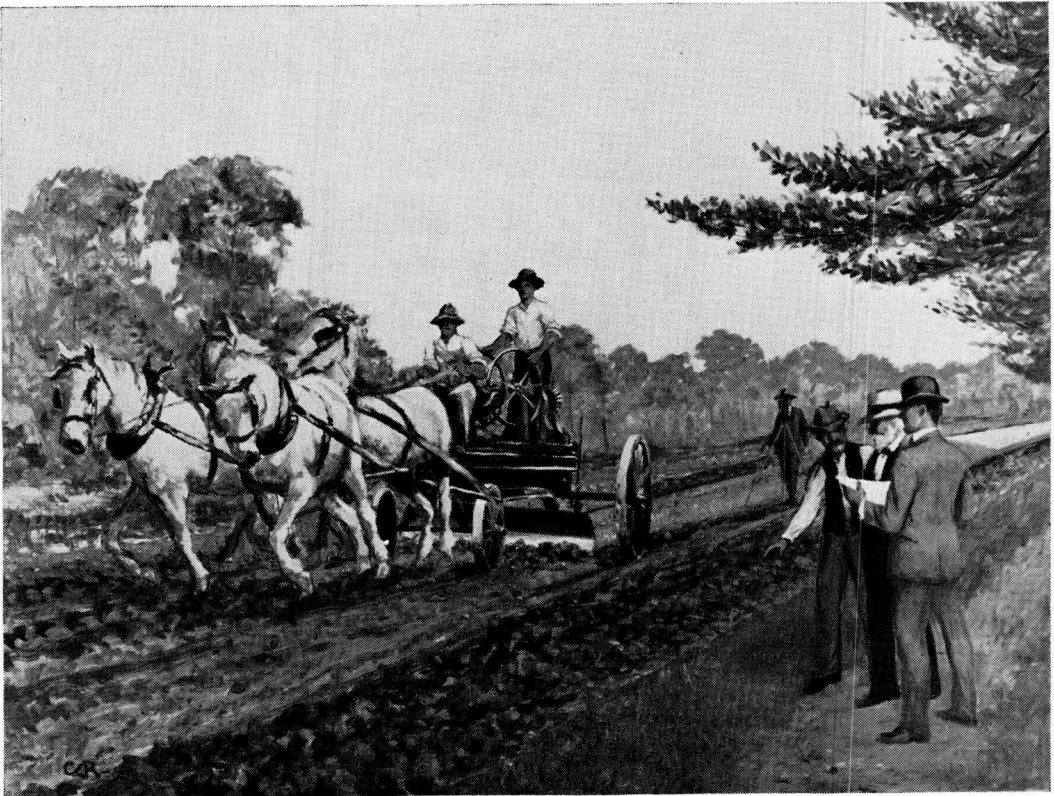
Formal legislation in the nineteenth century reflected these changes in the States' attitude and approach to highway maintenance, and was concerned chiefly with providing a framework of legal authority in which local officials could organize and supervise the work needed. With variations, the State laws typically provided for county and township road supervisors or Boards of Control which had responsibility for allocating funds and determining what maintenance was needed. Legislation also delegated responsibility for maintenance between neighbor-

ing towns, liability for injuries due to lack of maintenance, and penalties for officials who neglected road repair duties. Normally, however, failure of this latter sort was made excusable if funds were not available for maintenance work. Statutory descriptions of the specific duties of road maintenance overseers were invariably vague; as, for example, the revised New York statutes, which stated:

It shall be the duty of overseers of highways in each town:

1. to repair and keep in order the highways within the several districts for which they may be chosen;
2. when so required by the commissioners of highways or any one of them, to warn all persons assessed to work on the highways in their respective districts to come and work thereon;
3. to cause the noxious weeds on each side of the highway within their respective districts to be cut down or destroyed twice in each year, once before the first

⁴ For example, the steam driven stone crusher was patented by Eli Whitney Blake in 1858; and the steam road roller, for which the first United States patent was issued to Andrew Findeloff in 1873, was actually used in road construction in New York City's Central Park.



1897—The first "object lesson road" was built by the U.S. Office of Road Inquiry.

day of July, and again before the first day of September; and the requisite labor shall be considered highway work;

4. to collect all fines and commutation money, and to execute all lawful orders of the commission.⁵

State laws relating to maintenance changed very little until the second decade of the twentieth century. Elliott's treatise on highway law in 1911 still described the county-township supervisor system as the basic framework by which maintenance was carried out. However, by 1911 laws relating to maintenance appeared to be concerned in a major way with problems arising out of municipal contracts with private persons to keep certain public streets and highways in repair. Growth of the practice of contracting for maintenance work could not and did not absolve municipalities of their legal lia-

bility for road repairs, but it was one step toward introducing professionalism into highway work thereby tending to outmode the statute labor system of maintenance.⁶

The final step in substituting professional engineering for amateur and unskilled road maintenance was taken with the organization of State highway departments in the 1920's. Thus, by 1929 it was possible to read that:

Nearly all state highway organizations include a maintenance department which has general supervision of all maintenance activities in the state. The highways to be maintained are divided into patrol districts including from 5 to 15 miles of highway and a patrolman is employed to perform all maintenance work on the highways in his district. . . . In addition to the work done by the patrolmen, there will be some general

⁵ THOMPSON, I., A PRACTICAL TREATISE ON THE LAW OF HIGHWAYS, Albany (1868), p. 114.

⁶ See, generally; ELLIOTT, B.K. and W.F., A TREATISE ON THE LAW OF ROADS AND STREETS, Indianapolis 3rd ed. 1911), §§465-481.



1905—Research to improve and protect road surfaces was conducted by the U.S. Office of Public Roads and the Marion County Tennessee Roads Commission.



1925—A uniform route marking system was adopted giving evidence that long distance motor transportation was fact.

repair work that requires a crew of several men and extensive equipment. For work of this latter class maintenance gangs are organized with the proper personnel and suitable equipment. . . .⁷

This historic evolution of American State legislation, relating to road maintenance, has influenced the character of the present statutes on this subject. Consistent with its history, much of this body of law is concerned with enabling local government to perform as much of the maintenance procedure as may feasibly be assumed by it. Because maintenance has been accepted as a major responsibility of State government only in relatively recent years, and then with respect to relatively restricted segments of the total systems of streets and highways, there exists no uniform agreement as to the scope and content of maintenance

programs. Matters which (in more mature branches of highway law) have been stabilized by legislation based on extensive engineering background, administrative competence, and judicial interpretation, are still subjects of experimentation in the laws relating to maintenance. To a great extent the lawmaker, like the engineer, must view the subject of highway maintenance as described in the Iowa State Highway Commission's recent study:

While research has found great favor in construction, design, and traffic engineering, generally speaking it has been neglected in the maintenance field. . . . Maintenance, with its diversified activities extending throughout the State, presents a local and Statewide challenge in the art of labor and equipment management and the possibility of a new horizon to the organization which can make substantial improvements in methods and practices.⁸

⁷ AGG, T.R., THE CONSTRUCTION OF ROADS AND PAVEMENTS, New York (1929), p. 429.

⁸ "Iowa State Highway Maintenance Study." HRB Special Report 65, p. 2, (1961).

STATUTORY DEFINITIONS OF MAINTENANCE

Adequate definitions of maintenance terminology are essential to the successful allocation of maintenance functions among State, county, and city highway agencies, and for the development of effective performance standards for these functions. Such definitions may be set forth in particular language and adopted by the legislature, or may be established through interpretation of substantive provisions of enabling statutes dealing with maintenance, and through administrative practice.

Fourteen States and the District of Columbia have included definitions of maintenance in their legislation regarding this subject.⁹ These States are Alaska, Arkansas, California, Delaware, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Mississippi, New Jersey, Pennsylvania, and Wisconsin. By far the most complete definition is that of New Jersey, which distinguishes between "maintenance," "repair," and "work." This definition describes the standard of maintenance as the preservation of the general character of the original road without alteration in any of its component factors. Any major alterations or restorative actions therefore fall into the definition of repair. The full scope of the maintenance function is outlined in the definition of work and includes maintenance and repair, removal of obstructions, placement and upkeep of road signs, and restoration of detours. The clear inference of this statute appears to be that an agency with maintenance authority over a highway system is expected to carry on continual activities to keep the road from deteriorating as a traffic facility.

Eleven States have definitions that prescribe specific standards for the main-

tenance of roads in addition to provisions describing the general scope of the maintenance function and responsibilities of maintenance agencies.¹⁰ Five States¹¹ provide that the standard of maintenance is a state of repair comparable to the original condition of the roadway. Four States define maintenance as keeping the roads in such a condition as to preserve a smooth surface.¹² Illinois considers maintenance to be the performance of all things necessary to keep a highway in serviceable condition for vehicular traffic; and Maryland considers it to be keeping a road in ordinary, efficient operating condition.

The laws of Indiana, Wisconsin, and the District of Columbia offer an interesting contrast in their legislative approach to the establishment of standards. Indiana defines maintenance as the preservation and repair of surfaces, the development of surfaces and roadbeds, and the means to promote safety and traffic.¹³ Wisconsin defines maintenance only in regard to State trunk highways and refers to it as a continuing process for their preservation, restoration, and reinforcement.¹⁴ The District of Columbia considers maintenance to be those repairs necessary to preserve the highway.¹⁵

Pennsylvania defines maintenance only in relation to limited-access highways.¹⁶ The definition contains no mention of the standard to which the road is to be kept, but does outline the scope of maintenance to include the removal of snow, repair of curbs, shoulders, ditches, and slopes, and also permits inclusion of attention to lighting, parking facilities, and trees, grass, and shrubs where this is deemed

⁹ Alaska, 14A-1-3(10); Ark., 76-505, Cal., 27; Del., 17-101; Hawaii, 111-30(b), Ill., tit 121, §2-214; Ind., 36-107; La., 48-1(13), Me., 23-2, Md., 89B-2(e), Miss., 8053; N. J., 27 7-1; Pa., 36-2391 10, Wis., 84-07(1); D. C., 47-1902(i).

¹⁰ Alaska 14A-1-3(10), Ark. 76-505; CAL. STS. AND HIGHWAYS 27; Del. 17-101; Hawaii 111-30(b), Ill. 121-2-214; La. 48-1(13); Me. 23-2; Md. 89B-2(e), Miss. 30-8053, N. J. 27:7-1.

¹¹ Alaska, Cal., La., Me., N. J., *supra* note 10.

¹² Ark., Del., Hawaii, Miss., *supra* note 10.

¹³ Ind., 36-107.

¹⁴ Wis., 84-07(1).

¹⁵ D. C., 47-1902(i).

¹⁶ Pa., 36-2391.10

desirable. Alaska and Illinois have very general provisions stating that the scope of maintenance is the operation of highways in such a manner as to provide satisfactory and safe roads, and the performance of all things necessary to keep a highway in serviceable condition.¹⁷

The remaining five States are more specific in stating the scope of maintenance. Arkansas considers the scope as including culverts and drains, and the making of cuts and fills if the State deems it necessary. In California, maintenance is defined to include attention to safety devices, roadside plantings, and lighting. In Delaware, keeping the right-of-way clear of underbrush and debris, and planting and preserving trees are considered part of the scope of the maintenance function. New Jersey includes the removal of obstructions from the roadway, and the placement and repair of road signs and route markings. In Wisconsin, maintenance includes snow and ice control, care of roadside trees, and highway beautification.

Six States provide statements of legislative purpose in connection with their maintenance statutes. These, in practice, serve as reference points regarding the scope of the highway agencies' responsibilities in the absence of formal statutory definitions.¹⁸ Typically, such statements of legislative purpose are in general terms, leaving the details of maintenance methods to administrative policy and practice within the broad range of the highway agency's delegated authority.¹⁹

Comparison of the preceding examples of State legislation indicates that, in approaching the task of furnishing guidelines to agencies responsible for performing highway maintenance functions, the

tendency of most States is to rely on administrative practice to supply meaning to the term "maintenance." Among the fourteen States and the District of Columbia which have enacted formal legislative definitions of maintenance, the preferred practice appears to be to furnish standards which refer to some ascertainable past physical condition of the highway. Where roadside features, or facilities of an auxiliary nature are to receive attention as part of maintenance, it appears that legislative draftsmen have preferred to specifically mention such matters rather than leave them to administrative interpretation.

Where administrative practice has been relied upon in lieu of statutory definitions to establish the scope and content of legal responsibilities for road maintenance, there has, until recently, been no authoritative set or source of standards for administrators to follow. Since the early 1950's, however, the American Association of State Highway Officials has provided a framework for the development of policies of nationwide application and acceptance on maintenance responsibilities. From these policies, informational guides and manuals for the administration of maintenance work have been issued.²⁰ These documents, while not recognized by legislative declaration as being incorporated by reference into the general statutory obligation of maintenance, can nevertheless serve effectively in closing what otherwise would remain a continuing gap in the coverage of the law.

²⁰ The principal publications of the American Association of State Highway Officials relating to definitions and descriptions of standards or specifications for maintenance include: "AASHO Highway Definitions," (1962); "Manual on Uniform Highway Accounting Procedures," (1960); "Informational Guide for Lighting Controlled Access Highways," (1960); "Informational Guide for Physical Maintenance of Pavements," (1963); "Informational Guide on Services to Motorists on Interstate Highways" (1961); "Guide for Bridge Painting," (1962); "Guide to Roadside Mowing," (1962); "Policy on Maintenance of Shoulders, Road Approaches and Sidewalks," (1958); "Policy on Maintenance of Safety and Traffic Control Devices and Related Traffic Services," (1955); "Policy on Locating Police Stations and Maintenance Yards Serving Interstate Highways," (1959)

¹⁷ *Supra* note 9.

¹⁸ Fla. 834 02(5-7); Ill. 121.314a-26, LA. LAWS 1955 act 40 §1, Neb. 89-1301; Nev. 408.100 (5-6); N D. 24-01-01.

¹⁹ See: "Legislative Purpose in Highway Law." HRB Special Report 39, pp. 44-47, (1958).

LEGISLATIVE DUTY AND AUTHORITY TO MAINTAIN ROADS

Good highway administrative practice recognizes the necessity for clear and realistic allocation of maintenance responsibility. Thus no segment of the general system of public highways should be left in an uncertain status regarding the legal responsibility and authority for maintenance by some specific unit of government. Normally, and without constitutional or statutory provisions providing otherwise, streets and highways are considered to be under the jurisdiction of the governmental unit within whose territorial limits they are found.²¹ The State has full sovereignty over all public ways, however, and may by statute alter this method of allocating jurisdiction over roads, subject to constitutional limitations.²² The statutes have been enacted in every State to clarify jurisdictional responsibility for highway systems. Some States have fairly complex divisions of authority within political subdivisions, while others put the burden of maintenance primarily on the unit of local government in whose territory the road lies.

In order that the legislature may clearly assign responsibility for maintenance to a specific governmental agency, it is necessary for the State to adopt a system for the classification of highways. Generally, classifications fall into two groups: generalized groupings and groupings encompassing specific types of highways. The general classification usually divides streets into State, county, and municipal systems. The specific classifications give responsibility to the State, counties, or municipalities for the maintenance of clearly defined systems. Illustrative of the specific classes of roads recognized for maintenance are detours to one of the general classes, municipal connecting links, streets in unincorporated towns, roads

constructed with Federal funds, expressways, rural post roads, municipal extensions of State or county roads, farm-to-market roads, parkways, freeways, U.S. Mail routes, rural roads, and Interstate highways.

Legislative assignment of responsibility for maintenance may be either mandatory or permissive. Table 1 lists citations of state maintenance statutes for each of these categories. Some statutes appear to be neither mandatory nor permissive authorizations, but rather directives as to what political body has control over the operation and maintenance of specified road classes. In a few cases, there is provision for concurrent jurisdiction; and in others, repairs are made upon consent, request, or direction of one of the units of government affected. Provisions allowing one agency to aid another in maintenance or allowing maintenance by one governmental agency if another fails to do so are also found.

There are also special road systems under the jurisdiction of State, county, or municipal bodies regarding which the statutes listed in Table 1 are silent. Provisions regarding these highways are shown in Table 2.

For convenience this chapter will be divided into State, county, and municipal sections. Under these major headings, subsections covering the major road systems and miscellaneous road systems will be analyzed and compared. These subsections will be subdivided into mandatory and permissive statute groupings.

JURISDICTION OF THE STATE

Statutes giving State highway departments legal responsibility over various road systems for the purpose of repair may be classed according to their mandatory or permissive terminology. Legis-

²¹ *City of Elksville v. State Highway Comm'n*, 191 So. 274 (Miss. 1939).

²² *Sanderson v. City of Texarkana*, 146 S.W.105 (Tex. 1912)

Table 1. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Highways

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
Ala	Municipal connecting link. 23-78			State highways ¹ 23-20	State highways (with State aid) 23-20 Public roads in counties. ¹ 23-43 Roads in Municipalities. ² 23-49	County streets in municipality. 37-661, 662
Alaska	State highways 2A-1-19; 14A-1-62		City streets. 16.1-35(3)			City streets. 16-1-91
Ariz	State highways 18-106(7), 18-109(3); 18-102 A	County roads. 11-710 Roads outside cities. 18-207 Streets in unincorporated towns. 18-209			Public roads 11-251	
Ark	State highways 76-501, 76-505	County roads 76-806 Public highways within county 76-1021	Public highways within city. 19-3801	State highway detours. 76-515 Roads constructed with Federal Funds. 76-508		City streets 19-2313
Cal.	State highways 91	County roads 941		State highway detours. 93 County or city streets or highways if constructed by Federal aid. ³ 823 5 County or city streets ² 131(e)	County highways ¹ . 940	
Colo	State highways 120-13-2	County roads, primary and secondary county road system 120-13-11	City street system 120-13-24, 139-76-2, 120-13-26 Streets in cities which are designated as county highways. ⁴ 120-3-17 Streets in cities which are designated as State highways ⁴ 120-3-17			Streets within its boundaries ¹ 139-32-1 Highways leading into cities. 139-32-3
Conn.	State highway detours 13-142		Town roads. 13-53 All necessary highways within boundaries. 13-2	Highways 13-79 Expressways 13-161	Highway within town ¹ 13-12	

Table 1. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Highways (Continued)

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
Del.	State highways. 17-182; 184 Streets built between 1935 and 1951 in unincorporated suburban communities. 17-181					
Fla.	Municipal connecting links. 335.05(8)			State highways 335 02(1)	County roads ¹ 336 02; 125.01	City streets 167 02
Ga.	State highways. 95-1504; 95-1610 State-aid roads. 95-1714 Rural post roads. 95-2202				County roads ¹ 23-904	
Hawaii	All roads on which Federal-aid funds have been spent. 111-11	County highways. 142-3 Public highways and streets 146-90(c)				
Idaho		County road system 40-131	Streets within its limits. 40-136, 50-1141	State highways ¹ 40-120		
Ill.	State highway system. 4-405 Detours to State highways. 4-407	County roads. 5-401, 5-205.5		Freeways. 8-101	Township roads. ² 6-401 Municipal extension of county road ² 5-408 Freeways. 8-101	Municipal streets. 7-101 State highway within municipality. 7-202.1 Freeways 8-101
Ind.	State highways. 36-2902, 36-107 State highway detours. 36-142 City streets connecting city of less than 3,000 inhabitants with State roads. 36-116 Roads constructed with Federal aid. 36-127	County highways 36-1459 Township roads 36-901			County highways. 36-301 Abandoned State highways. 36-117 One main thoroughfare through city. ² 36-701	City streets. ¹ 48-503 Abandoned State highways. 36-117
Iowa	Farm-to-market roads. ³ 310 29 Primary roads 313 36	Secondary roads. 306 3, 309.21, 309 67 Farm-to-market roads 310.29	City streets. 389.1, 389.12	Extensions of primary roads in cities. ² 313 21, 313 36, 314 6		
Kan.	Detours for State roads 68-2103	County roads 68-115, 68-516	County roads improved with	All roads. ¹ 68-404	Connecting links to county	County roads ² 68-506

Table 1. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Highways (Continued)

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
Kan (con't)	Township roads under Federal aid 68-404	Detours to county roads 68-121, 68-2108 State roads through county. 68-115	State, Federal aid 68-506(d)	State highways in cities. ³ 68-416	system in cities. 68-506e	Township roads. 68-560
Ky.	Primary roads. 177.020	County roads 179 070	Public ways. 93.050, 94.040, 93 950	State roads 177.340 Highways in cities of 4th, 5th, or 6th class 177 048		
La	State highway system. 48-21, 48-261	Parish roads. 48-751	City streets 83-811	County and city highways. ⁵ 48-21, 48-193 School bus routes 48-215	Abandoned State highway 48-224	Streets within its limits. ⁴ 83-401(18)(21)
Me.	State and State-aid highways. 23-13, 23-68 Detours to State highways 23-26 Secondary Federal-aid roads 23-69 All roads in certain counties. 23-70; 23-39		Highways within its limits 23-71, 23-55 State highways in compact town. 23-71 Town highways. 96-63		County roads. 89-68 Town roads ³ 89 35; 96-66	
Md.	State roads 89B-68, 89B-7 County roads in 11 specified counties 89B-220	County roads ³ 25-1 Roads in unincorporated towns. 25-15		Parkways 89B-213	County roads. 89B-222	Public ways in towns. ³ 28B-75
Mass.	State highways 81-13		Town ways and town highways. 84-1 Public ways constructed or improved by the State and which are not State highways. 81-25	Public ways constructed or improved by the State and are not State highways in towns ³ 81-25	Highways within county ⁷ 82-1 Highways in town. ⁵ 81-26A	State highways. ⁷ 81-19
Mich	State trunk line highways 9 901, 9 1097	County roads 9.121		State highways ² 9 204 County line highways ² 9 117 Federal-aid highways. 9.831		
Minn.	State trunk highway system Art. 6, §1 of Const	County, State-aid highways 162 02	Municipal and State-aid highway system 162.09	State trunk highway in an adjoining State. 161 26	County roads ¹ 163 07 County highways 163 02(1) City streets ³	Roads beyond boundaries. 160 07

Table 1. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Highways (Continued)

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
Minn. (con't.)	Detours for trunks highways. 161.25		Town roads 164.02		163.16 Roads of certain cities & towns. 163.04(2) Roads beyond boundaries. 160.07	
Miss	State highway system. 8021, 8025	Roads in county. 8035-01 State-aid roads in counties 8035-08		State-aid roads ¹ 8035-08	State highways. 8324	City streets ¹ 16, §8374-129
Mo	State highway system 227.210	County roads. 230.030 Streets in unin- corporated town 231.340	City streets. Title 7, 88.153			
Mont.		Highways in county. 32-302(3)		State highways. 32-1615		City streets ¹ 11-906
Neb.	State highway system. 39-1337 Detour for State highways. 39-1347 Certain city con- necting links to State high- ways. 39-1339	Roads in unin- corporated villages 39-1405			Unpaved roads along city boundaries 39-1803 Unimproved roads in cities. 39-1803	County roads ² 39-2003
Nev.	State highways 408.285 Freeways ² 408.940			Freeways ² 408.940 Frontage roads to freeways. 408.940	County roads ¹ 408.090	City streets ¹ 266.275
N.H.	Highways con- structed by State. 231:1; 229:6 State-aid high- ways 231:3 Federal-aid high- ways in towns over 2,500 persons. ³ 239.5	Highways not in towns 246:1	All town high- ways 245:6 Class II, un- improved highways which are not maintained by State 231:4 Federal-aid high- ways in towns over 2,500 persons. 239.5 Class IV and V roads. 231:7, 231.8	City streets ² 229:22 Local service roads 236.5		
N.J.	State highways. 27-7-11	County roads. 27.14-21 Roads taken over by county. 27-16-6 Public roads in county. 27.16-8 Parkways. 27.18-4	Roads within its limits 27-22-1, 27-14-29	Detours to State highways. 27.3-3	Roads under county control. 27.16-1 Detours to county high- ways 27:3-4 County connect- ing roads and boulevards. 27:17-1	County roads in municipality 27.14-30

Table 1. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Highways (Continued)

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
N.M.	State highways 55-2-29 <i>et seq</i>	State highways. ² 55-2-29 County high- ways. 55-1-2	City streets 14-37-1		County roads ¹ 55-3-2	
N.Y.	State highways. 10(5) Detours to State roads 42		Highway within cities that are not part of State high- way system 102(1)			Town highways. ¹ 140(1)
N.C.	State highway system. 130-61(1), 136-45 Detours to State roads. 136-25 County roads 136-51		Municipal street system 136-66.1(2), 160-54	All roads except those in cities and towns ¹ 136-18(7) Federal-aid high- ways. 136- 18(12) All streets con- structed by State in towns under 3,000 persons 136-18(7)		
N.D.	State highway system 24-01-03, 24-03-02	County road system. 24-05-17	Township roads streets in town, 40-05-01(8), 24-06-01			State highways within cities ^{4, 8} 24-01-11
Ohio	State highway system. 5501 02(A), 5511.01 Intercounty highways 5535.07 State highways within muni- cipalities ² 5521 01	State highways ⁷ 315 13 County highway system 5535 01(B)	Township roads 5571 02, 5535 01(d)	State highways within muni- cipalities. ² 5501 11	Township roads. ⁵ 5535 01(c), Parkways 301 26	Municipal streets, 715 19, 723 01 State highways within the limits of town 5571.02 County roads, ² 5571 02, 5535 08
Okla.	State highways 69-55	County roads. Tit 69, 324, 69-51 Township roads Tit 69, 324	County line roads. 69-352	County and city roads ² 69-20 5 Federal-aid highways ¹ 69-20 7(a)		
Ore.	Some city streets ⁹ 373 030	County highways 368 205(2-a), 366 290(3) 368.415		State highways. 366 220(1), 366 290 City streets interrelated with thruways. 374 015(3)	Streets in unin- corporated towns ¹ 368 210	
Pa.	State highways 71-512, 36-1 Township roads using State funds. 71-516-a	County roads, 16-5901(f) City streets con- structed jointly by county and city 16-2762, 53-1834	City streets. 53-22561 Detours in certain cities. 53-37978, 53-57014, 53-66112 Streets which connect county roads. 16-2759		Detours to county roads 16-5940 City streets which connect county roads. ³ 16-2759	

Table 1 Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Highways (Continued)

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
R I	State roads 24-8-5, 24-8-14 Detours for State roads 24-8-19		Highways within town limits. 24-5-1	Freeways 24-10-2		
S C.	State highway system 33-101	Highways in county 33-815, 33-801	Streets and ways within city or town limits. 47-1321, 47-1323	Public roads. ¹ 33-71		State highways 33-112
S D.	State trunk high- way system 28 0211 All highway con- structed or improved with Federal aid 28 0211 Roads in unorganized territories 28 0501	County highway system. 28 0303, 28 0312 Secondary roads outside city limits. 28 0408, 28.0418 United States Mail routes. ³ 28-0407	Secondary roads in township. 28 0401 United States Mail routes 28-0407		Township roads in town 28.0314	
Tenn.	State highway system. 54-501, 54-113 County roads. ³ 54-613	County roads 54-0702 Rural roads 54-613	City streets. 54-406 Public highways in cities. 6-1001			State connecting lnks. 54-533
Tex	State highways. 6674q-4 Detours for State highways 66740o	County roads Art 6716-1(3)		State highways. 6673		City streets ¹ 1082
Utah	Class A roads ¹⁰ 27-8-1 Detours for State roads, 27-2(10)	Class B roads ¹¹ 27-8-3				
Vt.	Detours for State roads 19-4(6)		State-aid high- ways. 19-1, 19-13 Town highways. 19-101	State highways. 19-222 Highways in unorganized towns. 19-24	Town roads ⁴ 19-1335	State roads under Federal aid ⁵ 19-1804
Va.	State highway system 33-13 Detours for State high- ways 33-110 Secondary high- ways 33-46 County highway system 15-321		Bypass city routes on the State highway system 33-35	Interstate high- ways 33-36 2 Certain streets in town of less than 3,500 in- habitants ³ 33-50.1 <i>et seq.</i>		City streets ¹ 15-6(1)
Wash.	State highway system 47.01 160	County roads 36 75 020		County roads ³ 36 75 250 Streets in town ² 47 24 050	Streets in town ² 47 24 050	City streets ¹ 35 27 370(4)
W.Va.	County-district roads 1458		City streets and roads 494	State highways ¹ 1448(8)(1), 1457(1)	Roads not given up for maintenance	City streets and roads ¹ 494

Table 1. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Highways (Continued)

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
W. Va. (con't)				City connecting roads 1474(9) Local roads, ¹ 1448(8)(11)	to State. 1591	
Wis.	State trunk highways 84 07(1) Detours for State system. 84 20 Interstate highways. 84.01(17), 84.29	Intercounty trunk roads 83 025(2) State trunk highways within cities 83 025(a)	Town roads 81 01(1) County-aid roads within its limit. 83 06		State highways. ⁵ 83 03(1) Town roads ³ 81.14(1)	
Wyo.	Highways on which State funds were expended. 24-33 County roads under Federal aid. 24-40	Roads within unincorporated towns. 24-67	City roads and streets. 15-68		County roads ¹ 18-254, 18-149	City roads and streets ¹ 15-88, 15-530(10)
D C.	Highways and Streets Reorg Ord No. 53, June 20, 1953					
P.R.	Commonwealth roads. 9-12 to 18, 3-421 Highways through urban areas. 9-12					Commonwealth roads. 9-15

¹ Provision contains only reference to control, jurisdiction, power, or supervision over roads or maintenance.

² Upon request, consent, or direction.

³ If the agency with duty or authority to maintain fails to do so.

⁴ In conjunction with another governmental level.

⁵ May aid in maintenance

⁶ May assume concurrent jurisdiction for maintenance purposes.

⁷ Emergency or specific repairs.

⁸ May maintain to a higher standard than authority with duty.

⁹ Special routes.

¹⁰ State highway.

¹¹ County or municipal highway.

lation using mandatory terms directs the State authorities to undertake the maintenance of specific systems or road types. It does not leave to administrative discretion the question of whether the State has legal responsibility to repair certain highways. The questions of whether these highways should be repaired, the conditions under which they should be repaired, and the extent of repair needed are left to administrative discretion and engineering judgment, either absolute or in accordance

with the statutory definitions of maintenance functions.

Statutes speaking in permissive terms customarily attach conditions to the description of the State's maintenance obligation. In these statutes the State receives authority to perform maintenance functions on the public highway system, but the legislation requires that this authority shall be used only upon the occurrence of certain conditions or under certain stated circumstances.

Table 2. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Special Roads

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
Ala.	Roads in agricultural experiment stations 23-25 (2)					
Ark.	Park roads and park connecting roads. (2) 76-504					
Cal.	Roads on certain state controlled property 121			Highways in State parks ¹ 122		
Conn.	Roads in State parks, forests, and institutions. ³ 13-96					
Del.				Roads in State institutions. 17-136		
Fla.				Park road system. 335 06		
Idaho	Roads in State institutions and parks 40-2215					
Ill.	Roads connecting State highway with State parks, forests, and game or fish refuges. ¹ 4-201 5					
Ind.				Roads in State parks and institutions. 36-135		
La.				Park roads ² 48-270 Access roads from highways to grave yards. 48-272		
Mich.				Forest highways 9 852		
Mont.				Roads connecting State highways with parks. 62-307		
N H.	Certain recreational roads. 231 6					

Table 2. Statutory Duty and Authority of States, Counties, and Municipalities to Maintain Special Roads (Continued)

State	Maintenance Duty			Maintenance Authority		
	By State	By County	By Municipality	By State	By County	By Municipality
N J				Roads in cities that lead to State institutions. 27:14-46		
N.M	Access roads and flight strips 55-2-45					
Ohio				Roads leading from State highways to State parks, forests, school lands, and recreational areas 5511 04, 5511 05 Roads in State institutions ¹ 5511 03 Park roads. ³ 5511.06		
Okla	Roads connecting State parks and institutions and roads located within State parks 69-58					
Ore.		Territorial roads. 368 420, 368 205(2a)				
S.C				Roads in State parks ¹ 33-74		
Utah				Roads on property of State institutions 27-2-7(21); 27-2-12		
Va.	Roads in State parks that are in primary system. 33-24			All roads in State parks. 33-25		
Wash				Roads in State parks. 43 27.040	Forest roads. 36 82.140	
Wis.	Federal forest roads ⁴ 84.01(17)			Institutional roads 84 27 State park roads.		

¹ Upon approval of park authorities² Upon request³ In cooperation with the responsible authorities⁴ May cooperate with subdivisions for maintenance.

In those statutes which speak in mandatory terms, it is normal to also have the legislature carefully designate those segments of the highway system that are within the scope of the mandatory duty. Among statutes in the permissive category, however, 19 States, the District of Columbia, and Puerto Rico do not particularize the portions of the highway system subject to the State's maintenance jurisdiction.²³ This contrast of statutory terms is one aspect of a legislative policy decision which may be based on several factors, including the need and feasibility of working out cooperative agreements between the highway agencies of the State and other units of government, the recognition of local practices which may permit maintenance by either of two governmental units, and the particular pattern of classifications used for the State's various systems of highways, roads, and streets.

State Highways

Mandatory Provisions. — Thirty-six States, the District of Columbia, and Puerto Rico have statutory provisions making it the duty of the State authorities to maintain the State highway system.²⁴ The system is designated by several names. Generally, the statutes call for maintenance of "State highways." Reference is also frequently made to the "State highway system." In three States (Minnesota, South Dakota, and Wisconsin) the reference is to "State trunk highways." Utah calls its system "Class A highways."

The duty of maintenance created by these mandatory statutes is absolute in

its terms, and does not depend upon factual findings regarding the respect or degree of roadway or street deterioration or damage. Discretion is accorded the State highway agency in determining the type and extent of maintenance to be performed, and occasionally standards for such determinations are set forth in legislative language. For example, California law states that the type and extent of maintenance will be based on traffic requirements and money available for such work.

Permissive Provisions.—Twelve States have permissive provisions which allow the State to maintain State roads.²⁵ Many of these States have mandatory provisions requiring the maintenance of the State highway system. Thus, a total of 46 States have some provision relating to State maintenance of State highways. Hawaii, Kansas, New Hampshire, and Wyoming have no specific legislative directives; but in each of these States, except Hawaii, there are comprehensive delegations of responsibility which bring the State authorities into the area of maintenance of State roads. In Kansas, the State has supervision over all roads except township roads.²⁶ The State authorities in New Hampshire must maintain highways constructed by the State and State-aid and Federal-aid highways in certain cities. The State also may maintain city streets on request of the municipal authorities.²⁷ Wyoming has statutes calling for mandatory State maintenance of highways on which State funds have been expended, county roads under Federal aid, and farm-to-market roads.²⁸

Of the 12 States with permissive provisions regarding State maintenance of State roads, six are clearly permissive.²⁹ In four States, the statutory provision is

²³ Alaska, Ariz., Colo., Del., Ga., Hawaii, Ind., Me., Mo., Neb., N.M., N.Y., N.D., Pa., S.D., Tenn., Utah, Wis., and Wyo.

²⁴ Alaska, 2A-1-19, 14A-1-62, ARIZ., 18-106(7), 18-109(3), 18-102A, Ark., 76-501, 76-505; CAL. STS. AND HIGHWAYS 91; Colo., 120-13-2; Del., 17-132, 17-134, Ga., 95-1504, 95-1610; Ill., 121-4-405; Ind., 36-2902, 36-107; Iowa, 313.36; La., 48-21, 48-261; Me., 23-13, 23-68, Md., 89B-68, 89B-7; Mass., 81-13, MINN. CONST. art. 16, §1; Miss., 8025, Mo., 227.210, Neb., 39-1337; Nev., 408 285, N.J., 27 7-11, N.M., 55-2-29 et seq.; N.Y. HIGHWAYS 10 (5); N.C., 136-61(1), 136-45, N.D., 24-01-03, 24-03-02, Ohio, 5501 02(A), 5511.01, Okla., 69-55; Pa., 71-512, 36-1, R.I., 24-8-14, S.C., 33-101, S.D., 28 0211; Tenn., 54-501, 54-113, Tex., 6674 q-4; Utah, 27-8-1, Va., 39-13, Wash., 47.01.160; Wis., 84.07(1); D.C. ORGAN. ORDER 122, Jan. 8, 1959, P.R., 9-12 to 9-18, 9-421

²⁵ Ala., 23-20; CONN. PUB. ACTS OF 1961, ch. 137(2); Fla., 395 02(1), Idaho, 40-120; Ky., 177.340, Mich., 9-204, Mont., 32-1615, Ore., 366.220(1), 366.290; Tex., 6673, 6674q-4(a); Vt., 19-222, W.Va., 1448(8), 1457.

²⁶ Kan., 68-404.

²⁷ N.H., 231:1, 229:5, 231:3, 239:5.

²⁸ Wyo., 24-33, 24-69; 24-40.

²⁹ Fla., Ky., Mont., Ore., Tex., Vt., *supra* note 25.

not so clearly permissive because the words of direction are not those customarily used for this purpose. In Idaho, the reference is to power of the State to maintain State highways. Iowa's statute refers to "jurisdiction and control" over primary routes. In Michigan, "full charge and control" over State roads is given to the State. In West Virginia, two provisions use different wording to give the State authority over State highways. The language used is "may exercise general supervision" and "control is vested." In one State, Alabama, the authority to maintain is clearly permissive on the occurrence of a condition—that condition being that the jurisdiction with the authority to maintain fails to do so.

The state authorities of Kansas and South Carolina are given the right to maintain all roads by statute.³⁰ In Kansas, the provision gives the State the right to supervise all roads. In South Carolina, the State has the power to maintain all public roads. North Carolina has a similar law allowing the State to repair all roads except those in cities and towns.³¹

State Highway Detours

Mandatory Provisions.—In fifteen States there are mandatory provisions calling for the State to repair detours to roads that are under its maintenance jurisdiction.³² In three States (Kansas, Texas, and Vermont), there is a mandatory provision for maintenance of detours to the State highway system even though there is no requirement that the State maintain its highway system. In Texas and Vermont, however, the State authorities do have the permissive authority to maintain the State highway system; and in Kansas, where the reference is to detours for State roads, the State has general supervision

over all roads. The fact that the rest of the States either have no provision for maintenance of State road detours or have a permissive provision is not to say that they assume no responsibility for State highway detours. Local agreements or administrative practice may provide a basis for State responsibility, or the State may include State highway detours as a part of the State highway system by definition for the length of time said road is used as a detour.

Permissive Provisions.—Only three States have enactments that give the State specific permission to maintain detours to State roads.³³ In each of these, the State has a duty to maintain the State highway system.

County Roads

Mandatory Provisions.—Five States make it mandatory for the State to maintain county roads.³⁴ In North Carolina, Virginia, and West Virginia, all county roads fall under this provision. In Tennessee, the State must maintain the county roads only if the county fails to do so. In Wyoming, the State has the duty to maintain county roads on which Federal-aid money has been expended. The absence of provisions in the rest of the States regarding mandatory State maintenance of county roads may be misleading. In several States there is no county road classification, and those roads that would normally be classified as part of the county system fall into the State or municipal category.

Two other States (Maine and Maryland) have statutes making the State responsible for the maintenance of all county roads in specified counties, with Maine also making it the duty of the State to maintain all township roads in specific townships.³⁵ In Maine, the roads provided for in this

³⁰ Kan., 68-404; S C., 33-71

³¹ N.C., 136-18(7)

³² Conn., 13-142, Ill., 121-4-407, Ind., 36-142; Kan., 68-2103; Me., 23-26; Minn., 161-25; Neb., 39-1347, N.Y. HIGHWAYS 42; N.C., 136-25, R.I., 24-8-19, Tex., 66740; Utah, 27-2-7(10); Vt., 19-4(6); Va., 33-110, Wis., 84-20.

³³ Ark., 76-515, CAL. STS. AND HIGHWAYS 93; N J., 27 3-3

³⁴ N.C., 136-51, Tenn., 54-613, Va., 15-321, W.Va., 1458, Wyo., 24-40.

³⁵ Me., 23-70, 23-39; Md., 89B-220.

manner become a part of the State highway system.

Permissive Provisions.—In five States (California, Louisiana, Maryland, Oklahoma, and Washington³⁶) there is legislation granting the State authorities the right to supervise all county roads. In none of these States is the authority absolute. The Louisiana and Oklahoma statutes provide that the State may aid in the maintenance of a county's roads. California law authorizes the State to make repairs for those county roads that received Federal aid if the cognizant maintenance authority fails to do so, and if the State has performed an improvement project on the road. Maryland's State road authorities may maintain county roads if the county is unable to do so. In Washington, the State may maintain if the county fails to do so.

City Streets

Mandatory Provisions.—No State legislature has enacted laws requiring a State to maintain city street systems, as such. However, municipal connecting links must be maintained by the State in Alabama, Florida, Indiana, Nebraska, and Ohio.³⁷ A connecting link is defined as either a road that connects a city with a State highway or as a continuation through a city of a State highway, joined at either end by a State highway. In Indiana, only those roads connecting cities of fewer than 3,000 persons with a State highway must be maintained by the State. In Nebraska, those streets constructed by State funds in first class cities are to be maintained by the State.

State highways running through a city are not considered to be separate from the State highway system. Therefore, the authority responsible for the maintenance of the State highway system is also

responsible for the maintenance of those portions of the system that run through cities in spite of the fact that there is no specific statute to that effect.

Oregon and Puerto Rico have statutes that are similar to those calling for State maintenance of municipal connecting links, although this specific term is not used.³⁸ In Oregon, the law covers streets over which State highway traffic is routed. The Puerto Rico statute calls on the Commonwealth to maintain highways through urban areas.

Permissive Provisions.—Although no State is bound by a general statutory duty to maintain city streets, eleven State legislatures have seen fit to enact laws that permit the State to maintain city streets under certain conditions.³⁹ In Louisiana and Oklahoma, the State may "aid" in maintenance, while the New Hampshire, Virginia, and Washington provisions allow the State to give aid on request. In the case of Virginia, only a city with a population under 3,500 persons may make such a request. With the exception of this proviso, these two types of statute are similar, and suggest the possibility that in practice Louisiana and Oklahoma may limit instances of aid in the maintenance of roads to those in which there is a request by a city.

California's provision for State repair of local roads is the same as that for county roads; that is, the State may maintain if the road received Federal aid, the State has improved it, and the city has failed to maintain it. In Massachusetts, if a city street has been constructed or improved by the State, and if it is *not* a State highway, the State may maintain it. North Carolina's State authorities may repair streets the State has constructed if they lie in cities of fewer than 3,000 persons. The Oregon provision allows the State to keep up city streets which have

³⁶ CAL. STS. AND HIGHWAYS 823.5; La., 48-21, 48-193; Md., 89B-213, Okla., 69-20.5, Wash., 36 75 250. See Highway Research Board Special Report 85 for a detailed analysis of the classification of road systems in each state.

³⁷ Ala., 23-78(21); Fla., 335.05(3); Ind., 36-116; Neb., 39-1339; Ohio, 5521.01.

³⁸ Ore., 373.030; P.R., 9-12.

³⁹ CAL. STS. AND HIGHWAYS 823.5; La., 48-21, 48-193, Mass., 81-25, N.H., 229 22, N.C., 136-18(7); Okla., 69-20 5; Ore., 374 015(3); Va., 33-50 1 *et seq.*; Wash., 47 24.050, W.Va., 1474(9), Wyo. LAWS 1961, ch. 77.

functions related to thruways; and in West Virginia, the State has been given the power and authority to "control" city streets.

There are statutes in five States (Iowa, Kansas, Kentucky, Ohio, and Vermont) that permit them to maintain highways within city limits.⁴⁰ Iowa, which classifies its State highway system as primary roads, allows the State to repair extensions of those primary roads within a city. Ohio State highway agencies may maintain highways within cities at the city's request. In Kansas, the State may maintain the highways within a city with the city's consent. Kentucky's State authorities may repair highways only in small cities (4th, 5th, and 6th class cities); while in Vermont, the enactment is applicable only to highways in unorganized towns.

Federal-Aid Roads

By Federal law, any road on which Federal-aid funds have been spent must be maintained to prescribed standards.⁴¹ Such maintenance may be done by the State or one of its subdivisions. In spite of the fact that more than one-fourth of the Nation's roads and streets are in one or another of the Federal-aid systems and that all major highways are included therein, relatively few States have enacted legislation specifically dealing with maintenance of Federal-aid roads.

Mandatory Provisions.—Mandatory duties to maintain certain Federal-aid roads exist in six States.⁴² In Arkansas and Indiana, the requirement pertains to all roads constructed with Federal aid; while in South Dakota, it applies to all roads constructed or improved with Federal aid. In Hawaii, the provision encompasses all roads on which Federal-aid money has been spent. The law of

Maine states that all secondary Federal-aid roads must be maintained by the State. Under New Hampshire law, the State must maintain Federal-aid highways in towns over 2,500 persons only if the town fails to maintain them. In Wyoming, the provision applies to county roads under Federal aid.

Permissive Provisions.—In five States, the State has authority to maintain roads receiving Federal aid.⁴³ In Oklahoma, all highways receiving Federal aid are included; while the provision in California applies only to county roads or city streets which were constructed by Federal-aid money and which the State has improved and the county or city has failed to maintain.

State-Aid Roads

Mandatory Provisions.—In three of the seven States with provisions on Federal aid (Maine, New Hampshire, and Wyoming), there are statutes making it mandatory that maintenance of roads under State aid be performed by the State. In all three States, the statutes are concerned with highways on which State funds are expended. Georgia also has mandatory laws relating to state-aid roads.⁴⁴

Special Road Systems

Mandatory Provisions.—Seven States (Georgia, Iowa, Kentucky, Michigan, Ohio, Virginia, and Wisconsin) have enacted legislation requiring the State to repair special road systems.⁴⁵ Mandatory maintenance by the State is called for on "intercounty highways" in Ohio, and on Interstate roads in Wisconsin. In Iowa, the State must maintain the road only upon the condition that the county fails to do so after receipt of notice from the State. Kentucky and Virginia are concerned with primary and secondary routes,

⁴⁰ Iowa, 313.21, 313.36, 314.6, Kan, 68-416, Ky, 177.048, Ohio, 5501.01, 5521.01; Vt., 19-24.

⁴¹ 23 U.S.C. 116. See also, "Federal-aid Provisions in Highway Laws" HRB Special Report 48, (1959).

⁴² Hawaii, 111-11, Ind., 36-127, Me., 23-69, N.H., 239.5, S.D., 28 0211; Wyo., 24-40.

⁴³ Ark., 76-508, CAL. STS. AND HIGHWAYS 823.5, Mich., 9 831, N.C., 136-18(12), Okla., 69-20 7(a)

⁴⁴ Ga., 95-1714, LAWS OF 1961, NO. 395

⁴⁵ Ga., 95-2202, Iowa, 310 29, Ky., 177 020; Mich., 9 901, 9 1097, Ohio, 5535 07, Va., 33-46, Wis., 84 01(17), 84 29.

respectively. A Georgia statute refers to rural post roads. A Michigan provision refers to trunk line highways. Iowa is concerned with farm-to-market roads.

Permissive Provisions.—Six States have permissive legislation allowing the State to maintain special road systems.⁴⁶ The State may maintain parkways in Maryland, expressways in Connecticut, freeways in Nevada, Illinois, and Rhode Island, and Interstate highways in Virginia.

Miscellaneous

Mandatory Provisions.—Several States have mandatory provisions that do not fall into any particular category. In Delaware, streets that were built between 1935 and 1951 in unincorporated suburban communities are to be maintained by the State.⁴⁷ New Hampshire has a provision relating to State constructed highways.⁴⁸ In Pennsylvania, township roads for which State funds are appropriated must be maintained by the State.⁴⁹ A South Dakota law calls on the State to maintain roads in unorganized territories.⁵⁰

Permissive Provisions.—Six States have permissive statutes that do not fall into any particular category. Michigan has a statute allowing the State to maintain county-line highways if the counties adjoining the road fail to do so.⁵¹ Minnesota may repair its own trunkline highway lying in another State.⁵² City connecting roads may be maintained by the West Virginia State authorities,⁵³ while local service roads are covered in New Hampshire,⁵⁴ and frontage roads to freeways are covered in Nevada.⁵⁵ School bus routes may be maintained by the State in Louisiana.⁵⁶

Special Roads

In every State there are roads that are used for special purposes, such as park and institutional roads or forest roads. They are public roads because they run through or connect with a public institution. They do not, however, fall into the usual broad categories of roads because they are not delineated on the basis of being a State, county, or city roadway. Provisions for maintenance of special roads have been found in twenty-two States. Mandatory provisions appear in ten States, and permissive provisions appear in fifteen States. Table 2 presents all provisions found relating to State, county, and municipal street and highway agencies.

Summary

Apparent in statutes directing or authorizing the State to repair road systems is the diversity of approaches the various State legislatures have used to make certain the State authorities maintain the roads assigned to them. Some State legislatures have been very general in designating the systems over which the State has jurisdiction, while others have been very specific. Most legislatures make it mandatory for the State to repair the State highway system, but a few do not mention the State highway system at all. It is customary, also, to find provisions referring to detours, roads that received Federal aid, in one form or another, and county road systems. Statutes regarding these categories may be either permissive or mandatory. There is, additionally, a tendency for the legislature to make the State's responsibility mandatory, and not premised on conditions. In contrast, many of the permissive statutes specify conditions which must occur before the State may perform maintenance activities.

Normally, the control of roads is a matter of legislative concern, at least to the extent of assuring that all segments

⁴⁶ Conn., 13-161, Ill., 121-8-101, Md., 89B-213; Nev., 408 940, R I., 24-10-2; Va., 33-36.2.

⁴⁷ Del., 17-131.

⁴⁸ N.H., 231 I., 229.6.

⁴⁹ Pa., 71-516a.

⁵⁰ S.D., 28 0501.

⁵¹ Mich., 9.117

⁵² Minn., 161 26

⁵³ W.Va., 1474(9).

⁵⁴ N.H., 236:5

⁵⁵ Nev., 408.940.

⁵⁶ La., 48-215

of the road system are assigned to some unit of government.⁵⁷ This is not necessarily an exclusive assignment, and much of the practice followed by States, counties, and cities is based on administrative discretion.

JURISDICTION OF THE COUNTY

Because counties are the principal political subdivisions of the States, it might be expected that they would be assigned a major share of the responsibility for highway maintenance. In fact, however, there is relatively little state legislation on this subject. In a few States the reason is that there is no county agency capable of performing road maintenance work. In other cases the lawmakers appear to have determined that specific legislation is unnecessary because, under the State Constitution or organic laws of the State, the county is automatically responsible for the road systems within its confines. Whereas the jurisdiction of the States generally encompasses major roads that form a statewide network, the county is typically concerned with roads of a local nature.

Seventeen States, the District of Columbia, and Puerto Rico have no provisions making mandatory the maintenance of certain highways by the county.⁵⁸ Six of these States also have no provisions permitting the county to maintain specified roads.⁵⁹ In all, permissive provisions are lacking in 22 States.⁶⁰

State Highways

Mandatory Provisions.—Four States have provisions requiring the county to repair certain State roads.⁶¹ A Wisconsin provision requires the counties to maintain State trunk highways within cities. This modifies the mandatory enactment requiring the State to keep up all State trunk highways, and creates a possible dual jurisdiction over those roads that lie in cities. Kansas and Ohio laws call for the counties to maintain State roads through the counties. In Ohio, the provision refers only to emergency repairs that cost less than \$1,000. In New Mexico, the counties must repair State highways if so directed by the State.

Permissive Provisions.—There is permissive legislation allowing counties in five States to repair State highways.⁶² Alabama may maintain State roads with State aid after the county has applied to the State for such aid. This provision

⁵⁸ Ala., Alaska, Conn., Del., Fla., Ga., Ky., La., Me., Mass., Nev., N.Y., N.C., N.D., R.I., Vt., W.Va.

⁵⁹ Alaska, Del., N.Y., N.C., R.I., Va.

⁶⁰ Alaska, Ark., Colo., Del., Hawaii, Idaho, Iowa, Ky., Mich., Mo., Mont., N.H., N.Y., N.C., N. Dak., Okla., R.I., S.C., Tenn., Tex., Utah, Va.

⁶¹ Kan., 68-115; N.M., 55-2-29; Ohio, 315.13; Wis., 83.025.

⁶² Ala., 23-20; Ind., 36-117; La., 48-224; Miss., 8324; Wis., 83.03(1).

⁵⁷ Sanderson v. City of Texarkana, *supra* note 22.



The development of highly mobile and portable equipment has led to increased road maintenance efficiency.

supplements the permissive legislation allowing the State to repair its highway system. Indiana and Louisiana statutes allow the counties to maintain abandoned State highways within their territorial limits or within a city located within the county. In Wisconsin, counties may aid the State in the maintenance of State highways by special agreement.

County Roads

Mandatory Provisions.—In 29 States the legislature has conferred on its counties the duty of county road system maintenance.⁶³ In Iowa, these roads are classified as “secondary roads,” and in Utah as “Class B roads.”

The duty of the counties to maintain county roads in Maryland is dependent on nonmaintenance by the agency or unit of government having primary responsibility. Although not typical, this provision is of particular interest because general responsibility for repair has been delegated to the State for 11 specific counties only.⁶⁴ There is other legislation permitting the State of Maryland to maintain county roads if the county is unable to do so,⁶⁵ and giving to the county permission to maintain its roads.⁶⁶ It would appear, therefore, that the provision purporting to impose a mandatory duty on counties to maintain county roads is uncertain in scope.

Indiana has two provisions relating to maintenance duties of counties.⁶⁷ Under one, the county “must” maintain county roads; and under the other, the county “may” repair them. Where such a situation exists, principles of statutory con-

struction are likely to hold that the mandatory provision should prevail.

Closely related to provisions calling for the counties to maintain county roads are those statutes which direct the counties to repair “public highways” in the county. Five States have such laws.⁶⁸ In Arkansas, Hawaii, and New Jersey it would appear that “public highways” may mean something other than county roads because these three States have separate provisions covering county roads. Montana and South Carolina do not have such provisions, and it is probable that in practice they include all roads in the county as public highways. Typically, “public” means all roads dedicated for general use. It would appear, therefore, that “public highways” in Hawaii comprises State roads because there is no legislation directing a jurisdiction to maintain State highways in that State.

New Jersey has a provision calling for the counties to maintain roads taken over by the county.⁶⁹ Because the counties must also repair county roads and public roads in the county, this provision supplements the basic laws. In New Hampshire, there is legislation directing the counties to maintain highways not in towns.⁷⁰

Permissive Provisions.—Eleven States have passed legislation conferring on the counties the authority to repair county roads.⁷¹ In California, Indiana, Maryland, Minnesota, New Jersey, and New Mexico, there are provisions making it mandatory for the counties to maintain county roads.⁷² Therefore, in these States the permissive provisions must be subservient to the mandatory.

In some States the unusual wording of the statutes makes it difficult to classify their provisions as either mandatory or

⁶³ Ariz., 11-710, Ark., 78-806; CAL. STS. AND HIGHWAYS 941; Colo., 120-13-11, Hawaii, 142-3, Idaho, 40-131, Ill., 121-5-401, 121-5-205 5, Ind., 36-1459; Iowa, 306 3, 309 21, 309 67, Kan., 68-115, 68-516, Ky., 179 070, La., 48-751; Md., 25-1, Mich., 9-121, Minn., 160-541, 162-02, Miss., 8035-01, Mo., 230 030, N.J., 27 14-21, N.M., 55-1-2, N.D., 24-05-17; Ohio, 5535 01(B), Okla., 69-324, 69-51; Ore., 368,205(2a), 366,290(3), 368 415; Pa., 16-5901, S.D., 28 0303, 28 0312; Tenn., 54-702, Tex., 6716-1(3), Utah, 27-8-3; Wash., 36 75 020.

⁶⁴ Md., 89B-220.

⁶⁵ Md., 89B-213.

⁶⁶ Md., 89B-222.

⁶⁷ Ind., 36-1459, 36-301.

⁶⁸ Ark., 76-1021; Hawaii, 146-90, Mont., 32-302(3); N.J., 27-16-3; S.C., 33-815, 33-801

⁶⁹ N.J., 27-16-6

⁷⁰ N.H., 246 1

⁷¹ CAL. STS. AND HIGHWAYS 940, Fla., 336 02, 125.01, Ga., 23-904; Ind., 36-301; Me., 89-68; Md., 89B-222; Minn., 163.07, Nev., 403 090, N.J., 27-16-1, N.M., 55-3-3, Wyo., 18-254 18-149(7)

⁷² Cal., Ind., Md., Minn., N.J., N.M.

permissive.⁷³ The California statute gives the counties "supervision, management, and control" of county roads. Florida counties have "superintendence and control" over their roads. The Minnesota law confers "general supervision" on the counties. Nevada gives "exclusive control" to the counties. In North Dakota, the counties have "sole authority and responsibility." Wyoming puts county roads under the "supervision" of the counties. In Georgia, the county is given "exclusive jurisdiction" over its roads. New Mexico counties have been given "exclusive control" of all matters pertaining to the maintenance of county roads.

Alabama and Arizona have statutes that are closely related to those conferring on the counties the authority to repair county roads, but they describe in more general terms the roads to which the law applies.⁷⁴ These statutes make it permissible for the counties to maintain "public roads" within their confines. In Alabama, the counties have been given "general supervision, and unlimited jurisdiction and power to maintain." The use of the words "public roads" indicates a somewhat broader classification than does "county roads." Under the latter, only those roads that form a part of a formally designated county road system should be included if rules of statutory construction are strictly applied. Under the former, all roads in the county may be included.

In Massachusetts and Minnesota there are statutes covering maintenance of highways in the county.⁷⁵ (The highways within Massachusetts counties must necessarily be "State Highways" since there is no county highway system.) The Massachusetts law allows counties to make only emergency repairs. The Minnesota provision supplements a statute conferring on the counties the authority to maintain county roads.

A New Jersey statute authorizes county

maintenance of county connecting roads and boulevards.⁷⁶ There is no definition of what constitutes a connecting road, but it appears to be either roads connecting with roads of another county or roads connecting with county roads. This provision supplements a mandatory statute directing counties to maintain county roads and a permissive law allowing the counties to maintain roads within their control.

County Road Detours

Mandatory Provisions.—Only Kansas has a requirement that the county maintain county road detours.⁷⁷ Two reasons may account for such a lack of provisions regarding detours. First, most roads in the counties fall within either county or State jurisdictions. Therefore, maintenance responsibility for normal repairs is already allocated. Moreover, it is seldom that a State highway is also useful as a county road detour because most county roads ultimately serve the State highway system. A second factor explaining the pattern of legislation relating to maintenance of detours is the tendency on the part of the lawmakers to leave detailed practices to the discretion of local officials who are closest to the highways involved.

Permissive Provisions.—Two States, New Jersey and Pennsylvania, have permissive provisions allowing the counties to maintain detours to their county road systems.⁷⁸

City Streets

Mandatory Provisions.—Although legislation directing the State to maintain city streets is directed primarily to municipal links connecting to State roads, mandatory legislation directing the counties to repair city streets is aimed more at specific road systems. Five States have passed laws requiring the counties to maintain streets

⁷³ Fla., Ga., Minn., Nev., N.M., Wyo.

⁷⁴ Ala., 23-43, Ariz., 11-251.

⁷⁵ Mass., 82-1; Minn., 163.02.

⁷⁶ N.J., 27-17-1.

⁷⁷ Kan., 68-2103.

⁷⁸ N.J., 27.3-4, Pa., 16-5940.

in unincorporated towns.⁷⁹ Statutes have been passed in Indiana and Oklahoma making it the duty of the counties to maintain township roads.⁸⁰

In Pennsylvania, counties must by law maintain those city streets which were constructed jointly by the county and the city.⁸¹

Permissive Provisions.—Eight State legislatures have enacted provisions giving counties the permissive authority to maintain city streets.⁸² A Nebraska law permits maintenance only for unimproved roads in the city. The Maine, Vermont, Washington, and Wisconsin laws refer to town roads. Alabama and Minnesota have provisions allowing the counties to maintain city streets. Minnesota has a second provision allowing the counties to maintain roads of towns, villages, boroughs, or cities of the second, third, or fourth class.

The Oregon law delegates to counties the power and jurisdiction over roads in unincorporated towns. In Maine, Minnesota, Vermont, and Wisconsin the counties may repair the streets if the city fails to do so. In Washington, the city may authorize the county in which it lies to maintain its streets. California counties have the authority to maintain city streets without attached conditions, and they may aid in maintenance or may maintain them on request of the city. In Alabama, the county may repair city roads with the consent of the municipality, but it may not maintain those streets over which the State has jurisdiction.

Connecticut has no county road system, but the counties have the authority to repair highways within a town whenever the town fails to repair them.⁸³ Furthermore, the county may set its own standards of repair. Massachusetts, also

a State in which there is no county system of roads or streets, allows the county to aid in the maintenance of a highway within a town.⁸⁴ Indiana's counties may, with the permission of the city, maintain one main route through the city.⁸⁵ This provision leaves the basic jurisdiction over the route with the city.

Three States have enacted laws giving the counties permissive authority to maintain city streets that connect with county highways.⁸⁶ In Illinois, the counties may with approval of both State and municipal governments repair a road within a municipality which connects or completes a county highway. Kansas counties may maintain connecting links in the county system that are within cities, and Pennsylvania counties may maintain streets that connect county roads if the counties fail to do so.

Under the laws of Illinois, Ohio, and South Dakota, the counties may repair township roads.⁸⁷ In Illinois this may be done if the township fails to do so.

State-Aid Roads

Mandatory Provisions.—Minnesota and Mississippi laws require the counties to maintain State-aid roads.⁸⁸ The Minnesota roads covered by this law are known as the county-State-aid highway system. The Mississippi law supplements a provision for the maintenance of county roads by the county.

Special Road Systems

Mandatory Provisions.—In New Jersey, the counties are required to maintain parkways.⁸⁹ Iowa law requires the counties to repair farm-to-market roads.⁹⁰ Tennessee has a provision requiring its counties to maintain rural roads.⁹¹ South Dakota has provisions directing the coun-

⁷⁹ Ariz., 18-209, Md., 25-15, Neb., 39-1405, Mo., 231 340, Wyo., 24-67.

⁸⁰ Ind., 36-901, Okla., 69-324.

⁸¹ Pa., 16-2762, 53-1834.

⁸² Ala., 23-49, Me., 89 35, 96-66, Minn., 163 16, 163.04(2); Neb., 39-1803, Ore., 368 210; Vt., 19-1335, Wash., 47.24.050, Wis., 81.14(1).

⁸³ Conn., 13-12. Note, however, the effect of statutory changes reducing the status of counties in Connecticut. CONN. GEN. STATS. §6-2(a).

⁸⁴ Mass., 81-26A

⁸⁵ Ind., 36-701

⁸⁶ Ill., 121-5-408, Kan., 68-506; Pa., 16-2759.

⁸⁷ Ill., 121-6-401; Ohio, 5535.01; S.D., 28 0314.

⁸⁸ Minn., 162.02, Miss., 8035-08.

⁸⁹ N.J., 27-18-4.

⁹⁰ Iowa, 310 29.

⁹¹ Tenn., 54-613.

ties to keep up U.S. Mail routes if the cities responsible for their upkeep do not maintain them.⁹² Wisconsin counties must keep up intercounty trunk highways.⁹³

Permissive Provisions. — Two States have provisions authorizing their counties to maintain special systems of roads.⁹⁴ In Illinois, counties may repair freeways under legislation which also makes it possible for the State or cities to repair these facilities. Ohio counties have authority to repair parkways.

Miscellaneous

Mandatory Provisions. — Arizona and South Dakota have miscellaneous statutes calling for the counties to maintain roads outside the city limits.⁹⁵ In Arizona this duty is imposed with respect to roads "without the limits of incorporated towns or cities." In South Dakota, the roads in question are described as "secondary highways" outside corporate limits. Because both of these States have laws directing the county to repair county roads, it appears that the roads to which these duties apply must not be county roads. In Arizona, the duty of maintenance is imposed by statute; but under South Dakota law, the voters of the township affected must approve the matter in a township election before the duty of construction and maintenance becomes effective.

Permissive Provisions. — Three States have miscellaneous permissive statutes. In Minnesota, the counties may keep up roads beyond their boundaries, and in West Virginia, the counties may maintain any roads not given up to the State for maintenance purposes.⁹⁶ It should be noted that in West Virginia, the State authorities have jurisdiction over county roads. In Nebraska, roads along the boundaries of cities that are not paved are

authorized to be maintained by the county so long as they remain unpaved.⁹⁷

Special Roads

In most States it is the policy that responsibility for maintenance of special road systems should be assigned to state-level agencies. Occasionally, however, laws are found that delegate power to counties. In Oregon there is a mandatory provision requiring the counties to maintain territorial roads.⁹⁸ Washington has a permissive statute allowing the counties to repair forest roads.⁹⁹

Summary

Legislation dealing with the maintenance of streets by counties is somewhat less comprehensive than is the body of laws under which the State authorities act. This is due, in part, to the tendency of the legislatures to be primarily concerned with State functions leaving county functions to be dealt with through general enabling laws. Furthermore, it is more difficult to draw comprehensive laws for many counties with differing problems than it is to draft them for a single statewide authority.

Depending on the State, there are more classifications of roads over which the counties have jurisdiction than was the case for the States. Just as the legislation involving the State authorities tended to touch county roads, laws involving the counties touch its immediate subdivisions. There are many forms of subdivision within a county, all of which have their peculiar road problems.

JURISDICTION OF CITIES

Cities constitute the third level of government which shares in the responsibility for maintaining highways. Because municipal corporations do not possess inherent sovereign powers, it is an axiom

⁹² S D., 28-0407.

⁹³ Wis., 83.025(2).

⁹⁴ Ill., 121-8-101; Ohio, 801.26.

⁹⁵ Ariz., 18-207; S D., 28.0408, 28.0418.

⁹⁶ Minn., 160 07; W. Va., 1591

⁹⁷ Neb., 39-1803.

⁹⁸ Ore., 368 420, 368 205(2-a).

⁹⁹ Wash., 36.82 140.

of the law that a city's legal power to levy taxes and spend public funds on "works of internal improvement" must be based on legislative authority derived from State statutes or the State constitution. Despite the theoretical limitations which American constitutional doctrine imposes upon the power of municipalities, modern practice allows for the substantial participation of cities in highway construction and maintenance programs.¹⁰⁰ This practice recognizes that the authority for municipal corporations to engage in public works activities that are demanded for the public welfare have sometimes been found in specific legislative language, and sometimes implied from the general language of municipal charters.¹⁰¹ In similar fashion, the authority of municipalities with respect to public improvements located outside its corporate limits but connected with the municipality's own system of public works has been recognized to permit both construction work and regulatory acts by the municipal government.¹⁰²

There appears to be no single source of law from which municipal powers and responsibilities relating to highway maintenance are derived. Not all States give cities power to maintain their roads under a charter. In New York, for example, it has been held that local governing bodies have only such control over roads as has been given to them by statute.¹⁰³ Furthermore, a charter giving a city jurisdiction over streets within its boundaries can be changed by the legislature through enactment of other laws.¹⁰⁴ Moreover, because the legislature can take away what it has given, municipal authority may be destroyed by repeal of these laws.

There is a diversity of opinion among the courts as to whether roads in State or county systems are automatically brought

within the jurisdiction of the city in which they lie. In Mississippi, it is felt that public highways through a city become streets over which the city has control unless a statute directs otherwise.¹⁰⁵ California has ruled that a State highway within a municipality is a matter of city concern, and that the city may aid in its maintenance. Legislation to this effect has been enacted.¹⁰⁶ On the other hand, Florida courts have held that a statute must specifically give a city the authority to act, as regards State roads within its confines, for it to have jurisdiction.¹⁰⁷ Even in those jurisdictions in which a city is given a presumptive right to control State and county roads within its boundaries, the legislature retains the right to deprive it of its interest because cities are creatures of the legislative body.

The position of cities (caught between the demands for street maintenance and limitations on their authority to act) must therefore be determined by reference to the language of State constitutions, municipal charters, local government laws, and State administrative regulations relative to highways. The presence or absence of legislation specifically allocating responsibility for road repairs may not always indicate whether there is objection to municipal initiative. Judicial confirmation of authority should precede municipal assumption of street maintenance powers.

State Highways

Mandatory Provisions. — Cities have legislative duties to repair State highways in three States.¹⁰⁸ In each case only those State highways within the confines of a city must be municipally maintained. In Colorado, the municipality is to act in conjunction with another governmental level. In Maine, State highways in compact cities or in developed city areas

¹⁰⁰ As to the evolution of this attitude in state constitutional law, see *Attorney General ex rel Barbour v. Pingree*, 120 Mich 550, 79 N.W. 814, 46 L.R.A. 407 (1899).

¹⁰¹ *Municipal Corporations*, 38 AM JOUR 5559.

¹⁰² For example, *Dodge County v. Chandler*, 96 U.S. 205 (1878).

¹⁰³ *Hofstra College v. Board of Trustees of Hempstead*, 145 N.Y.S.2d 323 (1955).

¹⁰⁴ *Barnett v. City of Opelousas*, 13 So. 2d 788 (La. 1943).

¹⁰⁵ *City of Ellenville v. State Highway Comm'n*, 191 So. 274 (Miss. 1939).

¹⁰⁶ *Perez v. City of San Jose*, 237 P.2d 548 (Cal. 1951). Also see, CAL. STS. AND HIGHWAYS 113.

¹⁰⁷ *Webb v. Hill*, 75 So. 2d 596 (Fla. 1954).

¹⁰⁸ Colo., 120-3-17, Me., 23-71, 23-55, Va., 33-35.

of over 5,000 persons must be maintained by the municipality. Virginia statutes require the municipalities to repair city bypasses that are in the State highway system.

Permissive Provisions.—Eight States and Puerto Rico have passed laws permissively authorizing their cities to maintain State highways.¹⁰⁹ In South Carolina and Puerto Rico, a city may maintain any State highway. California, Illinois, North Dakota, and Ohio cities may maintain State highways within their boundaries. In California, however, cities may only aid in maintenance. The North Dakota law authorizes concurrent maintenance, and gives the city the right to make repairs to a higher standard than required by the State. Ohio cities may carry on repair work after getting the consent of the State. Indiana cities may repair abandoned State highways; and in Massachusetts, the municipalities may make emergency repairs. State connecting links may be maintained by cities in Tennessee. In Vermont, a city may aid in the maintenance of Federally aided State highways.

County Roads

Mandatory Provisions.—Only two States have mandatory requirements calling for cities to maintain county roads.¹¹⁰ In Colorado, a municipality is required to maintain streets within its boundaries even though they have been designated county highways. The city's action, however, is in conjunction with the county having primary jurisdiction. The Kansas statute requires cities to repair county roads improved with State or Federal aid.

Permissive Provisions.—Five States have laws allowing municipalities to maintain county roads.¹¹¹ In Kansas and Ohio, the city may repair all county roads. The

Kansas statute provides for the city to aid the county in maintenance, and supplements the preceding mandatory duty of the city. Ohio requires the city to get the approval of the county. Alabama, Nebraska, and New Jersey laws allow the cities to repair all county roads in the city. In Nebraska, the provision refers to township repair of those roads in an organized county township if the county so directs.

City Streets

Mandatory Provisions.—Seventeen State legislatures have enacted provisions making it mandatory for a city to maintain its municipal street system.¹¹² In Kentucky, the provision refers to "public ways," and in Massachusetts, it refers to "townways." One of three relevant Colorado statutes requires that cities maintain all streets except those that are the responsibility of the State. Another provision makes it mandatory for a city to maintain State highways within its city limits, as was seen previously. In effect, therefore, Colorado cities must maintain all streets within their limits.

Five States have special statutes requiring cities to maintain "all necessary highways within their boundaries."¹¹³ Five States have laws referring to town highways.¹¹⁴ All of the States having this latter type provision are in New England, as might be expected due to the retention of the town as the basic unit of local government. Maine has enactments in both categories.

North Dakota and Ohio have statutes calling on townships to maintain township roads.¹¹⁵

Permissive Provisions.—Eighteen States have provisions allowing their cities to

¹⁰⁹ Ill., 121-7-202.1; Ind., 36-117; Mass., 81-19; N.D., 24-01-11; Ohio, 5571.02; S.C., 33-112; Tenn., 54-533; Vt., 19-1804, P.R., 9-15.

¹¹⁰ Colo., 120-3-17; Kan., 68-506.

¹¹¹ Ala., 37-561, 37-562; Kan., 68-506; Neb., 39-2003, N.J., 27-14-30; Ohio, 5571.02, 5535.08.

¹¹² Alaska, 16-1-35(3); Colo., 120-13-24, 139-76-2, 120-13-26; Conn., 13-53; Idaho, 40-136, 50-1141; Ky., 93-050, 94-040; Mass., 84-1; Minn., 164-02; Mo., 88-153; N.J., 27-22-1, 27-14-29, N.M., 14-37-1; N.C., 136-66.1(2), 160-54; N.D., 40-05-01(8), 24-06-01; Pa., 53-22561; S.C., 47-1321, 47-1323; W.Va., 494, Wis., 81-01(1); Wyo., 15-63.

¹¹³ Ark., 19-3801; Conn., 13-2; Me., 23-71, 23-55; N.Y., 102(1), Tenn., 6-1001.

¹¹⁴ Me., 96-63; Mass., 84-1, N.H., 245.6; R.I., 24-5-1; Vt., 19-101.

¹¹⁵ N.D., 40-05-01(8), 24-06-01; Ohio, 5535.01(c), 5571.02.

maintain city streets.¹¹⁶ Four of these States (Alaska, Colorado, West Virginia, and Wyoming) also have mandatory provisions. Thus, a total of 32 States have enacted laws either requiring or permitting their cities to maintain city streets. In States lacking general legislation assigning maintenance responsibility, provisions in municipal charters may furnish the basis for municipal taxation and expenditure of funds for street and road maintenance.

Of the 17 States with permissive laws, seven in addition to Colorado, West Virginia, and Wyoming are possibly mandatory and have been included with the permissive laws only for the sake of convenience.¹¹⁷ The Indiana, Mississippi, Nevada, Virginia, and Washington statutes confer authority without specifying duties. Montana gives control over city streets to the municipalities. Texas refers to control and authority.

Colorado and New York have enacted provisions allowing municipalities to maintain highways.¹¹⁸ The Colorado law refers to highways leading into cities. The New York law gives the cities care and superintendence of town highways.

One State (Kansas), by statute, allows its townships to maintain township roads.¹¹⁹

Federal-Aid Roads

Mandatory Provisions.—New Hampshire and Kansas have enacted laws requiring the cities to maintain Federal-aid roads.¹²⁰ The Kansas statute pertains to county roads improved with Federal-aid money. The New Hampshire provision refers to Federal-aid highways in towns over 2,500 persons.

Permissive Provisions.—Only Vermont has passed legislation allowing its cities

to maintain Federal-aid routes.¹²¹ The law allows the cities to "aid" the State in the maintenance of State roads under Federal aid.

State-Aid Roads

Mandatory Provisions.—Three States require by law that maintenance of State-aid roads be performed by cities.¹²² Kansas' statute is concerned with county roads improved with State-aid money. Minnesota requires maintenance by municipalities of their municipal and State-aid highway systems. The Vermont statute merely refers to "State-aid highways."

Special Road Systems

Mandatory Provisions.—South Dakota has passed two laws requiring its municipalities to maintain special road systems.¹²³ One of the laws pertains to U.S. Mail routes; the other is concerned with secondary roads in townships, which are outside municipal limits.

Permissive Provisions.—Illinois has a statute allowing its cities to maintain freeways.¹²⁴ This provision also allows the State or the counties to maintain freeways.

Miscellaneous

Mandatory Provisions.—Three States have mandatory statutes requiring their cities to maintain miscellaneous roads.¹²⁵ Oklahoma cities have been given the duty of maintaining county-line roads. Pennsylvania municipalities must repair streets that connect county roads. In Wisconsin, county-aid roads within city limits must be maintained by the cities.

Permissive Provisions.—Minnesota has passed a statute permitting cities to maintain roads beyond their boundaries.¹²⁶

¹¹⁶ Alaska, 16-1-91, Ark., 19-2313, Colo., 139-32-1(20), Fla., 167-02; Ill., 121-7-101, Ind., 48-503, Iowa, 359-1; La., 33-401 (18) (21); Md., 23B-75, Miss., 3374 129, Mont., 11-906; Nev., 266-275, Ohio, 715 19, 723 01; Tex., 1082, Va., 15-6(1); Wash., 35 27 370(4); W Va., 494, Wyo., 15-88, 15-530(10).

¹¹⁷ Ind., Miss., Mont., Nev., Tex., Va., Wash.

¹¹⁸ Colo., 139-32-3; N.Y. HIGHWAYS 140(1).

¹¹⁹ Kan., 68-560.

¹²⁰ Kan., 68-506d; N.H., 239:5.

¹²¹ Vt., 19-1804.

¹²² Kan., 68-506d, Minn., 162 09; Vt., 19-1, 19-13.

¹²³ S.D., 28-0401, 28 0407

¹²⁴ Ill., 121-8-101.

¹²⁵ Okla., 69-252; Pa., 16-2759, Wis., 83 06.

¹²⁶ Minn., 160 07.

Summary

State legislative provisions relating to municipal authority are less numerous than are laws relating to State and county maintenance functions. Furthermore, where laws have been enacted, they usually refer to streets and roadways within the cities. State legislators have tended to deal least of all with local rural roads. In several States there is an apparent legislative vacuum regarding the cities'

maintenance duties. In the absence of legislation, many municipalities have relied on general powers conferred in their charters for authority to perform necessary acts of maintenance. This practice, while appearing to be more subject to attack than one based on specific legislative authorization, has proved sufficient to sustain all normal programs of maintenance for municipal street and highway systems.

REMEDIES FOR FAILURE TO MAINTAIN HIGHWAYS

Failure to perform highway maintenance duties, as previously described in this report, may raise a question of legal remedies for this failure in either of two ways. A person who has suffered injury because of a defective and hazardous condition in the road due to failure of maintenance may sue the responsible public agency or unit of government for damages. Similarly, another governmental agency or official, or a private individual with standing to sue, may petition for a judicial determination that a statutory duty has been neglected, and an order calling for its performance by the appropriate public agency. The substantial difference in the purposes of these two types of remedies is reflected in the procedures used to obtain them and the standards for determining when a failure of maintenance duties has occurred.

LIABILITY FOR INJURIES

Law Governing Liability

Legal liability for injuries resulting from highway defects is (as a general rule) determined according to the law of the place where the injury occurs, and the particular provisions of the law in force at the time of the occurrence of the injury. Thus, care must be taken to relate the cause of a complainant's injury to the legal duty regarding street or highway maintenance existing at the time of the injury and the failure of said legal duty. The extensive review and discussion of legislative allocation of maintenance authority and responsibility to the various major highway systems set forth in the preceding portion of this report is, therefore, of direct importance in meeting the jurisdictional requirements necessary to obtain a hearing before the courts in regard to remedies for failure to perform maintenance.

Liability of State Highway Agencies

It is an axiom of tort doctrine that in the absence of statutory consent to suit and liability, actions for injuries due to the defective condition of a public highway or street cannot be brought against a State or a State agency performing governmental functions. Also, this doctrine of sovereign immunity generally extends to counties and townships, and their respective agencies.¹²⁷ This doctrine of sovereign immunity is deeply rooted in the law. It has been held to prevail over State constitutional guarantees that every person shall be entitled to a certain remedy for all injuries or wrongs which he may receive, conformable to the laws.¹²⁸

Modification of the sovereign immunity of the State and its political subdivisions to tort claims has however been carried out in some States by means of specific statutory consent to suit on certain types of claims, in others by judicially created exceptions to the doctrine of sovereign immunity, and in still others by administrative procedures implementing a legislative policy decision to compensate private injuries caused by public agencies.

No clear preponderance of opinion regarding either the theory or procedure of waiver emerges from a comparison of the statutes on this subject. Eighteen States have enacted laws that appear to waive substantive tort immunity for injuries resulting from the activities of public agencies.¹²⁹ In these States, proof of injury and causation are the only issues to be resolved; and as a result, adminis-

¹²⁷ *Highways*, 25 AM. JOUR. §346. See, also, 62 A.L.R.2d 1224, discussing decisions relating to highway agencies.

¹²⁸ For example, WIS. CONST. art. I, §9, and *McCoy v. Kenosha County*, 195 Wis. 278, 218 N.W. 348, 57 A.L.R. 412 (1928). Also see, *Ace Flying Serv. v. Colorado Dep't of Agriculture*, Colo. 19, 314 P.2d 278 (1957).

¹²⁹ ALASKA CONST. art. II, §21; and A.C.L.A., §15-1-1 and 56-7-1; Conn., §13-87, Ga., §95-1710; Hawaii, §245A-1 *et seq.*; Ky., §44-070, LA. CONST. art. III, §35, Me., ch. 23, §35; Mass., ch. 81, §18, MICH. LAWS 1964, ch. 170, Miss., §8038(c), N.Y. Court of Claims Act of 1939, §8 and Highway Act, §58, N.C. CONST. art. IV, §9; OKLA. LAWS 1953, S.J. Res. 28, S.C. CONST. art. XVII, §2, S.D. §§93 4301-33.4308, Tenn., §9-801, Vt., tit. 19, §93, Va., §8-752.

trative procedures are frequently established to dispose of claims by settlement rather than require the courts to handle them by litigation. In a number of other States, however, the language of the statute or court decisions makes it clear that the waiver does not affect the substantive basis of liability, but merely allows the claimant to litigate in court the ultimate issue of liability under the same substantive standards that would apply if the action were between two individuals.¹³⁰ Moreover, even among those States listed as waiving substantive tort immunity, the waivers frequently are subject to various limitations. Thus, some waiver statutes apply only to certain types of claims or apply only to claims against certain agencies of the state. Other waiver statutes specify maximum amounts recoverable in actions against the State, and still others provide that the State may only be sued secondarily when a county or township has been sued for injury resulting from a defective bridge or structure on a State-controlled highway.¹³¹ In addition to a diversity of language, these statutes have been subject to variations in the interpretation they have received by the courts. Some courts have adopted the liberal view of the New Jersey Supreme Court that "the exemption of the sovereign from suit involves hardship enough where consent has been withheld. We are not to add to its rigor by refinement of construction where consent has been announced."¹³² Others have adhered to a more cautious policy when faced with pressure to extend the scope of the State's waiver, as suggested by the following statement of the Colorado Supreme Court: "We recognize that there have been

numerous criticisms of the rule applied in this case emanating from various legal writers, judges and students of law. However, their criticisms and comments should be addressed to the legislature where constitutional authority rests to amend the law."¹³³

Where no statutory waiver of sovereign immunity has occurred, various rules govern the disposition of claims for injuries due to defective highway conditions.

In four States (Alabama, Arkansas, Illinois, and West Virginia) specific provisions of the state constitution prohibit the State from being a defendant in court proceedings. In each State, however, tort claims against the State may be presented to special administrative bodies or claims courts established for the purpose of relieving hardship resulting from State-caused injuries.¹³⁴

The drafters of several State constitutions attempted to provide a basis for the relief of deserving claims against the State by declaring that the legislature had authority to prescribe the manner in which such suits could be brought. Arizona, Delaware, Florida, Louisiana, Nevada, Ohio, Oregon, Pennsylvania, and South Carolina offer examples of such provisions, but not all of these States have exercised their constitutional authority to promulgate the necessary legislative remedies.¹³⁵ As a result, the doctrine of sovereign immunity continues to be available as a

¹³⁰ *Faber v. Department of Highways*, 143 Colo. 240, 353 P.2d 609 (1960). See also, *Shields v. State Highway Comm'n.*, 178 Kan. 342, 286 P.2d 173 (1955), where recovery for injury due to a highway defect was disallowed because notice directed to the Director of Highways was not received within the statutory period of 90 days even though it had been mailed during this period.

¹³¹ ALA. CONST. art. I, §14; ALA. CODE ANN. tit. 55, §333 *et seq.* See also, *Barlow v. Employers Ins. Co.*, 273 Ala. 665, 188 So. 896 (1939). ARK. CONST. art. V, §20. ARK. STATS. ANN. §13-1401 *et seq.* See also, *Arkansas State Highway Comm'n. v. Nelson Bros.*, 191 Ark. 629, 7 S.W.2d 394 (1935). ILL. CONST. art. IV, §26; ILL. REV. STATS. ch. 37, §439.8c. See also, *People v. Illinois State Toll Highway Comm'n.*, 3 Ill. 2d 218, 120 N.E.2d 35 (1954); *Molitor v. Kaneland Community Unit Dist. No. 302*, 18 Ill. 2d 11, 163 N.E.2d 89 (1959). W. VA. CONST. art. VI, §35; W. VA. CODE ANN. §1143 *et seq.* See also, *Stewart v. State Road Comm'n. of W. Va.*, 117 W. Va. 352, 185 S.E. 567 (1936). State *ex rel. Adkins v. Sims*, 130 W. Va. 645, 46 S.E.2d 81 (1947). ¹³² *Ariz.*, art. IV, Pt. 2, §18; *Del.*, art. I, §9; *Fla.*, art. III, §22; *La.*, art. III, §35; *Nev.*, art. IV, §22; *Ohio*, art. I, §16; *Ore.*, art. IV, §24; *Pa.*, art. I, §11, S.C., art. XVII, §2.

¹³³ *Spangler v. Florida State Turnpike Authority*, 106 So. 2d 421 (1958); *Lucerno v. New Mexico State Highway Comm'n.*, 55 N.M. 157, 228 P.2d 945 (1951); *Fonseca v. State*, 147 Tex. 628, 219 S.W.2d 70 (1949); *Wilson v. State Highway Dep't.*, 174 Va. 82, 4 S.E.2d 746 (1939); *Riddoch v. State*, 58 Wash. 329, 123 Pac. 450 (1912).

¹³⁴ Regarding the last mentioned type of statute, see, GA. CODE ANN. §95-1710, ME. REV. STATS. ch. 23, §35; VT. STATS. ANN. tit. 19, §33.

¹³⁵ *Taylor v. New Jersey Highway Authority*, 22 N.J. 454, 126 A.2d 813, 62 A.L.R.2d 1211 (1956).

defense against claims in most of these States.¹³⁶

Most States have neither constitutional nor legislative mandates governing the immunity of the State and its agencies to suit for tort claims, and therefore they rely on judicial decisions to determine this question. As a result, the evolution of doctrine based on court decisions has grown at varying rates and in varying directions. Some judges and commentators assert that the rule of governmental immunity for tort is an anachronism at the present time and should be abolished by the courts.¹³⁷ Others are not so ready to intrust such a major revision of the common law solely to the courts, and argue that sovereign immunity must be dealt with by statutory or constitutional means.¹³⁸

Reliable conclusions regarding the present existence and extent of sovereign immunity to tort claims are most elusive. In several States, the courts and legislatures have avoided dealing directly and comprehensively with the issue of immunity and have evolved a series of indirect and piecemeal modifications of the State's basic law. Illustrative of this problem is the experience of North Carolina. Here a constitutional provision sets forth a procedure for filing and considering tort claims. The State supreme court, however, ruled that State agencies were not suable in tort without legislative consent.¹³⁹ Subsequently, the State legislature enacted a State Torts Act (1961) authorizing the State Industrial

Commission to award up to \$8,000 for injuries caused by the negligent acts of State employees. However, in a case arising out of failure to repair a hole in a state highway, the court held that this remedy allowed recovery only for acts of misfeasance and did not extend to negligent omissions such as involved here.¹⁴⁰

Any study of the interpretation of State tort claim laws requires substantial attention to the meanings assigned to various key terms of the statute relating to its coverage and procedure. Thus, legislative consent to liability for injuries caused by "highway defects," under Massachusetts law, was held not to allow recovery for failure to repair holes in a highway.¹⁴¹ In Kansas, on the other hand, previous narrow judicial interpretations of the statutory concept of a "highway defect" have recently become so liberal as to allow recovery on the basis of a defect where injury was due to a gravel pile blocking traffic.¹⁴²

Looking beyond the letter of the law in statutes and court decisions, a full appreciation of the present state of the doctrine of sovereign immunity must include some notice of special administrative agencies and procedures functioning outside the framework of the State's judicial system. By establishing administrative bodies to receive and consider claims against the State and recommend payment from specially provided funds in either the general budget or the budget of the agency against whom the claim is brought, a practical means is provided for relieving private hardship without conflict with the State's sovereign immunity to lawsuit. Also, still very much in evidence is the practice of dealing with private claims by

¹³⁶ For example, *Grande v. Carron*, 50 Ariz. 397, 72 P.2d 676 (1937), but see; *Hernandez v. County of Yuma*, 91 Ariz. 35, 369 P.2d 271 (1962). Also; *Randebaugh v. State*, 96 Ohio St. 513, 118 N.E. 102 (1917).

¹³⁷ For example; *Muskopf v. Corning Hospital Dist.*, 55 Cal. 2d 211, 371 P.2d 987 (1962); *Holytz v. City of Milwaukee*, 17 Wis. 2d 26, 115 N.W.2d 618 (1962).

¹³⁸ For example; *Boxberger v. State Highway Dep't*, 126 Colo. 438, 250 P.2d 1007 (1952); *Norby v. Department of Pub. Works*, 60 Idaho 475, 92 P.2d 789 (1939); *Mississippi State Highway Comm'n v. Knight*, 170 Miss. 60, 154 So. 263 (1934); *Bush v. State Highway Comm'n*, 329 Mo. 843, 46 S.W.2d 854 (1932); *Coldwater v. State Highway Comm'n*, 118 Mont. 65, 162 P.2d 772 (1945); *Greenville v. State Highway Comm'n*, 196 N.C. 226, 145 S.E. 81 (1928); *Texas Highway Dep't v. Weber*, 147 Tex. 628, 219 S.W.2d 70 (1949); *Campbell Building Co. v. State Road Comm'n*, 95 Utah 242, 70 P.2d 857 (1937).

¹³⁹ N.C. CONST. art. IV, §9 (initial consideration by State Supreme Court followed by recommendations to the legislature) *Greenville v. State Highway Comm'n*, *supra* note 138

¹⁴⁰ *Flynn v. North Carolina State Highway and Pub. Works Comm'n*, 224 N.C. 617, 94 S.E.2d 571 (1956).

¹⁴¹ MASS ANN. LAWS, ch. 81, §18; and *Lemon v. Commonwealth*, 236 Mass. 599, 129 N.E. 382 (1921).

¹⁴² *Thompson v. Comm'rs*, 170 Kan. 74, 223 P.2d 749 (1950).

enactment of private relief bills by the State legislature.¹⁴³

Liability of Counties

The proposition that counties and townships should share the immunity enjoyed by sovereign States because they are political subdivisions of the state is arguable. Numerous decisions can be found that recognize the logical correctness of this proposition. In practice, however, the political subdivisions of the State have not enjoyed as strong a position of immunity as has the State and its administrative agencies. This is due in part to the treatment that counties and townships have received in statutory modifications of the doctrine of sovereign immunity, and in part to the judicial interpretation of these laws.

In Maryland and Pennsylvania, the courts have upheld sovereign immunity as regards the State's highway agencies, but have held that a statutory delegation of authority and responsibility to counties for road construction and maintenance implicitly waives the counties' immunity to suit for injuries resulting from these activities.¹⁴⁴

In South Dakota, a constitutional provision authorizes enactment of consent statutes, but up to the present time only counties and townships have been made liable for injuries to travelers caused by the defective condition of roads, bridges, and culverts. In somewhat the same spirit, the laws of Maine, authorizing the highway commission to defend any action posing State liability, are premised on a provision that the State shall be liable only to counties and towns where judgment has

been recovered against the latter on account of defects in a State-aid highway. Even in this limited class of cases, the State's liability arises only when certain procedural conditions are met.¹⁴⁵

The practical effect of laws permitting counties and townships to carry liability insurance has not yet been fully assessed. Some recent cases, however, suggest that the existence of insurance may be regarded by the courts as a significant indication that the governmental agencies themselves are ready to abandon their claim to immunity from damage claims. *Molitor v. Kaneland Community Unit District No. 302* indicates that future changes in the doctrine of sovereign immunity in Illinois probably will be affected by this factor. This case held that a quasi-municipal school district, whose activities were wholly governmental, was liable for negligence despite the fact that the District had no liability insurance and that previous decisions had imposed liability only to the extent that the governmental unit had voluntarily insured itself. The Illinois legislature reacted quickly to the suggestion of this case and passed statutes granting complete tort immunity for counties, forest preserves, and park districts with the avowed intention of forestalling any early extension of the rule in the *Molitor* case by further judicial decisions.¹⁴⁶

The Indiana Supreme Court, in *Flowers v. Board of Commissioners*, has also recognized the existence of liability insurance coverage for governmental agencies. In this case, the court held that a "consent to sue or be sued" statute pertaining to counties was equivalent to waiver of the counties' tort immunity, at least with regard to their proprietary activities to the extent of their liability insurance coverage. The basis of the court's holding appeared to be the State's insurance act

¹⁴³ Administrative Claims Procedure: For example; Ala. (Board of Adjustment); Ark. (State Claims Commission), Ill., W. Va. (Courts of Claims), Minn. (Claims Commission), Mont., Nev. (Board of Examiners), Ohio (Sundry Claims Board); S.D. (Commission on Claims).
Legislative Relief: For example, Nev., N.H. (direct appropriation in special bills), R.I. (appropriation based on report of permanent Joint Committee on Accounts and Claims), Iowa (appropriation on recommendation of State Appeal Board, IOWA CODE, §§25.1, 25.3, 25.8).

¹⁴⁴ *Baltimore & Ohio Railroad Co. v. Howard County*, 111 Md. 176, 78 Atl. 656 (1909). *McLaughlin v. Corry*, 77 Pa. 109, (1874). Regarding townships, see *Burrell Township v. Uncapher*, 117 Pa. 353, 11 Atl. 619 (1887).

¹⁴⁵ Me., ch. 23, §35.

¹⁴⁶ *Molitor v. Kaneland Community Unit Dist. No. 302*, supra note 134; ILL. REV. STATS. ch. 34, §22.1. Also, see *Government Immunity in Illinois The Molitor Decision and the Legislative Reaction*, 54 NW U.L. REV. 588 (1959).

which the court interpreted as legislative approval for waiver of governmental immunity where insurance had been procured.¹⁴⁷

Liability of Quasi-Governmental Highway Agencies

Utilization of quasi-governmental bodies to perform special highway administrative and operational functions has required individual determinations of the status of such bodies regarding their liability for tort claims. Because these bodies are normally created by special legislation, their status is governed by such law. Therefore, a general provision that the Florida State Turnpike Authority should have the power to sue and be sued was construed by the Florida court as not waiving the substantive tort immunity of the authority as derived from its State agency status. In Illinois, on the other hand, the court held that the Illinois Toll Highway Commission could be regarded as an independent legal entity rather than a state agency. Therefore, it was subject to suit because there was no conflict with the State constitutional prohibition against suits against the State or its agencies.¹⁴⁸ In Nebraska and Oklahoma, the legislation (creating the turnpike agencies) specifically provided for their suability and liability for employee negligence.¹⁴⁹ Application of the rules of sovereign immunity to the Pennsylvania Turnpike have produced an unusual conflict of decisions between the Federal District Courts of the Eastern and Western Districts of Pennsylvania. In the Eastern District, it was held that the turnpike commission's statutory authority to sue and be sued was insufficient to constitute

a waiver of tort immunity. In the Western District, however, the Federal District Court ruled that the turnpike's financial and managerial independence rendered it sufficiently separate from the State; therefore, the immunity of the sovereign State did not extend to it. Thus, the western court reached a conclusion directly opposed to that of the eastern court.¹⁵⁰

Liability of Municipalities

Diversity of opinion exists on the question of whether a municipal corporation is legally liable and subject to lawsuit for injuries resulting from defects and/or failure to repair public streets. In one line of decisions, the management and control of streets is a governmental activity; therefore, municipalities cannot be held liable for injuries in such connection, unless liability is expressly imposed by statute.¹⁵¹ The majority rule in the United States, however, holds that municipalities that have full and complete control over the streets and highways within their territorial limits assume a duty to keep them in repair and free from nuisances; and are legally liable for damages for injuries sustained as a result of failure to use due care and diligence in maintenance.¹⁵² Other theories supporting municipal liability have suggested that legal liability may arise completely aside from any question of legal duties to repair, and may be predicated on the active creation or authorization of a nuisance affecting the safety of highway users. A recent expression of this approach to the problem of municipal liability occurred in the Florida Supreme Court's decision in *Hargrove v. Cocoa Beach*, where municipal liability for the consequences arising in

¹⁴⁷ *Flowers v. Board of Comm'rs*, 168 N.E.2d 224 (Ind. 1960); IND. STATS. ANN. §39-1819. Also see comment in 36 IND. L.J., 223 (1961).

¹⁴⁸ *Spangler v. Florida State Turnpike Authority*, *supra* note 130; *People v. Illinois State Toll Highway Comm'n*, *supra* note 134.

¹⁴⁹ NEB. REV. STATS. ANN. §39-1235. However, this part of the Nebraska Turnpike Authority's law was repealed in 1955. *Oklahoma Turnpike Authority v. Kitchen*, 337 P.2d 1081 (Okla., 1959) and *McReynolds v. Oklahoma Turnpike Authority*, 291 P.2d 341 (Okla., 1955).

¹⁵⁰ *Masse v. Pennsylvania Turnpike Comm'n*, 163 F. Supp. 510 (D.C., E.D. Pa. 1958), *Linger v. Pennsylvania Turnpike Comm'n*, 158 F. Supp. 900 (D.C., W.D. Pa. 1958).

¹⁵¹ For example; *Taylor v. Cincinnati*, 143 Ohio St. 426, 55 N.E.2d 724, 155 A.L.R. 44 (1944), where it was held that a statute requiring a city to keep its streets "open, in repair, and free from nuisances" did not render the city liable for a street condition which did not amount to an absolute nuisance.

¹⁵² For example; *Nelson v. Duquesne Light Co.*, 338 Pa. 37, 12 A.2d 299, 128 A.L.R. 1257 (1940); *Ledbetter v. Great Falls*, 123 Mont. 270, 213 P.2d 246, 18 A.L.R.2d 903 (1949); *Smith v. District of Columbia*, 89 App. D.C. 7, 189 F.2d 671, 39 A.L.R.2d 773 (1951).

the performance of a governmental function was discussed. The court said:

The modern city is in substantial measure a larger business institution. While it enjoys many of the basic powers of government, it nonetheless is an incorporated organization which exercises those powers primarily for the benefit of the people within the municipal limits who enjoy the services rendered pursuant to the powers. To continue to endow this type of organization with sovereign divinity appears to us to predicate the law of the Twentieth Century upon an Eighteenth Century anachronism.¹⁵³

With the emphasis on the similarity of a municipal corporation to a private business corporation, there would seem to be a basis for distinguishing this case from a subsequent one involving an agency such

as the State highway department. The general tenor of the opinion in the *Hargrove* case, however, is strong enough to encourage further and deeper erosion of the doctrine of sovereign immunity as it still exists for States and their political subdivisions.

Where the State's sovereign immunity has been waived or destroyed, is the immunity of the State's municipal corporations also destroyed? In Washington, municipalities have been held immune from suit for injuries resulting from the performance of governmental functions, but not where the function is proprietary.¹⁵⁴ This ruling was, however, made over a strong dissent arguing that the legislature's previous abolition of the State's immunity for tortious acts had the effect

¹⁵³ *Hargrove v. Cocoa Beach*, 96 So. 2d 130, 60 A.L.R.2d 1193 (Fla. 1957). 96 So. 2d 130 at 133.

¹⁵⁴ *Lightner v. Balow*, 59 Wash. 2d 856, 370 P.2d 982, (1962); *Macy v. Town of Chelan*, 59 Wash. 2d 610, 369 P.2d 508 (1962).



In cases of natural disasters, good maintenance practice includes structural testing of the road surface, the shoulders, and the clearing of debris from the road. Failure to do so may result in suit.

of also destroying the immunity of the municipalities that was dependent upon the immunity of the State.

ENFORCEMENT OF DUTIES TO REPAIR

Mandamus

Where the duty to maintain a street or highway is clearly established, and there is failure on the part of authorized officials to maintain or repair, an action of mandamus may be an appropriate remedy to compel performance. In all States, the action of mandamus may be brought in a court of competent jurisdiction to obtain an order from the court commanding an inferior tribunal, administrative body or official, or municipal corporation to perform an official act that the law assigns as a duty. Actions subject to mandamus are known as ministerial acts, and in all essential aspects are completely and explicitly prescribed by the law. Where the act is discretionary in such aspects as whether, when, or how the act shall be performed, mandamus will not be issued.¹⁵⁵

The preceding principle remains in the law of all States, although all States have enacted statutes modifying various details of the common law writ of mandamus. Yet these principles cannot serve as a touchstone in determining the applicability of this remedy in all factual situations. Wholly aside from possible statutory requirements is the fact that legislatures have created duties which involve both ministerial and discretionary acts. For example, a statute may establish a duty positively calling for performance of an act, but leave to the discretion of the responsible official the question of how the duty will be performed. Where such cases have been challenged, courts have not attempted to control discretionary aspects of the action and have confined

their order to merely directing that the act be performed.¹⁵⁶

Other features of the common-law doctrine relating to mandamus affect its applicability. Because it is an extraordinary writ, it may not issue if the legislature has by statute provided another remedy for the failure of official action.¹⁵⁷ If the action of the official is one that must be performed upon demand, then a showing that demand was made is necessary to establish the duty and its neglect.¹⁵⁸ While this latter limitation pertains to procedure rather than the substance of the remedy, it nevertheless arises from an inherent characteristic of the remedy.

In their modification of the common-law rules regarding mandamus, State legislation has developed three main types. The first type is very specific in authorizing use of mandamus against definitely named officials when specified acts are not performed. The second type generally outlines the procedure applicable to petition for the writ, but does not name any officials or duties to which the remedy applies. A third group of States combines both aforesaid types with varying degrees of particularity in describing the officials to whom the remedy applied. In certain States, statutes in these three categories have been applied to highway officials for maintenance duties. This grouping does not distinguish whether the statute is mandatory or permissive in its terms. Such a consideration is, of course, an important one in the action for mandamus because the presence of mandatory language clearly establishes a positive legal duty, whereas permissive language creates the impression of discretionary terms.

Three States have passed legislation specifically calling for the use of mandamus against officials who fail to repair roads under their jurisdiction.¹⁵⁹ Georgia law calls for the action to lie against

¹⁵⁶ *State v. Schloemer*, Wis., 228 N.W. 487 (1930).

¹⁵⁷ *State v. West Virginia State Rd Comm'n.*, 122 S.E. 527 (1924); *State ex rel Wisniewski v. Rossier*, 298 N.W. 825 (1931).

¹⁵⁸ *Mandamus*, CORPUS JURIS SECUNDUM 55, 60 §32-a.

¹⁵⁹ Ga., 64-102, Ky., 178 250(3); Miss., 8038(c).

¹⁵⁵ *Mandamus*, CORPUS JURIS SECUNDUM 55, 17 §2-b, 19 §2-c.

counties when roads under their jurisdiction are out of repair. Because the duty to repair is included within the counties' mandatory duty of "supervision and jurisdiction," the duty is subject to mandamus. Suit for mandamus under this law may be brought either by a citizen or another unit of government having standing to sue. By comparison, the law of Kentucky regarding use of mandamus is very narrow in its scope because it makes the remedy available only where there has been failure to enforce inter-county agreements that are limited to cases involving intercounty roads.¹⁶⁰ In Mississippi, the State is authorized by statute to resort to mandamus to enforce any legal rights it may have against another public body. While this law does not specifically mention highways, it would appear to apply in cases where local officials are charged with duties to repair roads with which the State has a direct interest. Such interest is present where local officials have an obligation to maintain streets and highways that are part of the State highway system. It is possible, although not certain, that sufficient standing to sue is present where the State's interest is based on a statute permitting it to repair State-aid roads if the county fails to perform its maintenance duty.

More commonly found are statutes allowing mandamus against an official when the law specifically describes his function as a duty. Sixteen States have such provisions.¹⁶¹ In these States, the language used by the legislature to describe the functions and activities of State and local highways agencies assumes particular importance. If the law uses "shall," "must," "has the duty to," or other words of this nature, a duty capable of being enforced by mandamus is present.

If, on the other hand, the statutory language uses such words as "may," "has control," "has supervision," or "has power" in regard to the function in question, it has been held that the statute calls for discretionary action which cannot be enforced by mandamus.¹⁶² The judicial test of whether a duty capable of being enforced by mandamus is not purely a semantic one. Various factors have been considered in analyzing the nature of the functions involved. Some indication of the courts' reaction to various situations is suggested by the following illustrative cases:

In *State ex rel. Rose v. Town of Greenwood*,¹⁶³ a Minnesota case, a citizen sought mandamus to compel the town to construct a cartway from his property to a town road with town money. The State law relating to mandamus provided that an official may be forced to perform any act that is enjoined as a duty. The relator sued under two sections of this statute, one of which dealt with the construction of cartways, and the other of which dealt with the use of town funds for such construction. The language of the former section stated that a town "shall . . . establish" a cartway if certain conditions were met. The latter section was worded so that the town in its "judgment . . . may expend" town funds to cartways. The Supreme Court of Minnesota held that mandamus should issue to compel the town to establish a cartway because the conditions of the section had been met, but that the town could not be compelled to use town funds to do so. In so doing, the court made a distinction between the words of the two sections, saying that the use of the word "shall" created a duty such as was in the contemplation of the mandamus statute; while the use of the word "may" was discretionary in nature

¹⁶⁰ Ky., 178 250(1).
¹⁶¹ Alaska, 57-3-2, Ariz., 12-2021, CAL. CIVIL PROCEDURE 1085; Hawaii, 236-3, Idaho, 7-302; Ind., 3-2201; Iowa, 661 1, Minn., 586.01, Mont., 93-9102, Nev., 34-160, N.M., 22-12-4; N.D., 32-34-01; Ohio, 2731 01, Okla., 12-1451, Ore., 34-110, Wyo., 1-877, P.R., 32-3422.

¹⁶² *State of Washington v. City of Seattle*, 242 Pac 966 (1926). Also see, *State ex rel. Wisniewski v. Rossier*, *supra* note 157, holding that words such as "care and supervision" do not create a clear duty, whereas "it shall be the duty" does clearly establish and obligation to act.
¹⁶³ *State ex rel. Rose v. Town of Greenwood*, Minn., 20 N.W 2d 345 (1945)

and made the use of town funds a matter over which the court had no jurisdiction. The court stated that "mandamus does not lie to compel the manner in which official discretion should be exercised."¹⁶⁴ The court also indicated that it was necessary for the town to have sufficient funds to create the cartway before mandamus would issue to compel its creation; however, this problem was not the decisive issue in the case because the relator had offered to pay the expenses.

In *State of Washington v. City of Seattle*,¹⁶⁵ citizens of the City of Seattle sued for a writ of mandamus to compel the city to rebuild and repair a bridge that had been partly destroyed by a fire. The city had been petitioned to repair the bridge; but it did not appear that the city had affirmatively refused to do so, although no active steps had been taken relative to it. The court refused to issue a writ on the grounds that the statute created a municipal power to repair bridges, and that this power was discretionary rather than ministerial. It stated that the fact that a public body could be held liable for damages from injuries arising as a result of its failure to repair was not sufficient to make the matter subject to mandamus. The court declared that the difference between ministerial duties and other official acts is that a ministerial duty exists where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, whereas a discretionary duty does leave something to the judgment of the responsible authorities.

In a New Mexico case, the issue arose in connection with determining standing to sue.¹⁶⁶ A citizen and automobile owner of the county brought suit against said county endeavoring to compel the county

to maintain a road by removing obstructions from it. The court recognized that precedents from other States were not in agreement, but it felt that in New Mexico suit to enforce the performance of a public duty by public officers could be brought by any citizen whose rights were affected in common with those of the general public, and it felt that an automobile driver had rights common to those of the general public.

In *Town of District Heights v. County Comm'rs Prince Georges County*, a Maryland case,¹⁶⁷ suit was brought by the town to force the county to take action relative to the expenditure of funds. The court held that it had an inherent right under mandamus to review acts of public officers, and to correct illegal or arbitrary acts or abuses of discretion impairing personal or property rights. However, where the use of discretion was lawful, the court said, it could not interfere. In some States, therefore, discretionary activity is not totally outside the ambit of a court's consideration, provided the court is able to say that official discretion was clearly abused.

A Pennsylvania case made a distinction between ordering an act to be done and interfering with an official's discretion in performing it.¹⁶⁸ The court stated:

The objection is raised that we cannot issue the writ because the object is to interfere with a discretionary power. The purpose of a proceeding by mandamus is to compel the performance of an acknowledged duty or to enforce an existing right, rather than to decide what that right or duty is. The writ will issue to compel the exercise of discretion or judgment, but does not prescribe the manner of the performance. It sets in motion but never controls discretion. If a person is required by law to do a particular act, but the time and manner of doing it are dependent upon his discretion, he may be ordered by a writ of mandamus to do the act. The manner of doing it will rest with him.

¹⁶⁴ 20 N W 2d at 349.

¹⁶⁵ *State of Washington v. City of Seattle*, 242 Pac 966 (1926).

¹⁶⁶ *State v. Board of Commissioners of Bernalillo County*, N.M., 161 P 2d 212 (1945).

¹⁶⁷ 122 A.2d 489 (1956).

¹⁶⁸ *Commonwealth v. Doylestown*, 16 Pa. Co Ct 161 (1895).

Thus, where statutes combine both mandatory and permissive provisions, courts may find that they can isolate and give separate effect to mandatory duties. A more difficult problem arises, however, where there is failure to perform a duty involving the exercise of professional engineering judgment.¹⁶⁹

Other Statutory Remedies

In a number of States, specific legislation directed to providing remedies for failure to perform maintenance duties has been enacted. In some instances these laws are themselves the remedy. In other instances, the directives of the law provide the necessary bases for mandamus actions. Thus, for example, Iowa has legislation making it mandatory for the State to enforce the counties' duty to repair intercounty roads.¹⁷⁰ A South Dakota law permits one township to sue another in order to force participation in the repair of a township-line road.¹⁷¹ Three New England States have passed laws providing for the levying of fines for failure to maintain highways.¹⁷² The Maine law directs that highways of the State shall be kept in repair, and specifies that fines shall be levied for failure to repair. It does not, however, indicate what units of government shall have this duty. In Massachusetts and New Hampshire, the laws are specific in referring to the towns' duties of road repair and provide for fines upon town corporations which neglect this duty. Under the New Hampshire law, courts have held that this duty requires the towns and cities to do all acts reasonably

necessary to keep streets in good repair.¹⁷³ South Carolina has enacted legislation providing criminal penalties for failure of towns of less than 1,000 population to perform their maintenance duties on streets within town limits.¹⁷⁴ The Vermont legislature has also enacted a series of laws establishing procedures for compelling repair of roads within town limits.¹⁷⁵ The statute explicitly prescribes the unusual procedure of the remedy. Under this procedure the occurrence of a failure may be called to the town's attention by three taxpayers, who may file written complaints to the county if the town does not make the needed repairs within thirty-six hours. Upon receipt of the complaint, the road is examined by the county and a hearing held to determine the needed repairs and their cost. Thereafter, if it is determined that repairs are to be made, the county may direct the town to make them. If the town refuses to obey this order, the county may make the repairs and assess the town for its cost. Procedure for appeal by the town involved is provided.

The foregoing examples of statutory remedies for the failure to repair streets and roads illustrate several points of interest to a study of the structure of the laws regarding maintenance. First, it is significant that many of these special statutory remedies relate to inter-governmental relationships in highway administration and suggest that the cooperation needed to maintain boundary-line roads or highways in which units at two levels of government have a direct interest requires special attention by the legislature. A second aspect of interest is suggested by the Vermont legislation which recognizes the desirability of providing a means for shifting the burden of action from the agency

¹⁶⁹ For example; *Catlettaburg v. Kinner*, 76 Ky. 334 (1877); holding that Mandamus should issue to compel town trustees to make repairs when necessity was so "apparent and obvious" that refusal to act must be considered "a determination not to discharge a plain duty, rather than a mistaken judgment as to the existence of the necessity."

Compare, *City of Buffalo v. International R.Y. Co.*, 239 N.Y.S. 118 (1930); and *Borough of Paramus v. County of Bergen*, 25 N.J. 492, 137 A 2d 425 (1958).

¹⁷⁰ Iowa, 309 69.

¹⁷¹ S.D. LAWS 1961, ch. 152.

¹⁷² Me., 96-63; Mass., 84-22; N.H., 247:1.

¹⁷³ *Conner v. City of Manchester, N.H.*, 60 Atl. 436 (1905).

¹⁷⁴ S.C., 47-1321.

¹⁷⁵ Vt., 19-1331.

with primary responsibility to the agency with secondary responsibility. The means established by the Vermont statute call for the secondarily-responsible agency to make a quasijudicial determination of the failure of another agency to do its duty, and thereby, suggest a new use for the administrative process in a field which otherwise must depend upon adjudication by the courts or negotiation between political bodies to meet demands for needed public services.

JOINT MAINTENANCE PROVISIONS

Many States have legislation authorizing highway agencies, on either equal or unequal levels, to enter into agreements calling for joint road maintenance programs. These statutes are similar to those pertaining to a single governmental body in that they are both permissive and mandatory in nature. The majority of the statutes refer to boundary-line roads where logic and fairness require that both units of government share maintenance responsibility.

There is also the common situation where a road crisscrosses a boundary line between two jurisdictions in such a way that only small portions of the road are in one jurisdiction at any one location. If territorial boundaries were strictly adopted as the limits of responsibility, road maintenance would be broken up into such small segments that major repairs would be prohibitively expensive. Segmentation does not create serious problems regarding minor repairs. It would, however, force a jurisdiction to carefully delineate the area within its confines.

Other common types of cooperative programs relate to interjurisdictional roads, such as intercounty or interstate routes. The value of permitting agencies at different governmental levels to enter agreements relative to maintenance may be seen in situations where it is more efficient to allow another agency to perform the repairs. These have arisen in areas with peculiar terrain where special equipment is required, where it is desirable to maintain a road in two jurisdictions to a uniform standard, and perhaps most frequently in those cases where the needed repairs traverse the jurisdictional lines.

The enactment of joint maintenance statutes creates problems of a contractual nature between the jurisdictions involved. To the extent that the statutes are mandatory, the responsible highway authorities are required to enter into and perform agreements with each other. There is, however, a possibility that one party will refuse to do so, or that the parties cannot agree as to what their duties regarding a road should be. Moreover, after having entered an agreement, be it permissive or mandatory, one of the parties may refuse to perform his part of the agreement, or a dispute may arise over the terms of the agreement. Under any of these circumstances, further arbitration or court action is necessary to settle the dispute. The latter method of settlement does not, however, appear to be too common.

Judicial determination of disputes over joint maintenance agreements requires the courts to look not only to the agreement but also to the statute involved in order to ascertain what it will permit. This frequently poses a problem since the legislative language is usually very general, stating merely that the agencies involved shall or may enter agreements for the joint maintenance of certain roads, leaving it to the discretion of the highway authorities to determine what they will do.

A Wisconsin case shows the development of certain judge-made principles by which a court may guide itself.¹⁷⁸ The Town of Eau Galle sued Waterville for a declaration of the rights, duties, and responsibilities of the two towns regarding the reconstruction and main-

¹⁷⁸ *Town of Eau Galle v. Town of Waterville, Wis.*, 241 N.W. 377 (1932).

tenance of a bridge on a road between the two towns. The towns had divided the road into two sections years earlier, with the plaintiff taking the section that contained two bridges. The plaintiff wanted to know whether it must maintain the bridges entirely at its own expense. The court did not rely on contractual principles in reaching its decision. Rather, it felt that when a town-line highway had been divided, the portion any town took for repair became incorporated into its highway system and was indistinguishable from other streets under its care. Furthermore, the court indicated that where a road or bridge formed the boundary between two towns, touching the territory of both, but only one of the two towns performed maintenance work on this facility, the long and continuous acquiescence of the nonparticipating town would result in the loss of its title and authority to the other.

STATE AGREEMENTS

Seven States have enacted specific legislation calling for the execution of agreements for joint maintenance.¹⁷⁷ This does not suggest that other States do not permit their State highway authorities to enter such agreements, for under the general statutory provisions allowing the authorities to take all actions necessary to maintain their roads properly, joint agreements may be appropriate. In this study, however, only specific legislation is discussed, and no attempt is made to go into the activities that may be taken under general statutes.

The provisions in each of the seven States authorize the highway agencies to enter agreements with appropriate officials of adjoining States. The Iowa law allows its State agencies to enter agreements with the subdivisions of an-

other State as well. The States that have these provisions are widely scattered geographically and frequently the States bordering on them do not have such provisions. However, as previously mentioned, bordering States without similar provisions are not necessarily restrained from entering agreements with their neighbors by the lack of such laws.

Connecticut's and Mississippi's statutes are permissive, allowing the States to enter agreements with their neighbors relative to Interstate highways. The Connecticut law provides that an Interstate highway may be maintained by either State upon agreement, indicating that the agreement need not always call for joint maintenance. California and Iowa have permissive enactments calling for joint maintenance of boundary-line highways. The California provision refers to highways at or near a common boundary. The Iowa law is concerned with State-line highways.

Louisiana's law is mandatory and refers to public highways. However, except for neighboring Mississippi, Louisiana's neighbors do not have joint agreement statutes; therefore, the mandatory aspect of the law is limited to the extent that the other States must desire to enter agreements with Louisiana before the State authorities must take action. This is also true of Mississippi due to the State's permissive statute. The mandatory aspect may, nevertheless, have a bearing on whether mandamus will lie as a remedy for failure to perform maintenance duties.

Nevada has a joint maintenance statute that simply refers to highways. It appears that such agreements may be entered by the State regardless of the highway's proximity to the State line. The provision is permissive.

South Dakota's permissive legislation is unique. It allows the State to enter agreements with an adjoining State relative to county highways on the State

¹⁷⁷ CAL. STS. AND HIGHWAYS 100.6, Conn., 13-92, Iowa, 314 10, La., 48-213; Miss., 8038.2, Nev., 408 125(2), S.D., 28.0701.

line. It allows the State, along with its neighbors, to assign portions of such highways to the counties of the two States for maintenance. With a provision of this kind (restrictive in nature) and with a lack of similar provisions in the adjoining States, it is clear that the only way such a provision can be carried out is if the neighboring States act under their general authority to perform those acts necessary for the proper repair of roads. The legislature, by being specific, appears to have intended to curtail sharply the scope of interstate agreements, for usually courts interpret specific legislative instructions as limiting administrative discretion based on generally delegated authority.

COUNTY AGREEMENTS

County-Line Roads

Eighteen States have enacted laws providing for joint maintenance of county-line roads.¹⁷⁸ Nine of these States have mandatory statutes and eight have permissive laws. Indiana has a statute in both categories. Although the terms of these statutes vary, all appear to authorize joint or cooperative maintenance activity. Three of the 18 States have also enacted laws calling on the State authorities to enter joint agreements.¹⁷⁹

Eight States have laws making it mandatory for the counties to act jointly in maintaining their county-line roads,¹⁸⁰ while two others have closely related mandatory provisions.¹⁸¹ An Iowa statute calls on the counties to divide maintenance, subject to the approval of the State authorities. Oklahoma counties must maintain county-line highways if

they are State roads. Several States do not use the word "jointly" in their laws, but the wording of the provisions is such that the counties must necessarily enter agreements with each other in order to carry out the intent of the laws.

A closely related statute of Colorado requires counties to maintain a definite part of a county-line road. Each county determines, by agreement, the road portions each shall maintain. The Missouri law calls on each county, interested in a county-line road, to furnish one-half the cost of keeping it in repair without specifying what authority shall be responsible for the maintenance of the roadway. Presumably, the counties are responsible and must enter an agreement as to who will be responsible for the maintenance of the road.

Of the nine States with permissive statutes, all except California have wording that calls on the counties to enter joint agreements. The California law merely states that county-line highways may be maintained by either county or by both. By implication, however, if both counties agree to maintain the road, details of their arrangement will be embodied in an inter-county agreement.

The Oregon law is unique in that it calls for concurrent action by the counties, or joint action by a county and another State in the maintenance of county-line roads. However, the law in neighboring California allows the State authorities to enter agreements only with other States for the maintenance of State-line roads. Thus, the Oregon counties would not be able to enter agreements with California unless the California statute is interpreted so as to allow the officials to enter joint agreements with political subdivisions of another State. This illustrates a danger inherent in all specific laws because no one can fully anticipate all of the situations in which these powers might be used with advantage.

¹⁷⁸ CAL. STS AND HIGHWAYS 1626; Colo., 120-13-17; Idaho, 40-801, Ill., 121-6-319, Ind., 36-501, 36-1456, Iowa, 309 68; Kan., 68-507, Mich., 9 117 *et seq*; Minn., 162 08, 163 14; Miss., 8329, Mo., 228 140, N.M., 55-4-7; Okla., 69-252, Ore., 369.410, 369.480, Pa., 16-2704, S.D., 28 0705, Tenn., 54-1012, Wash., 36.75.210.

¹⁷⁹ Cal., Miss., S.D.

¹⁸⁰ Ill., Ind., Iowa, Kan., Miss., N.M., Okla., S.D., *supra* note 178.

¹⁸¹ Colo. and Mo., *supra* note 178.

Indiana's permissive statute on county-line roads complements the State's mandatory provision. The mandatory provision requires joint maintenance of county-line roads, while the permissive statute states that in carrying out joint maintenance, one county may enter agreements with another regarding the responsibilities of each.

Miscellaneous

Two States (Georgia and Kentucky) have enacted laws calling on the counties to maintain jointly "intercounty roads."¹⁸² The Georgia statute is permissive, and the Kentucky statute is mandatory.

Joint maintenance of "State-line highways" by counties is provided for by Iowa and North Dakota.¹⁸³ Iowa's statute is the same one as appeared for joint State agreements. The State also has a statute requiring the counties to maintain jointly county-line highways. The North Dakota law allows the counties to enter agreements with each other or another State for the maintenance of State-line roads. Both Iowa's and North Dakota's laws are permissive.

Alabama law has a provision requiring causeways on county lines to be maintained by the counties.¹⁸⁴ Either a municipality or non-neighboring county may aid in the maintenance if they determine that such aid would be beneficial to them. New York has passed a permissive statute referring to county-city agreements whereby a city and a county may jointly maintain roads partly in the county and partly in the city with the city doing the maintenance work on that portion within its limits.¹⁸⁵ In Washington, two counties may jointly maintain a connecting road in a third county.¹⁸⁶

MUNICIPAL AGREEMENTS

Ten States have passed laws relating to joint agreements between cities or between townships for the maintenance of roads.¹⁸⁷ Two of these States (Connecticut and South Dakota) have also passed provisions relating to State officials entering joint agreements with other States,¹⁸⁸ while five States also have laws on joint maintenance agreements between counties.¹⁸⁹ South Dakota is represented by laws in all three categories.

Four States have enacted laws relating to the joint maintenance of city-line roads.¹⁹⁰ The Pennsylvania statute is mandatory, while those of Connecticut, Minnesota, and Wisconsin are permissive. The Minnesota and Wisconsin laws do not state that the agreements must be between one city and another. Rather, they say that a city "may enter agreements" without stipulating the authorities and, therefore, suggest the possibility that the cities are able to join with county, State, or municipal authorities for the maintenance of city-line roads.

There are laws in four States relating to the maintenance of township-line roads.¹⁹¹ The provisions of all four States are mandatory. The Pennsylvania law allows townships and cities to enter joint maintenance agreements. South Dakota also allows townships to enter agreements for the maintenance of secondary highways on township lines without specifying that they may be made between townships only.¹⁹² Secondary roads are not in any single system of highways in this State.

Three State legislatures have enacted

¹⁸⁷ Conn., 13-26, Kan., 68-527; Mass., 84-5; Minn., 162.09(10) 164.12, N.J., 40:67-24; Ohio, 5579.03, Pa., 16-2763; S.D. SESSION LAWS OF 1961, ch. 152, 28.0702, Vt., 19-1121, Wis., 80 11(8).

¹⁸⁸ Conn. and S.D., *supra* note 177.

¹⁸⁹ Kan., 68-507, Minn., 162 03, 163 14; N.J., 27:16-20; Pa., 16-2704; S.D., 28 0705.

¹⁹⁰ Conn., Minn., Pa., Wis., *supra* note 187.

¹⁹¹ Kan., 68-527, Ohio, 5579.03; Pa., 53-57101, 53-50715, 53-66205, 53-66210, 53-66215; S.D. SESSION LAWS OF 1961, ch. 152, 28 0702.

¹⁹² S.D., 28 0702.

¹⁸² Ga., 23-1801 *et seq.*; Ky., 178.250(1).

¹⁸³ Iowa, 314.10; N.D., 24-0508

¹⁸⁴ Ala., 23-50, 23-52, 23-53.

¹⁸⁵ N.Y. HIGHWAYS 187.

¹⁸⁶ Wash., 36.75 220.

Table 3. Joint Maintenance Statutes¹ Relating to Boundary-Line Roads

State	State		County		Municipal	
	State Line Roads, State with Another State	Other	County Line Roads County with Another County	Other	Municipal Line Roads, City with Another City	Other
Ala.			M	P		
Cal.	P		P			
Colo.			M			
Conn.		P			P	
Ga.				P		
Idaho			P			
Ill.			M	P		
Ind.			M, P			
Iowa	P		M	P		
Kan.			M		M ²	
Ky.				M		
La.		M				
Mass.						P
Mich.			P			
Minn.			P, P		P	
Miss.		P	M			
Mo.			M			
Nev.		P				
N.J.				P		P
N.M.			M			
N.Y.				P		
N.D.				P		
Ohio					M ²	
Okla.			M			
Ore.			P	P		
Pa.			P		M, M ²	M ²
S.D.		P	M		M ²	P ²
Tenn.			P			
Vt.						P
Wash.			P	P		

¹ M—Mandatory Provision; P—Permissive Provision.² Reference is to townships.

permissive laws allowing municipalities to enter joint agreements for the maintenance of intercity highways.¹⁹³ Massachusetts says that the cities may act in common. In New Jersey, the cities may enter a contract for the maintenance of a connecting road not within the control of the counties or the State. Vermont allows its cities to cooperate with each other in the repair of highways that pass through them.

Pennsylvania has enacted a very specific statute¹⁹⁴ calling for the adjoining townships of Pennsylvania and Ohio

to jointly maintain State-line roads running between the two States. Of course, Pennsylvania cannot determine what Ohio's political bodies shall do. However, it is noted that Ohio has a statute calling on the townships of that State to act jointly with other townships in maintaining township-line roads, and therefore it appears that the Pennsylvania and Ohio statutes may readily be reconciled to form a basis for cooperative maintenance programs.

Table 3 presents a State listing regarding joint maintenance statutes relating to State, county, and municipal boundary-line roads.

¹⁹³ Mass., N.J., Vt., *supra* note 187.

¹⁹⁴ Pa., 36-2361

CONTRACTUAL AGREEMENTS FOR MAINTENANCE

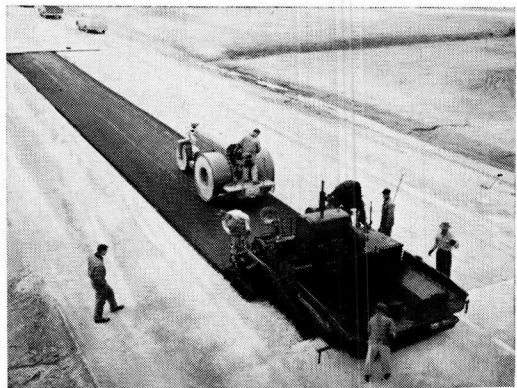
To ensure effective road maintenance, it is important that State, county, and municipal highway authorities be made capable of entering contracts for the work that must be done. While many jurisdictions have their own road repair crews who perform street maintenance, others must rely on private contractors or other public agencies for road repair. Even those jurisdictions that have their own forces are not completely free from the need to contract for certain types of maintenance. Sometimes necessary repairs are so extensive that they require additional labor and equipment that are not kept for normal maintenance work. At other times, necessary maintenance requires specialized equipment that road maintenance agencies are not normally expected to have on hand.

For many, if not most, local governments, the scopes of their road activities do not warrant keeping men and machinery available at all times. This is often true in the case of small, incorporated towns with few roadways. For such units of government to keep a maintenance crew with the needed machinery would be inefficient and costly. A more sensible alternative is to permit such jurisdictions to make arrangements with other juris-

dictions or nongovernmental organizations for the repair of their roads.

The power to execute contracts pertaining to the maintenance of roads is granted by the legislature. In many States, laws have been enacted that specifically delegate this authority to the governmental units or agencies responsible for maintenance. In others, the power to contract is given generally and there are no specific maintenance provisions. It is not the purpose of this study to analyze the general contractual provisions.

The more specific a legislature has been in granting the authority to contract, the more likely it is that entry into other types of contractual arrangements will be disallowed by the legislature's general power to do all things necessary to effectuate a governmental body's responsibilities. For this reason, it is generally advisable that the contractual power be granted in general terms thereby allowing the responsible authorities to use discretion in determining how to achieve road repair. The legislature may then proscribe certain types of contractual arrangements, by means of negative laws, if it subsequently feels that they are undesirable.



Cooperative agreements between government highway agencies and State highway departments or contracts with private firms can secure the sophisticated equipment necessary for specialized road building jobs.

Joint agreements for the maintenance of roads have already been mentioned. While the joint agreement is contractual in nature, it was felt that it would be better to handle the subject separately because of the mandatory and permissive aspects of the laws, and because this chapter gains better focus by dealing with contractual arrangements under which only one party will repair the roads involved.

This chapter is divided into four main groupings. The first section deals with contractual arrangements entered into by one governmental body to perform the maintenance work of another. The second deals with the cooperative agreements whereby one jurisdiction is given the authority to aid another in the maintenance of special road systems. The third section deals with contractual provisions authorizing units of government to contract with nongovernmental bodies. Section four contains analyses of agreements between a jurisdictional unit and the Federal government. Every State, the District of Columbia, and Puerto Rico are represented in at least one of these categories.

CONTRACTUAL ARRANGEMENTS BETWEEN JURISDICTIONS

Most statutes authorizing contractual agreements for the maintenance of roads by one jurisdiction for another are permissive in their wording. Only in Oklahoma and Pennsylvania are there mandatory statutes.¹⁹⁵ The purpose of legislatures in passing permissive statutes is to leave administrative discretion free to determine whether the State and its political subdivisions will enter into contracts with each other for road maintenance, or whether each will maintain its own roads in some other fashion. In accordance with this approach most of the statutes allow a unit of government

at one level the authority to enter a contractual arrangement with one at another level. See the listing in Table 4.

Seven States, however, do not have any statutes in this category.¹⁹⁶

State Provisions

The legislatures of the States, in enacting statutes giving State highway authorities the power to enter contracts with other political bodies, are primarily concerned with the maintenance of major road systems. Some laws make it possible for the State to maintain the roads of another unit of government, and other laws make it possible for a unit of local government to maintain the roads of the State. A few provisions are so worded that the State, or one of its units of local government, may enter agreements pertaining to the maintenance of any road system.

Agreements with County or City.—Laws have been passed in five States authorizing the State to enter agreements with a county or city for the maintenance of roads in general.¹⁹⁷ These statutes are so worded that under them the State may repair streets under county or city jurisdiction, or a city or county may repair the roads of the State. The Pennsylvania and West Virginia statutes make no reference to a specific type of road; while the Nebraska law refers to highways, roads, streets, or connecting links. For these three States, therefore, although the statutes run from the very general to the very specific, all roads are covered by legislative directive. In Alabama and Oregon, on the other hand, the statutes merely refer to "highways," a term which, in some States, means major roads of high speed nature. It is possible that in these States the provisions limit agreements to maintenance of the major roads of the State system.

Seven States have passed laws permit-

¹⁹⁵ Del., Me., N.H., N.Y., Ohio, S.C., Wyo.

¹⁹⁷ Ala., 23-22; Neb., 39-1307; Ore., 366.775; Pa., 36-670-408; W.Va., 1448-8(32).

¹⁹⁶ Okla., 11-117.2, Pa., 53-46758.

Table 4. Statutory Authority of States, Counties, and Municipalities to Enter into Contracts and Agreements with Each Other

State	By State	By County	By Municipality
Ala.	State may enter contracts with counties and cities for maintenance of highways. 23-22		
Alaska	State may enter agreements with city for State maintenance of municipal connecting links. 14A-2-22		
Ariz.	State may enter contracts with counties and cities for maintenance of State highways 18-106-5 State may enter agreement with city to maintain as State road city streets which connect with State roads 18-156	County may enter agreement with city to maintain as county road, city streets that connect with county roads 18-156	
Ark	State may enter agreements with county to maintain county roads. 76-1034		
Cal.	State may enter agreements with counties or cities for maintenance of State highways. 130 State may make agreement with counties or cities to maintain any highway if Federal aid is involved. 882 5 State may enter agreements with counties and cities for maintenance of roads by state, counties, or cities Gov't 6500 <i>et seq</i>	County may contract with city for county to maintain city streets. 1803	City may agree with county to maintain county highways outside cities. 1710 City may enter agreement with county for city to maintain roads in unincorporated territory 1710 City may contract with county for city to maintain county roads within its limits. 1726
Colo.	State may contract with county or city for State to maintain state or county highways within county or city. 120-3-17 State may contract with county for county maintenance of State highways outside the county jurisdiction 120-13-4 State may contract with city for city maintenance of State highways within the city 120-13-3	County may contract with State or city for State or city to maintain county or State highways within the county or the county and city. 120-13-44 County may contract to maintain State highways within its boundaries if the amount is not greater than \$100,000. 120-1-8 County may contract with adjoining county to maintain county or State highways of the adjoining county 120-13-44	City may contract with State or county for State or county to maintain city streets, and county or State highways within the city. 120-13-44 City of less than 5,000 may contract for county to maintain its streets 120-13-27
Conn	State may make agreements with municipality for municipal maintenance of State highways 13-58 State may enter agreement with city to maintain any road built by the city as a State-aid road if it finds it in the State's interest to do so and subject to qualifications a city may impose. 13-103		City may enter a reciprocal agreement with State whereby it maintains a section of State road and the State maintains an equivalent section of city road. 13-116
Fla.	State may enter contract with city whereby city maintains municipal connecting links. 335 05(3)		
Ga.	State may contract only with counties for work on State roads without bids 95-1630		

Table 4. Statutory Authority of States, Counties, and Municipalities to Enter into Contracts and Agreements with Each Other (Continued)

State	By State	By County	By Municipality
Hawaii		County may enter agreements with State for State to maintain county roads. 142-35.	
Idaho	State may contract with county whereby county maintains State roads. 40-2301 State may contract with city for city to maintain entire width of highway in the city when a part of the width is under the jurisdiction of the State. 40-123	County may enter agreement with State, another county, or municipality to maintain the county road system. 40-133(b) County may contract with State for maintenance of county system. 40-131 County may contract for another county to maintain any part of its system. 40-131	City may enter agreement with State or county for State or county to maintain city street system. 40-136
Ill.	State may enter contract with county for county maintenance of State highways within county if county originally built the highway. 4-406 State may enter contract with city for city maintenance of State highways within city. 4-406	County may enter contract with city for city maintenance of county highway within city. 5-410	
Ind.	State may enter agreement with city for city to maintain Federal-aid routes within its boundaries. 36-2921		
Iowa	State may contract with county or city for county or city to maintain State institutional and park roads. 307 5(12)		City under 5,000 may contract with county or adjoining cities to maintain its streets. 391.2
Kan.	State may enter contracts with county for county to maintain State highways. 68-407	Counties not under county unit system may enter agreements for counties to maintain township roads. 68-572	
Ky.	State may enter agreement with city for city to maintain municipal connecting links that normally would be maintained by State. 177.041		
La.	State may enter contract with parish (county) or city for parish or city to maintain State highways. 48-193(d) State may contract with city, at city's request, for city to maintain continuation of State highway within city. 48-193(A)	Parish with less than 100 miles of parish road may contract with State to have State maintain the roads. 48-193(G) Parish may enter agreement with city for city to maintain parish streets. 33-1324(4)	City may enter agreement with parish for parish to maintain city streets. 33-1324(4)
Md.	State may contract with county or city for county or city to maintain State highways. 89 B-7		
Mass.	State may contract with town for town to maintain State highway within its boundaries. 81-15		Town with less than \$5,000,000 valuation may contract with State for State to repair its streets. 81-28
Mich.	State may contract with county or township for county or township to maintain trunk line highways. 9.902	County may enter agreement with State for county to maintain State highways within county. 9 1097(12)	City or village may enter agreement with State or county for State or county to maintain any street within the boundaries of the city or village. 9 1097(13)(f)

Table 4. Statutory Authority of States, Counties, and Municipalities to Enter into Contracts and Agreements with Each Other (Continued)

State	By State	By County	By Municipality
Mich (con't)		County may enter contract with adjacent county, city or village for adjacent county, city or village to work on county highways 9 1097(12)(i)	Township may contract with county for township to maintain county highways within county. 9 195(1)
Minn.	State may enter agreements with county or city for maintenance of State highways, including frontage roads, by county or city if the highway is within their boundaries 161.38 State may enter agreements with city for State to maintain the additional width on a State highway within a city, said width not being part of the State highway. 161.38	County may enter agreement with State for county to maintain State trunk highways 161.38 County may enter agreement with city of less than 5,000 persons for maintenance of county State-aid highways and city State-aid streets by either the county or the city 162.17(3)	City may enter agreement with State for city to maintain State trunk highways 161.38 City of less than 5,000 persons may enter agreement with county for maintenance of county State-aid highways or city State-aid streets by either the county or the city 162.17(3)
Miss		County may enter agreement with adjoining county to maintain a road in the adjoining county if it will benefit thereby. 8322	
Mo.	State may make contracts with local jurisdictions for maintenance. Article IV, §31, Constitution		Local jurisdiction may make contracts with State for maintenance. Article IV, §31, Constitution
Mont.	State may enter agreements with county for county to maintain State highways. 32-1610		
Neb.	State may enter agreement with county or city to maintain additional width of State highway which was constructed by county or city. 39-1341 State may enter agreements with county or city for maintenance of highways, roads, streets or connecting links 39-1307 State may enter agreements with cities for cities to maintain connecting links to State highways which were at least partly constructed with State funds 39-1339(7)	County may enter agreements with State or city for maintenance of highways, roads, streets or connecting links 39-1307	City may enter agreements with State or county for maintenance of highways, roads, streets or connecting links. 39-1307, 39-1339(7)
Nev.	State may enter into contract with county in emergency for State to maintain county roads 403 570(2)		
N J	State may enter into contract with county or city for maintenance with aid of State and Federal funds 27 8-1 State may contract with city for State to maintain city streets connecting State highways 27:7-1	County may contract with State for county to maintain State roads within the county. 27 16-40 County may contract with another county or a city for maintenance of roads 40 23-14	City may contract with county for maintenance. 27 22-37 City may contract with county for county to maintain city streets if State aid is available for the streets. 27.15-1.11
N.M.	State may contract with county for county to maintain State highways 55-2-30	County may contract with State for State to maintain county roads. 55-3-4	
N.C.	State may contract with city for city to maintain State highway streets within city 136-41.3		City receiving State funds may contract with State for State to maintain city streets. 136-41.3

Table 4. Statutory Authority of States, Counties, and Municipalities to Enter into Contracts and Agreements with Each Other (Continued)

State	By State	By County	By Municipality
N D.			City of 10,000 or less may contract with county for county to maintain city street. 40-05-14 Township may contract with county or another township for county or other township to maintain the township's roads. 24-06-09 City may agree with State for maintenance of added width of city streets 24-01-11
Okla.	State may contract with town of less than 1,500 for State to maintain town's streets 11-117.2	County shall contract with town of less than 1,500 for county to maintain town's streets if State does not so contract 11-117.2	
Ore	State may enter agreement with county or city relating to maintenance of any highway. 366.775	County may enter agreement with city for city to maintain county connecting road within city 373.110, 373.270 County may enter agreement with city for repair of county roads or city streets within the city, or roads outside the city but leading directly to it if city has population under 100,000 373.260	City may enter agreement with county for repair of county roads or city streets within the city, or roads outside the city but leading directly to it if city has population under 100,000. 373.260
Pa	State may enter contract for maintenance with county or city. 36-670-408 State may enter agreement with county or city for State to maintain entire route on which there is a division of the responsibility for maintenance. 36-670-906 State may enter agreement with city to maintain city streets which are continuations of State highways or connecting roads to State highways City may maintain jointly. 36-391	County may contract with cities and townships for maintenance 16-2760, 16-2759 County may enter agreement with city for county to maintain city streets which connect with county roads 16-2759, 16-5923, 53-1836 County may enter agreement with city for county to maintain city streets 53-1836 County may enter contract with township for township to maintain roads constructed jointly by county and city. 16-2762 County shall enter agreement with borough for maintenance of county improved streets in borough. 53-46758	City may enter contract with county for city to maintain jointly constructed streets. 53-1834 Borough shall enter agreement with county for maintenance of county improved streets in borough. 53-46758
R.I.			City may enter agreement with State for city to maintain State-improved roads within city 24-8-5
S.D		County may enter agreement with State for county to maintain State trunk highway lying within county. 28.0215 County may enter agreement with township for county to maintain township roads 28.0314	
Tenn.	State may contract with city for city to maintain municipal connecting links. 54-531		
Tex	State may enter agreement with county for State to maintain farm-to-market roads 6673-c		

Table 4. Statutory Authority of States, Counties, and Municipalities to Enter into Contracts and Agreements with Each Other (Continued)

State	By State	By County	By Municipality
Utah	State may enter agreements with county or town for county or town to maintain State roads. 27-2-7(5) State may enter agreement with county or city for maintenance of livestock highways 27-7-1, 27-7-2	County may enter agreement with State or city for maintenance of livestock highways 27-7-1, 27-7-2	Certain cities may contract with county or State for county or State to maintain local streets 27-8-4 City may enter agreement with State or county for maintenance of livestock highways 27-7-1, 27-7-2
Vt	State may enter contract with city for State to maintain State-aid or town highways 19-971		City may enter agreement with State for State to maintain State-aid highway system. 19-132 City may contract with State for State to maintain town highways 19-22
Va.		County may enter agreement with State for State to maintain county roads when Federal aid is involved. 33-131	City may enter agreement with State for State to maintain city streets when Federal aid is involved 33-131
Wash.	State may enter agreement with county for county to maintain State highways or State to maintain county highways 36.75.030	County may enter agreement with State for State to maintain county highways or county to maintain State highways 36.75.030 County may enter agreement with city of less than 1,000 for county to maintain county road within the limits of the city. 36.75.205	
W Va	State may enter agreement with county or city relating to maintenance 1448-8(32)		
Wis	State may enter agreement with county to have all maintenance work on State roads in or beyond limits of county done by county 84.07(1)	County may enter contract with city for county to maintain streets and highways in the city. 83.035	City may contract with county to have connecting streets maintained by the county 86.331

ting the State to enter agreements with counties or cities, by the terms of which, the county or city agrees to maintain State highways.¹⁹⁸ In all of these States, the primary responsibility for the repair of the State highway system rests mandatorily with the State authorities.¹⁹⁹ In Minnesota, the State highway must be within the boundaries of the county or city before a contract may be entered, and if it is, the agreement may also include frontage roads.

Where portions of the State highway system are normally maintained by cities or counties, the State highway agency

may, by special agreement, assume responsibility for the maintenance duties of the city or county. Nebraska has enacted legislation authorizing such agreements, directed primarily to instances where local governments construct additional width on highways of the State system.²⁰⁰

Colorado has passed a law that enables the State to maintain a State or county highway within a county or city on agreement.²⁰¹ This law created an apparent conflict when a subsequent statute made it mandatory for the State to maintain all State highways.²⁰² Be-

¹⁹⁸ ARIZ., 18-106-5, CAL. STS. AND HIGHWAYS 130, La., 48-193(d); Md., 89B-7, Mich., 9-902; Minn., 161.38; Utah, 27-2-7(5).

¹⁹⁹ See Table 4.

²⁰⁰ Neb., 39-1337, 39-1341.

²⁰¹ Colo., 120-3-17.

²⁰² Colo., 120-13-2.

cause the statute is silent regarding the status of the prior enactment, and there has been no judicial ruling on the question of possible repeal by implication, this legislation remains an internal inconsistency in the State law.

Agreements with Counties.—Arkansas, Nevada, and Texas have enacted provisions allowing the State to enter agreements with the county authorities whereby the State may maintain roads normally under the jurisdiction of the county.²⁰³ The Arkansas and Nevada statutes refer to the county road system. The Nevada statute requires the State to contract only in the event of an emergency. In Texas, the State may agree to maintain farm-to-market roads. Washington has a law allowing the State to contract with its counties for either State maintenance of county roads or county maintenance of State roads.²⁰⁴

Seven State legislatures have passed statutes enabling the State highway authorities to contract with the officials of the counties for the repair of State roads.²⁰⁵ Idaho, Kansas, New Mexico, and Montana's laws are concerned with State highways in general. In Colorado, the provision makes it possible for the county to maintain State highways beyond the county limits. This statute is the converse of the one previously mentioned wherein the State can enter agreements to maintain county roads. Illinois allows a county to maintain roads within its limits if they were originally built by the county. The Wisconsin statute refers to State roads in or beyond the jurisdiction of the county.

Agreements with Cities.—Eight States have passed laws making it possible for the State authorities to enter agreements with a city for State maintenance of roads under the city's care.²⁰⁶ Provisions

for the State to enter into agreements by which the cities maintain roads are more common. They may be found in twelve States.²⁰⁷ Florida, Kentucky, Nebraska, and Tennessee statutes pertain to municipal connecting links to State highways. In Nebraska, the connecting links must have been constructed, at least in part, with State funds. Florida and Nebraska have specific provisions making it mandatory for the State to repair its connecting links.²⁰⁸ The connecting-link provisions are interesting because in other States the situation is reversed and the State may maintain them on agreement. This dichotomy of approach presents a good view of how the legislatures of different States place dissimilar responsibilities on the various jurisdictions for the same types of road systems.

Missouri, while it has no statutes allowing the State to contract with other jurisdictions, does have a constitutional clause allowing the State to enter agreements with local governmental agencies for maintenance.²⁰⁹ The clause is general regarding what unit or agency may maintain which roads. It is so general, in fact, that either one or the other jurisdiction may maintain State roads, or the State may maintain another jurisdiction's roads under it.

County Provisions

Statutes authorizing counties to contract for maintenance are quite varied; some refer to agreements with the State authorities, while others deal with another county, and still others are concerned with agreements involving cities. Some statutes allow the other governmental unit to maintain county roads, while others allow the county to maintain certain roads under the care of another

²⁰³ Ark., 76-1034, Nev., 403.570(2); Tex., 6673c.

²⁰⁴ Wash., 36 75.080.

²⁰⁵ Colo., 120-13-4; Idaho, 40-2301; Ill., 121-4-406; Kan., 68-407; Mont., 32-1610; N.M., 55-2-30; Wis., 84.07(1).

²⁰⁶ Alaska, 14A-2-22; Ariz., 18-156; Conn., 13-103; Minn., 161.38; N.J., 27:7-16; Okla., 11-117.2, Pa., 36-391; Vt., 19-971.

²⁰⁷ Colo., 120-13-3, Conn., 13-58, Fla., 335 05(3); Idaho, 40-123, Ill., 121-4-406, Ind., 36-2921, Ky., 177 043; La., 48-193(A); Mass., 81-15, Neb., 39-1339(7); N.C., 136-41 3, Tenn., 54-531.

²⁰⁸ Fla., 335 05(d), Neb., 39-1339 (1)

²⁰⁹ MO. CONST., art. IV, §31.

jurisdiction. There is no consistent pattern. The statutes have arisen as a result of the various legislatures' determination of what is necessary and desirable.

Agreements with State and City.—Four States have enacted legislation allowing the counties to enter agreements with either the State or a city.²¹⁰ In Nebraska and Utah the counties may agree with either the State or cities to maintain certain roads. The Nebraska statute refers to "highways, roads, streets, or connecting links," thereby encompassing all roadways. By the same provision, the legislature has given the State and the cities reciprocal authority. The Utah statute refers to the maintenance of livestock highways and also has reciprocal provisions for the State and the cities. Either the State, county, or city may maintain the roads referred to in Nebraska's and Utah's provisions.

Agreements with the State.—In five States the counties may contract with the State for county maintenance of State roads.²¹¹ Certain limitations must, however, be observed. In Colorado, the cost of maintenance cannot be greater than \$100,000. In Michigan, New Jersey, and South Dakota, the State highway must lie in the county doing the contracting. In Colorado, Michigan, and Minnesota, as was previously noted, the legislatures have also passed specific provisions allowing the State to enter contracts with the counties for county maintenance of State roads.

Counties in 5 States may enter agreements for State maintenance of their roads.²¹² In Louisiana, where the counties are called parishes, the parish must have fewer than 100 miles of road in its system as a condition precedent to entry into such a contract. The import of this requirement is that the legislature has

decided that if a parish has more than 100 miles of road, it can and should efficiently perform its own repairs. The Virginia statute allows the State to enter agreements to maintain county roads only when Federal aid has been involved in their construction.

Agreements with Other Counties.—Five States have passed laws allowing a county to enter agreements with other counties for the maintenance of roads.²¹³ Colorado, Michigan, and Mississippi expressly state that the counties must be adjacent to each other. In Colorado, the agreement may be for the maintenance of either county or State roads. Mississippi requires that the contract be "beneficial" before the county enters it.

Agreements with Cities.—In twelve States, the counties may enter agreements with cities for county maintenance of city streets.²¹⁴ In Oklahoma, the provision is mandatory, as is one of the three provisions in Pennsylvania that refers to agreements with boroughs. Six States allow the counties to contract with cities for city maintenance of county roads.²¹⁵ In California, cities may maintain county highways outside the city limits and roads in unincorporated territories. The Illinois law is applicable to county highways within the city, the Louisiana law with parish streets, and the Michigan law with county highways. New Jersey counties may contract with a city for city maintenance of streets and highways within county bounds that are extensions of, or connect some improved county or State road, or form a link in a chain of improved county or State roads. The Oregon law allows the city to maintain county connecting roads within its bounds. In Pennsylvania, the

²¹⁰ Colo., 120-13-44; Idaho, 40-133(b); Neb., 39-1307; Utah, 27-7-1, 27-7-2

²¹¹ Colo., 120-1-8; Mich., 9.1097(12); Minn., 161 38, N.J., 27:16-40, S.D., 28.0215

²¹² Hawaii, 142-3 5; Idaho, 40-131; La., 48-193(G); N.M., 55-3-4, Va., 33-131.

²¹³ Colo., 120-13-44; Idaho, 40-131; Mich., 9.1097(12)(i); Miss., 8322; N.J., 40-23-14

²¹⁴ Ariz., 18-156; Colo., 120-13-27; Kan., 68-572; La., 33-1324(4); N.J., 27:15-1 11; N.D., 40-0514, 24-0609; Okla., 11-117 2; Ore., 373 260, Pa., 16-2759, 16-2760, 16-5923, 53-1836, S.D., 28 0314; Wash., 86.75 205; Wis., 83 035, 86 331.

²¹⁵ CAL. STS. AND HIGHWAYS 1710, 1726, Ill., 121-5-410; La., 33-1324(4); Mich., 9.195(1), 9.1097(12); N.J., 27-22-7; Ore., 373 110, 373.260; Pa., 16-2762, 53-1834

law allows a township to maintain roads constructed jointly by the county and city.

Three States allow the counties to contract with cities for the maintenance of roads in general.²¹⁶ Under these provisions, counties may repair roads under city control.

City Provisions

Legislation describing the authority of cities to contract for maintenance of their streets varies greatly from State to State depending on what the legislature has determined is the need of the various jurisdictions. There is no truly consistent pattern of authority. In those States where cities have not been given any specific power to contract with agencies of other governmental units for street maintenance, some cities have attempted to construe powers granted in their corporate charters so as to find authority for such contracts.

Agreements with County or State and County or City.—In four States, the cities have the power to enter into contracts with either county or State agencies for the maintenance of roads.²¹⁷ In Colorado, the provision allows the State or a county to repair city streets along with county or State highways within the city. Idaho, Michigan, and Utah laws are concerned solely with the city street system.

Authority enabling a city to enter into agreements for the maintenance of certain roads by the State or county exists in two States.²¹⁸ Under these laws either the State, county, or local authorities may maintain the roads specified. However, the Nebraska law includes all roads, and the Utah law refers only to livestock highways.

In two States, cities (or other units of local government) may enter agreements with a county or another city

whereby their roads are maintained by the county or the other city.²¹⁹ In Iowa, the city must have fewer than 5,000 population, and it may contract only with an adjoining city or county. The North Dakota law deals with townships rather than cities.

Agreements with State.—There is legislation in several States allowing a city to enter agreements with State authorities providing for State maintenance of certain city streets.²²⁰ Massachusetts grants cities permission to execute such agreements on condition that the city have a total valuation of less than \$5,000,000, in which case the State may repair all of the streets. In North Carolina, those cities receiving State funds may have their street systems maintained by the State. In Vermont, a city may contract for State maintenance of State-aid highways. The law in Virginia is concerned with city streets in which Federal aid is involved.

Cities may contract to maintain State roads in three States.²²¹ In Minnesota, the provision refers to State highways in general. The Rhode Island law is concerned with State-improved roads within the city. In Colorado, the provision refers to State roads within the city.

A constitutional provision in Missouri allows local jurisdictions to contract with the State for maintenance.²²² This clause is broad enough to allow any road to be maintained by the State, and any State road may be maintained by local bodies regardless of jurisdictional bounds. In this case, the term "Local" includes counties.

Agreements with Counties.—Two States allow their cities to enter agreements with a county for the maintenance of roads by either governmental unit.²²³ In Minnesota only cities under 5,000 population may enter this type of agree-

²¹⁶ Minn., 162.17(3); N.J., 40.23-14, Pa., 16-2759, 16-2760.

²¹⁷ Colo., 120-19-44; Idaho, 40-186; Mich., 9.1097(13)(F), Utah, 27-8-4.

²¹⁸ Neb., 39-1807, 39-1339(7); Utah., 27-7-1, 27-7-2.

²¹⁹ Iowa, 391 2; N.D., 24-0609.

²²⁰ Mass., 81-28, N.C., 136-41 3; Vt., 19-132; Va., 33-131

²²¹ Colo., 120-18-3; Minn., 161 38, R.I., 24-8-5

²²² MO. CONST., art. IV, §31.

²²³ Minn., 162.17(3); Ore., 373 260.

ment, and the roads included therein must be either county-State-aid highways or city-State-aid streets. An Oregon provision allows contracts if the city has fewer than 100,000 population and if the contracts apply to the repair of county roads or city streets within the city, or roads outside the city that lead directly to it.

Summary

A summation of the preceding provisions indicates that specific laws, allowing the State to maintain county roads, exist in 17 States, and that some provision for State maintenance of certain streets within a city's jurisdiction also exists in 20 States. The States allowing agreements between cities and state agencies are not the same as those for State maintenance of county roads. The counties may by contract maintain certain State roads in 23 different States and may repair certain city roads in 20 States. Twenty-five States allow the city to maintain designated State road systems by contract, while 13 States have passed laws permitting cities to maintain certain county controlled roads.

The provisions of these laws vary considerably. Each State that has enacted an enabling statute for maintenance contracting has had its own viewpoint, based on its policy regarding municipal discretion. A few States have followed a policy of using very general language in authorizing interjurisdictional contracts, and thus, have enabled the highway agencies concerned to use broad discretion in providing for road repairs. Others have left little room for local discretion.

In a number of States, authorization to contract for road maintenance is related to the population of the governmental unit concerned. The use of population as the criterion by which authorization to enter into maintenance agreements is allowed recognizes that local jurisdictions having

populations of less than a stated number cannot normally justify the cost of keeping necessary highway maintenance crews and equipment constantly available for their exclusive use.

A small group of States have attempted to pass very specific contract authorization statutes which prescribe exactly what the legislature deems desirable in the way of intergovernmental contracting. This approach, of course, may be satisfactory where the State road systems and the legal responsibility thereof are clearly defined. Where these matters are not comprehensively and clearly defined, however, there is danger that statutory directives will be inadequate to guide administrative decision-making and may lead to unnecessary confusion and expense.

COOPERATIVE AGREEMENTS

A number of States have enacted laws providing for intergovernmental cooperation in the maintenance of roads. Cooperative agreement statutes generally envisage the use of the contracting parties funds in the maintenance of specified road systems. They also normally call for both parties to maintain the same system of roads according to standards of repair agreed upon in negotiation. Their purpose is primarily to relieve the public agency having jurisdiction over the roads in question from inequitable or unduly expensive costs that otherwise would be imposed by the operation of the highway laws. Thus, where a city has jurisdiction over all roads within its boundaries, it may be deemed inequitable to require the city to devote its own funds to maintain roads that function as feeders to State highways because such roads are bearing traffic that is of primary concern to the State highway department.

Financial reasons have also played a major role in the enactment of cooperative agreements. In a number of States, funds

for the maintenance of roads are allocated from the State treasury or highway fund to counties, cities, and townships. Inevitably, the formulas by which moneys are allocated have some inequities. Authorization for cooperative arrangements, at the discretion of agencies at various levels of government, may correct these inequities to some extent. Cooperative agreements may also serve as an alternative to legislative grants of authority to contract for maintenance by the governmental agencies, and may allow for more efficient maintenance activities by freeing smaller political subdivisions and municipal corporations from the necessity of keeping costly equipment and crews available.

Most cooperative agreement statutes are permissive in nature. However, in a few States, the legislatures have directed that agreements be entered into by certain agencies. As previously noted, where these laws are mandatory, this fact has a bearing on whether mandamus will lie to force a jurisdiction to enter such an agreement.

Whereas 43 States have enacted provisions allowing their subordinate jurisdictions to enter into agreements for the maintenance of one authority's roads by another, 17 States have passed laws relating to cooperative agreements. Of these States, only Ohio has no provisions calling for contracts between local units of government. Fourteen States allow the State highway authority to enter cooperative agreements. Eleven of them also have provisions allowing the State to contract for the maintenance of state highways. Counties have express authority to enter cooperative agreements in six States, while cities have been given this express power in five.

State Cooperative Agreements

Several States allow the State highway authorities to enter cooperative agree-

ments with either the county or the city.²²⁴ The Idaho law is the only one with mandatory terms. In Illinois and Ohio, the authorization applies to all roads. The Idaho law is, however, concerned with feeder roads not in the State highway system, and Iowa's statute pertains to local service roads. Roads connecting county or city streets with an Interstate highway are provided for in Mississippi. Oregon's law relates to State highways, while Wisconsin's deals with Federal forest roads.

Provisions in six other States allow the State to cooperate with its cities.²²⁵ The Utah statute is mandatory, but the others are permissive. Alabama and North Dakota laws apply only to municipal connecting links, and in California and Texas the statutes refer to State highways within the cities. Texas has a separate provision that allows the State to cooperate with cities in the maintenance of freeways. In New Jersey, the State may cooperate with its cities in any work; while in Utah, the State's mandatory statute requires that it enter into cooperative agreements for the maintenance of local roads.

Oklahoma is the only State with a law allowing its State highway authorities to enter cooperative agreements with a county.²²⁶ The law relates to the maintenance of secondary Federal-aid roads. These roads are under the control of the State. Thus, this provision serves to enable the county to help maintain such roads.

County Cooperative Agreements

Illinois allows its counties to enter cooperative agreements with either the State or city.²²⁷ By the same provision a city or the State is granted express authority to enter a cooperative agree-

²²⁴ Idaho, 40-120(14); Ill., 121-9-101; Iowa, 306A.3; Miss., 8088.6, Ohio, 5501 02(D), 5535.08; Ore., 366.770; Wis., 84.01 (17).

²²⁵ Ala., 23-78(19); CAL. STS. AND HIGHWAYS 114; N.J., 27:7-19; N.D., 24-01-03, Tex., 6673b, 1085a; Utah, 27-8-4.

²²⁶ Oklahoma, 69-44(d), 69-20.7(a).

²²⁷ Ill., 121-9-101.

Table 5. Authority to Enter into Cooperative Agreements

State	State			County			Municipality		
	County or City	County	City	State or City	State	City	State or County	State	County
Ala.			P						
Cal.			P			P			P
Ga.						P			
Idaho	M								
Ill.	P			P			P		
Iowa	P						P		
Minn.						P			P
Miss.	P					P			P
N.J.			P						
N.M.					P				
N.D.			P						
Ohio	P								
Okla.		P							
Ore.	P				P				
Tex.			P					P	
Utah			M						
Wis.	P								

M—Mandatory Provision.
P—Permissive Provision.

ment with a county without statutory limitations regarding the road systems to which such agreements may apply.

New Mexico and Oregon allow the county road authorities to enter cooperative agreements with the State.²²⁸ The New Mexico law does not specify that any particular road system must be involved, while Oregon's law restricts cooperation to public roads within the county. It appears that roads in either county or State jurisdictions are encompassed by these enactments.

Four States specifically authorize counties to enter cooperative agreements

with cities.²²⁹ In all three States, the agreements cover certain roads within the cities. In Georgia, the city must lie within the county, and the applicable roads must be a part of the county or State highway system. A Minnesota statute allows cooperation between counties and cities, of more than 5,000 population, in the maintenance of the county State-aid highway system and municipal State-aid streets. County State-aid highways come under the jurisdiction of the county, and municipal State-aid streets come under the jurisdiction of

²²⁸ N.M., 55-2-22; Ore., 368.805.

²²⁹ Ga., 23.601, Minn., 162.17(1); Miss., 8323, CAL STS. AND HIGHWAYS 1727.

the cities.²³⁰ Mississippi's law covers county roads that traverse cities.

City Cooperative Agreements

Two States allow their cities to cooperate with either the State or county highway authorities.²³¹ The Illinois law is general and appears to encompass all roads. In Iowa, however, the law applies only to local service roads.

City-county cooperation is specified in the law of two States.²³² In Minnesota, under the same provision giving a county the authority to cooperate with cities, cities having over 5,000 population may cooperate with the county in the maintenance of the county State-aid highway system, and municipal State-aid streets. Another reciprocal provision exists in Mississippi. A Mississippi city may cooperate with a county in the maintenance of county roads through the city.

Texas allows its cities to cooperate with the State in the maintenance of freeways.²³³ This provision is expressly reciprocal.

GENERAL CONTRACTUAL PROVISIONS

The vast majority of the States have enacted laws giving authority to enter into contracts for the maintenance of roads to the State officials or the officials of political subdivisions. Most of the statutes are very general, and do not include any conditions precedent to the execution of such contracts. Others do have conditions attached. In those States that have not enacted specific laws for each level of government or for the State's political subdivisions, the authority to enter maintenance contracts frequently may be found in the laws relating to the governments' general contractual capacity.²³⁴

Such general statutes are usually per-

missively worded. Several States, however, have enacted mandatory provisions. Normally, they also allow highway officials broad use of their discretion regarding the terms of maintenance contracts, materials and methods to be used, and the standards to which the work is to be performed. The general contractual capacity of the States and their political subdivisions, therefore, constitute another basis on which to establish contracts for one governmental unit to maintain another's roads and streets.

It is not possible at this time to analyze closely the nature or procedure of these contractual relations.²³⁵ This section will, however, review the broad scope of the contractual provisions of the state highway laws, including the road systems covered and the conditions under which highway officials may act.

In practice, these laws have been of primary use in enabling highway agencies to contract with private groups, but in most cases, they are worded in terms general enough to enable the agencies to use the power to enter into agreements with the other levels of government. Table 6 furnishes a State-by-State listing of jurisdictional authority to contract with nongovernmental groups for road maintenance.

State Provisions

Thirty-nine States, the District of Columbia, and Puerto Rico have enacted general laws allowing the State highway departments to contractually relinquish the maintenance of their roads to other authorities or private groups. In eighteen States and Puerto Rico, these laws deal with the maintenance of all highways under the control of the State authorities,²³⁶ while in 15 States, the enactments

²³⁰ See "Highway Contracts" HRB. Special Report 57, (1959).

²³¹ Ala., 23-22; Alaska, 14A-3-17; Fla., 337.11(1b); Idaho, 40-120(1); Ind., 36-107, Iowa, 314 1; Kan., 68-407, 68-408; Minn., 161.32(1), Miss., 8038, Mont., 32-1608, Neb., 39-1349; N. J., 27 7-20, N.M., 55-2-32, N.C., 136-28, Ore., 366 400(1), R. I., 24-8-12; Utah, 27-2-7(1), W. Va., 1448(8)(27), 1474(1); P.R., 3-412.

²³² Minn., 162.02, 162 09.

²³³ Ill., 121-9-101, Iowa, 306A 3.

²³⁴ Minn., 162 17(1), Miss., 8323.

²³⁵ Tex., 1085a.

²³⁶ 40 C.J.S. 89

Table 6. Authority of State, County or Municipality to Contract with Non-Governmental Groups for Maintenance

State	State	County	Municipality	State	State	County	Municipality
Ala.	X	X		Neb	X	X	X
Alaska	X			Nev.	X	X	
Ark.	X			N H	X		X
Cal.	X	X		N.J.	X	X	
Colo.		X	X	N.M.	X		
Conn	X			N.Y.	X		X
Del	X			N C.	X		X
Fla.	X	X		N D.	X	X	
Ga	X		X	Ohio	X		X
Hawaii	X			Ore	X	X	
Idaho	X	X		Pa.	X	X	X
Ill.	X	X		R.I.	X		X
Ind	X	X		S C.	X	X	
Iowa	X	X		S D.	X	X	X
Kan.	X	X	X	Tex	X	X	
Ky		X		Utah	X	X	
La		X	X	Vt	X		
Me.	X		X	Va.	X		
Mich	X			Wash	X		
Minn	X			W Va.	X	X	
Miss	X	X	X	Wis		X	X
Mo.			X	D C.	X		
Mont.	X	X		P.R.	X		

pertain only to the State highway system.²³⁷ Florida, Kansas, Minnesota, and New Jersey have enacted laws in both categories.

A few States have laws allowing the State highway officials to enter into contracts for the maintenance, by other governmental bodies, of specific road systems that are under State jurisdic-

tion.²³⁸ In Georgia, the State may contract for the maintenance of State-aid roads, while in Hawaii, the State may enter agreements for the maintenance of Federal-aid roads. New York allows the State to let contracts for the maintenance of highways within the city limits, and South Dakota's State officials may contract for the repair of roads on the trunk highway system or roads

²³⁷ Ark., 76-217, 76-201.5b, 76-505; Conn., 13-106, Del., 17-132(c-9), Fla., 337.11(1a), Ill., 121-4-201.4, 121-4-405, Kans., 68-407, 68-408; Mich., 9.902, Minn., 161.32(1), Nev., 408.865, N.J., 27:7-21, Pa., 71-512d, Tex., 6674h; Vt., 19-4(1), Va., 33-12(2); Wash., 47.28.030.

²³⁸ Ga., 95-1631, 95-1715; Hawaii, 111-11; N.Y. HIGHWAYS 12-1; S.D., 28.0211.

that have been constructed with Federal aid.

Two States have laws allowing the State highway authorities to enter into contracts with other highway agencies for the performance of their duties.²³⁹ Because both agencies have, as one of their functions, control over the repairs of roads under their care, maintenance comes within the scope of the statutory authority of each.

Several States and the District of Columbia have enacted statutes requiring the letting of maintenance contracts if the cost exceeds a specified amount.²⁴⁰ In Montana, the provision is permissive if the cost is under \$1,000. In West Virginia, the law requires all work except projects costing less than \$3,000 to be done by contract, in which case the work may be performed by convict labor.²⁴¹ This type of provision has been widely relied on to permit State officials to contract with private individuals. However, it is so generally worded that it allows the possibility of State action in cooperation with public bodies. Georgia has a provision that is even more clearly directed toward agreements with private contractors in that it says that the State may take bids for contracts.²⁴² It is doubtful that other public bodies are encompassed by it.

County Provisions

Statutes have been enacted by 24 States in which the counties have been generally authorized to enter contracts for maintenance. In the great majority of the States, these laws refer to the county road systems.²⁴³ In Oregon, the provision imposes a mandatory require-

ment if the cost is over \$2,000 unless the repairs constitute an emergency. In South Dakota, the counties may contract for repair work costing less than \$1,000, but must contract for it if it costs more than \$1,000. As was the case with provisions dealing with the authority of State officials to contract, these enactments are so generally worded that they enable the counties to contract with other highway authorities for maintenance of their roads, as well as with private individuals. However, it should be pointed out that in those States with specific enactments for one of the other types of contractual relationship, the general contract authority for the counties has been interpreted more strictly. Specific legislation tends to foreclose any recourse to the more general statutes.

Two States have passed general contract provisions pertaining to specific roads under their counties' jurisdiction.²⁴⁴ A New Jersey law refers to county-connecting roads and boulevards. Oregon has a statute making it mandatory to contract for work costing more than \$2,000, and also requires that maintenance of county market roads be done by contract.

Municipal Provisions

In 13 States, the law allows municipalities to enter into contracts generally for the maintenance of their roads.²⁴⁵ Missouri and Pennsylvania each, have two provisions pertaining to classes of cities. Two States have conditions attached to the right to enter into such contracts. In Colorado, the city must have fewer than 5,000 inhabitants. In North Carolina, a city may make a maintenance agreement totaling not more than 90 percent of the State funds received in the previous year. In Mississippi, the enactment gives a municipi-

²³⁹ CAL. STS. AND HIGHWAYS 94; S.C., 33-72.

²⁴⁰ Mont., 32-1608; N.H., 228:4(I); Ohio, 5517 02, D.C., 7-601.

²⁴¹ W. Va., 1474(1).

²⁴² Ga., 95-1631.

²⁴³ Ala., 23-43; CAL. STS. AND HIGHWAYS 1075; Colo., 120-1-3; Fla., 336-44; Idaho, 40-517; Ill., 121-5-401, Iowa, 314-1; Kan., 68-520; Ky., 178 130, 178 160, La., 48-482, Miss., 8330; Mont., 32-302(7); Neb., 39-1407, 39-1408; Nev., 403-490, N.D., 24-05-04, Ore., 368 215, 369 190, Pa., 16-1802, 16-2706; S.C., 33-905, S.D., 28-0115, 28-0309; Tex., 6753, Utah, 27-8-3; W.Va., 1597, Wis., 83.015(2).

²⁴⁴ N.J., 27 17-10; Ore., 368 215, 369 190.

²⁴⁵ Colo., 120-13-27; Ga., 69-407, La., 33-3304, Me., 96-88; Miss., 3374-112; Mo., 88-190, 88 520; N.H., 245-5, N.Y. HIGHWAYS 193; N.C., 136-41 2; Ohio, 5571 01, Pa., 53-6901, 53-53201; R.I., 24-5-6; Wis., 60 01.

pality the power to enter contracts necessary to carry out their functions, of which road maintenance is one. New Hampshire's law states that a maintenance contract may not exceed five years.

In Kansas, Nebraska, and South Dakota there are general provisions relating to the power of townships to enter into contracts.²⁴⁶ In Kansas, a township must have the approval of the county for repairs costing in excess of \$1,000 before it can let a contract. The South Dakota law relates only to secondary roads.

AGREEMENTS WITH THE FEDERAL GOVERNMENT

Increasing Federal participation in the financial support of highway construction has significantly, although indirectly, affected the States' laws regarding highway maintenance. Using the grant-in-aid technique, in which the Federal Government prescribes conditions to be met in the expenditure of the granted funds, various standards of highway design, construction, and administration have come to be uniformly applied by State highway departments throughout the nation. Some of these standards are quite specific and detailed, while others are presented in terms that constitute general criteria. As an example of the latter type of provision, Section 109 of Title 23, United States Code, "Highways," declares that in giving approval to plans and specifications for proposed projects on any Federal-aid highway system, the Secretary of Commerce shall consider, among other things, the extent to which the proposal achieves "economy of maintenance."

Since its inception in 1916, the Federal-aid highway program has contemplated financial support for construction of highways and has treated maintenance

as a responsibility of the States. Therefore, current Federal-aid highway laws do not establish any direct conditions or requirements as prerequisites for receiving financial assistance for maintenance. There is, however, a natural interest on the part of the Federal Government in seeing that the highway systems constructed with Federal aid are protected against premature deterioration; therefore, the Federal law contains a Congressional mandate to the States regarding maintenance of highways constructed with Federal financial aid. Section 116 of Title 23, United States Code, "Highways," reads as follows:

(a) . . . it shall be the duty of the State highway department to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts. The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes part of a Federal-aid system.

(b) In any State wherein the State highway department is without legal authority to maintain a project constructed on a Federal-aid secondary system, or within a municipality, such highway department shall enter into a formal agreement for its maintenance with the appropriate officials of the county or municipality in which such project is located.

(c) If at any time the Secretary [of Commerce] shall find that any project constructed under the provisions of this chapter, or constructed under the provisions of prior Acts, is not being properly maintained, he shall call such facts to the attention of the State highway department. If, within ninety days after receipt of such notice, such project has not been put in proper condition of maintenance, the Secretary shall withhold approval of further projects of all types in the entire State until such project shall have been put in proper condition of maintenance, unless such project is subject to an agreement pursuant to subsection (b) of this section, in which case approval shall be withheld only for secondary or urban projects in the county or municipality in which the project is located. . . .

²⁴⁶ Kan., 68-526, 68-532; Neb., 39-1408, 39-1524; S.D., 28.0401

Acceptance by the State of this direct obligation to maintain Federal-aid highways within its territorial limits and under its jurisdiction, has been the subject of a substantial body of state legislation. In some instances, it has not been deemed necessary to enact specific enabling legislation in order to provide the State's highway department with legal authority to formally agree to the condition set forth in Section 116 of the Federal-aid highway law. All States have either express or implicit authorization enabling the State highway departments to take all necessary and proper action to obtain Federal aid for highways as prescribed by the statutes of Congress, and many departments have relied on this general authorization when making formal commitments to the Federal agencies involved in administering highway aid.²⁴⁷

The language used in several State statutes suggests that active Federal and State participation is called for in the maintenance agreements executed by these parties.²⁴⁸ Thus, for example, Arizona's law describes the duties of the State's highway commission as including the obligation to "pass upon projects submitted by the state engineer for construction in cooperation with the United States, and authorize the state engineer to enter into contracts on behalf of the state with the United States for the cooperative construction and maintenance of Federal-aid highways within the state."²⁴⁹ Such language tends to be misleading as suggesting anything more than that the State assumes the responsibility for financing and per-

forming necessary maintenance on Federal-aid highways. Congress has not extended Federal participation to the maintenance function with respect to these highways. "Construction and maintenance" are probably thought of and spoken of together as a result of speaking and writing habits. For most purposes, it is proper to connect the two terms in this way. In a discussion of the Federal-aid highway law however, it may be misleading, and each use of these terms in legislative drafting should be scrutinized carefully.

While the law places responsibility for maintenance of regular Federal-aid highway systems solely on the States, there are other instances of Federally-aided roadbuilding programs to which the limitations of Section 116 of Title 23 do not apply. Some of these programs were started in response to unusual circumstances that called for the abandonment of the historic policy of Federal-aid highway law. Thus, for example, a New Mexico law (enacted in 1943) authorized the State highway commission to enter into agreements with the Federal Government providing for construction or maintenance of access roads to flight strips, airports, bombing ranges, military reservations, industry and other locations "deemed necessary to the war effort" and systems of roads within such facilities.²⁵⁰ Other States have authorized their highway agencies to enter into cooperative agreements relative to road systems in national monuments, military bases, defense industries, and sources of raw materials.²⁵¹

The laws of several States contain provisions authorizing execution of agreements with the Federal Government regarding the maintenance of "rural post roads." Michigan's law, for example,

²⁴⁷ Ala., 23-32, Alaska, 14A-2-12, Colo., 120-3-24, Idaho, 40-2402, Ind., 36-127, 36-2919, 36-2920 *et seq.*, 36-2953, Iowa, 3181; Mass., 81-30, Mont., 32-1609, Nev., 408 250(1), 408.255, N.J., 27 8-1, Ohio, 5531.02, Ore., 366 710, 366 730; S.C., 33-76, Utah, 27-5-1, 27-7-1, 27-7-2, 27-2-7(4), Va., 33-12(5), Wash., 47 04 060, W.Va., 1448(8)(28); Wis., 84 011, 84 015(2), Wyo., 24-40.

²⁴⁸ Ga., 95-2221, Me., 23-15, Minn., 161 36(1), Miss., 8038(u); R.I., 37-5-2.

²⁴⁹ Ariz., 18-106(4). See also, Idaho, 40-2402, Ky., 176 240(1); Mich., 9 831, N.C., 136-18(12).

²⁵⁰ N.M. LAWS 1843, ch. 7; codified as N.M. STATS. ANNOT., §55-2-44.

²⁵¹ CAL. STS. AND HIGHWAYS 130.5, 820 5, Conn., 13-89, Fla., 335 05(3); N.M., 55-2-44, Okla., 69-30 1.

declares that the "state highway department . . . through the state highway commissioner is hereby authorized . . . to enter into all contracts and agreements relating to the construction and maintenance of rural post roads under the provisions of the said act of congress" ²⁵² In this instance, the reference to a specific system of roads (rural post roads) has no special significance in extending the effect of the statute to involve active Federal financial participation in maintenance. The language of the Michigan law is merely a forerunner of more recent laws referring to Federal-aid highways. The legislative history of the Michigan law shows that it was enacted in response to the provisions of the original Federal-aid highway act of 1916 that prescribed the States' obligation to maintain those rural post roads receiving financial aid in terms that are almost identical with the terms of current Federal-aid highway law.

Certain States have enacted authorization enabling counties to enter into agreements with the Federal Government. ²⁵³ In Arizona, California, Kansas, Nebraska, New Mexico, and Virginia, the statutes constitute general enabling authority for the political subdivisions and certain municipal corporations of the State to enter into agreements with the Federal Government obligating themselves to maintain Federal-aid highways within their territorial limits as a condition of receiving Federal highway aid. Colorado's law permits local governmental units to contract for maintenance of Federal highways within their boundaries provided the amount of the contract is not over \$100,000. In Minnesota similar contracts may be made provided they are entered into through the State, and provided Federal-aid funds

were involved in the subject project. In other instances, counties have been authorized to enter into agreements with the Federal Government providing for cooperative maintenance programs for roads other than State highways traversing national forest lands.

In five States, legislation provides for cities to deal with the Federal Government. ²⁵⁴ Like the similar laws enabling counties to enter into agreements for road maintenance, these statutes enable the cities to which they apply to enter into contractual arrangements in which municipal and Federal agencies cooperate to maintain certain street or highway systems, or the municipalities undertake maintenance duties as a condition of retaining certain streets of highways in the Federal-aid system.

Closely related to the State laws, authorizing or directing state and local officials to enter into agreements with Federal agencies regarding maintenance of highways, is another group of statutes pledging the good faith of the State in maintaining roads and highways constructed with Federal aid. ²⁵⁵ These statutes normally do not specifically mention contractual arrangements or other means of implementing the State's pledge of good faith, but when read in conjunction with other legislation detailing the basic powers of the State's highway department, they provide a basis in law for the State to undertake a wide range of obligations in cooperation with Federal agencies. Typically, the wording of these statutes pledges the good faith of the State to maintain highways and roads constructed with Federal-aid funds and to take adequate measures for carrying on such maintenance. Variations in the language of the pledge are found, as in

²⁵² Mich., 9 831.

²⁵³ Ariz., 11-251(28), CAL STS AND HIGHWAYS 1670, Colo., 120-1-8; Kan., 68-402b, Minn., 161 36(2), Neb., 39-1306, 39-1501(4), N M., 55-3-19, Utah, 27-5-4, 27-7-1, 27-7-2, Va., 33-131.

²⁵⁴ Kan., 68-402b; Minn., 161.36(2), Neb., 39-1306; Utah, 27-7-1, 27-7-2, Va., 33-131

²⁵⁵ Ala., 23-33, Ark., 76-522, Ill., 3-106, Ind., 36-2944, 36-2947, Nev., 408.250(2), Ohio, 5531.02; Pa., 36-2641; Tenn 54-303, W.Va., 1455

the case of the Illinois law which pledges that the State shall see that Federal-aid highways are properly maintained in accordance with the Federal-aid law.

Table 7 furnishes a listing by State and differentiates between State, county, and municipal authority to enter agreements with the Federal Government.

Table 7. Power of State, County or Municipality to Enter Agreements with the Federal Government

State	State	County	Municipality	State	State	County	Municipality
Ala	X			Miss.	X		
Alaska	X		X	Mont	X		
Ariz.	X	X		Neb		X	X
Ark	X			Nev.	X		
Cal	X	X		N J.	X		
Colo.	X	X		N.M	X	X	
Conn.	X			N.C	X		
Fla	X			Ohio	X		
Ga.	X			Okla.	X		
Idaho	X			Ore.	X		
Ill.	X			Pa	X		
Ind	X			R I	X		
Iowa	X			S C.	X		
Kan.	X	X	X	Utah	X	X	X
Ky.	X			Va.	X	X	X
Me	X			Wash	X		
Md	X			W.V.	X		
Mass	X			Wis.	X		
Mich.	X			Wyo	X		
Minn.	X	X	X				

CONTROLLED-ACCESS FACILITIES

Striking differences in design, construction, and operational characteristics distinguish expressways from other streets and highways. These differences, in turn, are reflected in the type and cost of maintenance services required for these systems. On the basis of very limited experience, it has been estimated that maintenance of Interstate System highways will range from \$2,500 to \$25,000 per mile per year, depending upon variations in the type of highway involved (rural or urban), the prevailing operating conditions, the regularity of maintenance, and the extent of maintenance services undertaken.²⁵⁶ This estimate compares with typical reports that maintenance of regular State primary highway systems ranges up to a maximum of \$2,500 per mile per year.²⁵⁷ The prospect of assuming responsibility for a continuing maintenance task of such formidable proportions has understandably been a cause of concern for State highway administrators,²⁵⁸ and may be expected to increase pressure for interagency and intergovernmental cooperation to spread both the financial and maintenance performance responsibilities more widely among the involved highway agencies.

Viewed as a problem in lawmaking, the task of making certain that adequate legal authority exists allowing the appropriate highway agencies, acting either separately or cooperatively, to undertake suitable maintenance measures is complicated by the fact that in the vast majority of States controlled-access highways are constructed and operated under statutes separate from the body of legislation relating to other State highway systems. Whether it was strictly

necessary, in point of law, for the States to enact specific legislation authorizing establishment of controlled-access highways has been questioned. State highway officials, however, desired statutory verification that their authority was "clearly legitimate in its basis and ample enough in its scope to avoid restrictive judicial definitions of its limits and details".²⁵⁹ Other factors, entirely apart from the need to extend the statutory powers of the highway departments, have also been noted:

Because the right of access has been enjoyed for centuries by property owners adjoining public highways, most legal authorities and students of government have felt that extinguishment of the right ought to be authorized by specific enactment of the State legislature which responds directly to public opinion. Moreover, a State law on the subject is desirable for reasons other than to sanction the control of access. Many special matters need to be dealt with in the establishment of express highways, such as intergovernmental arrangements, local consent to the closing of intersecting streets, penalty provisions, and other related matters.²⁶⁰

As a result of these considerations, all States but two have enacted legislation relating to establishment of controlled-access highways. In 35 of these State statutes, the authorization to carry out maintenance activities, either alone or in cooperation with other agencies or governmental units, is conferred upon the state highway department. Most of these laws reflect the substance of a suggested model act on this subject which reads as follows:

The highway authorities of the State, counties, cities, towns and villages, acting alone or in cooperation with each other or with any Federal, State, or local agency or

²⁵⁶ *Better Roads*, Vol. 32 (April 1962), pp. 16, 44

²⁵⁷ KULICK, M.J., FINANCING THE MAINTENANCE OF THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS, M.P.A. Thesis, University of Rhode Island (1968), pp. 36-37

²⁵⁸ See, for example, editorial in *Engineering News-Record*, May 4, 1961

²⁵⁹ NETHERTON, R.D., CONTROL OF HIGHWAY ACCESS, Madison (1963), p. 84.

²⁶⁰ LEVIN, D.R., PUBLIC CONTROL OF HIGHWAY ACCESS AND ROADSIDE DEVELOPMENT, Public Roads Administration, Washington, D.C. (1947), p. 19.

any other State having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use whenever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities. . . .²⁶¹

Although this body of legislation uniformly delegates ultimate responsibility for maintenance to the State highway department, numerous variations exist in the detail of provisions relating to cooperative arrangements and contractual agreements for carrying on this activity. In approximately half of these laws, cooperation between several States is specifically authorized. In the remainder, this possibility is dependent on a combination of the various general powers of the State's highway agencies. Where cooperative action has been specifically authorized by statute, most legislative draftsmen have merged maintenance duties with those other activities which make up the highway department's jurisdiction. Thus, for example, Wisconsin's statute dealing with controlled-access highways reads as follows:

To facilitate the purpose of this section, the commission and the governing bodies of a city, county, town or village are authorized to enter into agreements with each other or with the Federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation or controlled-access highways or other public ways in their respective jurisdictions.²⁶²

In addition to dealing comprehensively with the highway agencies' authority regarding controlled-access facilities, these statutes typically have been permissive in character and avoided prescribing in detail any standards of maintenance to which highway engineers must adhere.

Where necessary, under local law, State highway departments must secure the consent of counties or municipalities to perform maintenance activities within the local governmental areas; and this requirement has sometimes been specifically set forth in legislation for controlled-access facilities. In other instances, however, the State's obligation to secure local consent is not repeated in the statute but rather merely referred to. Therefore, the Louisiana statute on controlled-access highways qualifies its description of the State's powers by stating: "However, within municipalities, the exercise of this power is subject to such municipal consent as is required by law".²⁶³

Although many of the statutes relating to controlled-access highways specifically authorize counties and cities to enter into cooperative agreements with each other or with the State's highway agencies in order to perform maintenance duties, few have authority to deal with the Federal Government on this matter. Denial of the authority to enter into cooperative arrangements with the United States is accomplished by various means; in some cases denial is obtained by merely omitting reference to counties and cities in the basic legislation, in others by imposing qualifying conditions such as minimum population. Where, on the other hand, there has been a desire to verify or extend the authority of counties and cities, these desires have been reflected in the law, as illustrated by the language of a Virginia law:

Cities and towns shall have the same power and authority with respect to the planning, designation, acquisition, opening, construction, reconstruction, improvement, maintenance, discontinuance and regulation of the use of limited access streets . . . as the State Highway Commission has . . . or as the Commission may hereafter be granted. . . .²⁶⁴

²⁶¹ Section 3, "Model Controlled-Access Highway Act", *supra*, note 260, at pp 99-101.
²⁶² WIS. STATS. 1961, §84.25(9).

²⁶³ LA REV. STATS §48-302.
²⁶⁴ CODE OF VA. §15-7.1.

Maintenance of local service roads or frontage roads is an integral part of the operation of a system of controlled-access highways. Twenty-six of the 35 statutes dealing specifically with controlled-access facilities include provisions for maintenance of these ancillary facilities.²⁶⁵ The basic terms of these statutes provide that State, county, or municipal

highway agencies—acting alone or in conjunction—may maintain local service roads or frontage roads connected to controlled-access facilities. In this matter, as with the basic one regarding maintenance of the controlled-access facility itself, the statutes have taken into account the necessity of adapting legislative provisions to local law and have included provisions for local consent or limitations based on constitutional provisions, where they apply.

²⁶⁵ Ala., 23-33, Ark., 76-522, Ill., 121-3-106, Ind., 36-2944, 36-3947, Nev., 408 250(2), Ohio, 5531 02, Pa., 36-2641, Tenn., 54-303, W.Va., 1455

MISCELLANEOUS PROVISIONS

INVESTIGATION AND ESTABLISHMENT OF STANDARDS

A majority of the States have enacted laws directing highway agencies to investigate and determine the best methods of road maintenance, or have authorized investigation and establishment of standards and specifications for maintenance programs (Table 8). In most instances such legislation is directed to agencies at the state level.

Twenty-one States have laws authorizing the establishment of maintenance standards by highway agencies responsible for carrying on this activity.²⁶⁶ In some cases, the highway agency is directed to formally adopt and promulgate these standards. More frequently, as in the case of Maryland's law, Ann. Code of Md., Art. 89B, §68; the statute accomplishes this result by authorizing the State highway agency to "adopt such method or methods for the systematic repair and maintenance of such roads as it may from time to time deem proper and advisable." In Idaho, however, the State highway department is directed to coordinate standards for street systems within cities. In Iowa, the State's standards are to be furnished to the counties, but no mention is made of whether the counties must use them. The Kentucky law pertains only to secondary and rural roads. In Maine, the State may enforce its standards for maintenance of State, State-aid, and other highway systems to which the State contributes financial support. Nevada calls on the State officials to establish different standards in various sections of the State. North Carolina has a similar requirement for secondary roads. In North Dakota, the State is

directed to prepare and distribute manuals of standards and uniform methods of maintenance.

There are statutes in eleven States calling on the counties to establish standards of maintenance.²⁶⁷ Generally, these standards are applicable to county roads only, although in three States, city and township roads are included. In Indiana, the law combines programs of local investigations and standard-making. Kansas law requires that the standards be established for township roads, and be furnished to township officials for their use. Virginia's counties are given responsibility for making recommendations with respect to maintenance of roads in the State secondary system. These recommendations must be adopted by the State insofar as they are compatible with overall State maintenance standards.

Customarily, the statutes pertaining to investigation of maintenance methods have been interpreted broadly so as to permit highway agencies to adopt as standards those methods found to be desirable. Even where the highway agency does not have legal authority or responsibility to promulgate its findings as official standards, maintenance practices that are accepted as desirable tend to be adopted administratively for the purpose of selecting contractors and awarding maintenance work contracts. Similarly, the absence of legislative authority has not prevented local highway agencies from informally adopting practices which the State agency's investigations show to be desirable or to use these findings in planning and scheduling maintenance operations. Thus, a practical interdependence between investigative research and standard-making

²⁶⁶ Ala., 23-13, Alaska, 14A-2-41, Colo., 120-2-5(1), 120-2-5(10); Idaho, 40-120(5); Iowa, 307.5(1); Kan., 68-404; Ky., 177.850; Me., 23-27; Md., 89B-68; Mo., 226.130(3,4); Neb., 39-1316; Nev., 408.200(1)(2), N.Y. HIGHWAYS 10 (9); N.C., 136-61, N.D., 24-03-01, 24-03-3; Pa., 71-515(b); S.D., 28.0207; Tenn., 54-113, Tex., 6667, Vt., 19-4(7), W.Va., 1448(8)(2).

²⁶⁷ Ga., 23-913; Idaho, 40-135(f), Ind., 36-1103, Iowa, 309.67, Kan., 68-502; Md., 25-2, Mo., 231.450; Neb., 39-1503(3), Ohio, 5543.06; Tex., 6741, 6763, Va., 33-47.

Table 8. Statutory Provisions Relating to the Investigation of Methods and the Adoption of Standards for Road Maintenance

State	Investigation	Standards	State	Investigation	Standards
Ala.		S	Mont.		S
Alaska	S	S	Neb.		S-C
Cal.	S		Nev.		S
Colo.		S	N.Y.		S
Fla.	S		N.C.		S
Ga.		C	N.D.	S	S
Idaho		S-C	Ohio		C
Ill.	S		Okla.	S	
Ind.	C	C	Pa.		S
Iowa		S-C	S.D.		S
Kan.		S-C	Tenn.		S
Ky.		S	Tex.		S-C
Me.		S	Vt.		S
Md.		S-C	Va.		C
Mo.		S-C	W.Va.		S

S—Statute refers to state authorities.
C—Statute refers to county authorities.

has been widely recognized, and has within each State resulted in a more extensive standardization of maintenance programs than might appear from an examination of formal legislation on the subject. As previously noted, however, standardization of maintenance programs and practices from State to State has developed less widely.

EXCHANGE OF INFORMATION

A majority of the States have passed laws enabling one highway agency to advise another regarding maintenance problems (Table 9). With the many jurisdictions in each State charged with maintaining various road systems, these provisions tend to eliminate the necessity of having to determine what constitutes good maintenance procedure. By means of legislation, the various jurisdictions

are relieved of this burden and it is put in a single jurisdiction that can amass the necessary resources for adequate research into the maintenance problem.

There are laws in 13 States allowing information to be given by State highway officials to the counties.²⁶⁸ Sixteen States have laws allowing State information on maintenance to be passed to the cities.²⁶⁹ In Massachusetts, Pennsylvania, and Wisconsin, both cities and counties are covered by the laws. In three States, the counties are authorized to give advice to cities.²⁷⁰ In New York, the State may also give advice to cities.

²⁶⁸ Ill., 121-4-1013, Iowa, 809-16, Ky., 176-250(2,3), Md., 89B-78, Mass., 81-1, Mich., 9-201, Nev., 408.200(3), Ohio, 5501-11, Okla., 69-304, Ore., 366-155(K); Pa., 36-670-901, S.D., 28.0208, Wis., 84-01(7)

²⁶⁹ CAL. STS. AND HIGHWAYS 131, Conn., 13-83, Fla., 334.17, 334.24, Ind., 36-179, Kan., 68-404, Mass., 81-1, Neb., 39-1308, N.H., 229.19, 229.21, N.M., 55-2-10, N.Y. HIGHWAYS 10(11); N.D., 24-02-08; Pa., 36-670-901; 71-515c, S.C., 33-71(6) Tex., 6667, Vt., 19-4(9), Wis., 84-01(7)

²⁷⁰ Ill., 121-5-205-3, N.Y. HIGHWAYS 102(2), Okla., 69-299.

Table 9. Statutory Provisions for One Jurisdiction to Give Maintenance Advice to Another

State	State		County	
	To County	To City	To State	To City
Cal.	131	131		
Conn		13-83		
Fla.		334 17, 334 24		
Ill.	121-4-101 3			121-5-205-3
Ind.		36-179		
Iowa	309 16			
Kan.		68-404		
Ky	176-250(2,3)			
Md	89B-78			
Mass	81-1	81-1		
Mich.	9.201			
Neb		39-1308		
Nev.	408 200(3)			
N H.		229.21, 229 19		
N M		55-2-10		
N Y		10(11)		102.2
N D		24-02-08		
Ohio	5501 11			
Okla.	69-304			69-299
Ore	366 155K			
Pa.	36-670-901	36-670-901 71-515C		
S.C		33-71(6)		
S D.	28 0208			
Tex		6667		
Vt		19-4(9)		
Wis.	84 01(7)	84.01(7)		

APPENDIX A

SUMMARY OF MAINTENANCE STATUTES BY STATE

ALABAMA

The State shall maintain municipal connecting-link roads and may maintain State highways. The State may also maintain agriculture experiment station roads. The counties may maintain State highways with State aid, public roads within their limits, and roads in municipalities. Municipalities may maintain county streets within their limits. (§§23-20, 23-25, 23-43, 23-49, 23-78, 37-661, 37-662).

Counties shall jointly maintain causeways on county lines. Cities and other counties may aid in the repair work if they determine they would be benefited. (§§23-50, 23-51, 23-52, 23-53).

The State may enter contracts with counties and cities for the maintenance of highways, may cooperate with cities in the maintenance of municipal connecting links, may enter agreements with the Federal Government relative to the repair of highways, and may contract with nongovernmental bodies for maintenance. Counties may contract with nongovernmental bodies for maintenance, but the contract may not exceed 20 years. (§§23-22, 23-32, 23-43, 23-78).

The State shall adopt standard plans and specifications for road maintenance (§23-13).

ALASKA

The State shall maintain State highways. Municipalities may maintain city streets. (2A-1-19, 14A-1-62, 16.1-35).

The State may enter agreements with cities for the State to maintain municipal connecting links. The State may enter contracts with nongovernmental bodies for maintenance. Cities may contract with the Federal Government on matters

pertaining to the maintenance of Federal-aid highways within their limits. (14A-2-13, 14A-2-22, 14A-3-17).

The State or its cities, acting alone, in cooperation with each other, or in cooperation with the Federal Government, may maintain controlled-access facilities. The State or its cities, acting alone, or in cooperation with each other, may maintain local service roads to controlled-access facilities. (14A-2-61, 14A-2-66).

The State shall prepare and adopt uniform standard plans and specifications for the maintenance of highways. The State may gather, investigate, and compile information concerning the maintenance of highways. (14A-2-41, 14A-2-44).

ARIZONA

The State shall maintain State highways. The counties shall maintain county roads, roads outside cities and streets in unincorporated towns and may maintain public roads. (11-251, 11-710, 18-102A, 18-106, 18-109, 18-207, 18-209).

The State may enter agreements with counties and cities for the maintenance of State roads. The State may enter agreements with its cities to maintain as State roads city streets which connect with State roads. (The State may enter agreements with the Federal Government for the maintenance of Federal-aid highways.) Counties may enter agreements with cities to maintain as county roads city streets which connect with county roads. Counties may enter agreements with the Federal Government. (11-251, 18-106, 18-156).

ARKANSAS

The State shall maintain State highways and those park roads and park-

of maintenance materials costing in excess of \$500. (17-132).

The State, its counties and cities, in cooperation with each other, the Federal Government or another State or the State acting alone, may maintain limited access facilities. The State, its counties and cities, acting in cooperation with each other, or the State acting alone, may maintain service roads to controlled access facilities. (17-173, 17-177, 17-178).

FLORIDA

The State shall maintain municipal connecting links. The State is authorized to maintain State highways, the park road system and park connecting links. The counties are authorized to maintain county roads. Municipalities may maintain city streets. (125.01, 167.02, 335.02, 335.05, 335.06, 335.16, 336.02).

The State may enter maintenance contracts with the county. It may enter contracts with the cities whereby the cities maintain municipal connecting links. It may enter agreements with the Federal Government relative to the maintenance of municipal connecting links. It may contract with a nongovernmental group for the maintenance of all roads in the State highway system, or for the maintenance of county and municipal roads. The counties may enter agreements with nongovernmental groups for maintenance. (335.05, 336.44, 337.11).

The State, its counties and cities, acting alone or in cooperation with each other, or in cooperation with the Federal Government or another State and its subdivisions, may maintain controlled access facilities. If the facility is within a city, the city must consent to any work that is done. The State, its counties and cities, acting alone or in cooperation with each other may maintain local service roads to controlled access facilities. (338.01, 338.06).

The State shall investigate the best methods of maintenance. The State may give advice on maintenance to its cities. (334.17, 334.24).

GEORGIA

The State shall maintain State highways, State-aid highways, and rural post roads. The counties are authorized to maintain county roads. (23-904, 95-1504, 95-1610, 95-1714, 95-2202).

The State may contract only with counties for work on State roads without bids. The State may cooperate with the Federal Government to get aid for rural post roads and farm-to-market roads. The State may contract with nongovernmental bodies for the maintenance of State-aid roads. Counties may jointly maintain intercounty roads. A county may cooperate with a city within the county in the repair of roads in the city that are a part of the county or State highway system. Cities may contract with nongovernmental groups for maintenance. (23-601, 23-1801, 69-407, 95-1630, 95-1631, 95-1715, 95-2221).

The State, its counties and cities, acting alone or in cooperation with each other or with the Federal Government, may maintain controlled access facilities. The State or its cities may maintain local service roads to controlled access facilities. (95-1702a, 95-1706a).

The counties shall make general plans and specifications outlining how roads will be repaired. (23-913).

HAWAII

The State shall maintain all roads on which Federal-aid funds have been spent. The counties shall maintain county highways and public highways and streets. (111-11, 142-3, 146-90c).

The State may contract with nongovernmental groups for the maintenance of Federal-aid roads. The counties

may enter agreements with the State for the State to maintain county roads. (111-11, 142-3.5).

The State, its counties or cities, acting in cooperation with each other or the Federal Government, or the State acting alone, may maintain controlled access facilities. The State, its counties and cities, acting in cooperation with each other, or the State acting alone, may maintain local service roads to controlled access facilities. (111-44, 111-49).

IDAHO

The State shall maintain roads in State parks and roads in State institutions. The State is authorized to maintain State highways. The counties shall maintain the county road system. Cities shall maintain streets within their limits. (40-120, 40-131, 40-136, 40-2215, 40-2217, 50-1141).

The State may contract with its counties for the counties to maintain State roads. It may contract with a city for the city to maintain the entire width of highway in the city, when a part of the width is under the jurisdiction of the State. The State shall cooperate with a county or city in the maintenance of feeder roads not on the State highway system. The State may enter agreements with the Federal Government relative to the maintenance of all highways, and Federal-aid roads even if they are under the jurisdiction of the counties or the cities. The State may enter contracts with nongovernmental groups for maintenance. Counties may enter joint contracts for the maintenance of roads on county lines. A county may enter an agreement with the State, another county, or a city for the maintenance of the county road system. The counties shall contract with nongovernmental groups for maintenance. A city may enter an agreement with the State or a county for the State or county to

maintain the city street system. (40-120, 40-123, 40-131, 40-133b, 40-136, 40-517, 40-801, 40-2301, 40-2402).

The State shall establish standards of maintenance, and shall coordinate the standards in use for the street systems of cities. The county shall make surveys, plans, and specifications for the maintenance of county roads. (40-120, 40-135f).

ILLINOIS

The State shall maintain State highways, detours to State highways, and upon the approval of the park authorities shall maintain park connecting roads, forest connecting roads, and game and fish refuge connecting roads. The State may maintain freeways. The counties shall maintain county roads. They may maintain township roads and freeways, and also municipal extensions of county roads on request. Municipalities may maintain city streets, State highways within the city, and freeways. (4-201.5, 4-405, 4-407, 5-205.5, 5-401, 5-408, 6-401, 7-101, 7-202.1, 8-101).

The State may enter a contract with a county for the county to maintain a State highway within the county if the county originally built the highway. The State may enter a contract with a city for the city to maintain a State highway within the city. The State may enter cooperative agreements with a county or city. The State may enter agreements with the Federal Government relative to highways under Federal aid. The State may enter maintenance contracts with nongovernmental groups. Counties shall enter joint agreements for the maintenance of county-line roads. They may enter joint agreements for the maintenance of highways leading to a public ferry over a river that is the boundary line of the two counties and that is subject to floods. A county may enter an agreement with a city for a city to maintain a county highway

within the city. A county may enter cooperative agreements with the State or a city. A county may contract with nongovernmental groups for maintenance. A city may enter cooperative agreements with the State or its county. (3-103, 4-201.4, 4-405, 4-406, 5-401, 5-407, 5-410, 6-319, 9-101).

The State shall investigate and determine the best methods of maintenance. The State may give its counties advice on maintenance. The counties shall give cities advice on maintenance. (4-101.3, 4-101.5, 5-205.3).

INDIANA

The State shall maintain State highways, State highway detours, city streets connecting cities of less than 3,000 inhabitants with State roads, and roads constructed with Federal aid. The State may maintain primary highways. It may also maintain extensions of primary roads in cities upon request. It has the authority to maintain roads in State parks and State institutions, as well. Counties shall maintain county highways and township roads. They have the authority to maintain county highways, abandoned State highways, and on the consent of cities may maintain one main thoroughfare through a city. Cities are authorized to maintain city streets and abandoned State highways. (36-107, 36-116, 36-117, 36-127, 36-135, 36-142, 36-301, 36-701, 36-901, 36-1459, 36-3902, 48-503).

The State may enter agreements with a city for the city to maintain Federal-aid routes within its boundaries. The State may enter agreements with the Federal Government relative to highways and rural post roads. It may contract with nongovernmental groups for maintenance. Counties shall jointly maintain county-line roads and may enter joint agreements for the maintenance of county-line roads. Counties may con-

tract with nongovernmental groups to purchase materials for repair. (36-107, 36-127, 36-401, 36-501, 36-1105, 36-1456, 36-2912, 36-2920, 36-2921, 36-2953).

The State, its counties and cities, acting alone, or acting in cooperation with each other, the Federal Government or another state, may maintain controlled access facilities. The State, its counties and cities, acting alone or in cooperation with each other may maintain service roads to controlled access facilities. (36-3103, 36-3109).

The county shall investigate, determine, and prepare methods of maintenance. The State may give advice on maintenance to its cities. (36-179, 36-1103).

IOWA

The State shall maintain farm-to-market roads if a county fails to do so. The State has the duty to maintain primary highways; it may also maintain extensions of primary roads in cities on request. Counties shall maintain secondary roads and farm-to-market roads. Municipalities shall maintain city streets. (306.3, 309.21, 309.67, 310.29, 313.21, 313.36, 314.6, 389.1, 389.12).

The State may enter joint agreements with a bordering State, or its subdivisions, for the maintenance of State-line highways. The State may contract with a county or city for the county or city to maintain State park roads and institutional roads. The State may cooperate with a county or city in the maintenance of local service roads. The State may enter agreements with the Federal Government relative to the maintenance of highways. The State may enter contracts for maintenance with nongovernmental groups. Counties may enter agreements with another State, or its subdivisions, for the joint maintenance of State-line highways. Counties may enter agreements with each other for the

joint maintenance of county-line roads subject to the approval of the State. Counties may enter contracts with nongovernmental bodies for maintenance. Cities under 5,000 may contract with a county or adjoining city for the county or adjoining city to maintain its streets. A city may cooperate with the State or county in the maintenance of controlled access facilities. (306A.3, 307.5, 309.68, 313.1, 314.1, 314.10, 391.12).

The State, its counties and cities, may cooperate with each other, another State, or the Federal Government in the maintenance of controlled access facilities. The State or a city may act alone. (306 A3, 306 A7).

The State shall adopt standard plans of highway maintenance and furnish them to its counties. The counties shall adopt maintenance plans for their secondary road systems. The State shall give advice to its counties on maintenance on request. (307.5, 309.16, 309.67).

KANSAS

The State shall maintain detours to State highways and township roads under Federal aid. The State has the authority to maintain all roads. The State may maintain State highways in cities on request. The counties shall maintain county roads, detours to county roads, and State roads through the county. The counties may maintain connecting links to county roads that are in cities. Cities shall maintain county roads improved with State or Federal aid. Cities may aid in the maintenance of county roads. They may maintain township roads. (68-115, 68-121, 68-404, 68-416, 68-506, 68-506d, 68-506e, 68-516, 68-560, 68-2103).

The State may enter contracts with a county for the county to maintain State highways. The State may enter agreements with the Federal Government to carry out the purposes of Federal aid. The State may enter agreements with

nongovernmental groups for maintenance. Counties shall jointly maintain county-line roads. Counties may contract with the Federal Government relative to the maintenance of roads under Federal aid. Counties, not under the county unit system, may enter agreements whereby they maintain township roads. Counties may enter contracts with nongovernmental groups for maintenance. Townships shall jointly maintain township-line roads. Cities may contract with the Federal Government relative to the maintenance of roads under Federal aid. Townships may contract with nongovernmental bodies for maintenance but shall not contract in excess of \$200 without the approval of the county. (68-402, 68-402b, 68-407, 68-408, 68-507, 68-520, 68-526, 68-527, 68-532, 68-572).

The State, its counties and cities, acting alone, or acting in cooperation with each other, another state, or the Federal Government may maintain controlled access facilities. (68-1902).

The State shall adopt standard plans and specifications for road maintenance. The State may give advice to its cities on maintenance. The counties shall adopt standard plans for the maintenance of township roads and furnish them to the townships. (68-404, 68-502).

KENTUCKY

The State shall maintain primary roads. The State may maintain State roads and highways in cities of the fourth, fifth, and sixth class. The counties shall maintain county roads. The cities shall maintain public ways. (93.040, 93.050, 93.950, 177.020, 177.048, 177.340, 179.700).

The State may enter an agreement with a city for the city to maintain municipal connecting links that normally would be maintained by the State. The State may enter agreements with the Federal Government relative to main-

tenance if Federal aid is involved. Counties shall enter joint agreements to maintain intercounty roads. The counties may enter contracts with nongovernmental groups for the maintenance of all roads under their jurisdiction. (176.240, 177.041, 178.130, 178.160, 178.250).

The State, its counties and cities, acting alone or in cooperation with each other or the Federal Government may maintain controlled access facilities. If the road lies within the limits of a city, the city must consent to any action that is taken. The State, its counties and cities, acting alone or in cooperation with each other may maintain service roads to controlled access facilities. (177.230, 177.290).

The State is authorized to establish standards for the maintenance of secondary and rural roads. The State shall give advice to its counties on maintenance. (176.250, 177.350).

LOUISIANA

The State shall maintain the State highway system. The State may aid in the maintenance of parish and city highways. The State may maintain school bus routes, roads to graveyards, and upon request it may maintain park roads. The parishes shall maintain parish roads. Parishes may maintain abandoned State highways. Municipalities shall maintain city streets. They may assume concurrent jurisdiction over streets within their limits. (33-401, 33-811, 48-21, 48-193, 48-215, 48-224, 48-261, 48-270, 48-272, 48-751).

The State shall enter joint agreements with an adjoining State for the maintenance of a public highway. The State may enter an agreement with a parish or city for the parish or city to maintain State highways. The State, at the request of a city, may contract with the city for the city to maintain a continuation of a State highway with-

in the city. A parish with under 100 miles of parish road may contract with the State to have the State maintain its roads. The parishes may enter agreements with a city for the city to maintain parish streets. Parishes may enter agreements with nongovernmental groups for maintenance. Cities may enter agreements with a parish for the parish to maintain city streets. Cities may enter agreements with nongovernmental groups for maintenance. (33-1324, 33-3304, 48-193a, 48-193d, 48-193g, 48-213, 48-482).

The State, its parishes and cities, acting alone or acting in cooperation with each other, another state, or the Federal Government, may maintain controlled access facilities. If the road lies within a city, the city must consent. The State, its parishes and cities, acting alone, or acting in cooperation with each other, another state, or the Federal Government, may maintain service roads to controlled access facilities. If the road lies within a city, the city must consent. (48-301, 48-305, 48-306).

MAINE

The State shall maintain State and State-aid highways, detours to State highways, secondary Federal-aid roads, and all roads in certain counties. Counties may maintain county roads. They may also maintain town roads if the town fails to do so. Municipalities shall maintain highways within their limits, State highways in compact towns, and town highways. (23-13, 23-26, 23-55, 23-68, 23-69, 23-71, 89-35, 89-51, 89-68, 96-63, 96-66).

The State may enter agreements to cooperate with the Federal Government in the maintenance of Federal-aid highways. The State may enter agreements for maintenance with nongovernmental bodies. Municipalities may enter agree-

ments with nongovernmental groups for maintenance. (23-15, 23-40, 23-43, 96-88).

The State may maintain controlled-access facilities. The cities must consent if the road is within their limits. (23-7, 23-11).

The State may make rules and regulations as to the maintenance of State, State-aid, and all other highways to which the State contributes aid. (23-27).

MARYLAND

The State shall maintain State roads and county roads in eleven specified counties. It is also authorized to maintain parkways. The counties shall maintain county roads if the State fails to do so. They shall also maintain roads in unincorporated towns. Counties have the authority to maintain county roads. Cities may maintain public ways if the authority with the responsibility to do so does not. (23B-75, 25-1, 25-15, 89B-7, 89B-68, 89B-213, 89B-220, 89B-222).

The State may contract with a county or city for the county or city to maintain State highways. The State may contract with the Federal Government relative to the maintenance of rural post roads. (89B-7, 89B-73).

The State shall adopt those methods it deems advisable for systematic repair. The State shall give advice on maintenance to the counties. The counties shall make those rules and regulations for maintenance that they deem necessary. (25-2, 89B-68, 89B-78).

MASSACHUSETTS

The State shall maintain State highways. The State may maintain public ways in towns that were constructed or improved by the State and that are not State highways if the towns fail to maintain them. The counties may make emergency repairs on highways within their boundaries. They may also aid in the

maintenance of highways in towns. Cities shall maintain town ways and town highways. They shall also maintain public ways constructed or improved by the State that are not State highways. Cities may make emergency repairs on State highways. (81-13, 81-19, 81-25, 81-26A, 82-1, 84-1).

The State may contract with a city for the city to maintain highways within its boundaries. The State may enter agreements with the Federal Government relative to the maintenance of highways. Cities may act jointly for the maintenance of intercity highways. A city with less than \$5,000,000 valuation may contract with the State for the State to maintain its streets. (81-15, 81-26, 81-28, 81-30, 84-5).

The State shall give advice on maintenance to counties and cities upon request. (81-1).

MICHIGAN

The State shall maintain State trunk line highways. The State is authorized to maintain State highways if the agency with the responsibility to do so does not. The same is true for county-line highways. The State may maintain Federal-aid highways and forest highways. The counties shall maintain county roads. (9.117, 9.121, 9.204, 9.831, 9.852, 9.901, 9.1097).

The State may contract with a county or township for the county or township to maintain trunk line highways. The State may enter agreements with the Federal Government relative to the maintenance of Federal-aid highways. The State may contract with nongovernmental groups for the maintenance of trunk line highways. Counties may enter joint agreements for the maintenance of county-line highways. A county may enter an agreement with the State for the county to maintain a state highway within the county. A county may enter

an agreement with an adjacent county, city or village for the adjacent county, city or village to work on county highways. A city or village may enter an agreement with a county or the State for the county or state to maintain any street within the boundaries of the city or village. (9.117, 9.195, 9-831, 9-902, 9-1097).

The State, its counties and cities, acting alone or acting in cooperation with each other or the Federal Government may maintain controlled access facilities. If the facility lies within a city, the city must consent to the maintenance. (9-1094).

The State shall give advice to the counties on the maintenance of public wagon roads. (9.201).

MINNESOTA

The State shall maintain the State trunk highway system and detours for trunk highways. The State is authorized to maintain a State trunk highway in an adjoining State. The counties shall maintain county, State-aid highways. The counties are authorized to maintain county roads. They may maintain county highways, roads in certain cities and towns, and roads beyond their boundaries. They may also maintain city streets if the city fails to do so. The cities shall maintain the municipal and State-aid highway system, and town roads. They are authorized to maintain roads beyond their boundaries. (CONST. art. 6 §1; 160-07, 161.25, 161.26, 162.02, 162.09, 163.03, 163.04, 163.07, 163.16, 164.02).

The State may enter agreements with a county or city for the maintenance of State highways, including frontage roads, by the county or city if the road is within its boundaries. The State may enter an agreement with a city for the State to maintain the additional width on a State highway within a city, said width not being part of the State highway. The State may cooperate with the Federal

Government in the maintenance of all highways. The State may enter agreements with nongovernmental groups for maintenance. Counties may enter agreements for the joint maintenance of county-line roads. Counties may enter agreements for the joint maintenance of county-line highways. A county may enter an agreement with the State for the county to maintain a State trunk highway. A county may enter an agreement with a city of fewer than 5,000 for the maintenance of county-State-aid highways and city, State-aid streets by either the county or the city. A county may cooperate with a city of more than 5,000 in the maintenance of county, State-aid highways and municipal, State-aid streets within the city. A county may enter an agreement with the Federal Government relative to maintenance if Federal aid is involved. Cities may enter joint agreements for the maintenance of city-line roads. A city may enter an agreement with the State for the city to maintain State trunk highways. A city of fewer than 5,000 may enter an agreement with a county for the maintenance of county, State-aid highways or city, State-aid streets by either the county or the city. A city may enter an agreement with the Federal Government relative to maintenance if Federal aid is involved. (161.32, 161.36, 161.38, 162.03, 162.09, 162.17, 163.14, 164.12).

The State, its counties and cities, acting alone, or acting in cooperation with each other, another state, or the Federal Government, may maintain controlled access facilities. (160.08).

MISSISSIPPI

The State shall maintain the State highway system. The State may maintain State-aid roads if the agency with the authority or duty to do so fails to do so. The counties shall maintain roads in the counties and State-aid roads in the coun-

ties. They may maintain State highways. Cities have the authority to maintain city streets. (3374-129, 8021, 8025, 8035-01, 8035-08, 8324).

The State may enter joint agreements with another state for the maintenance of interstate highways. The State may cooperate with a county or city in the maintenance of roads connecting county or city streets with interstate highways. The State may enter agreements with the Federal Government relative to the maintenance of the Great River Road, or for the purpose of cooperating with the Federal Government. The State may enter agreements with nongovernmental groups for maintenance. Counties shall cooperate in maintaining county-line roads. A county may enter an agreement with an adjoining county to maintain a road in the adjoining county if it will be benefited by doing so. A county may cooperate with a city in the maintenance of county roads through the city. A county may contract with nongovernmental groups for maintenance or to purchase materials for maintenance. A city may cooperate with a county in the maintenance of county roads through the city. A city may contract with nongovernmental groups to carry out its functions. (3374-112, 8322, 8323, 8038, 8038u, 8038.2, 8038.6, 8329, 8330).

The State, its counties and cities, acting alone, or acting in cooperation with each other, another state, or the Federal Government, may maintain controlled access facilities. The State, its counties and cities, acting alone, or acting in cooperation with each other, another state, or the Federal Government, may maintain service roads to controlled access facilities. (8039.03, 8039.09).

MISSOURI

The State shall maintain the State highway system. The counties shall maintain county roads and streets in unincorporated towns.

Cities shall maintain city streets. (88.153, 227.210, 230.030, 231.340).

The State may make contracts with local jurisdictions for maintenance. Counties shall provide one-half the cost of keeping county-line roads in repair. First and second class cities may contract with nongovernmental groups for maintenance. (CONST. art IV, §31; 88.190, 88.520, 228.140).

The State shall prepare a system of maintenance and shall prepare plans and specifications as to the best methods of maintenance. The counties shall formulate general plans for maintenance of county roads in conjunction with the State. (226.130, 231.450).

MONTANA

The State is authorized to maintain State highways. It may maintain park connecting roads. The counties shall maintain highways in the county. Municipalities are authorized to maintain city streets. (11.906, 32-302, 32-1615, 62-307).

The State may enter agreements with the county for the county to maintain State highways. It may enter agreements with the Federal Government relative to the maintenance of highways. The State may enter contracts with nongovernmental groups for maintenance, and shall do so if the cost of the repairs is over \$1,000. The counties may enter contracts with nongovernmental groups for maintenance if the cost is over \$1,000. (32-302, 32-1608, 32-1609, 32-1610).

The State, its counties or cities, may maintain controlled access facilities. If the road is within a county or city, the county or city must consent to the maintenance. The State, its counties or cities, may maintain service roads to controlled-access facilities. (32-2004, 32-2008).

The State in conjunction with its counties shall prepare rules and regu-

lations for the maintenance of State highways. (32-1606).

NEBRASKA

The State shall maintain the State highway system, detours for State highways, and certain city connecting links to State highways. The counties may maintain unimproved roads in cities and roads in unincorporated villages. They may also maintain unpaved roads along city boundaries. Townships shall maintain county roads if the county delegates the duty to them. (39-1337, 39-1339, 39-1347, 39-1405, 39-1803, 39-2003).

The State may enter agreements with the county or city to maintain the additional width of a State highway that was constructed by a county or city. The State may enter agreements with a county or city for the maintenance of highways, roads, streets or connecting links. The State may enter agreements with cities for the cities to maintain connecting links to State highways which were at least partly constructed with State funds. The State may enter agreements with nongovernmental groups relative to maintenance, and has the duty to do so if Federal aid is involved. A county may enter agreements with the State or city for the maintenance of highways, roads, streets, or connecting links. The counties may enter agreements with the Federal Government relative to the maintenance of highways, roads, and streets. The counties may enter agreements with nongovernmental groups for maintenance or emergency repairs. A city may enter agreements with the State or county for the maintenance of highways, roads, streets, or connecting links. A municipality may enter agreements with the Federal Government relative to maintenance. Cities may contract with nongovernmental groups for emergency repairs or if county aid is involved. (39-1306, 39-1307, 39-1339, 39-1407, 39-1408, 39-1341, 39-1349, 39-1501, 39-1524).

The State, its counties and cities, may cooperate in the maintenance of controlled access facilities. The State may act alone. The State may maintain service roads to controlled access facilities. (39-1327, 39-1328, 39-1336).

The State shall formulate plans and specifications for the maintenance of State highways. The State may give advice to its counties on maintenance on request. A county shall adopt a standard system of maintenance. (39-1308, 39-1316, 39-1503).

NEVADA

The State shall maintain State highways. The State shall maintain freeways upon the approval of the county or city in which they are located. The State may maintain frontage roads to freeways. Counties have the authority to maintain county roads, and cities have the authority to maintain city streets. (266.275, 403.090, 408.285, 408.940).

The State may enter agreements with adjoining states for the joint maintenance of State highways. In an emergency, the State may enter a contract with a county for the State to maintain a county road. The State may enter agreements with the Federal Government relative to the maintenance of highways including secondary and feeder roads. The State may enter contracts with nongovernmental groups for maintenance. The counties may enter contracts with nongovernmental groups for maintenance. (403.490, 403.570, 408.125, 408.250, 408.255, 408.865).

The State shall establish standards and specifications for maintenance in the various sections of the State. The State shall give advice to its counties on maintenance. (408.200).

NEW HAMPSHIRE

The State shall maintain highways constructed by the State, State-aid highways

and Federal-aid highways in towns of over 2,500. The Federal-aid highways will be maintained by the State only if the town fails to do so. The State shall also maintain certain recreational roads. It may maintain city streets on request and may also maintain local service roads. The counties shall maintain highways not in towns. Cities shall maintain all town highways, Class II unimproved highways that are not maintained by the State, Federal-aid highways in towns over 2,500, and Class IV and V roads. (229:22, 229:6, 231:1, 231:3, 231:4, 231:7, 231:8, 236:5, 239:5, 245:6, 246:1).

The State may contract with nongovernmental groups for maintenance and shall do so if the cost of repairs is over \$5,000. Cities may contract with nongovernmental groups for maintenance for a period not to exceed five years. (228:4 I, 245:5).

The State shall give advice to its cities on matters of maintenance. (229:19, 229:21).

NEW JERSEY

The State shall maintain State highways. It may maintain detours to State highways and roads in cities that lead to State institutions. The counties shall maintain county roads, roads taken over by the county, public roads in the county, and parkways. Counties may maintain roads under county control, detours to county highways, and county connecting roads and boulevards. Cities shall maintain roads within their limits. They may maintain county roads within their limits. (27:3-3, 27:3-4, 27:7-11, 27:14-21, 27:14-30, 27:14-29, 27:14-46, 27:16-1, 27:16-6, 27:16-8, 27:17-1, 27:28-4, 27:22-1).

The State may enter into a contract with a county or a city for maintenance with the aid of State or Federal funds. The State may contract with a city for the State to maintain city streets connecting State highways. The State may

enter an agreement with any city for cooperation in any work. The State may enter agreements with the Federal Government relative to the maintenance of highways. The State may enter contracts with nongovernmental bodies for maintenance. A county may contract with the State for the county to maintain roads within the county. A county may contract with another county or with a city for the maintenance of roads. A county may contract with a city for the city to maintain streets or highways within the city which are extensions of, or connect some improved county or State road, or form a link in a chain of improved county or State roads. Counties may enter contracts with nongovernmental groups for the maintenance of connecting roads and boulevards. Cities may enter joint contracts for the maintenance of connecting roads not under the control of the county or the State. Cities may contract with a county for maintenance. A city may contract with the county for the county to maintain city streets if State aid is available for the streets. A city may contract with a county for the city to maintain streets or highways in the city which are extensions of, or connect some improved county or State road, or form a link in a chain of improved county or State roads. (27:7-1, 27:7-19, 27:7-20, 27:7-21, 27:8-1, 27:15-1.11, 27:16-40, 27:17-10, 27:22-4, 27:22-7, 40:23-14, 40:67-46).

NEW MEXICO

The State shall maintain State highways, access roads, and flight strips. The counties shall maintain State highways if directed to do so by the State. Counties shall maintain county highways. They are authorized to maintain county roads. Municipalities shall maintain city streets. (14-37-1, 55-1-2, 55-2-29, 55-2-45, 55-3-2).

The State may contract with a county for the county to maintain State highways. The State may enter contracts with the

Federal Government relative to the maintenance of rural post highways and access roads to air facilities. The State may enter contracts with nongovernmental groups for maintenance. Adjoining counties shall enter joint agreements for the maintenance of county-line roads. A county may contract with the State for the State to maintain county roads. A county may enter cooperative agreements with the State. A county may enter agreements with the Federal Government relative to maintenance. (55-2-22, 55-2-25, 55-2-30, 55-2-32, 55-2-44, 55-3-4, 55-3-19, 55-4-7).

The State, its counties and cities, may cooperate with each other or the Federal Government in the maintenance of controlled access facilities. The State or its cities acting alone or in cooperation with each other may maintain service roads to controlled access facilities. (55-10-8, 55-10-9).

The State shall give its cities advice on maintenance when requested. (55-2-10).

NEW YORK

The State shall maintain State highways and detours to State roads. Cities shall maintain highways within their limits that are not a part of the State highway system. Cities have the authority to maintain town highways. (10, 42, 102, 140).

The State may enter contracts with nongovernmental groups for the maintenance of highways within the limits of a city. County highways partly in a county and partly in a city may be maintained jointly, but the city must maintain the portion within its limits. Cities may enter contracts with nongovernmental groups for the maintenance of town highways. (12-1, 187, 193).

The State shall prescribe rules and regulations determining the methods of maintenance. The State shall give advice to its cities on maintenance. The counties

shall give advice to their cities on maintenance. (10, 102).

NORTH CAROLINA

The State shall maintain the State highway system, detours to State roads, and county roads. The State is authorized to maintain all roads except those in cities and towns. It may maintain Federal-aid highways and all streets constructed by the State in towns of fewer than 3,000. Cities shall maintain municipal street systems. (130-61, 136-18, 136-25, 136-45, 136-51, 136-66, 160-54).

The State may contract with a city for the city to maintain State highways within the city. The State may enter agreements with the Federal Government relative to the maintenance of Federal-aid highways. The State may enter agreements with nongovernmental groups relative to maintenance. Cities receiving State funds may contract with the State for the State to maintain city streets. Cities may contract up to 90 percent of the funds they received in the prior year from the State, with nongovernmental groups for maintenance. (136-18, 136-28, 136-41.2, 136-41.3).

The State, its counties and cities, may cooperate with each other in the maintenance of controlled-access facilities. The State may act alone or in cooperation with the Federal Government. The State may maintain access roads to controlled-access facilities. (136-89.50, 136-89.54, 136-89.55).

The State may establish standards and criteria for the maintenance of secondary roads. (136-61).

NORTH DAKOTA

The State shall maintain the State highway system. Townships shall maintain township roads. Cities shall maintain streets within their boundaries. The counties shall maintain the county road

system. Cities may maintain State highways within their limits concurrently with the State. They may maintain them to a higher standard than would the State. (24-01-03, 24-01-11, 24-03-02, 24-05-17, 24-06-01, 40-05-01).

The State may enter a cooperative agreement with a city for maintenance of urban streets connecting to State highways. A county may agree with another county or another State for maintenance by the county of parts of a State line highway in return for maintenance of parts of it by the other county or State. A county may enter contracts with non-governmental groups for maintenance. A city of 10,000 or less may contract with a county for the county to maintain the city streets. A township may contract with a county or another township for the county or other township to maintain the township's roads. Cities may make agreements with the State for maintenance of the added width of city streets. (24-01-03, 24-01-11, 24-05-04, 24-05-08, 24-06-09, 40-05-14).

The State, its counties and cities, acting alone, or acting in cooperation with each other, another State, or the Federal Government may maintain controlled-access facilities. If the road lies within a city, the city must consent for the action to be taken. The State, its counties and cities, acting alone or in cooperation with each other, may maintain service roads to controlled-access facilities. (24-01-30, 24-01-35).

The State shall prepare, print, and distribute manuals of standard and uniform methods of maintenance. The State may give advice on maintenance to cities. (24-02-08, 24-03-01, 24-03-18, 24-03-19).

OHIO

The State shall maintain the State highway system and intercounty highways. The State shall maintain State highways within cities upon request of city, and

may maintain such highways upon consent of city. It may also maintain park roads, park-connecting roads, roads in State institutions, forest-connecting roads, school-connecting roads, and recreational area-connecting roads. Counties shall make emergency repairs on State highways and shall maintain the county highway system. Counties may aid in the maintenance of township roads and may maintain parkways. Townships shall repair their roads. Cities are authorized to maintain their streets. They may repair State highways within their limits and county roads. (301.26, 315.13, 715.19, 723.01, 5501.02, 5501.11, 5511.01, 5511.03, 5511.04, 5511.05, 5511.06, 5521.01, 5535.01, 5535.01B, 5535.07, 5535.08, 5571.02).

The State may cooperate with a county or city in the maintenance of public roads. The State may enter agreements with the Federal Government relative to the maintenance of highways. The State may enter contracts with nongovernmental groups for maintenance and shall do so if the cost of the work is over \$6,000. Township-line roads shall be maintained jointly by the bordering townships. Cities may enter contracts with nongovernmental groups for maintenance. (5501.02D, 5517.02, 5531.20, 5535.08, 5571.01, 5579.03).

The State, its counties and cities, may cooperate with each other or with the Federal Government in the maintenance of controlled-access facilities. The State and its cities may act alone. (717.04, 5511.02, 5535.03).

The counties shall prepare the best and most economical methods of maintenance. The State may give advice to the counties on maintenance. (5501.11, 5543.06).

OKLAHOMA

The State shall maintain State highways. The State shall maintain park roads, park-connecting roads, and institution-connecting roads. The State may aid

in the maintenance of county and city roads. It is authorized to maintain Federal-aid highways. Counties shall maintain county and township roads. Townships shall maintain county line roads not designated as State roads. (69-20.5, 69-20.7a, 69-51, 69-55, 69-58, 69-252, 69-324).

The State may contract with a town of fewer than 1,500 for the State to maintain the town's streets. The State may cooperate with its counties for the maintenance of secondary Federal-aid roads. The State may contract with the Federal Government relative to the maintenance of roads to military bases. County-line roads shall, if they are State roads, be jointly maintained by the counties in which they lie. Counties shall contract with towns of fewer than 1,500 for the county to maintain the town's streets if the State does not so contract. Cities may enter agreements with a county or the State for the city to maintain State or county highways. (11-117.2, 69-30.1, 69-44d, 69-50, 69-251, 69-252).

The State, its counties and those cities with more than 5,000 acting alone, or acting in cooperation with each other, another State, or the Federal Government may maintain controlled-access facilities. (69-11.3, 69-11.5).

The State shall investigate and determine methods of road maintenance. The State may give advice to its counties on maintenance. Counties shall give advice to cities on maintenance on request. (69-20.7c, 69-299, 69-304).

OREGON

The State shall maintain certain city streets. The State is authorized to maintain State highways and may maintain city streets interrelated with thruways. The counties shall maintain county highways and territorial roads. They are

authorized to maintain streets in unincorporated towns. (366.220, 366.290, 368.205, 368.210, 368.415, 373.030, 374.015).

The State may enter an agreement with a county or city relating to the maintenance of any highway. The State may enter cooperative agreements with counties or cities for the maintenance of State highways. The State may enter agreements with the Federal Government relative to the maintenance of highways. The State may enter agreements with non-governmental groups for maintenance. County-line roads may be maintained by concurrent action of counties or by joint action of a county and another state. A county may enter an agreement with a city for the city to maintain county connecting roads within the city. A county may enter an agreement with a city for the maintenance of county roads or city streets within the city, or roads outside the city but leading directly to it if the city has a population of under 100,000. A county may cooperate with the State for the maintenance of public roads within the county. The counties shall enter contracts with nongovernmental groups for the maintenance of county market roads and for all other roads if the cost is over \$2,000, except in an emergency. A city may enter an agreement with a county for the maintenance of county roads or city streets within the city, or roads outside the city but leading directly to it if the city has a population of under 100,000. (366.400, 366.710, 366.730, 366.770, 366.775, 368.215, 368.805, 369.190, 369.410, 369.480, 373.110, 373.260, 373.270).

The State, its counties and cities, acting in cooperation with each other or the Federal Government may maintain controlled-access facilities. The State may act alone. (374.015, 374.080).

The State shall give advice to the counties on maintenance. (366.155k).

PENNSYLVANIA

The State shall maintain State highways and township roads using State funds. Counties shall maintain county roads and city streets constructed jointly by the county and the city. The counties may maintain city streets which connect with county roads if the city fails to do so. They may also maintain detours to county roads. Cities shall maintain city streets, detours in certain cities, and streets that connect county roads. (16-2759, 16-2762, 16-5901f, 16-5940, 36-1, 53-1834, 53-22561, 53-37978, 53-57014, 53-66112, 71-512, 71-516a).

The State may enter a contract for maintenance with a county or a city. The State may enter an agreement with a county or a city for the State to maintain the entire route on which there is a division of the responsibility for maintenance. The State may enter an agreement with a city to maintain city streets that are a continuation of State highways or connecting roads to State highways. The city may maintain jointly. The State may enter agreements with the Federal Government relative to the maintenance of rural post roads. The State may enter agreements with nongovernmental groups for maintenance. Counties may jointly maintain county-line roads. A county may contract with a city or a township for maintenance. A county may enter an agreement with a city for the county to maintain city streets. It may also do so for the maintenance of city streets that connect with county roads, the work to be done by the county. A county may enter an agreement with a township for the township to maintain roads constructed jointly by the county and a city. A county shall enter agreements with boroughs for the maintenance of county improved streets in the borough. The counties may enter contracts with nongovernmental groups for maintenance.

City-line roads shall be maintained by the cities involved. Township-line roads shall be maintained jointly by adjoining townships or townships and cities. State line roads between Ohio and Pennsylvania shall be maintained jointly by the adjoining townships in the two States. A city may enter a contract with a county for the city to maintain jointly constructed streets. A borough shall enter agreements with a county for the maintenance of county-improved streets in the borough. Third-class cities and incorporated towns may enter agreements with nongovernmental groups for maintenance. (16-1802, 16-2704, 16-2706, 16-2759, 16-2760, 16-2762, 16-2763, 16-5923, 36-391, 36-670-408, 36-670-906, 36-2361, 36-2642, 53-1834, 53-1836, 53-6901, 53-46758, 53-53201, 53-57101, 53-57105, 53-66202, 53-66205, 53-66210, 53-66215, 71-512d).

The State, its counties or cities, may maintain controlled-access facilities. The State, its counties or cities, may maintain service roads to controlled-access facilities if they lie within their boundaries. (36-2391.2, 36-2391.12).

The State shall adopt plans and specifications for road maintenance. The State shall give advice on maintenance to its counties and cities on request. (36-670-901, 71-515b, 71-515c).

RHODE ISLAND

The State shall maintain State roads and detours to State roads. The State may maintain freeways. Towns shall maintain highways within town limits. (24-5-1, 24-8-5, 24-8-14, 24-8-19, 24-10-2).

The State may cooperate with the Federal Government in the maintenance of roads. The State may contract with nongovernmental groups for maintenance. A city may enter an agreement with the State for the city to maintain State improved roads within the city. A city may enter agreements with nongovern-

mental groups for maintenance. (24-5-6, 24-8-5, 28-8-12, 37-5-2).

SOUTH CAROLINA

The State shall maintain the State highway system. The State is authorized to maintain public roads and may maintain roads in State parks upon the approval of park authorities. Counties shall maintain highways in the county. Cities shall maintain streets or ways within the city or town limits. Cities may maintain State highways. (33-71, 33-74, 33-101, 33-112, 33-801, 33-815, 47-1321, 47-1323).

The State may enter agreements with the Federal Government for the maintenance of highways. The State may enter agreements with nongovernmental groups for maintenance. Counties may enter agreements with nongovernmental groups for the maintenance of certain highways. (33-72, 33-76, 33-905).

The State may maintain controlled-access facilities. It may also maintain service roads to controlled-access facilities. (33-352, 33-354).

The State shall give advice to cities on maintenance on request.

SOUTH DAKOTA

The State shall maintain the State trunk highway system, all highways constructed or improved with Federal aid, and roads in unorganized territories. Counties shall maintain the county highway systems, secondary roads outside city limits, U.S. Mail routes, and feeder roads. Counties may maintain certain township roads. Townships shall maintain secondary roads in the township and U.S. Mail routes. (28.0211, 28.0303, 28.0312, 28.0314, 28.0401, 28.0407, 28.0418, 28.0501).

If a portion of a county highway lies on a State line, the State may along with another State assign portions of such a highway to counties of the two states for maintenance. The State may enter agree-

ments with nongovernmental groups for maintenance on state trunk highways built with Federal aid. County-line roads shall be maintained by the counties interested. A county may enter agreements with the State for the county to maintain State trunk highways lying within its boundaries. A county may enter an agreement with a township for the county to maintain township roads. Counties may contract with nongovernmental groups for the maintenance of highways, and shall do so on county and secondary roads if the cost is greater than \$1000. Townships shall jointly maintain township-line roads. Townships may enter joint agreements for the maintenance of secondary highways on township lines. Townships may enter contracts with nongovernmental groups for maintenance. (28.0115, 28.0211, 28.0215, 28.0309, 28.0314, 28.0401, 28.0701, 28.0702, 28.0705, Sess. Laws of 1961, ch. 152).

The State, its counties and cities, acting alone, or acting in cooperation with each other or the Federal Government, may maintain controlled access facilities. The State, its counties and cities, acting alone or in cooperation with each other may maintain service roads to controlled-access facilities. (28.09A03; Laws of 1953, Sec. 3, ch. 155).

The State shall adopt standard plans and specifications for road maintenance. The State shall give advice to its counties on maintenance. (28.0207, 28.0208).

TENNESSEE

The State shall maintain the State highway system. It shall maintain county roads if the county fails to do so. The counties shall maintain county roads and rural roads. Municipalities shall maintain city streets and highways within their limits. They may maintain State connecting links. (6-1001, 54-113, 54-406, 54-501, 54-533, 54-613, 54-702).

The State may contract with a city for

the city to maintain municipal connecting links. Counties may enter joint agreements for the maintenance of county-line roads. (54-531, 54-1012).

The State, its counties and cities, acting alone, or acting in cooperation with each other, another State, or the Federal Government, may maintain controlled-access facilities. The State, its counties and cities, may maintain service roads to controlled-access facilities. (54-2002, 54-2006, 54-2007).

The State shall adopt standard plans and specifications for road maintenance. (54-113).

TEXAS

The State shall maintain detours for State highways. The State shall maintain State highways. The State shall maintain county roads. Municipalities are authorized to maintain city streets. (1082, 6716-1, 6673, 6674o, 6674q-4).

The State may enter agreements with a county to maintain farm-to-market roads. The State may cooperate with a city for the maintenance of State highways within the city. The State may cooperate with a city in the maintenance of freeways. The State may enter agreements with nongovernmental groups for maintenance. Counties may enter contracts with nongovernmental groups for maintenance. A city may cooperate with the State in the maintenance of freeways. (1085a, 6673b, 6673c, 6674h, 6753).

The State may maintain controlled-access facilities. (6674w-1).

The State shall adopt standard plans and specifications for road maintenance. The State shall give advice to its cities on maintenance. The county shall make rules for maintenance. (6667, 6741, 6763).

UTAH

The State shall maintain Class A roads and detours to them. It may maintain roads in State institutions. Counties shall

maintain Class B roads. (27-2-7, 27-2-10, 27-2-12, 27-8-1, 27-8-3).

The State may enter agreements with a county or city for the county or city to maintain State roads. The State may enter agreements with a county or city for the maintenance of livestock highways. The State shall cooperate with its cities in the maintenance of local roads. The State may enter agreements with the Federal Government relative to the maintenance of highways and livestock highways. The State may enter contracts with nongovernmental groups for maintenance. A county may enter an agreement with the State or a city for the maintenance of a livestock highway. Counties may enter agreements with the Federal Government relative to the maintenance of roads other than State roads in national forests and livestock highways. Counties may enter contracts with nongovernmental groups for the maintenance of Class B roads. Certain cities may contract with a county or the State for the county or state to maintain local streets. A city may enter an agreement with the State or county for the maintenance of livestock highways. A city may enter agreements with the Federal Government relative to the maintenance of livestock highways. (27-2-7, 27-5-1, 27-5-4, 27-7-1, 27-7-2, 27-8-3, 27-8-4).

The State, its counties and cities, acting alone, or acting in cooperation with each other, another state, or the Federal Government, may maintain controlled-access facilities. The State, its counties or cities, may maintain service roads to controlled-access facilities. (27-9-2, 27-9-7).

VERMONT

The State shall maintain detours to State roads. The State may maintain State highways and highways in towns. The counties may maintain town roads if the town fails to do so. Cities shall main-

tain State-aid highways and town highways. Cities may aid in the maintenance of State roads under Federal aid. (19-1, 19-4, 19-13, 19-24, 19-101, 19-222, 19-1335, 19-1804).

The State may enter contracts with a city for the State to maintain State-aid town highways. The State may enter agreements with nongovernmental groups for maintenance. Cities may cooperate with each other in the maintenance of highways which pass through them. A city may enter an agreement with the State for the State to maintain the State-aid highway system. A city may contract with the State for the state to maintain town highways. (19-4, 19-22, 19-132, 19-971, 19-1121).

The State, its counties and cities, may cooperate with each other, another State, or the Federal Government in the maintenance of controlled-access facilities. The State may act alone. The State, its counties and cities, may cooperate with each other, another State, or the Federal Government in the maintenance of service roads to controlled-access facilities. The State may act alone. (19-1864, 19-1870).

The State shall adopt standard plans and specifications for maintenance. The State may give advice to its cities on maintenance on request. (19-4).

VIRGINIA

The State shall maintain the State highway system, detours to State highways, the county highway system, and secondary highways. The State may maintain interstate highways and certain streets in cities of fewer than 3,500, on request of the city. The State shall maintain roads in State parks on the primary system. The State may also maintain roads in State parks. Cities shall maintain bypass city routes on the State highway system. Cities are authorized to maintain city streets. (15-6, 15-321, 33-13, 33-24, 33-25, 33-35, 33-36.2, 33-46, 33-50.1, 33-110).

The State may enter agreements with the Federal Government relative to the maintenance of highways. The State may enter contracts with nongovernmental groups for maintenance. A county may enter an agreement with the State for the State to maintain county roads when Federal aid is involved. Counties may enter agreements with the Federal Government relative to maintenance. Cities may enter agreements with the State for the State to maintain city streets when Federal aid is involved. Cities may enter agreements with the Federal Government relative to maintenance. (33-12, 33-131).

The State or its cities may maintain controlled-access facilities. The State may maintain service roads to controlled-access facilities. (15-7.1, 33-38, 33-41).

The counties shall make recommendations for the maintenance of secondary State highways, and the State shall follow them as far as possible. (33-47).

WASHINGTON

The State shall maintain the State highway system. The State may maintain county roads if the county fails to do so, and may maintain streets in towns on request. It may also maintain roads in State parks. Counties shall maintain county roads, and may maintain streets in towns on request. They may also maintain forest roads. Municipalities are authorized to maintain city streets. (35.27.370, 36.75.020, 36.75.250, 36.82.140, 43.27.020, 43.27.040, 47.24.050).

The State may enter agreements with the county for the county to maintain State highways or the State to maintain county highways. The State may enter agreements with the Federal Government relative to the maintenance of highways. The State may enter agreements with nongovernmental groups for maintenance. County-line roads may be maintained by joint agreement between counties. Two counties may jointly agree to maintain a

connecting road in a third county. A county may enter an agreement with the State for the county to maintain a State highway or the State to maintain a county highway. A county may enter an agreement with a city of less than 1,000 for the county to maintain a county road within the limits of the city. (36.75.030, 36.75.205, 36.75.210, 36.75.220, 47.04.060, 47.28.030).

The State, its counties and cities, acting alone, or acting in cooperation with each other, another state or the Federal Government may maintain controlled-access facilities. The State, its counties and cities acting alone, or in cooperation with each other, another state or the Federal Government may maintain service roads to controlled-access facilities. (47.52.020, 47.52.100).

WEST VIRGINIA

The State shall maintain county-district roads. The State is authorized to maintain State highways, city connecting roads, and local roads. Counties may maintain roads not given up for maintenance to the State. Cities shall maintain city streets and roads. They are also authorized to maintain city streets and roads. (494, 1448(8)(1), 1448(8)(11), 1457i, 1458, 1474(9), 1591).

The State may enter agreements with a county or city relative to maintenance. The State may enter agreements with the Federal Government relative to maintenance. The State may enter contracts with nongovernmental groups for maintenance and shall do so if the cost is greater than \$3,000. Counties may enter contracts with nongovernmental groups for maintenance. (1448(8)(27), 1448(8)-(28), 1448(8)(32), 1474(1), 1597).

The State, its counties and cities, may cooperate with each other or with the Federal Government in the maintenance of controlled-access facilities. The State may act alone. The State, its counties

and cities, may cooperate with each other in the maintenance of service roads to controlled-access facilities. The State may act alone. (1474(26), 1474(27)).

The State may adopt standard plans and specifications for road maintenance. (1448(8)(2)).

WISCONSIN

The State shall maintain State trunk highways, detours to the State system, and interstate highways. It shall also maintain Federal forest roads. The State may maintain roads in State parks and institutional roads. Counties shall maintain intercounty trunk roads and State trunk highways within cities. Counties may aid in the maintenance of State highways, and may maintain town roads if the town fails to do so. Cities shall maintain city roads and county-aid roads within their limits. (81.01, 81.14, 83.025, 83.03, 83.06, 84.01, 84.07, 84.20, 84.27, 84.28, 84.29).

The State may enter agreements with a county to have all maintenance work on State roads, in or beyond the limits of the county, done by the county. The State may cooperate with a county or city in the maintenance of Federal forest roads. The State may enter agreements with the Federal Government relative to the maintenance of highways. A county may enter a contract with a city for the county to maintain streets and highways within the city. A county may enter contracts with nongovernmental groups relative to maintenance. Cities may enter joint agreements for the maintenance of city-line roads. A city may contract with a county to have connecting streets maintained by the county. A city may enter contracts with nongovernmental groups that are necessary for it to perform its functions. (60.01, 80.011, 83.015, 83.035, 84.01, 84.07, 84.011, 86.331).

The State, its counties and cities, acting alone, acting in cooperation with each

other or the Federal Government may maintain controlled-access facilities. The State, its counties and cities, acting alone, or acting in cooperation with each other may maintain service roads to controlled-access facilities. (84.25).

The State shall give advice to the counties and cities on maintenance on request. (84.01).

WYOMING

The State shall maintain highways on which State funds were expended and county roads under Federal aid. Counties shall maintain roads within unincorporated towns and are authorized to maintain county roads. Cities shall maintain city roads and streets. Cities are authorized to maintain city roads and streets. (15-63, 15-88, 15-530, 18-149, 18-254, 24-33, 24-40, 24-67).

The State may enter agreements with the Federal Government relative to the maintenance of highways. (24-40).

The State, its counties and cities, acting alone, or acting in cooperation with each

other, another state, or the Federal Government, may maintain controlled-access facilities. The State, its counties and cities, acting alone or in cooperation with each other may maintain service roads to controlled-access facilities. (24-72, 24-78).

DISTRICT OF COLUMBIA

The District shall maintain highways and streets. (Reorg. Ord. No. 122, January 8, 1959).

The District shall enter contracts with nongovernmental groups for maintenance if the cost of the work is over \$1,000. (7-601).

PUERTO RICO

The Secretary of Public Works shall maintain Commonwealth roads and highways through urban areas. Cities may maintain Commonwealth roads. (3-421, 9-12, 9-13, 9-14, 9-15, 9-16, 9-17, 9-18).

The Secretary of Public Works may enter into contracts with nongovernmental groups for maintenance. (3-412).

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APPENDIX C

LEGAL CODE REFERENCES

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