

# Outline of “Ground Design of Protection for Local Self-Government II - Local Self-Government System Study Group Report”

## 1. Objective of Study

In recent years, the situations around local governments have been significantly changed. Discussions on amendments to the Constitution have been actively held in the Diet, parties, and various fields, and review of the financial system of local tax called the “Trinity Reform” has been implemented. Also, the 28th Local Government System Survey Committee submitted the “Report concerning Regional System”.

Under such circumstances, the “8th Self-Government System Study Group” of the National Governors’ Association established in August 2004 has been studying the remaining issues useful for the examination of how the local self-government of our nation should be in the future on the basis of the findings of the 7th Self-Government System Study Group (Ground Design of Protection for Local Self-Government (“Ground Design I”)) and has been deepening its consideration on the new local self-government protection system which was provided in the Ground Design I on the constitutional level.

This Report was prepared based on the findings of our study.

## 2. Members of the 8th Local Self-Government System Study Group

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### 3. Outline of the Report

#### Chapter 1 “Issues on constitutional protection for local self-government”

This Chapter examines four issues which relate to constitutional protection for local self-government: (i) “Home Rule,” which is one of the fundamental rules for local self-government in the United States, (ii) procedural guarantee for local self-government, (iii) financial protection for local self-government and (iv) role of wide-ranged municipalities (especially regional system).

#### Section 1 “Home Rule” in the United States

This Section examines “Home Rule,” which is one of the fundamental rules for local self-government in the United States. In Clause 1, “Dillon’s Rule,” which sets forth the fundamental relationship between the states and municipalities in the United States, is explained. Clause 2 describes the significance of “Home Rule” and points out that although it is one of the fundamental rules for local self-government and unique to the United States, it is ambiguous, and states that it is normally associated with the constitutive power of the Charter of municipalities. Clause 3 categorizes local self-government in the United States into three types in view of “Home Rule”. Clause 4 describes the criteria for application of “Home Rule,” and refers to the case of Illinois, which is considered to allow the most freedom through “Home Rule” in the nation. Clause 5 describes the matters that “Home Rule” leaves to the discretion of municipalities, and their limits. Clause 6 provides the conclusion of “Home Rule”. Clause 7 offers suggestions gained by examining “Home Rule”, one of the fundamental rules for local self-government in the United States, upon the examination of roles of local self-government in Japan.

#### Section 2 “procedural guarantee for local self-government”

In Section 2, procedural guarantee for local self-government is examined. Clause 1 presents the points concerning the “participation in national affairs by municipalities” and “judicial remedy for right to self-government” in Ground Design I. Clause 2 summarizes the concepts of the procedure and examines the prior procedures and the level of participation. Clause 3 compares the judicial remedy and protection with that of Germany and presents the features of German and Japanese judicial protections. It also examines the significance of judicial protections stipulated in the Constitution by referring to the arguments on the European Charter of Local Self-Government.

#### Section 3 “financial protection for local self-government”

In Section 3, financial protection for local self-government is discussed. Clause 1 explains the stipulations of financial protection in the European Charter of Local Self-Government. Clause 2 describes the stipulations of financial protection in the World-Wide Declaration on Local Self-Government and the draft of the World Charter of Local Self-Government and provides comparisons to the stipulations in the European Charter of Local Self-Government. Clause 3 covers the stipulations of financial protection in the Constitution of France, which were newly provided in accordance with the amendments to the Constitution in 2003, and compares it with the stipulations in the European Charter of Local Self-Government. Clause 4 summarizes the details of the Shoup Report in respect to local finance and points out that the “local self-government in terms of local finance” includes “idea of self-government by residents” and “idea of protection for financial resources”. Clause 5 offers suggestions on financial protection for local self-government and indicates four items that should be provided as financial protection for local self-government in the Constitution.

#### Section 4 “role of wide-ranged municipalities – particularly the regional system”

Section 4 looks at the historical changes in arguments on the regional system and examines the relationship between the Constitution and the regional system. Clause 1 examines the topics argued in the regional system before World War II. Clause 2 discusses the topics argued in the regional system around the time of the Report of the 4th Local Government System Survey Committee. Clause 3 points out that many of the recent topics are those of regional systems as wide-ranging municipalities and examines the topics argued in the regional system in the Report of the 28th Local Government System Survey Committee. Clause 4 provides the conclusion of the discussions of regional systems and points out that they have historically shifted from centralized to decentralized topics. Clause 5 examines the relationships between the regional system and the Constitution by categorizing them into 2 groups: the regional system as an administrative body or intermediary of the central government, and the regional system as a wide-ranged municipality.

#### Chapter 2 “Study on the constitutional protection for local self-government”

In Chapter 2, the “new constitutional local self-government protection system,” from which the concepts were presented in Ground Design I, is further examined on the basis of the findings of Ground Design I and Chapter 1, and the recent situation of constitutional debates.

#### Section 1 “general matters”

Section 1 states the general issues upon examination of constitutional protection for local self-government. Clause 1 presents the following four points as prerequisites for the

examination: (i) aiming at a more decentralized system under a unified nation, not a federate nation, in terms of the overall picture of the nation, (ii) taking the stance of the common systematic guarantee theory in terms of the legal theory of local self-government, (iii) seeking more liberal, diversified local self-government by guaranteeing and improving the autonomy of municipalities and autonomy of local residents in respect to the principle of local self-government, and (iv) improving the stipulations concerning local self-government in the Constitution, relying on stipulations concerning local self-government provided in the Constitution. Clause 2 presents the following 11 items as items to be examined: (i) reference to local self-government in the preamble, (ii) fundamental rules for local self-government, (iii) basic relationship between the central and local governments, (iv) types and guarantee of the existence of municipalities, (v) right to autonomous organization for municipalities, (vi) direct suffrage of residents, (vii) autonomous legislative rights of municipalities, (viii) autonomous implementation rights for municipalities, (ix) stipulations concerning the financial administration of municipalities, (x) stipulations concerning the procedural guarantee of local self-government, and (xi) matters other than the ones in Section 8.

#### Section 2 “Examination of the items”

Section 2 examines each of the items presented in Section 1. Clause 1, titled “reference to local self-government in the preamble”, examines whether or not local self-government should be mentioned in the preamble, and if so, and how it should be referenced. Clause 2, titled “fundamental rules for local self-government”, examines the issues regarding the clarification and specification of the “principles of local autonomy” on the basis of the assertion of maintaining the “principles of local autonomy”. Clause 3, titled “basic relationship between the central and local governments”, examines whether or not the “adequate role sharing” rule of the central and local governments should be stipulated in the Constitution. Clause 4, titled “types and guarantees of existence for municipalities”, examines the necessity of guaranteeing, at the least, a two-layered system of local self-government in the Constitution, how it should be stipulated. Clause 5, titled “autonomous organization right of municipalities (option for the form of the government)”, examines whether or not the chief officers should be elected by direct public election without exception, and the issues raised by allowing exceptions to this rule. Clause 6, titled “direct suffrage of residents”, examines whether or not stipulations concerning the direct suffrage of residents should be provided in the Constitution. Clause 7, titled “autonomous legislation right of municipalities”, further examines the argument that autonomous legislation rights of municipalities, including constitutive power of the charter, should be strengthened. Clause 8, titled “autonomous implementation rights for municipalities”, examines the method of ensuring the effectiveness of autonomous implementation rights for municipalities. Clause 9, titled “stipulations concerning the financial administration of municipalities”, describes the matters to be stipulated in the case of specifying financial

protection for local self-government in the Constitution. Clause 10, titled “stipulations concerning the procedural guarantee of local self-government”, examines the participation in the legislative process of the country, and the judicial remedy for infringements on the right of self-government. Clause 11, titled “matters other than the ones in Section 8”, states the constitutional relationship of “laws” and ordinances, the roles of House of Councilors and the roles of the courts.

### Section 3 “Conclusion”

Section 3 provides the conclusion to Section 2. It states that the stipulations of constitutional protection for local self-government need to be improved in order to guarantee “Japanese-type local self-government”. It also describes seven points as particularly important.

- (i) referring to the importance of “local self-government” in the preamble (and if possible “decentralization”);
- (ii) making efforts to clarify and specify the “principles of local autonomy” in Article 92 of the current Constitution (for now not focusing on specifically how they should be stipulated in the Constitution) and improve the details of the principles;
- (iii) there is the possibility that although, in the above case, the concept of “Home Rule” in the United States can be very useful, it can lead to the unvarying review of the direct public election of chief officers and develop into the issue of granting them the constitutive powers of the charter;
- (iv) stipulating the “adequate role sharing” rule of the central and local governments provided in Article 1-2 of the Local Autonomy Law as a rule in the Constitution. And, in relation to that, the title of the “Section of local self-government in the Constitution” can be changed to the “Section of local self-government and decentralization”;
- (v) stipulating that municipalities consist of basic municipalities and wide-ranged municipalities (on the basis of adequate discussions on the significance of existence of two-layered municipalities);
- (vi) providing stipulations concerning the financial protection of local self-government, i.e. the stipulations of protection of independent funds (intrinsic resources) which municipalities are allowed to use by their discretion, accordance of authority (responsibility) and financial resources, independent taxation right, and financial adjustment system in the Constitution; and
- (vii) providing the supporting stipulations guaranteeing participation in the legislative process (including administrative legislation) for municipalities and the judicial review of municipalities for infringement of the right of self-government in the Constitution on the basis of retaining the Article 95 (Special Law on Local Self-Government) in the current Constitution.