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May 3, 2013

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act.
Regulation Z [Docket No. CFPB-2013-0009]

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)¹ appreciates this opportunity to comment on the proposed amendment to the Escrows Final Rule, originally issued January 10, 2013 by the Consumer Financial Protection Bureau (the Bureau). This rule, among other things, imposes new requirements on financial institutions regarding the mandatory use of escrow accounts for Higher Priced Mortgage Loans (HPMLs). This rule also established an exemption from the mandatory escrow requirements for certain creditors that operate predominantly in rural or underserved areas. The amendment as proposed by the Bureau seeks to provide certain clarifications regarding the definition of rural as well as to provide for continuity of certain consumer protections under the current HPML rules regarding a creditor's current responsibilities

¹ *The Independent Community Bankers of America®*, the nation's voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With nearly 5,000 members, representing more than 24,000 locations nationwide and employing more than 300,000 Americans, ICBA members hold more than \$1.2 trillion in assets, \$1 trillion in deposits, and \$750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

under the ability to repay rules. These ability to repay rules for HPMLs will be replaced by the new ability to repay rules as issued by the Bureau January 10, 2013 and will take effect on January 10, 2014. While ICBA generally supports the proposed amendment as written, we urge the Bureau to broaden the definition of rural to include more communities and consumers.

ICBA strongly urges the Bureau to amend its current definition of rural to include all non-metropolitan counties and any town or community with a population of 50,000 or less as rural.

The current definition of rural as defined by the Bureau is too narrow and excludes many counties and communities that are very rural in nature. This will prevent the community banks which serve those markets from benefiting from the exemptions in the escrow rule, as well as from receiving QM safe harbor legal protections on balloon payment mortgages they make and retain in portfolio.

ICBA appreciates the challenging task that the Bureau has undertaken to define what is rural and what is not. There are a variety of definitions used by various financial services regulators, government agencies, GSEs and the states and counties themselves. The Bureau has chosen to use Urban Influence Codes (UICs) as produced by the United States Department of Agriculture-Economic Research Service (USDA-ERS). USDA-ERS has assigned a code ranging from 1-12 to each of the 3141 counties in the United States. Codes 1 and 2 are for metropolitan counties, and codes 3-12 for non metropolitan counties.² The current designations are based on the 2000 census, and will be updated later this year with the results of the 2010 national census. The Bureau's current definition of rural is any county that is **not** part of a Metropolitan Statistical Area (MSA) or a *Metropolitan Area adjacent to an MSA*. As such, counties with UICs of 1,2,3,5 are **not** considered rural, and based on the 2000 census data account for 251,394,317 citizens or 89.7% of the U.S. population. When looking at the census data, the Census Bureau indicates that "82% of the U.S. population lives in urban and suburban" areas, which would suggest that they believe 18% of the U.S. population lives in rural areas, a full seven percentage points or almost 20 million residents more than the Bureau's definition would support.

The problem with the Bureau's definition is that it assumes the entire county is either rural or non rural. The reality, however, is that many counties, including some in MSAs are a mix of rural and non rural, and by excluding the entire county the Bureau is excluding many rural communities where community banks provide much of the mortgage financing through loans they originate and retain in portfolio. Many of these loans are balloon payment loans, and many community banks do not escrow for taxes and insurance. The Bureau's definition of rural will cause many of these community banks to significantly curtail portfolio lending or exit the business all together.

For many borrowers in rural communities, community banks are their only source of mortgage credit, due to unique or rural property types or due to the borrower's special

² Urban Influence Codes www.ers.usda.gov/data-products/urban-influence-codes/documentation

financial situation, such as seasonal employment, which makes it impossible to qualify for a secondary market loan. Community bankers have made these types of loans, frequently balloon loans for decades, safely and soundly. But unless the Bureau amends the definition of rural to include more counties and towns, many of these community banks will exit the mortgage business. The attached maps illustrate this impact and were created based on the UICs for rural and non rural under the Bureau's current definition of rural. Counties in yellow are non-rural counties and counties in blue are rural counties.

In a recent survey of approximately 400 ICBA members, 75% of those community banks indicated they currently make balloon payment mortgages, and that only 46% of the banks would be able to use the balloon mortgage exemption to the ability to repay rule. Additionally, of the banks that responded to the survey that considered themselves to be rural or in a rural community, 44% did not meet the Bureau's definition of rural.

The following are some of the comments we received from the banks who responded to the survey:

"While we are in a MSA we are a rural bank, in a rural area, in a village of 4,000 people. We are \$60 million [in assets]. About half of the mortgage loans we make are to customers that do not fit into the secondary market parameters because of the type of property, their income or job history, or their credit score. They are still considered part of our good customer base that we maintain as a community bank. Many of these people have banked with us for many years, their families have banked here, and they might even hold a few shares of stock in our bank. These new rules will severely limit our ability to provide a mortgage to a good share of our customer base. We don't want to go to an adjustable rate mortgage. It's simply too much work, too much compliance. I have been making balloon loans to my mortgage customers for 38 years, without a problem. We hold the balloon loans in our portfolio and service them without an issue. Again, some fly by night lenders made some bad balloons loans and created a problem for us all. The definition of rural and underserved is way too narrow and will severely restrict the availability of mortgage loans for many people in the country."

"We are a small community bank located in Houston County, Minnesota with the City of LaCrosse, WI located across the river (the real MSA). We are totally NOT a metropolitan area. We have an agricultural concentration with approximately 80% of our loan portfolio in agricultural related loans. We do in-house balloon loans for borrowers who do not qualify for a secondary market loan due to a ding in their underwriting (approximately 10% of our portfolio). None of the balloon loans are over 30 days delinquent. We will discontinue offering in-house loans if we cannot offer balloon loans. We are considering discontinuing loans not qualifying for the secondary market already, due to required escrow accounts, which we do not offer. Rates on this type loan do not reflect risk, due to limiting the interest rate by not offering escrow accounts."

“Our bank has 2 offices located on one side of a county but the other side of the county is part of a MSA. So, even though we are certainly in a "rural" farming area, and the population of our 2 communities is less than 1,400 people, we are explicitly excluded from the "rural" exemption due to a large city located in our county, approximately 20 miles away. Our bank has 10 employees covering 2 offices. We have 3 loan officers, one of which is our only mortgage loan officer - in other words, we have a mortgage department of "1". Due to the staggering regulatory burden placed on community banks during the recent mortgage reform, our bank has had to stop offering consumer owner-occupied loans. Recent mortgage revisions and prohibitions have made mortgage lending not only impractical, but impossible for a small community bank such as ours.”

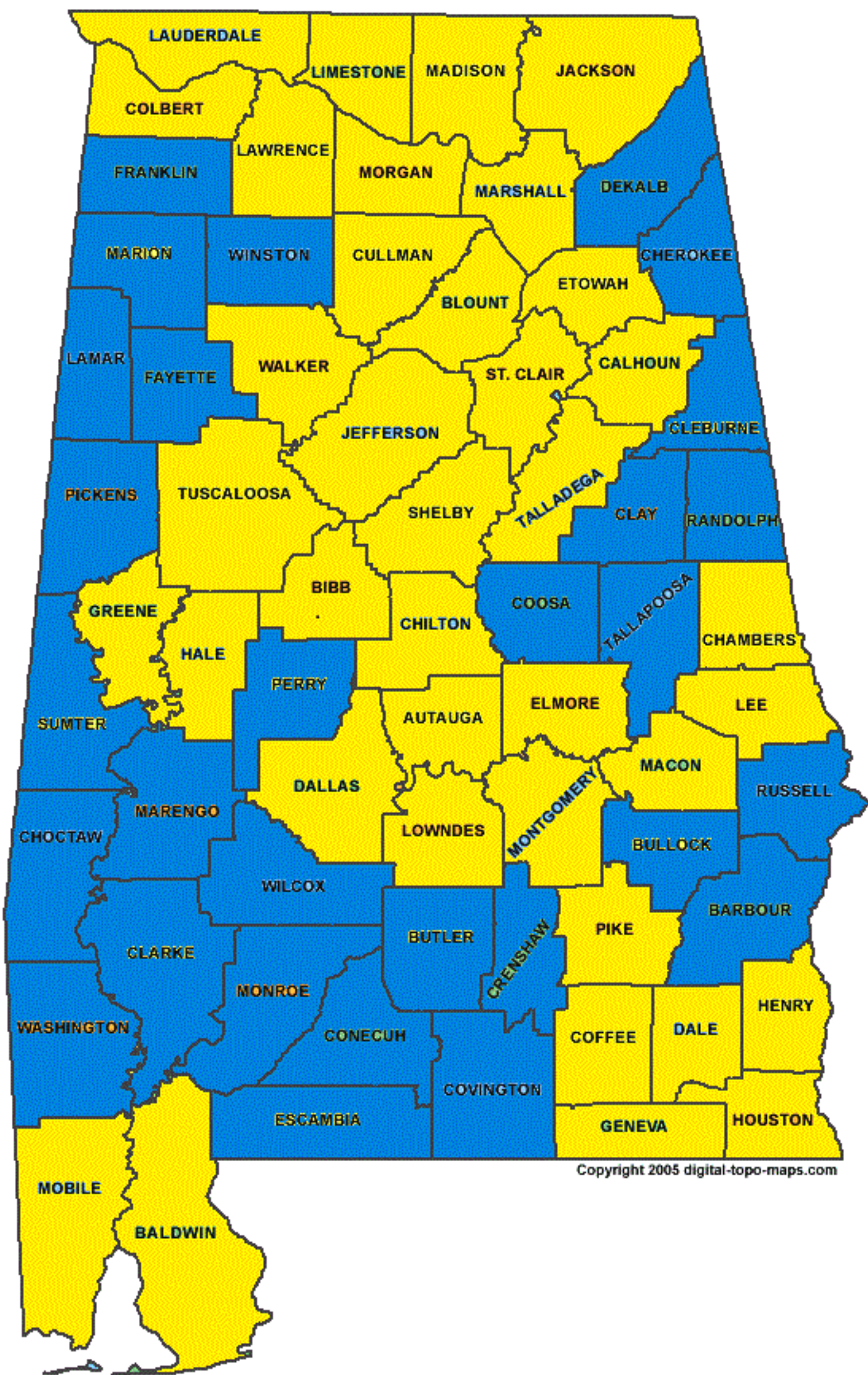
As indicated above, the Bureau’s definition of rural will have far reaching unintended impacts on the availability of credit in many communities. These are the same communities in which community banks have served consumers safely for decades by making mortgage loans only to consumers who could afford to repay them, along with paying their taxes and insurance, as well as all of their other household expenses. Community bankers did not exploit consumers as some other lenders did, yet they and their customers will suffer for deeds done by others which now drive these rules. The Bureau created this definition of rural, and the Bureau has the authority to change it so community banks can continue to serve their customers.

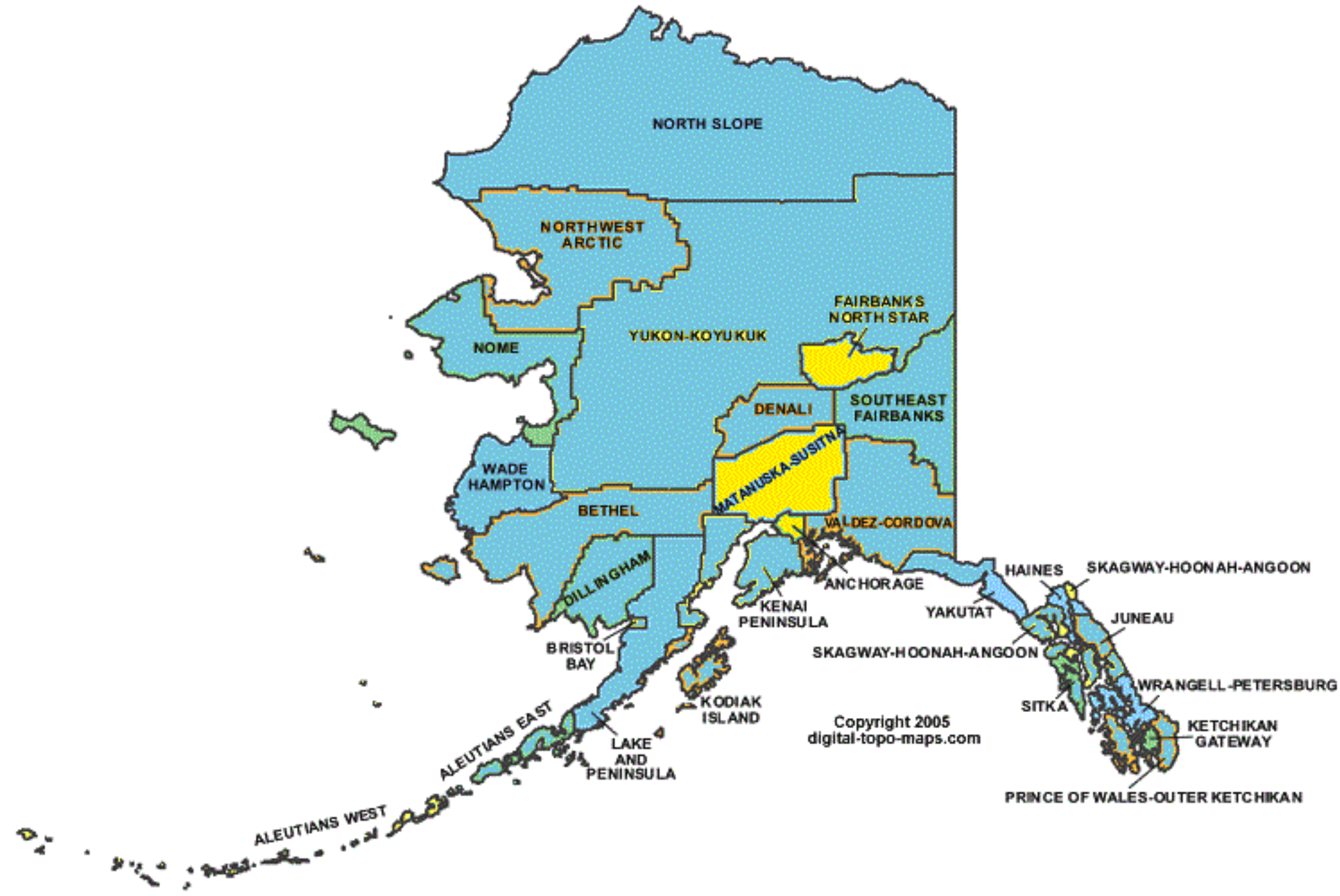
ICBA strongly urges the Bureau to amend its definition of rural for purposes of the escrow rule, and the recently issued balloon mortgage exception to the ability to repay rule, by including all non metropolitan counties (UICs 3-12) and any town or community with a population less than 50,000.

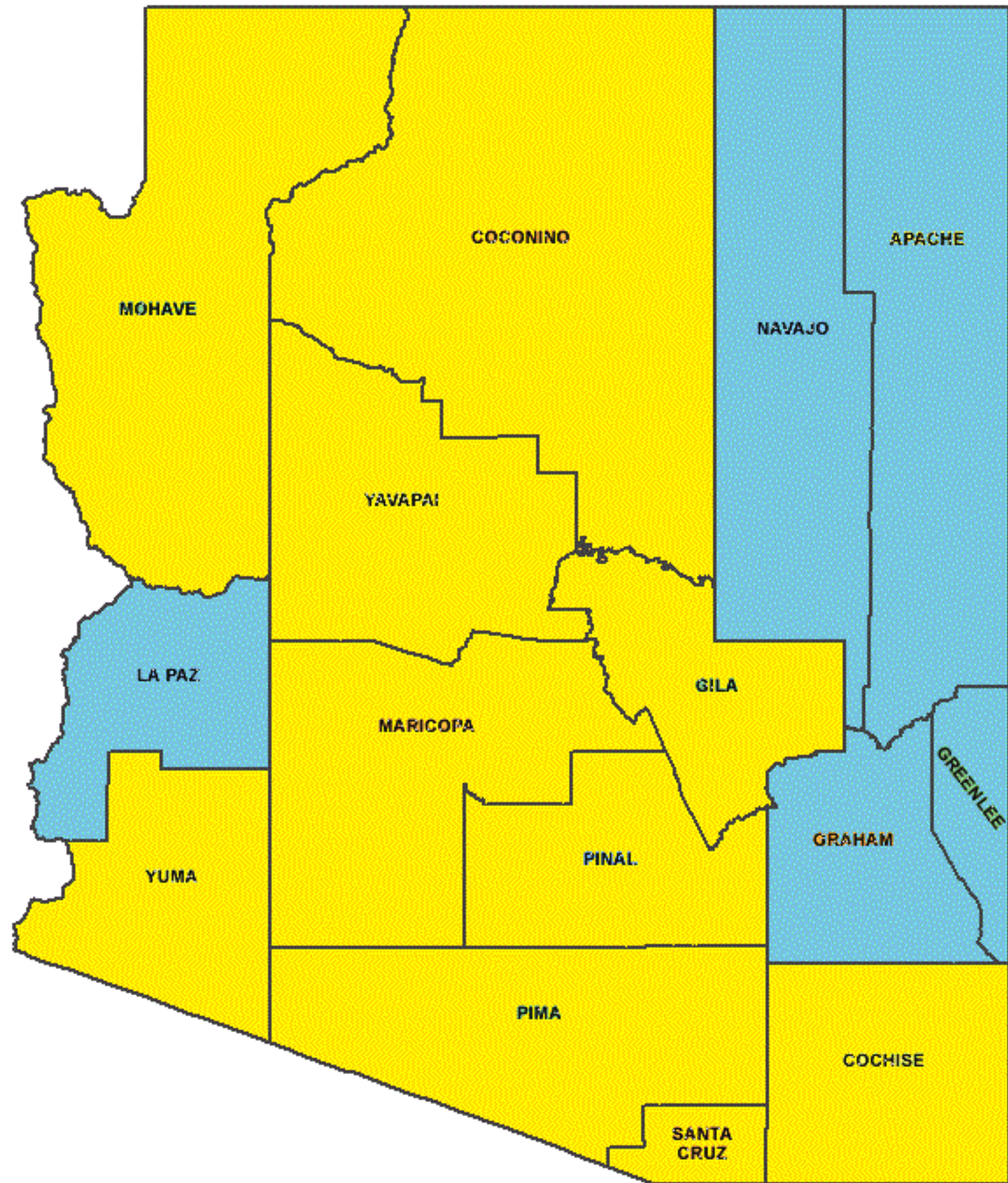
ICBA looks forward to working with Bureau staff on this and future rulemakings. We appreciate the Bureau’s ongoing outreach to ICBA and community bankers. If you have any questions regarding this letter, please contact the undersigned at ron.haynie@icba.org .

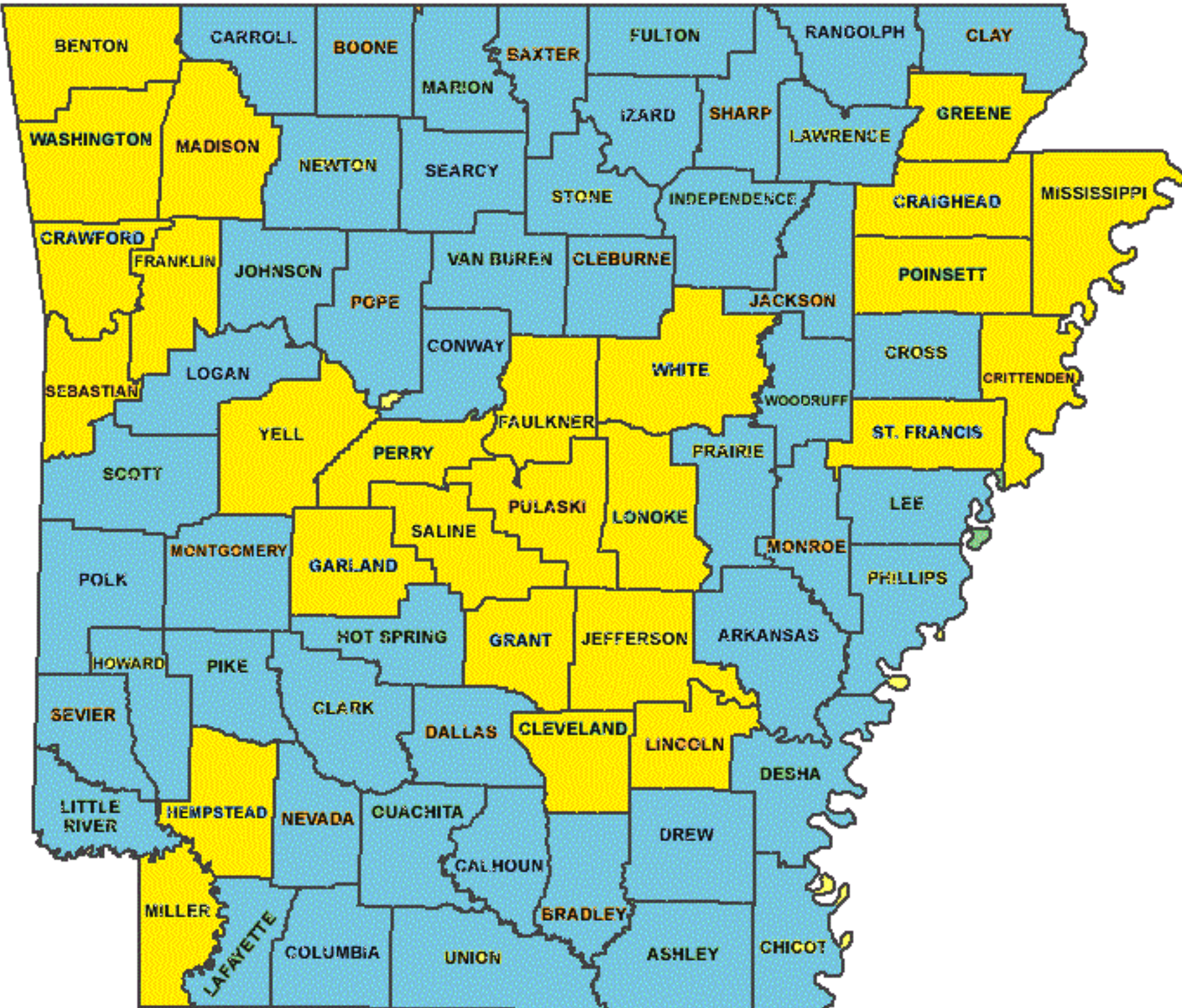
Sincerely,

Ron Haynie
Senior Vice President- Mortgage Finance Policy
Independent Community Bankers of America

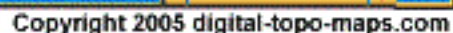


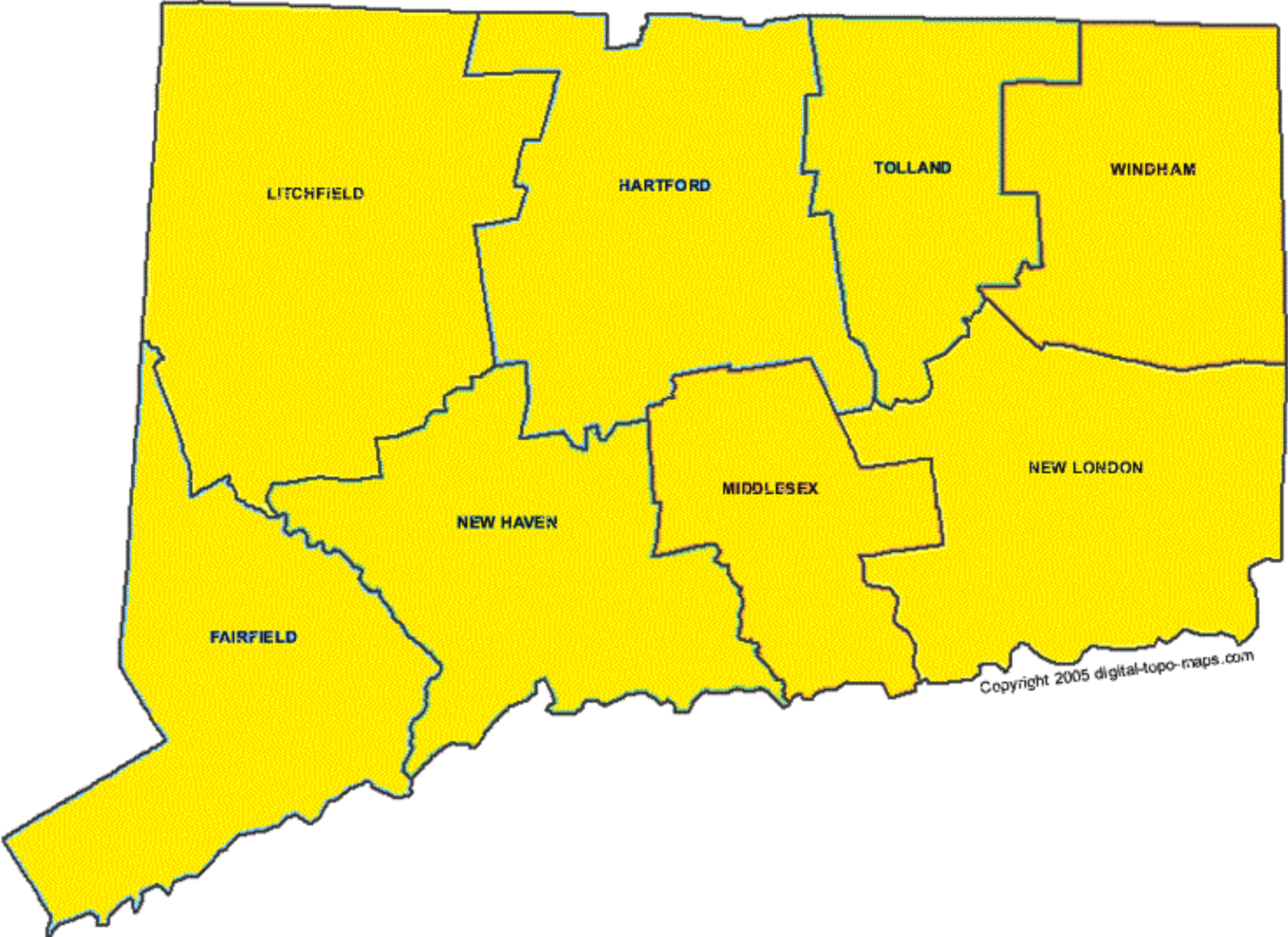












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HARTFORD

TOLLAND

WINDHAM

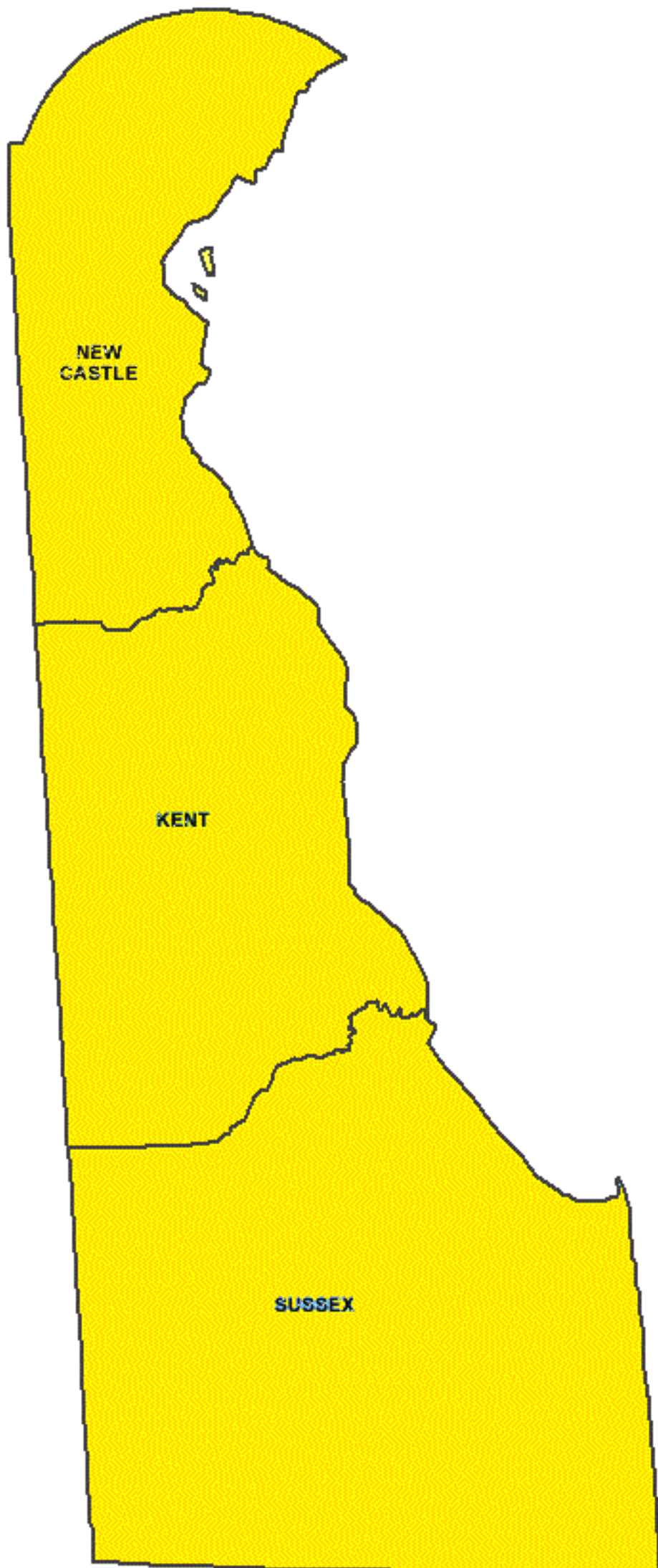
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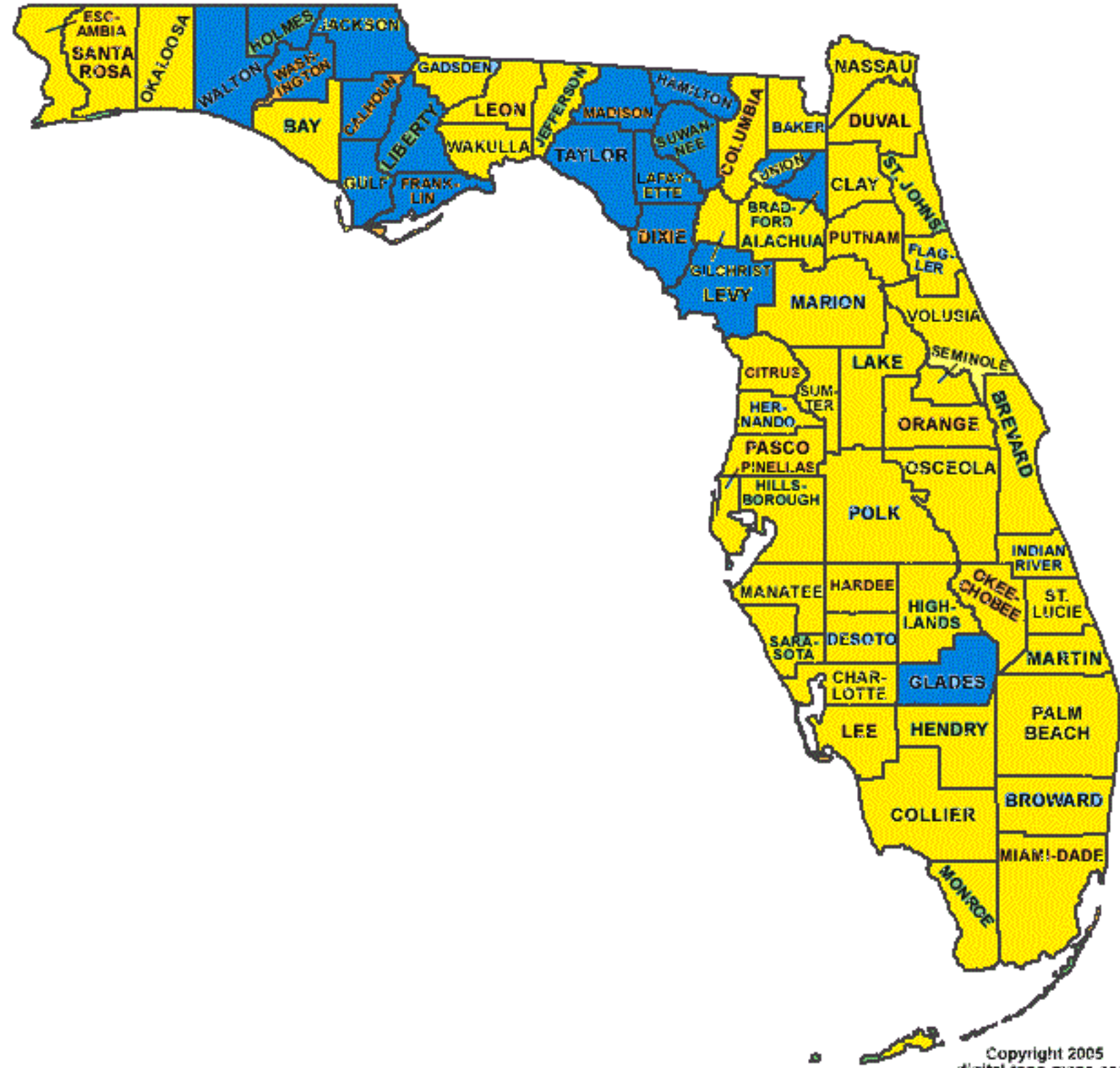
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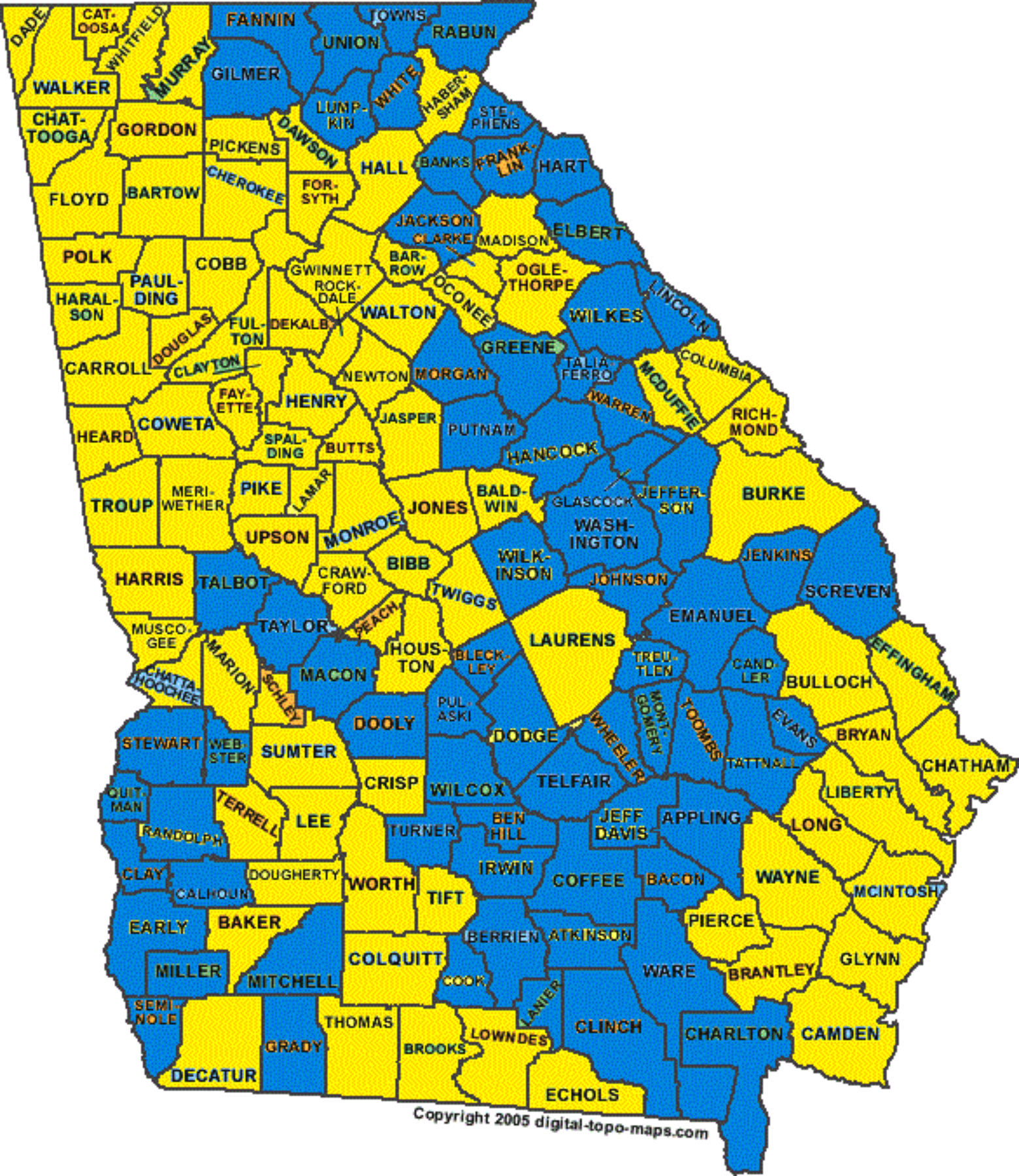
NEW LONDON

FAIRFIELD

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KAUAI



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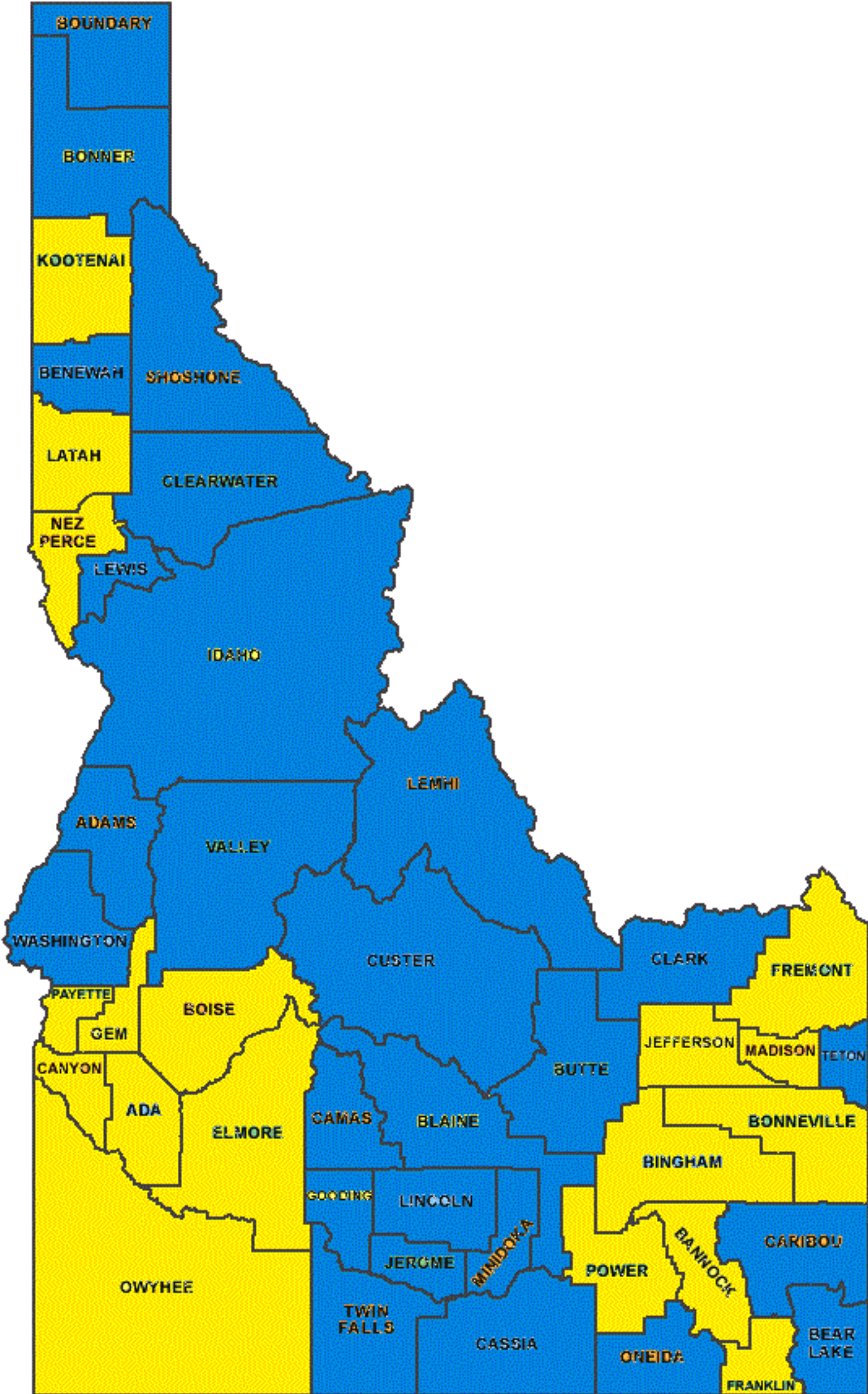


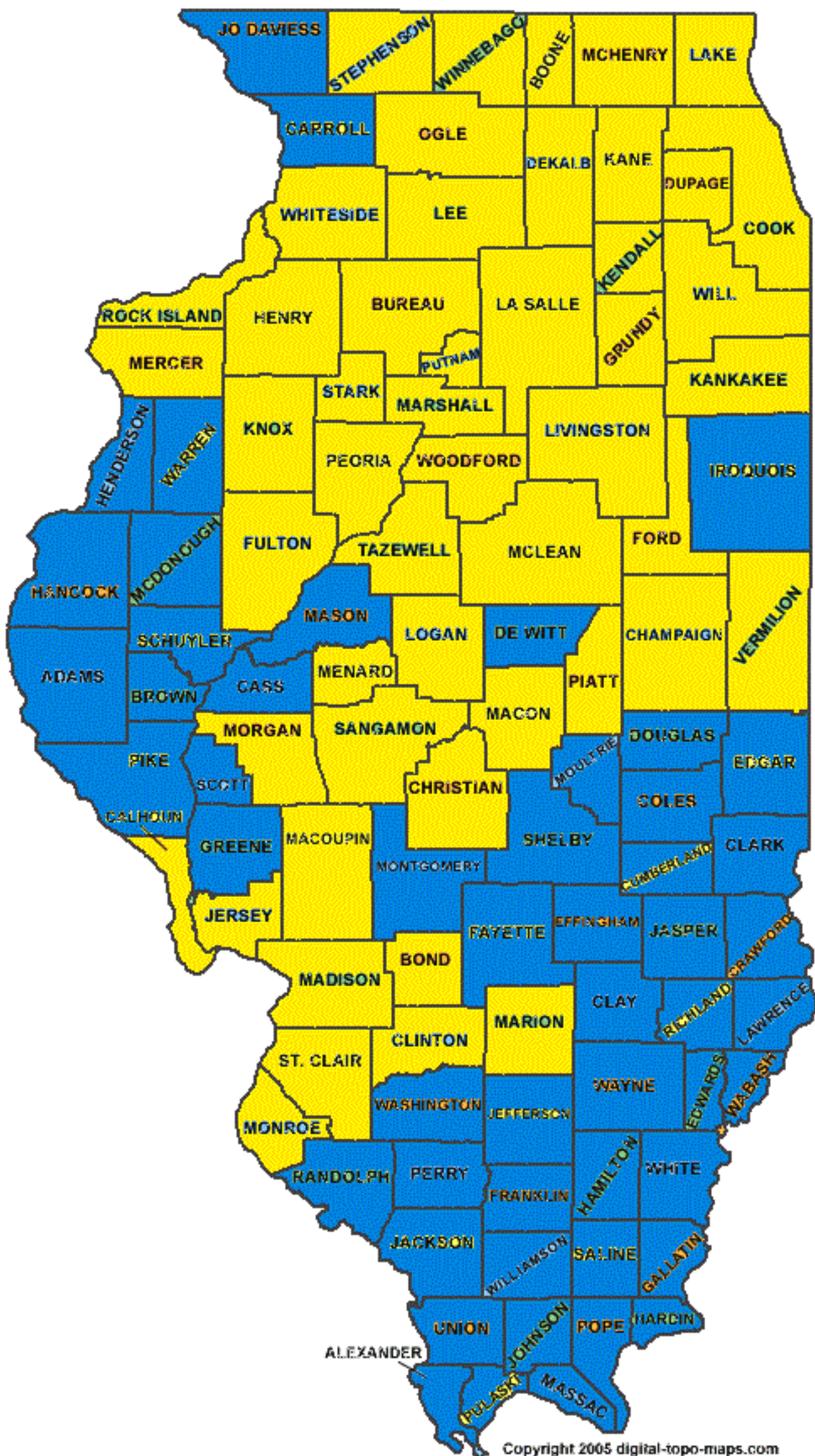
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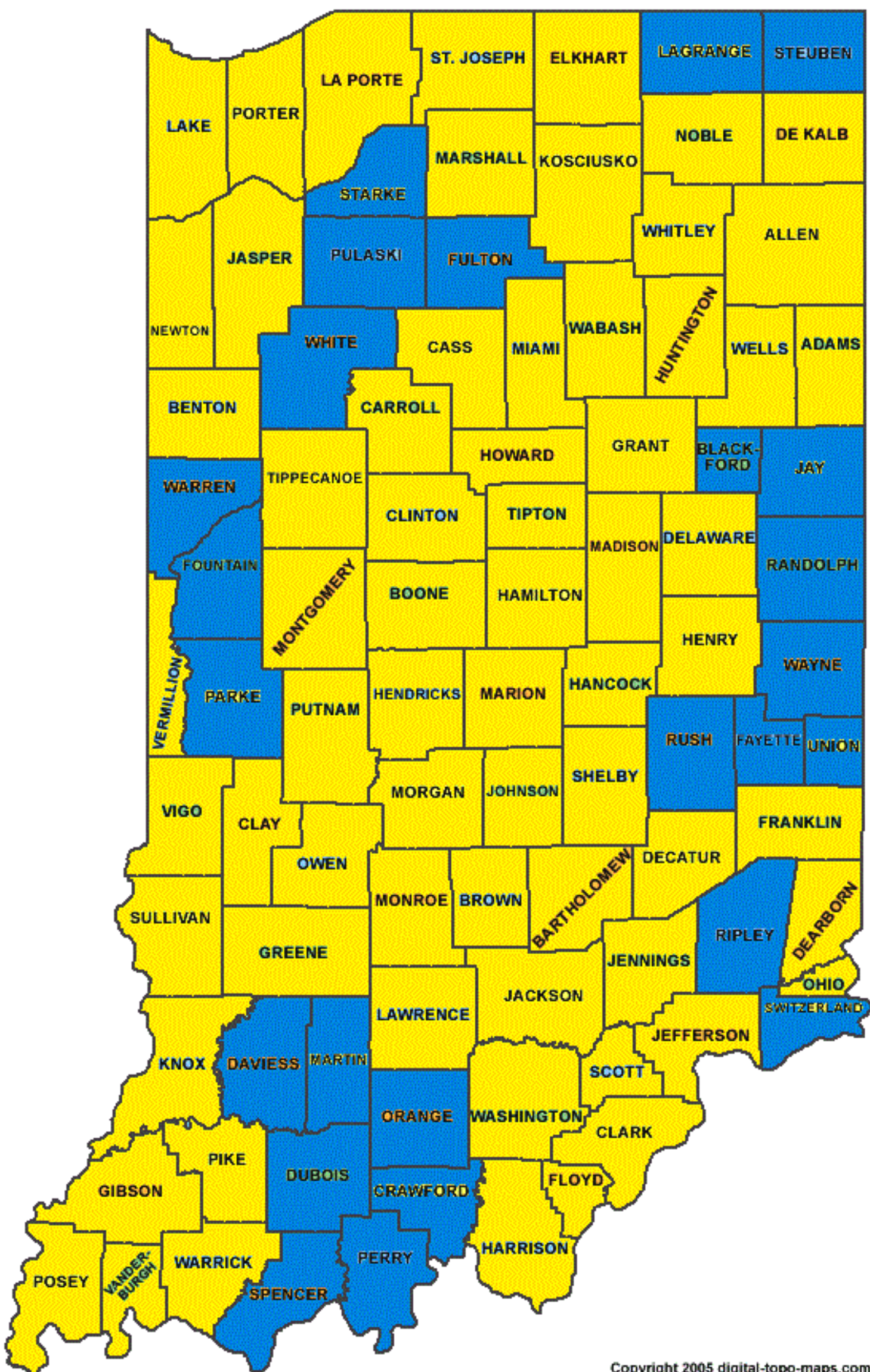


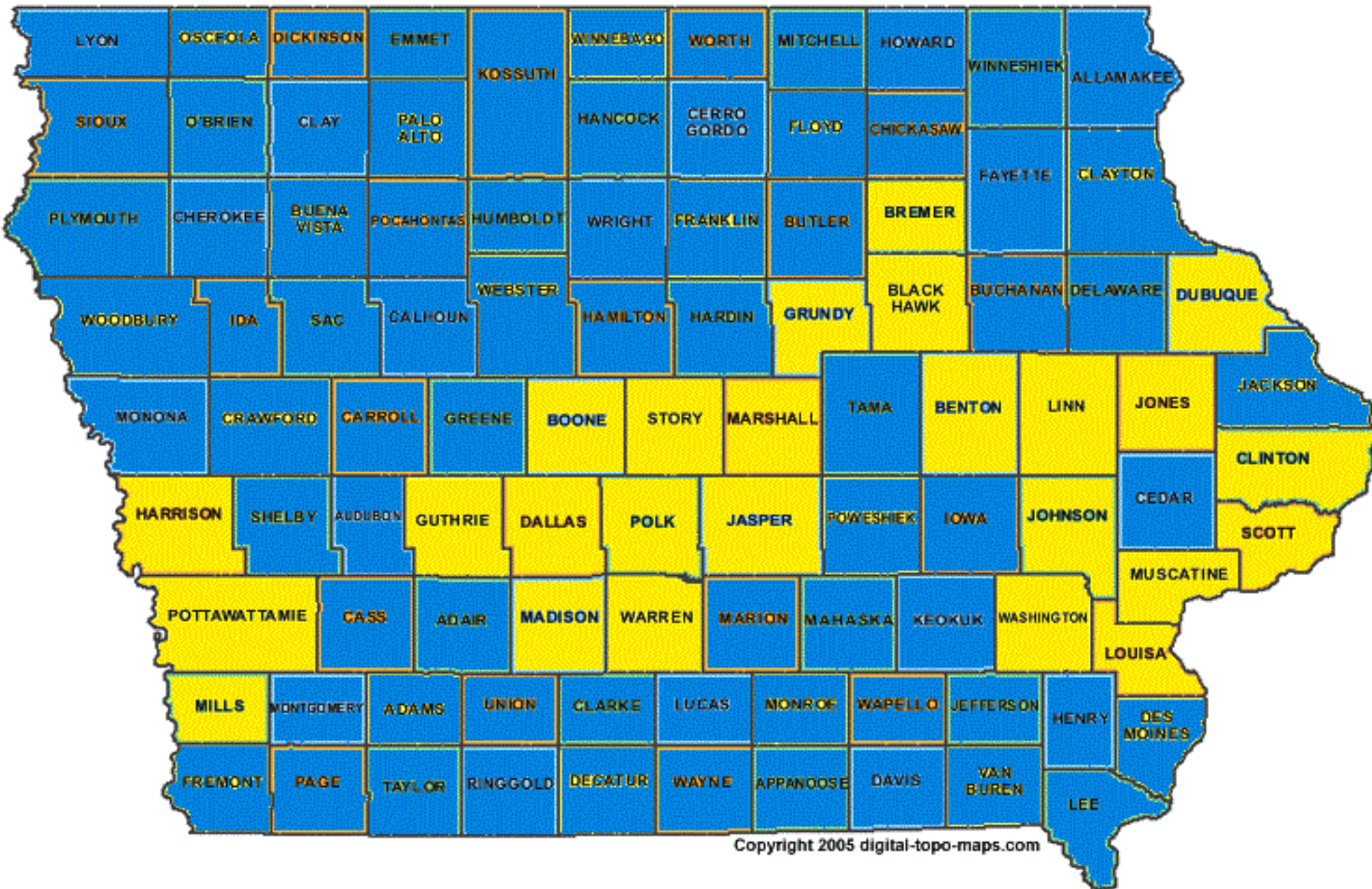
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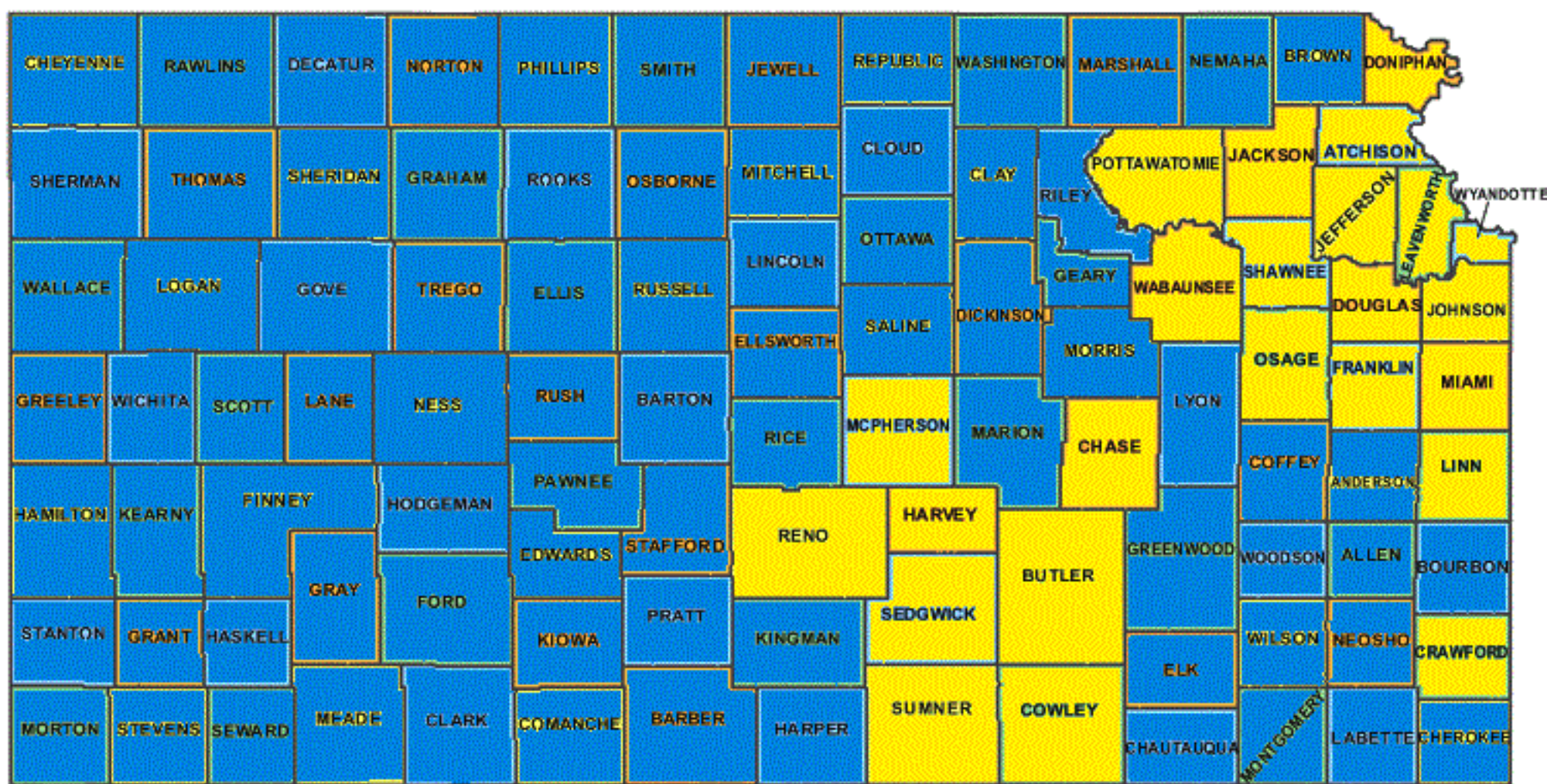


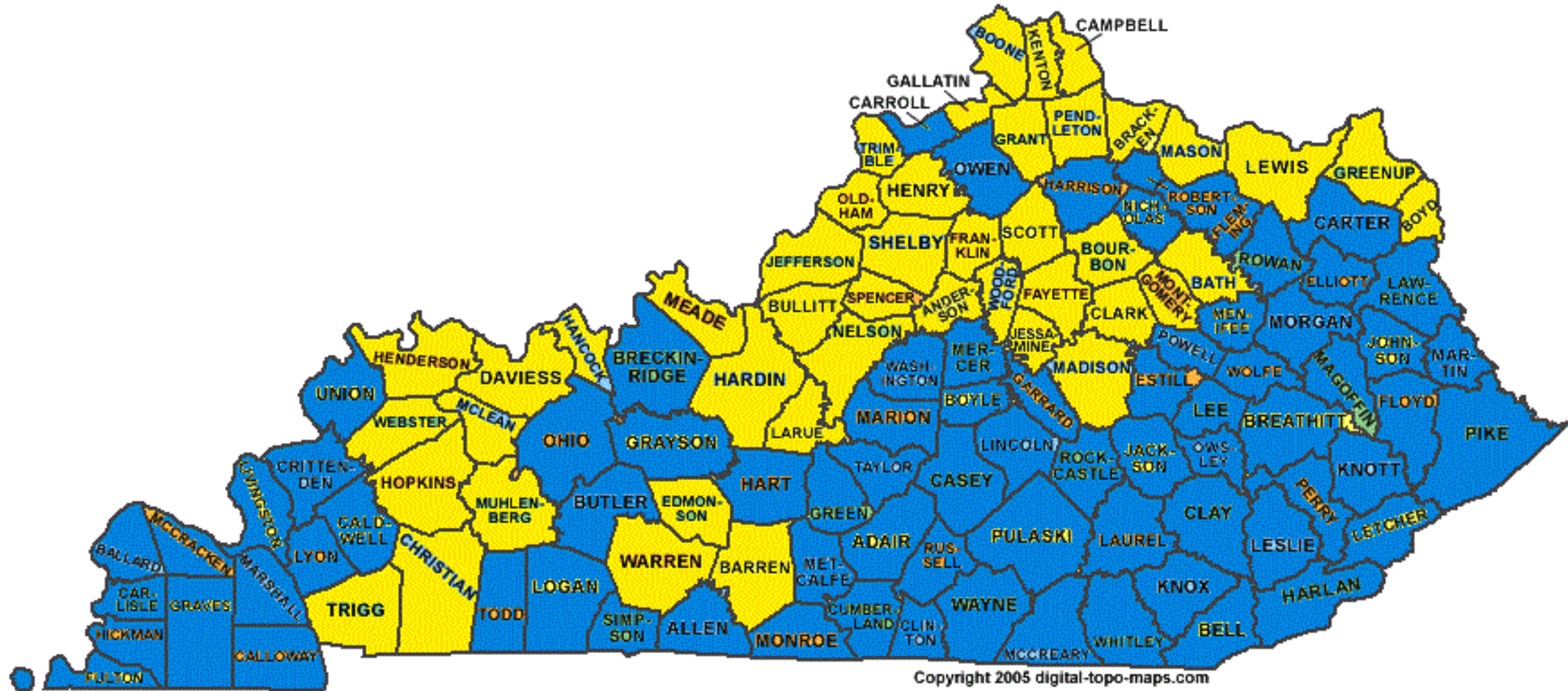


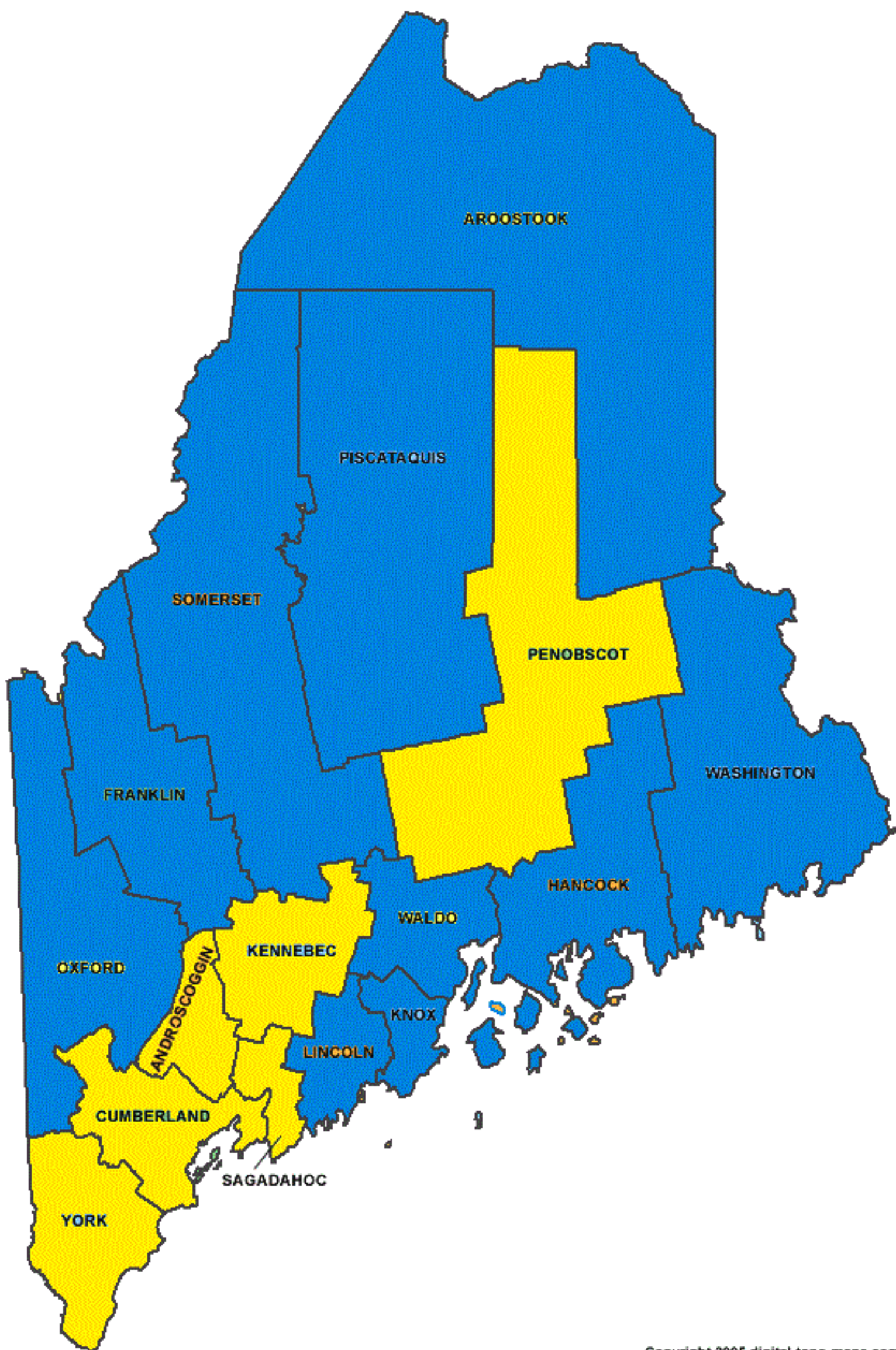


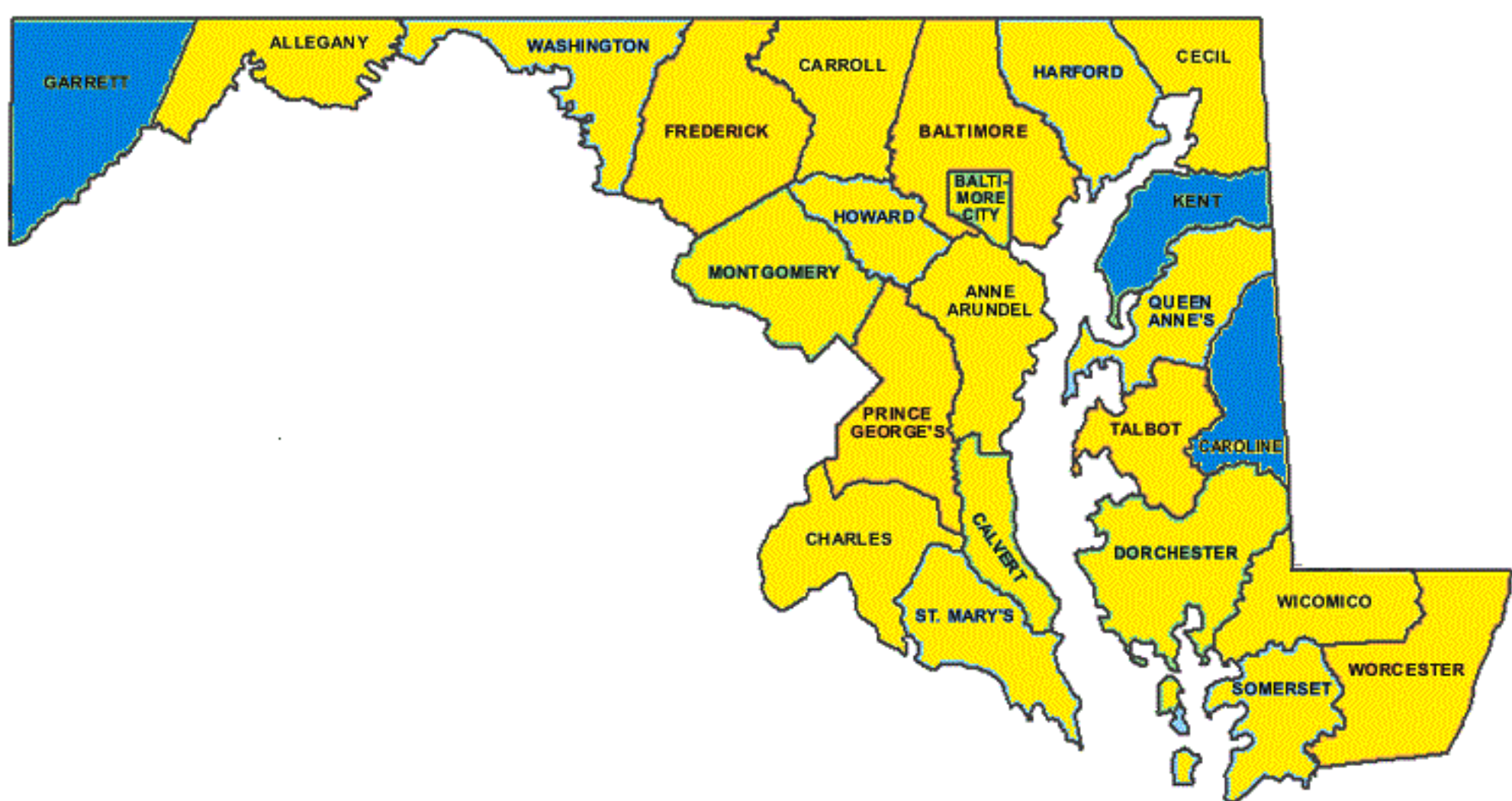


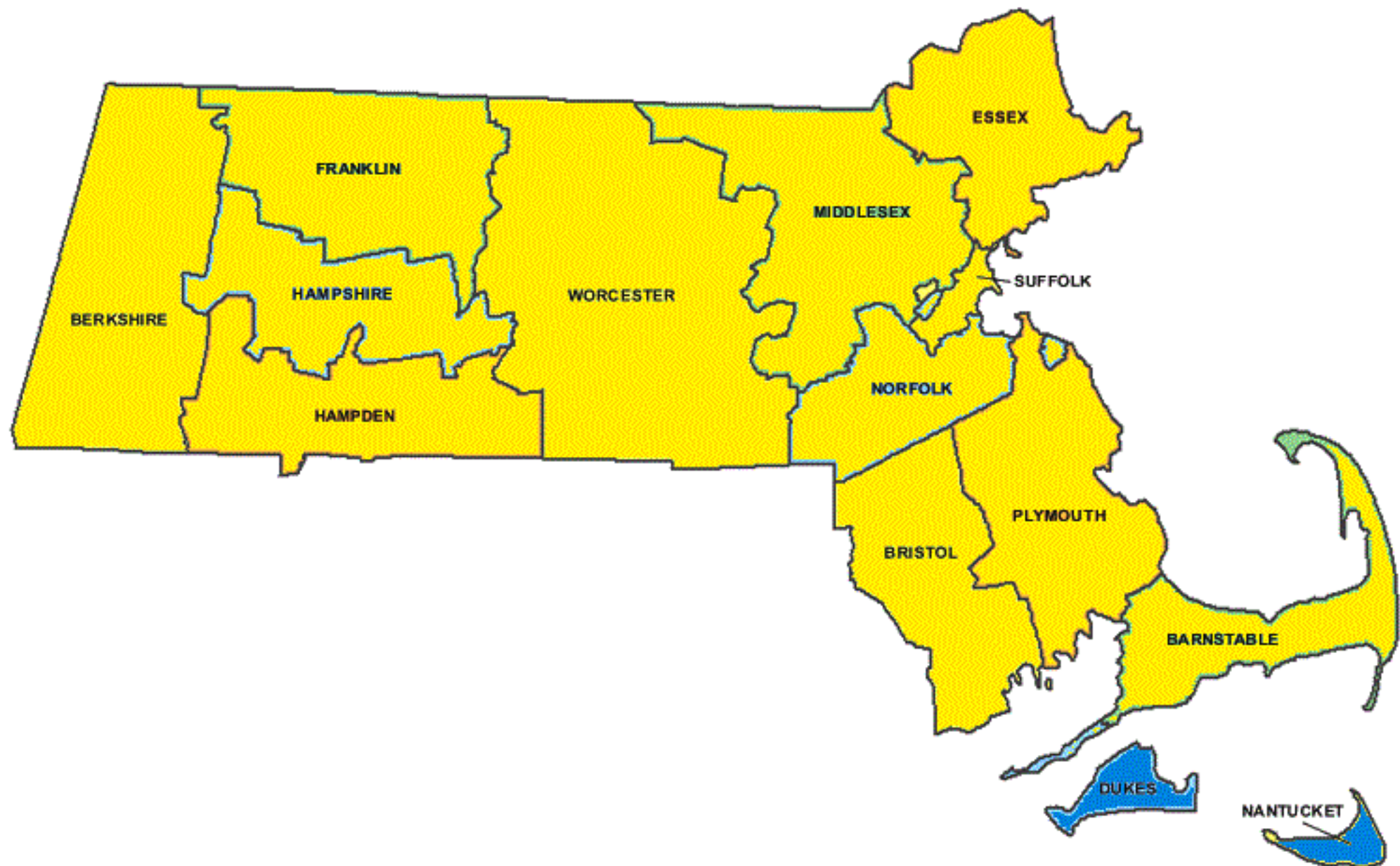


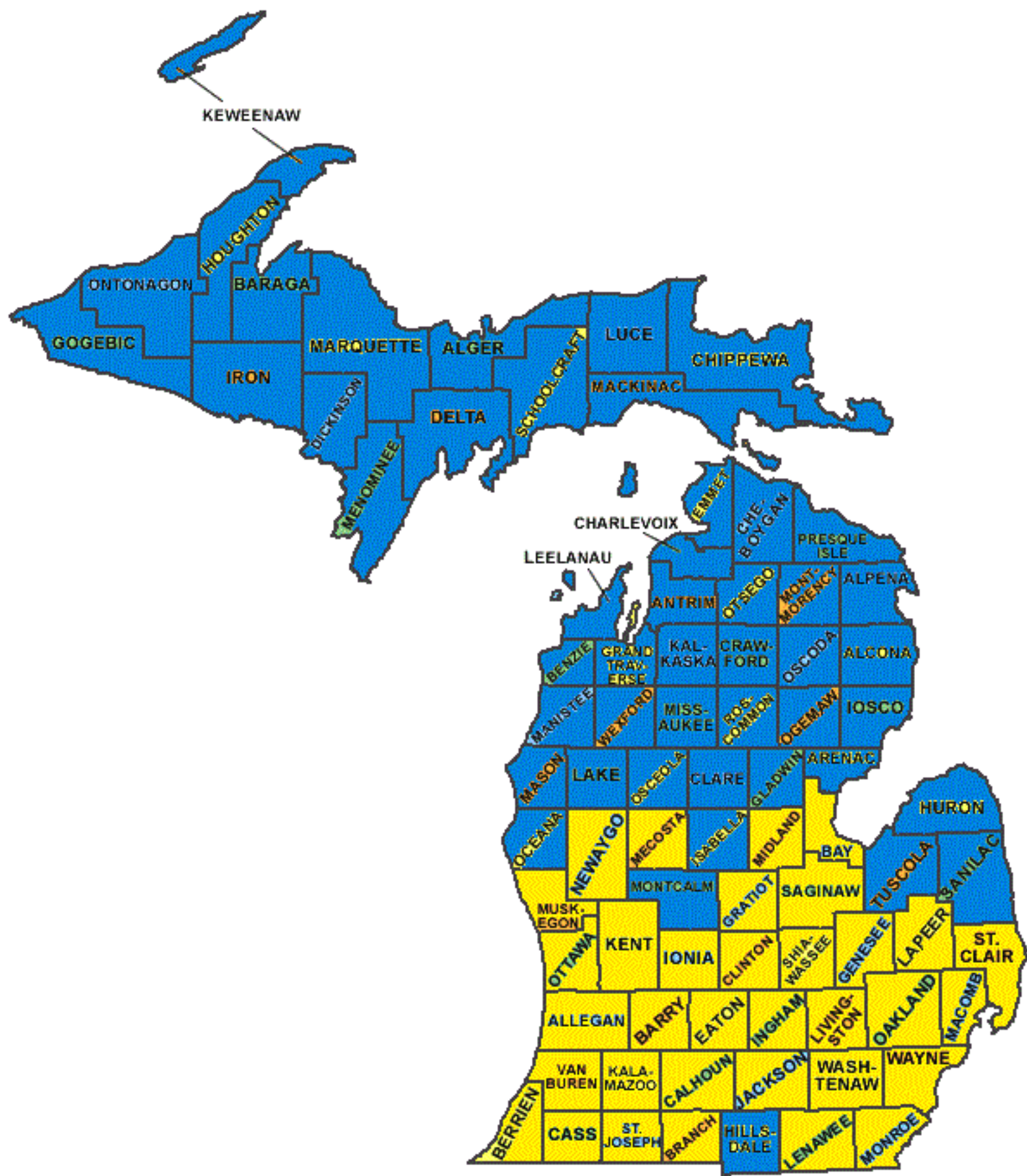


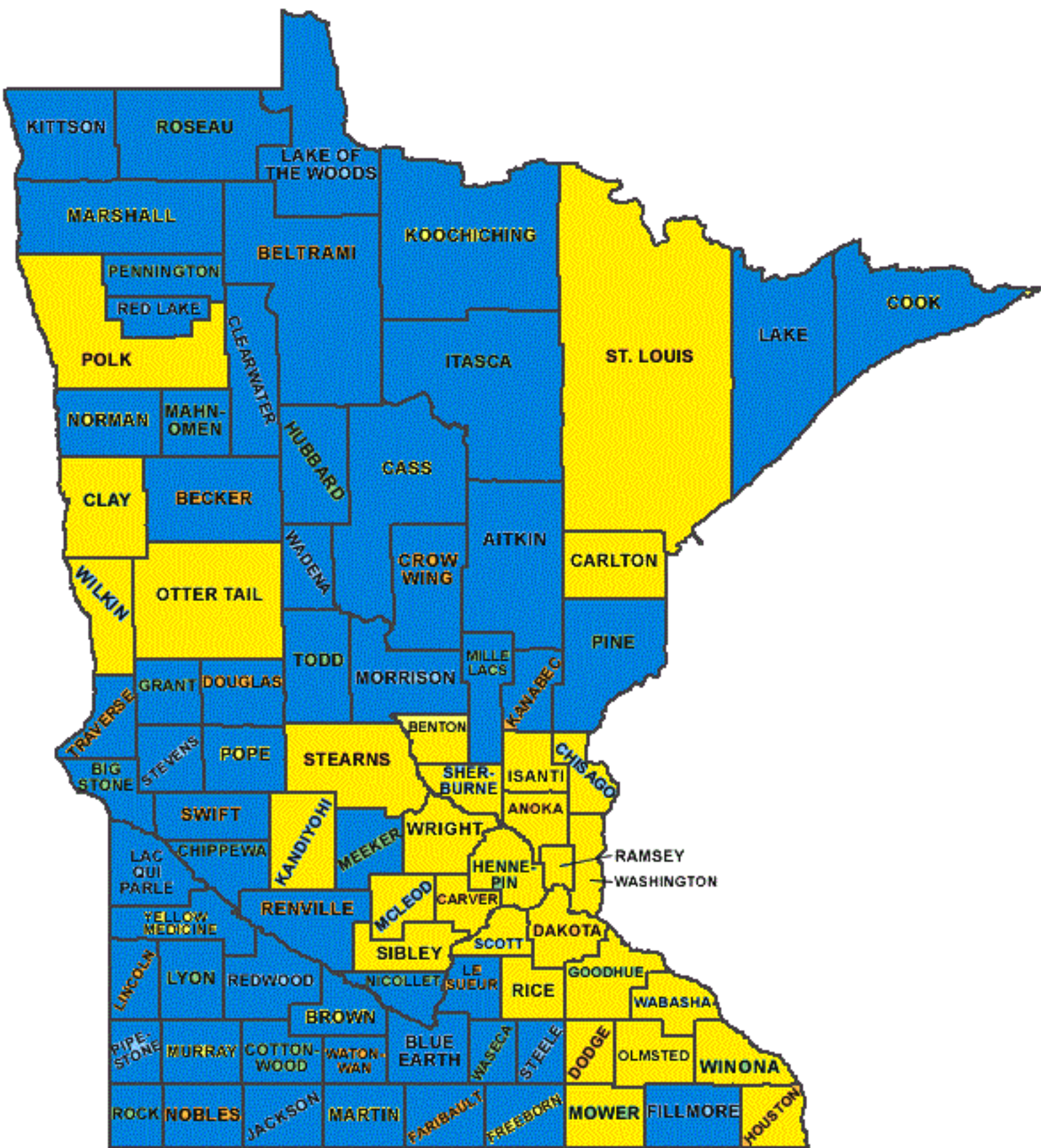


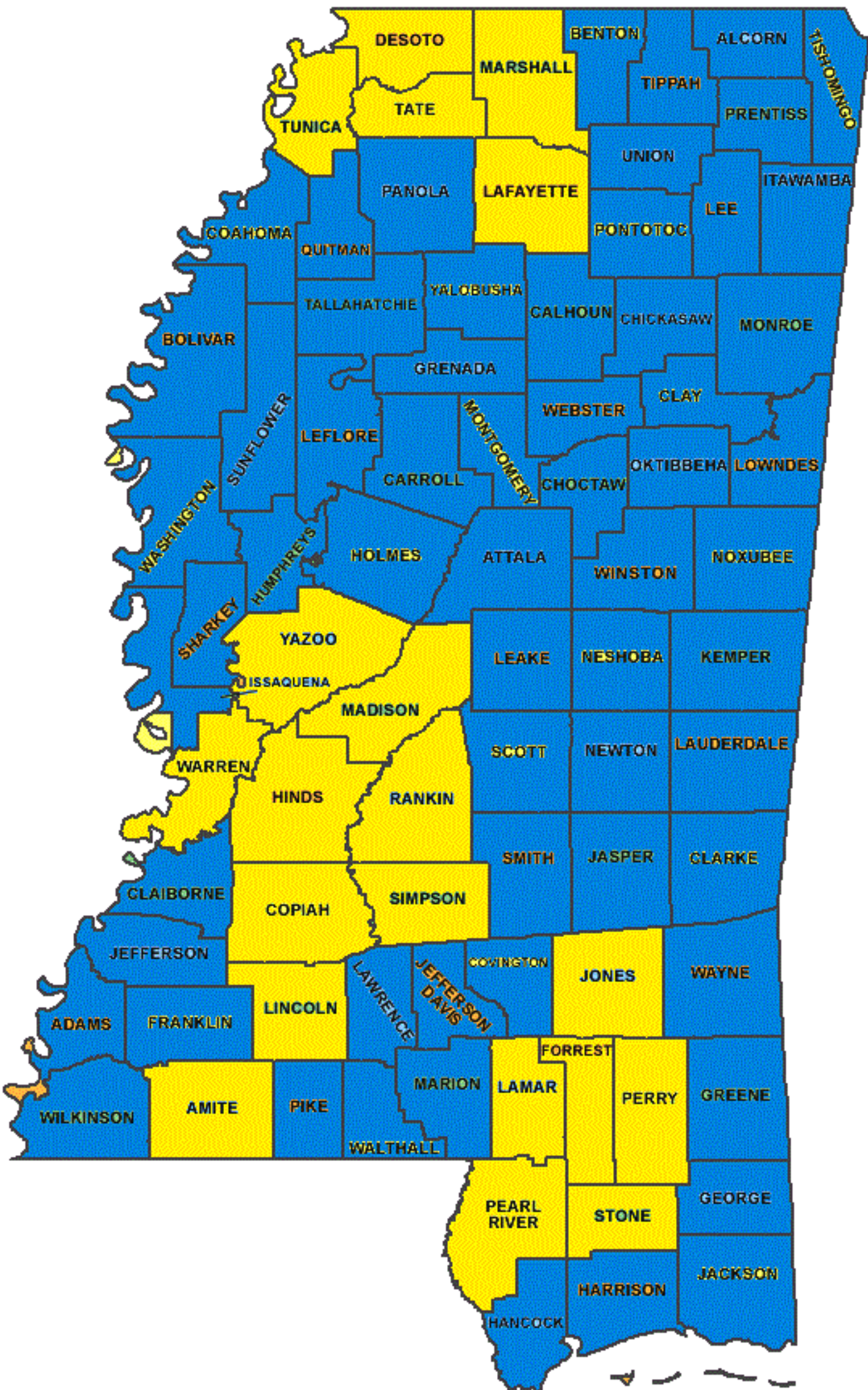


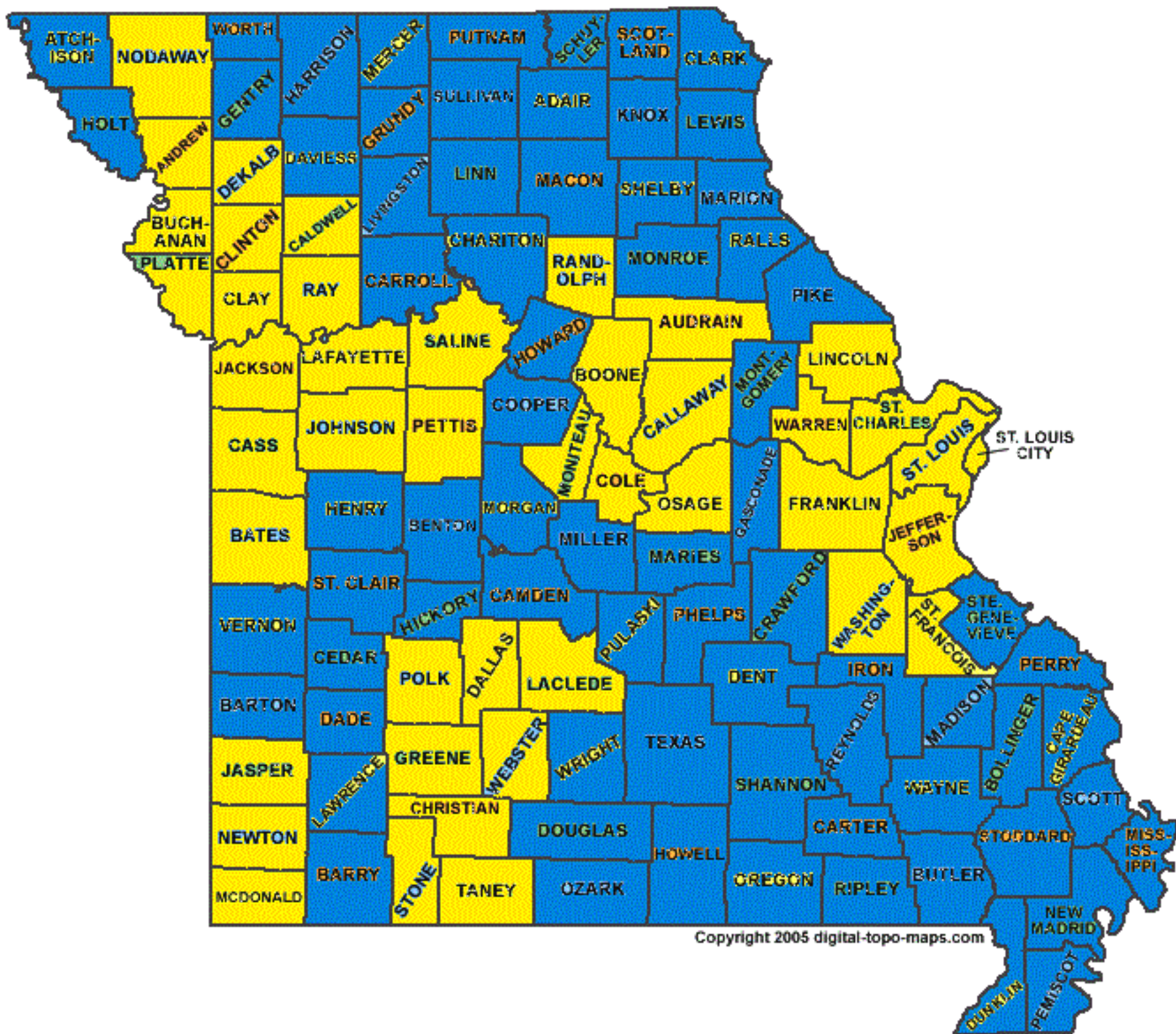


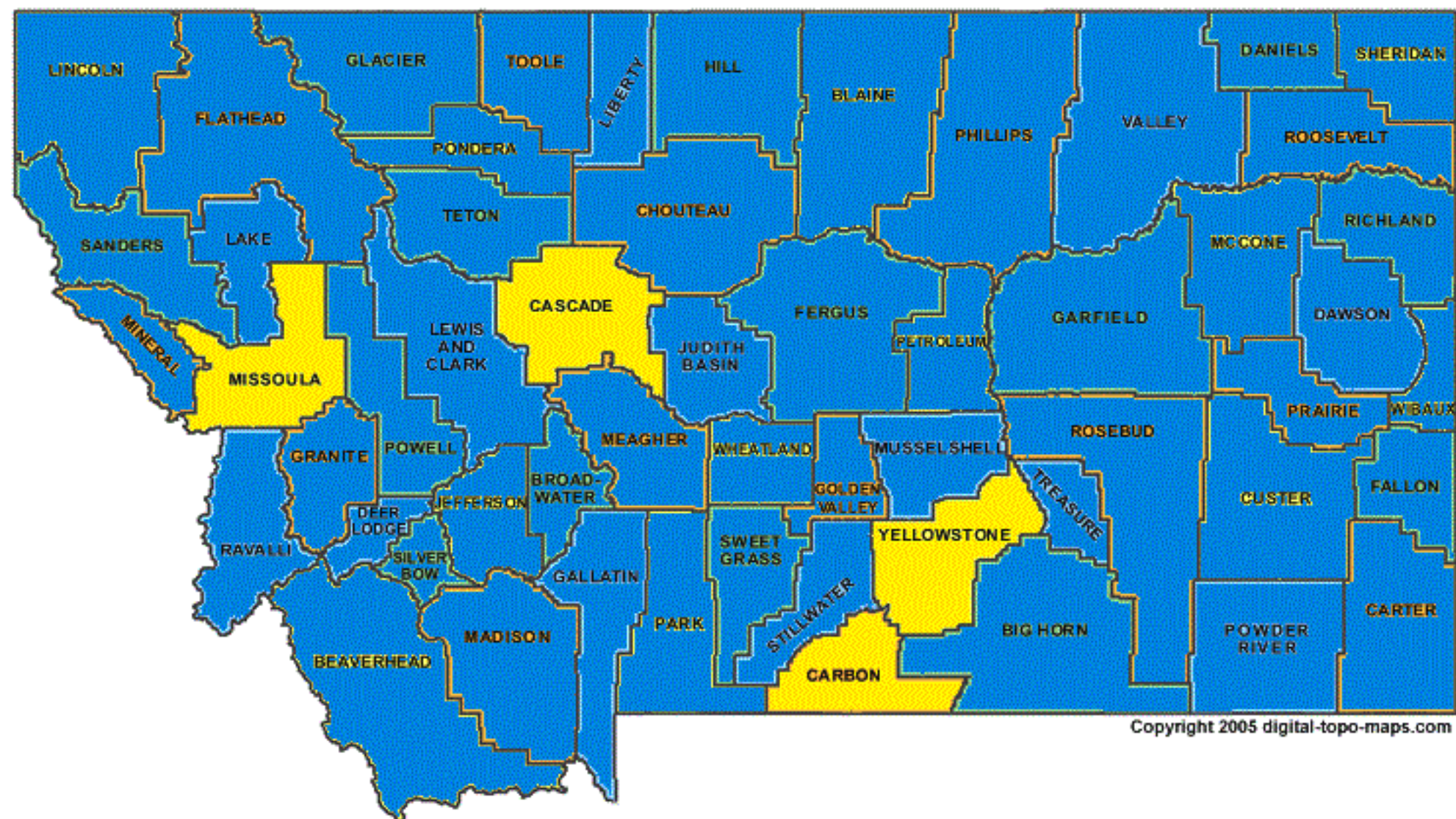


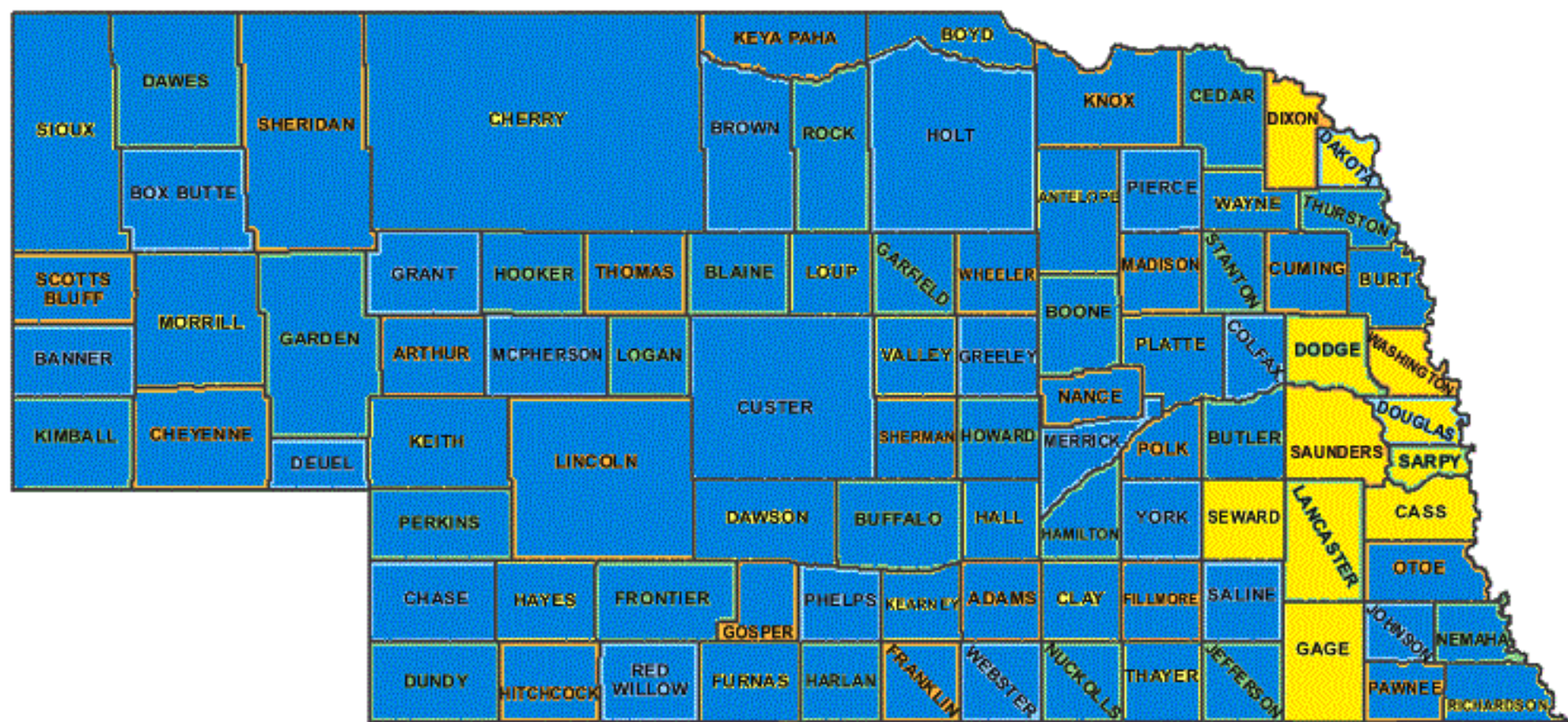


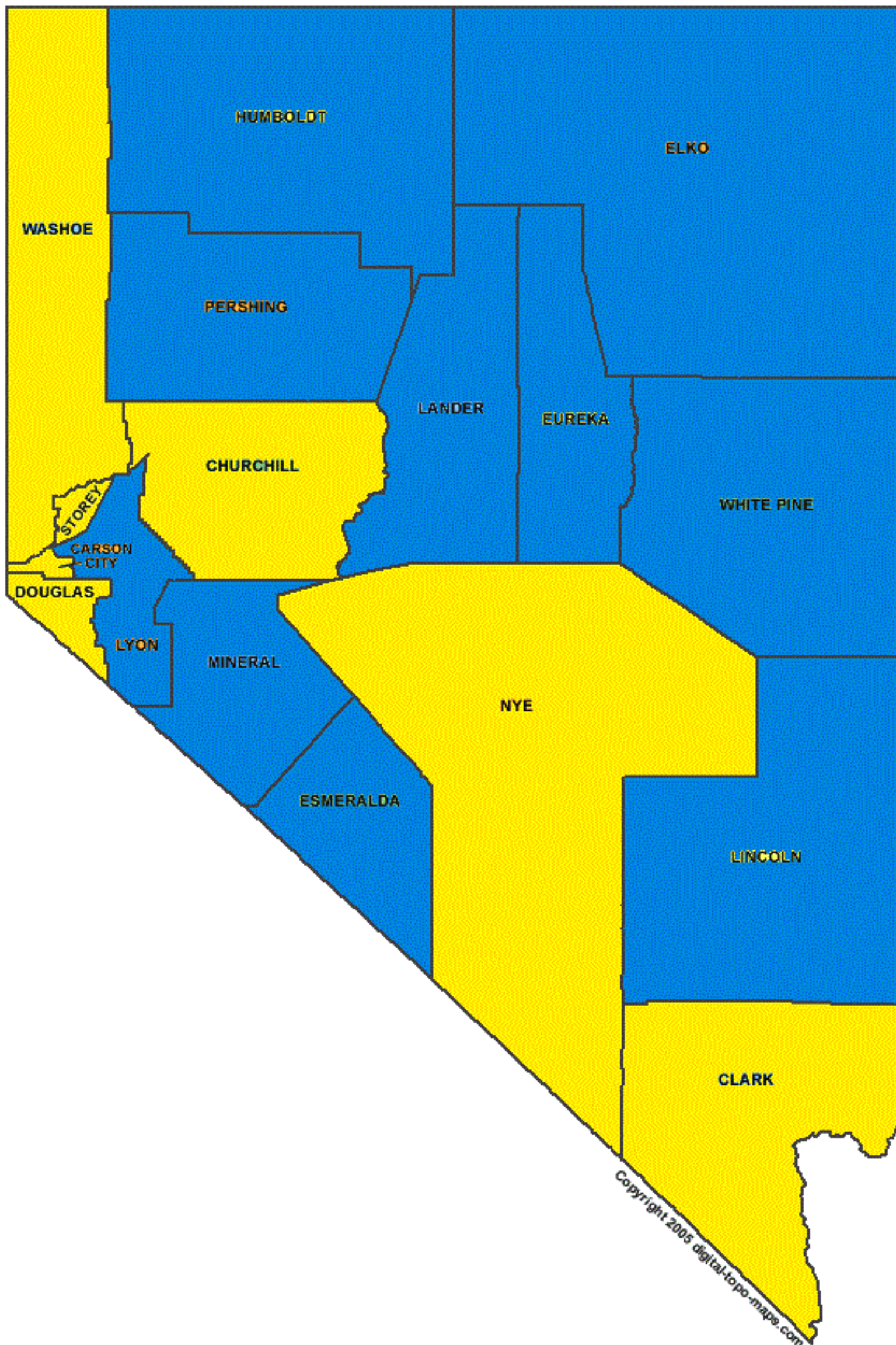


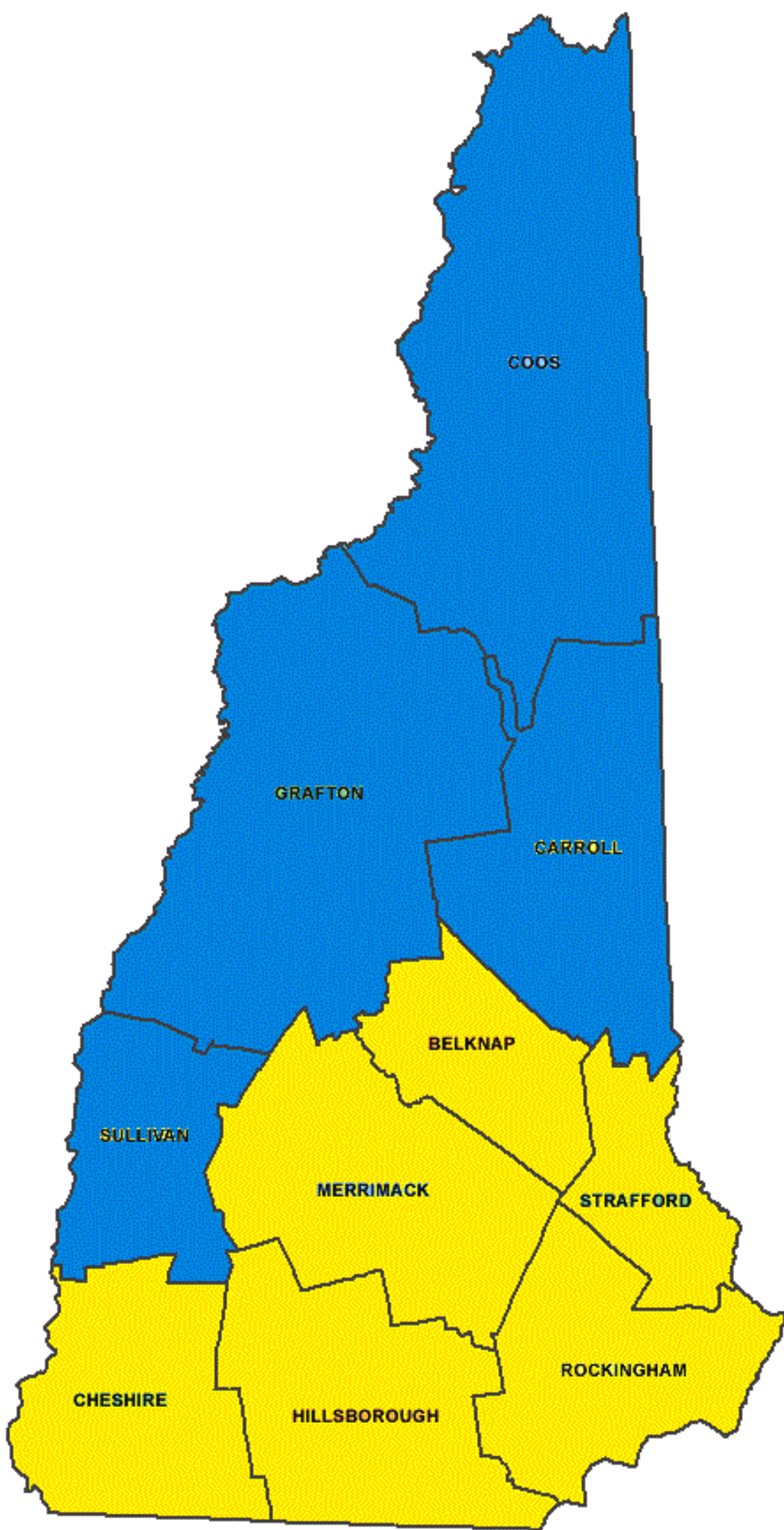


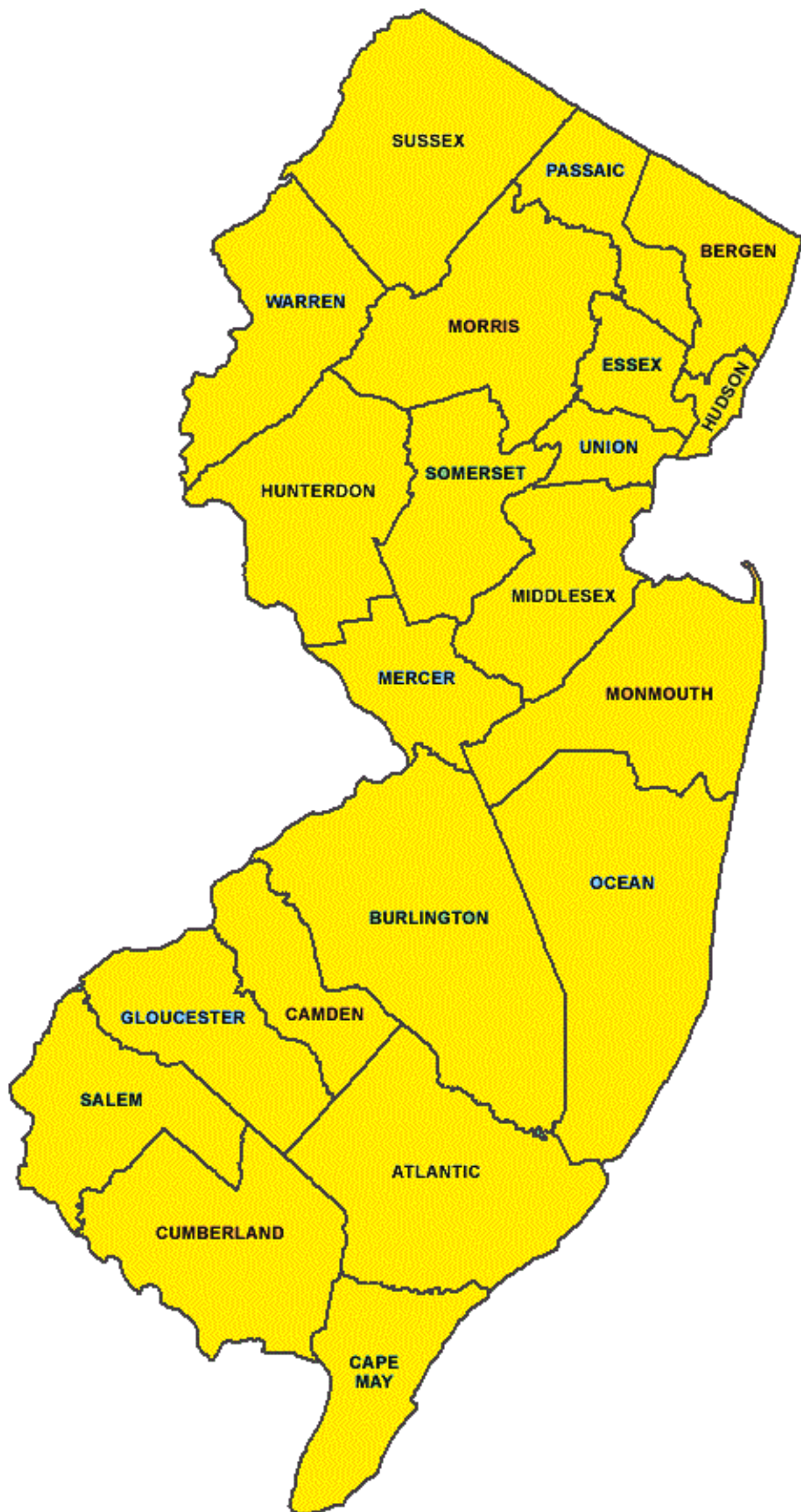


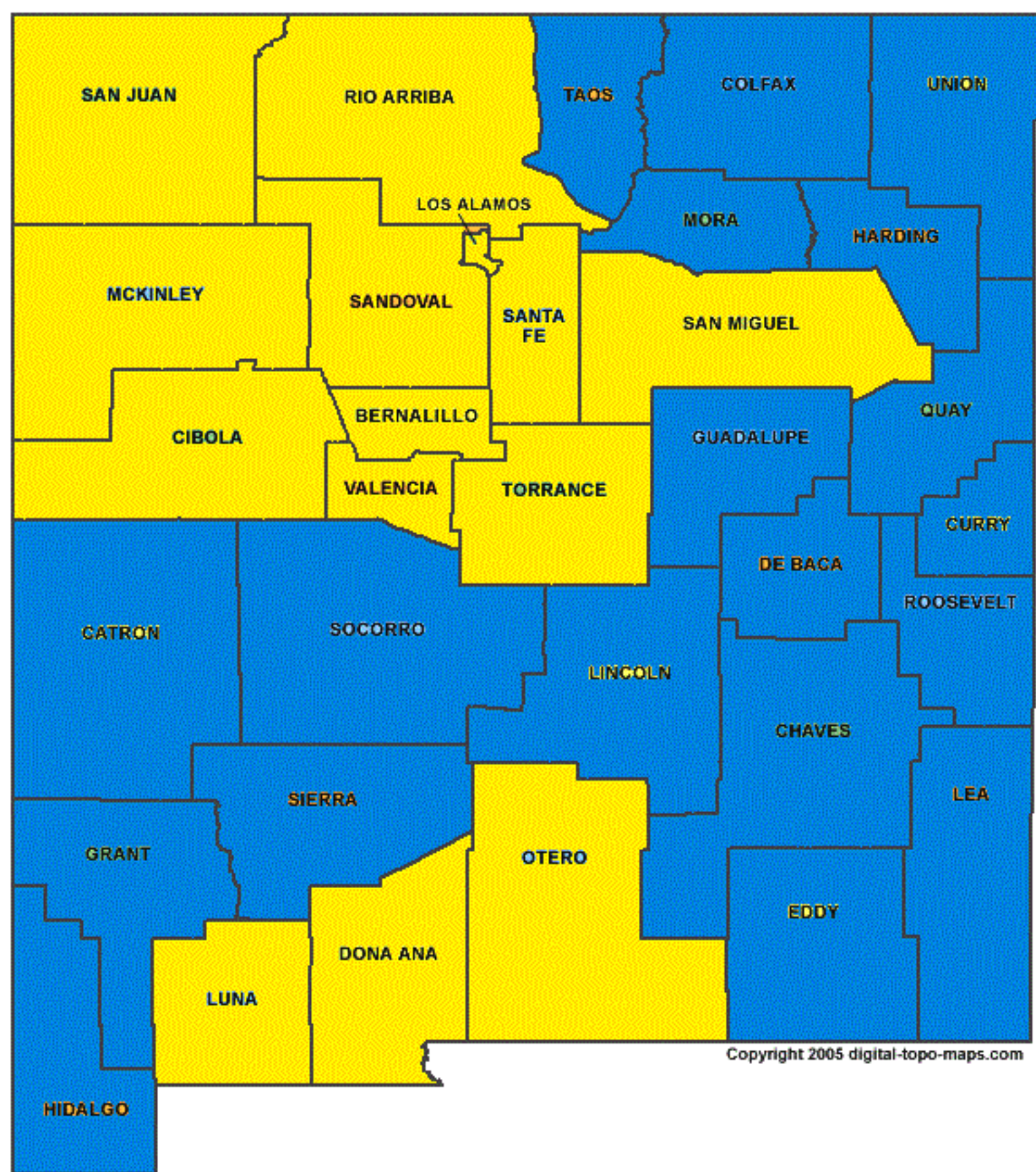


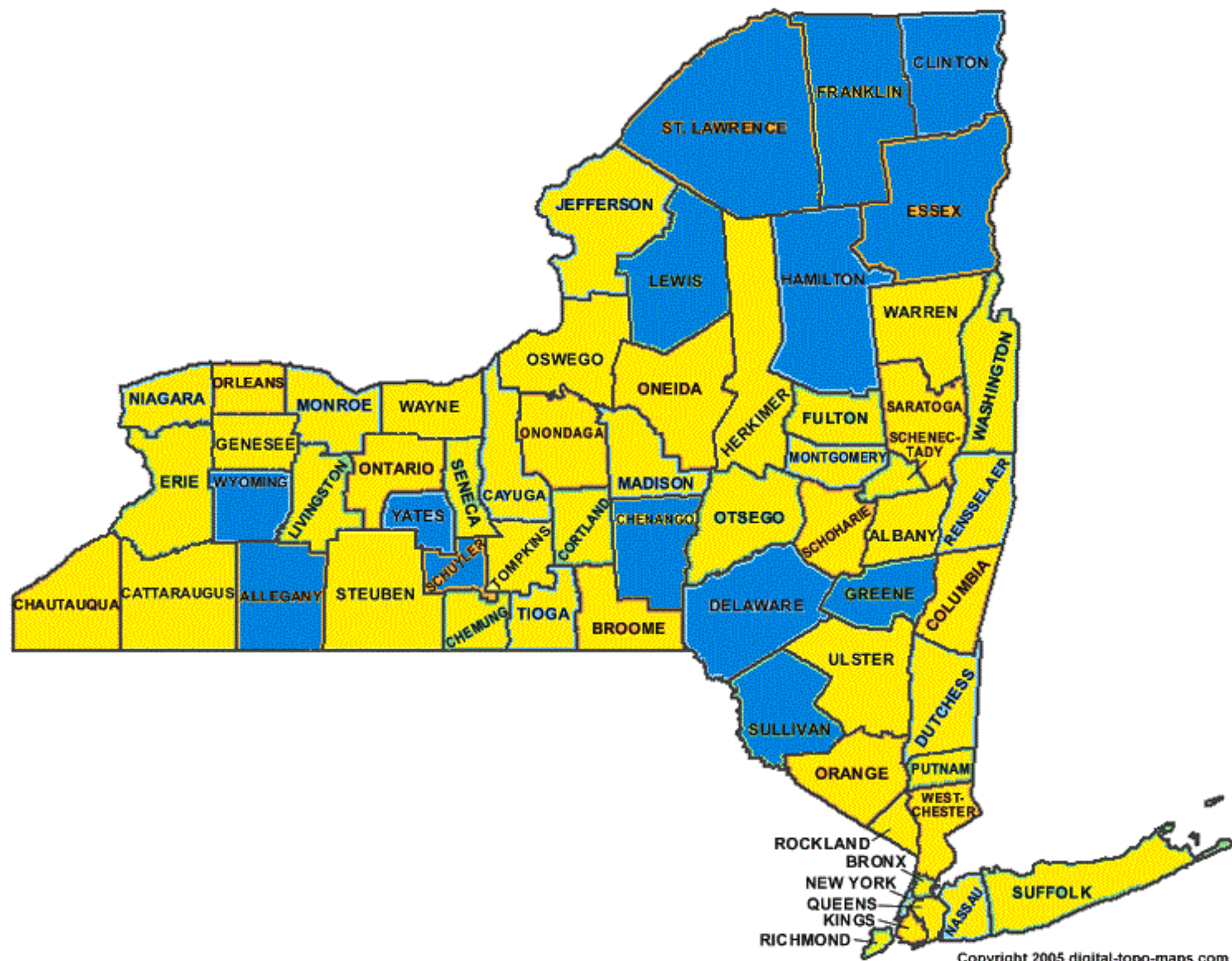


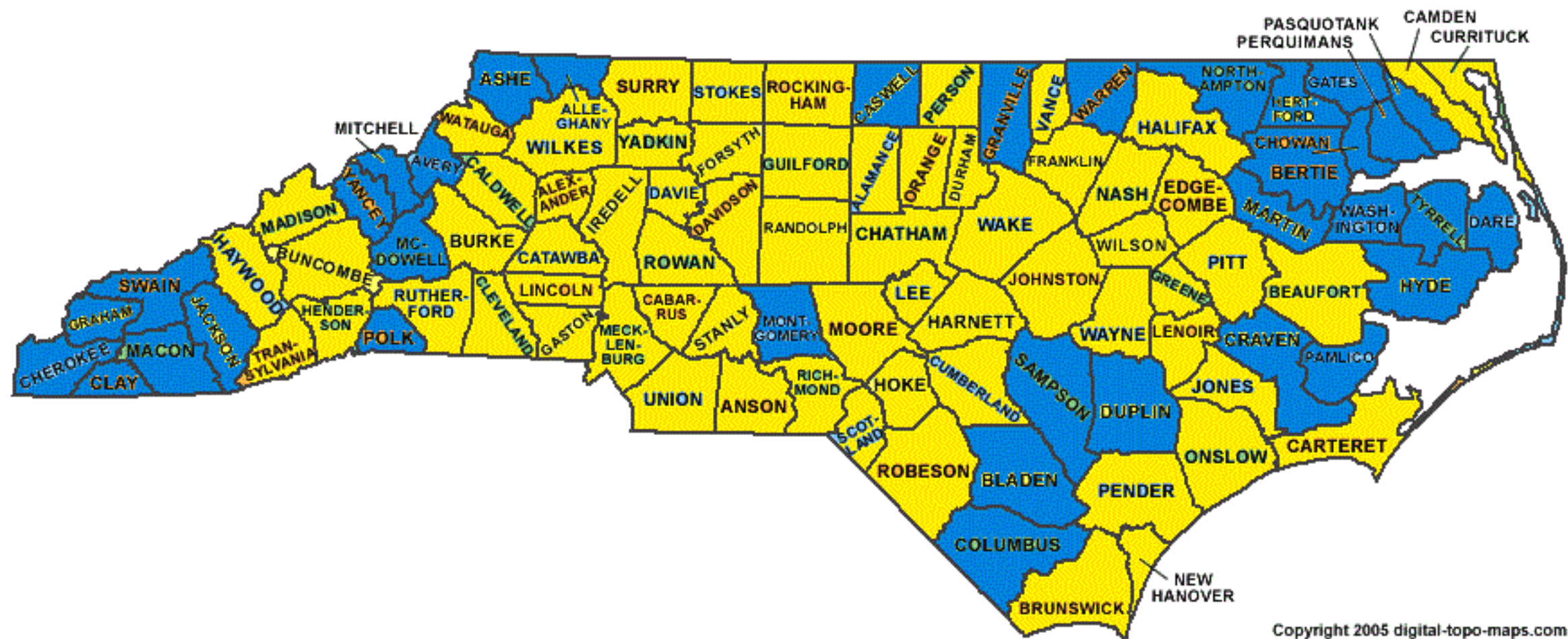


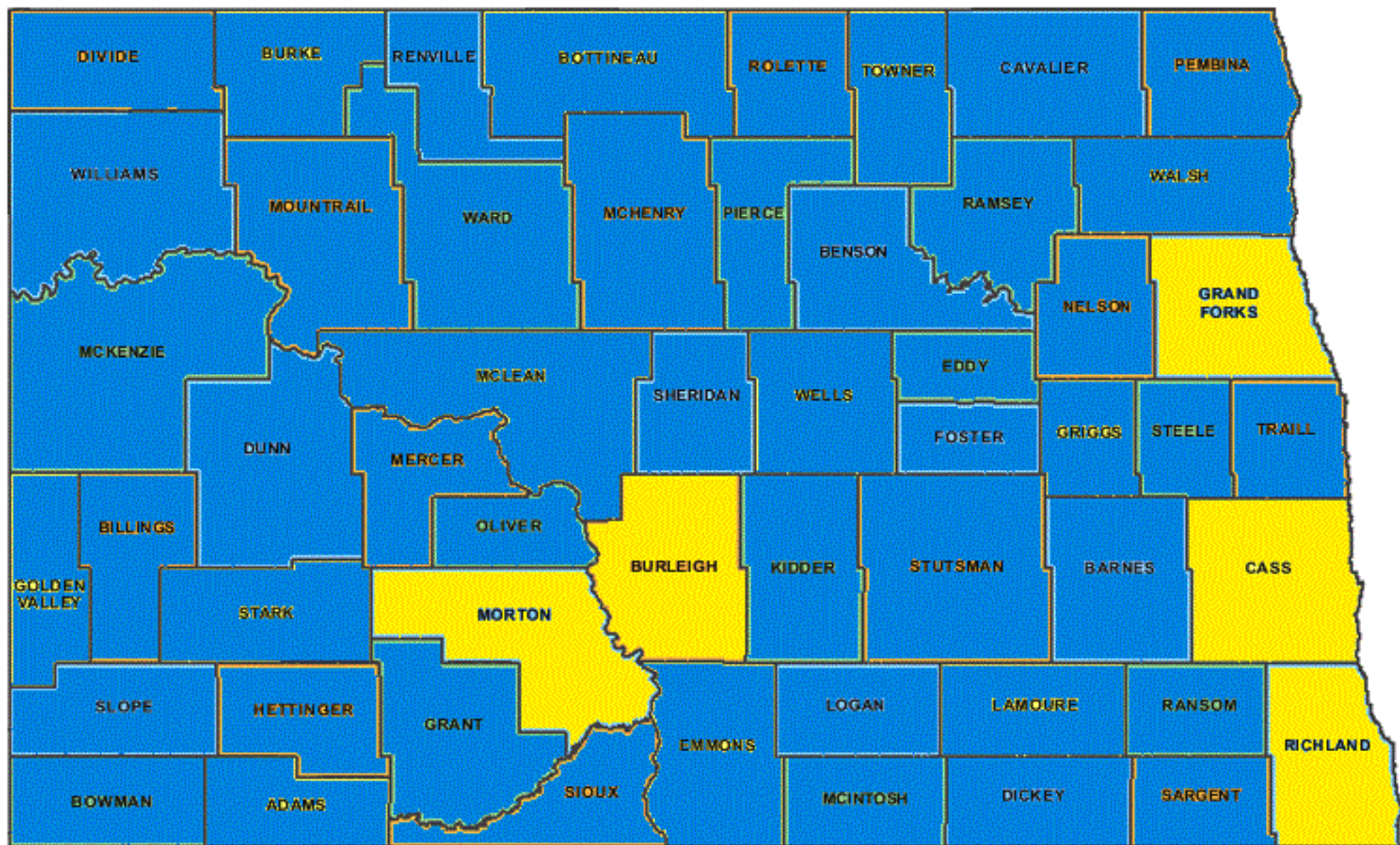


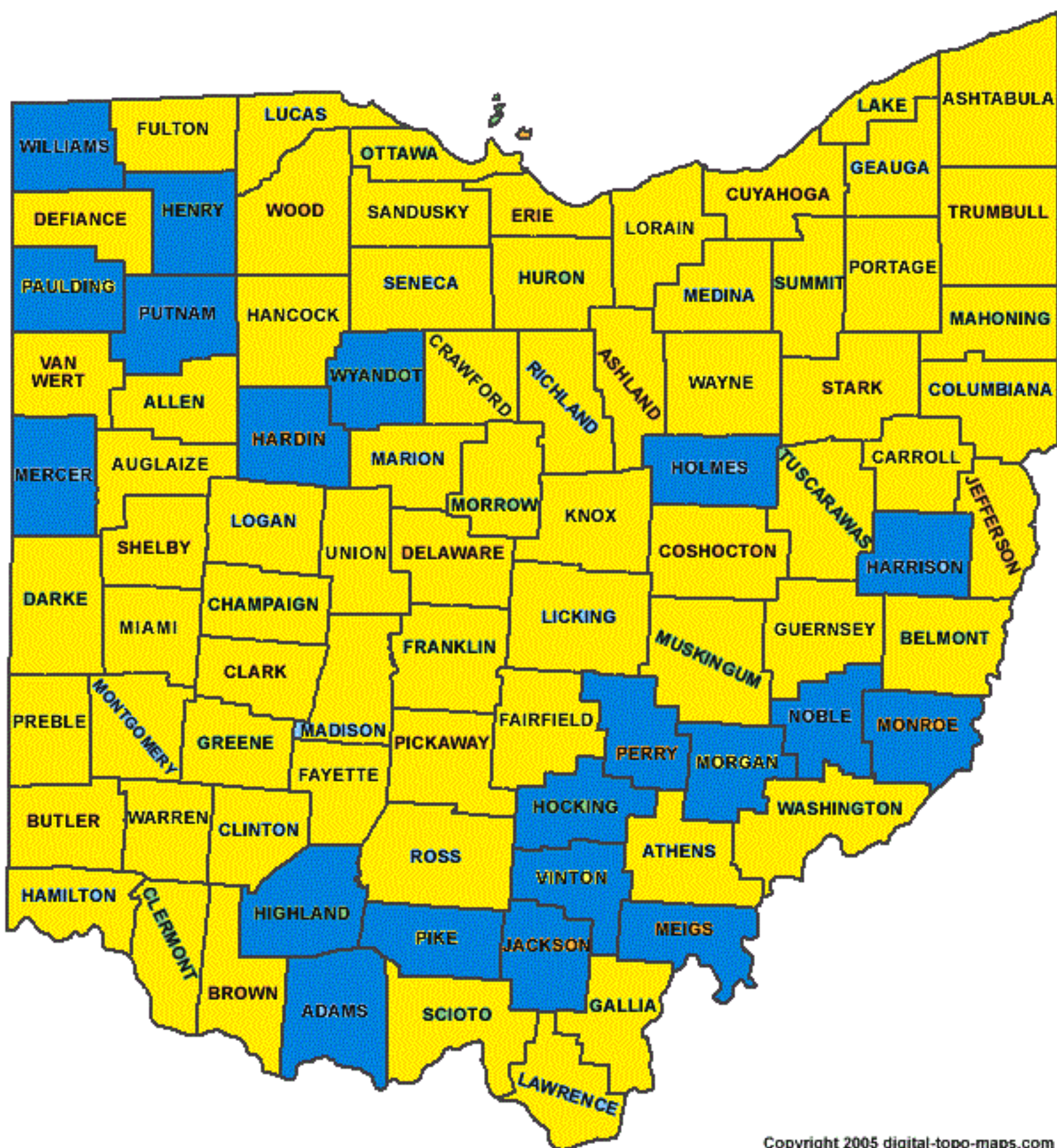


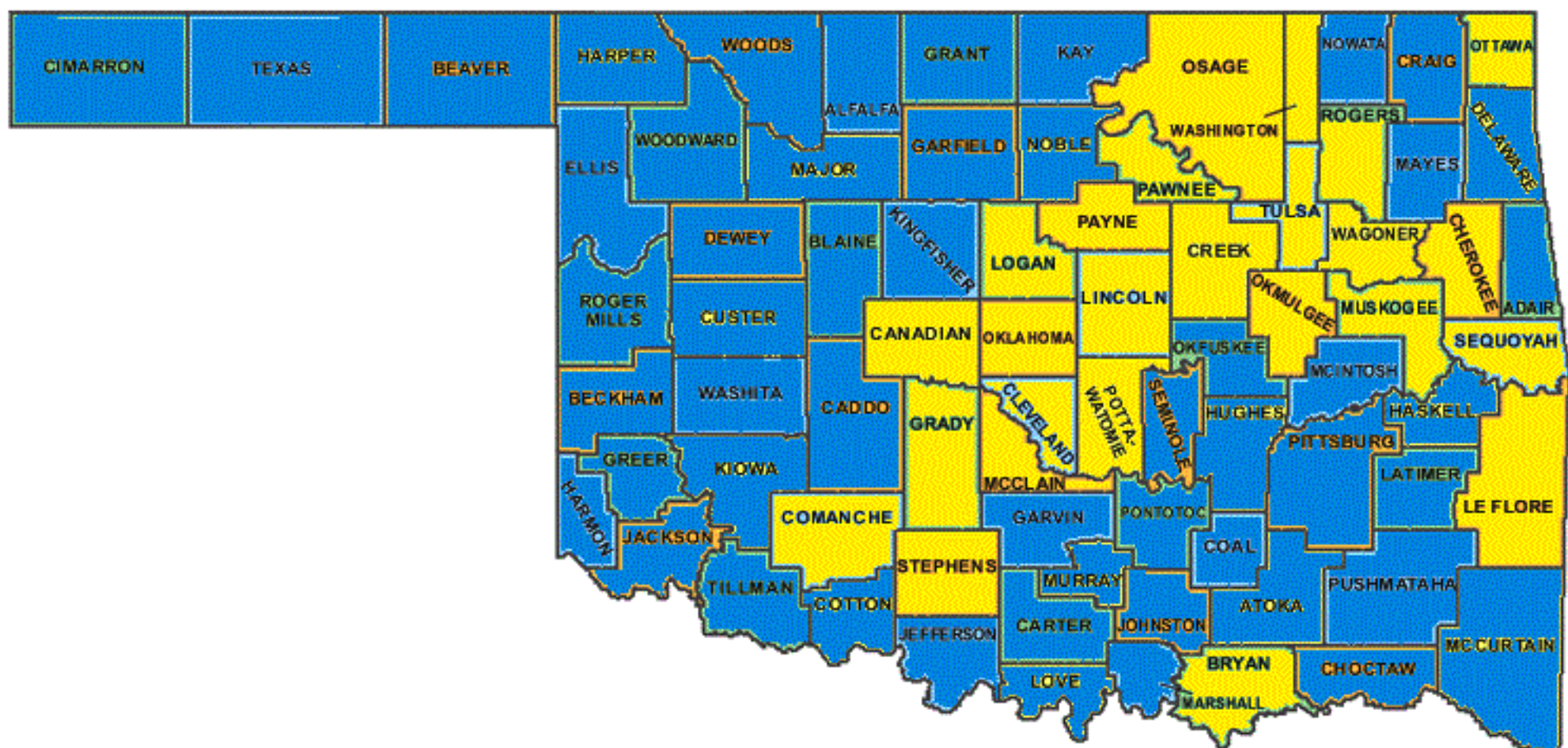


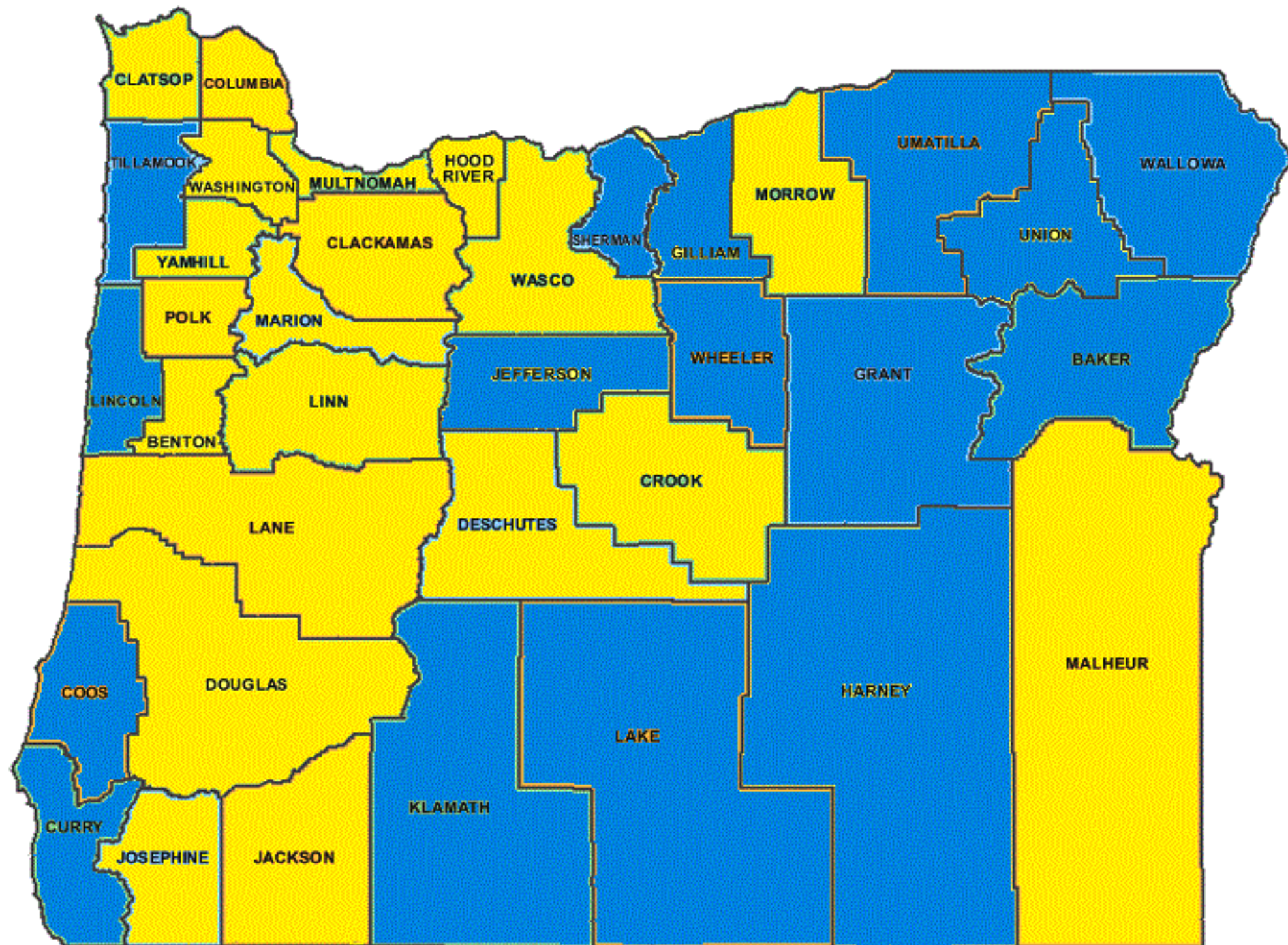




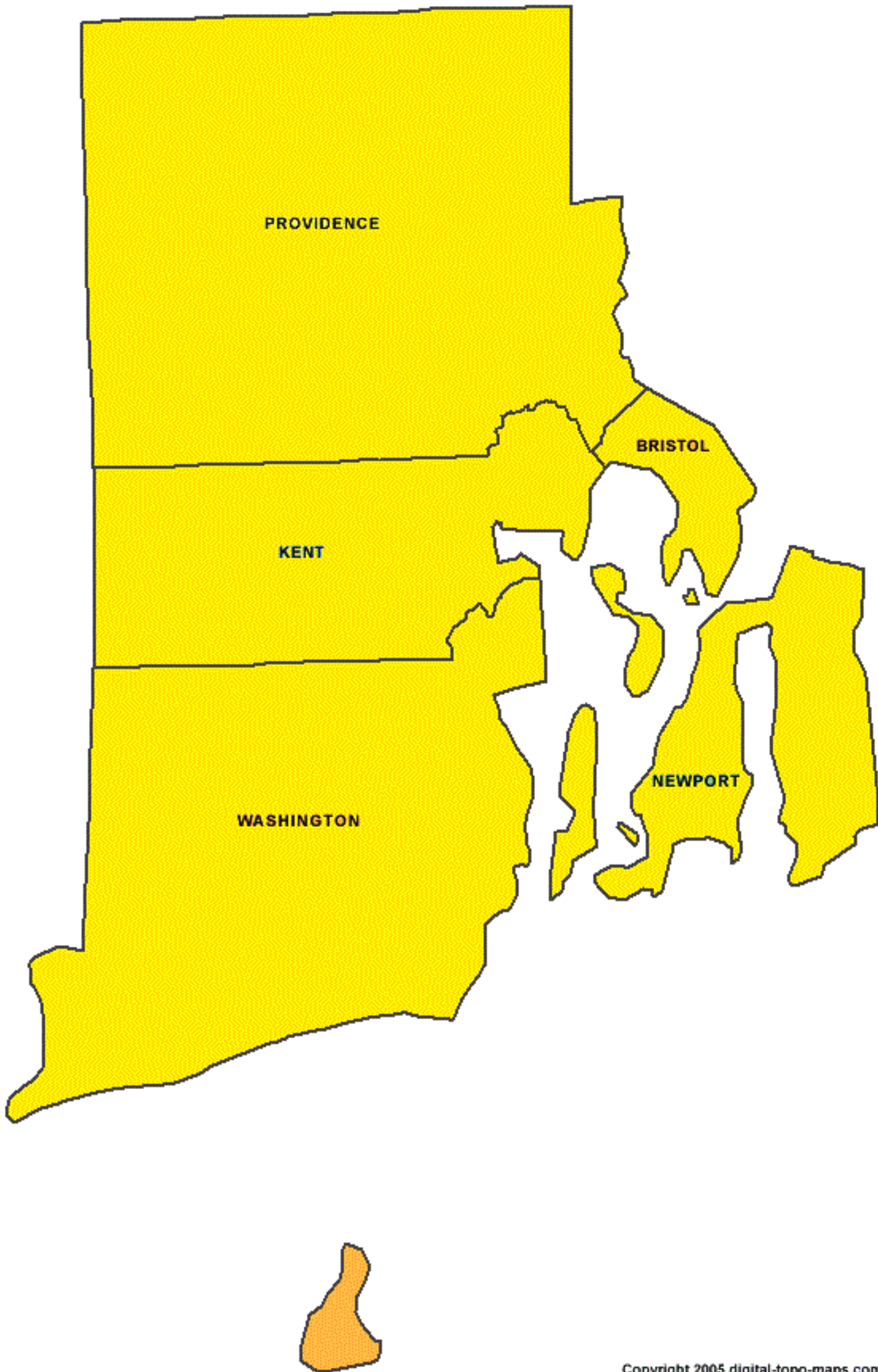


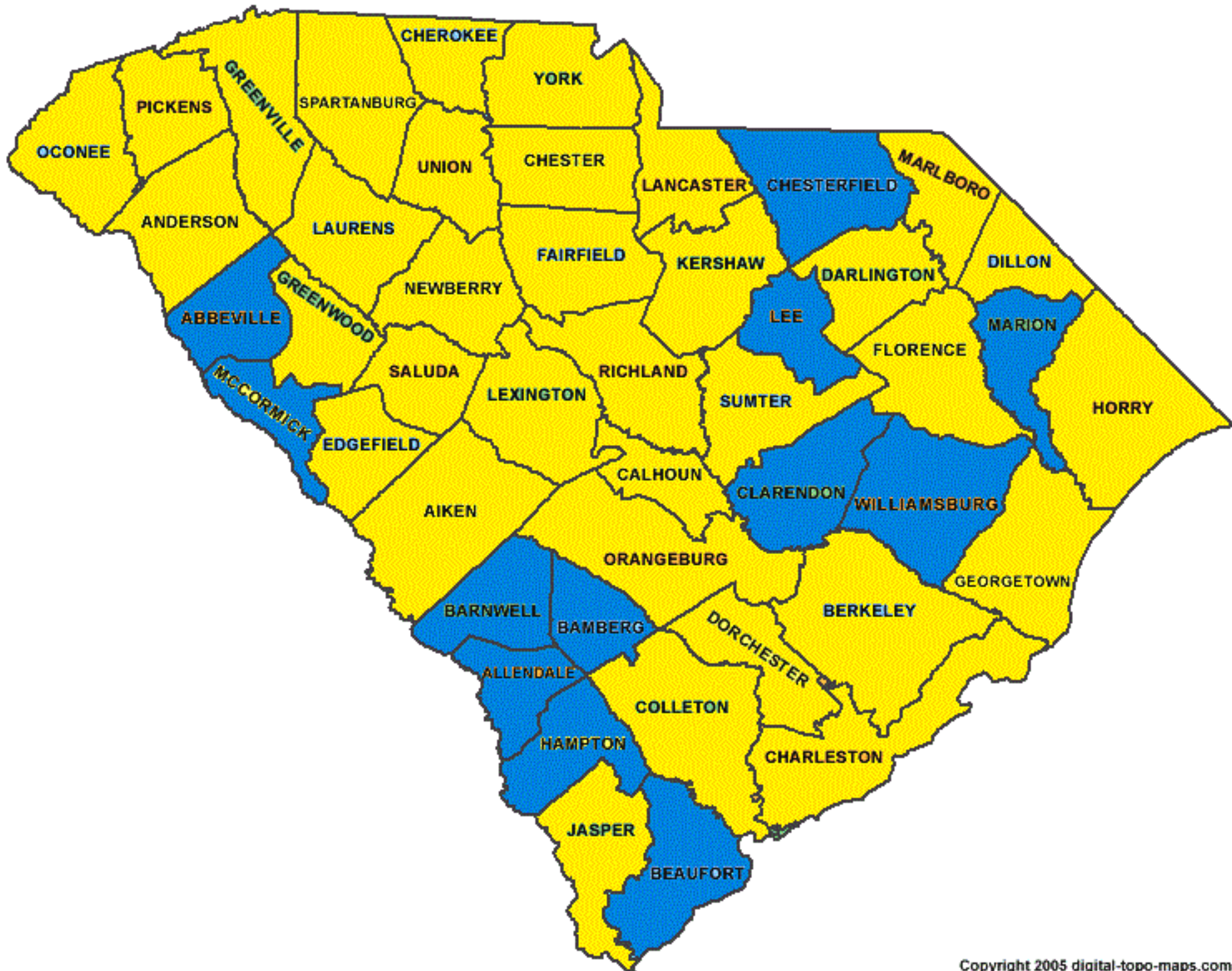


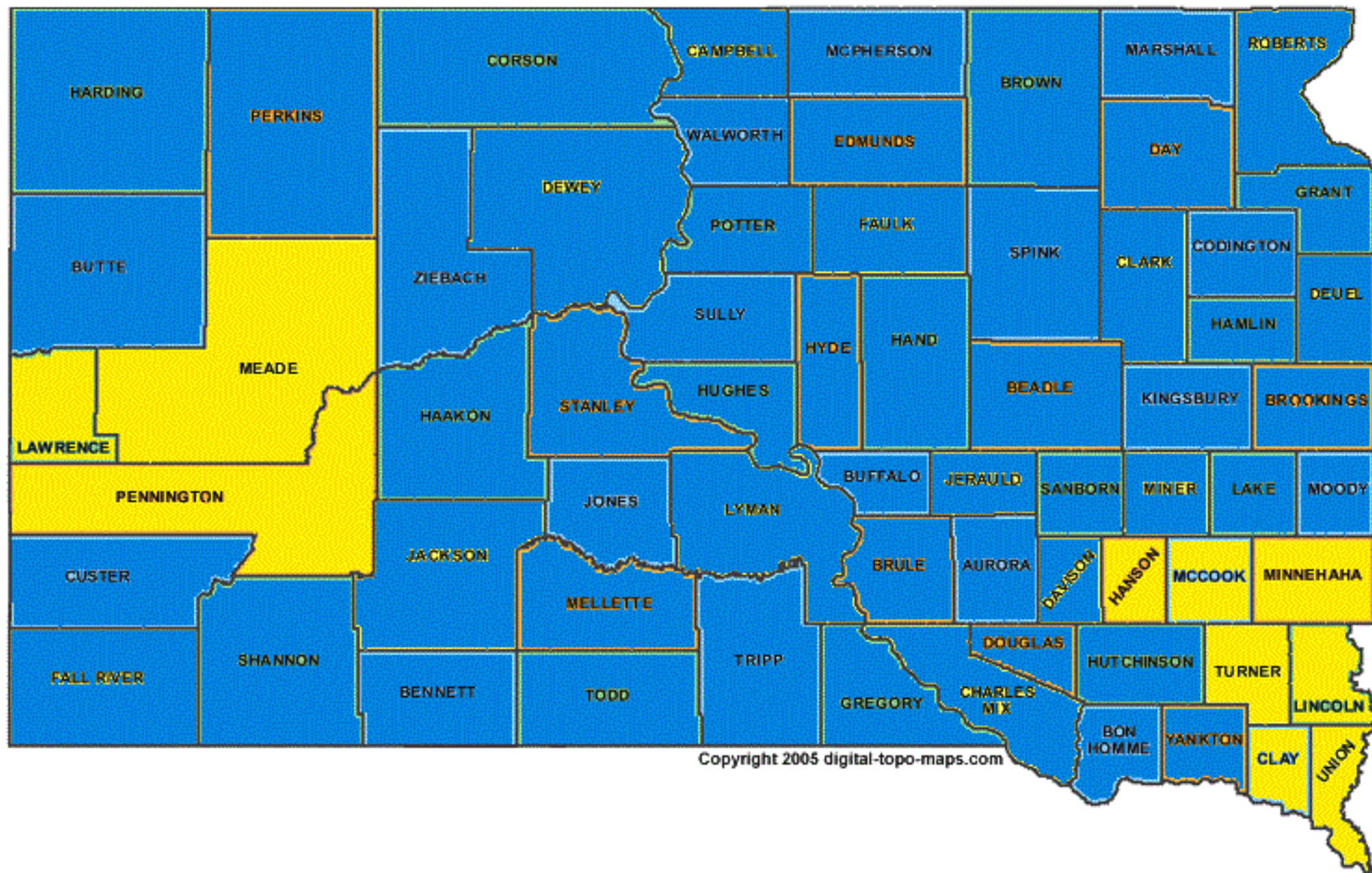


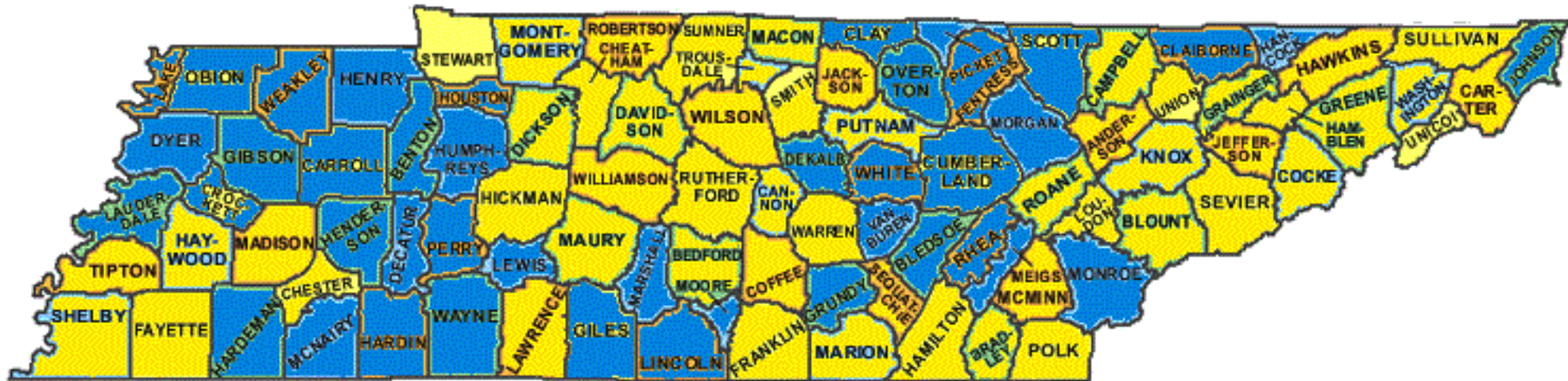


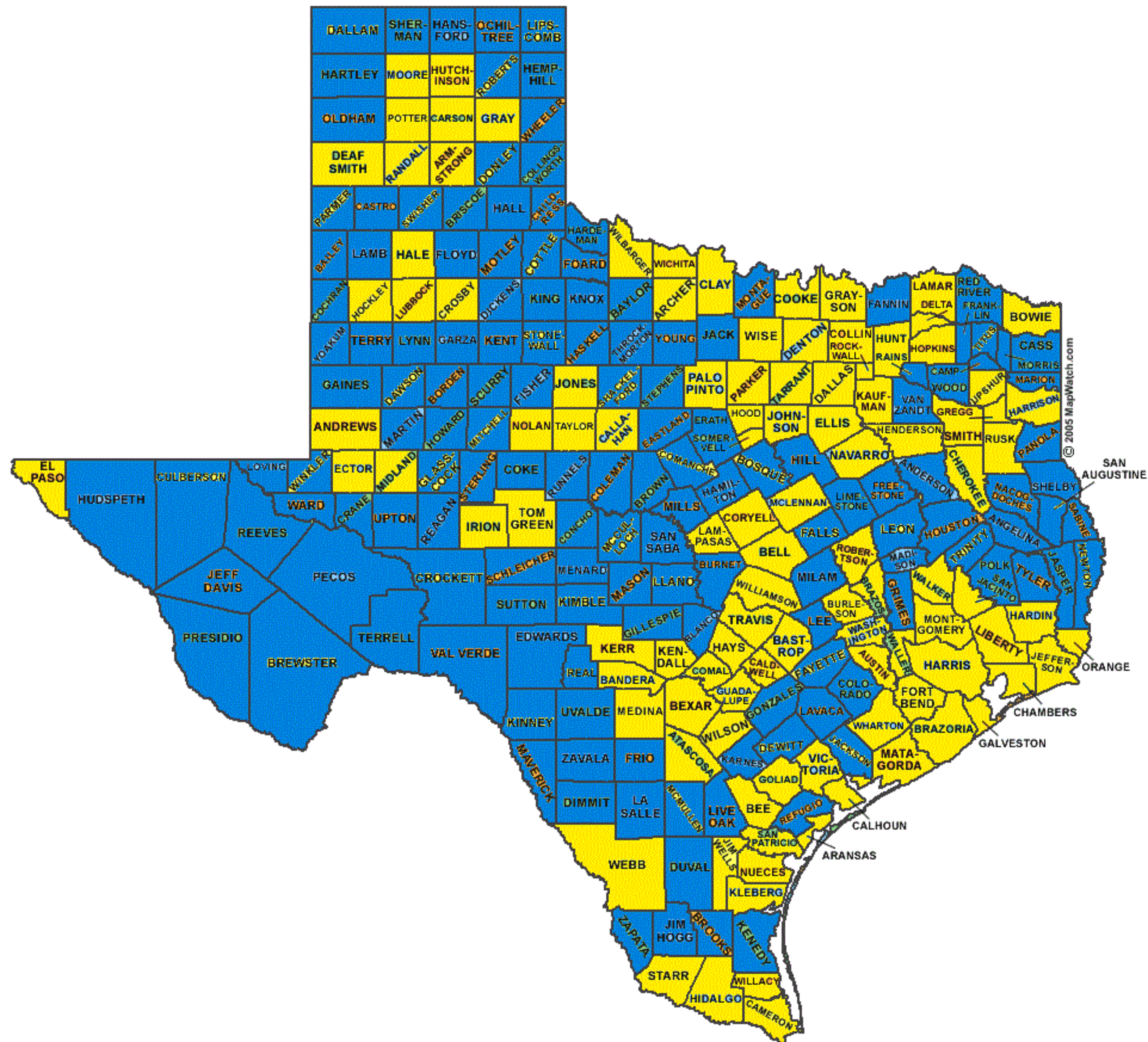


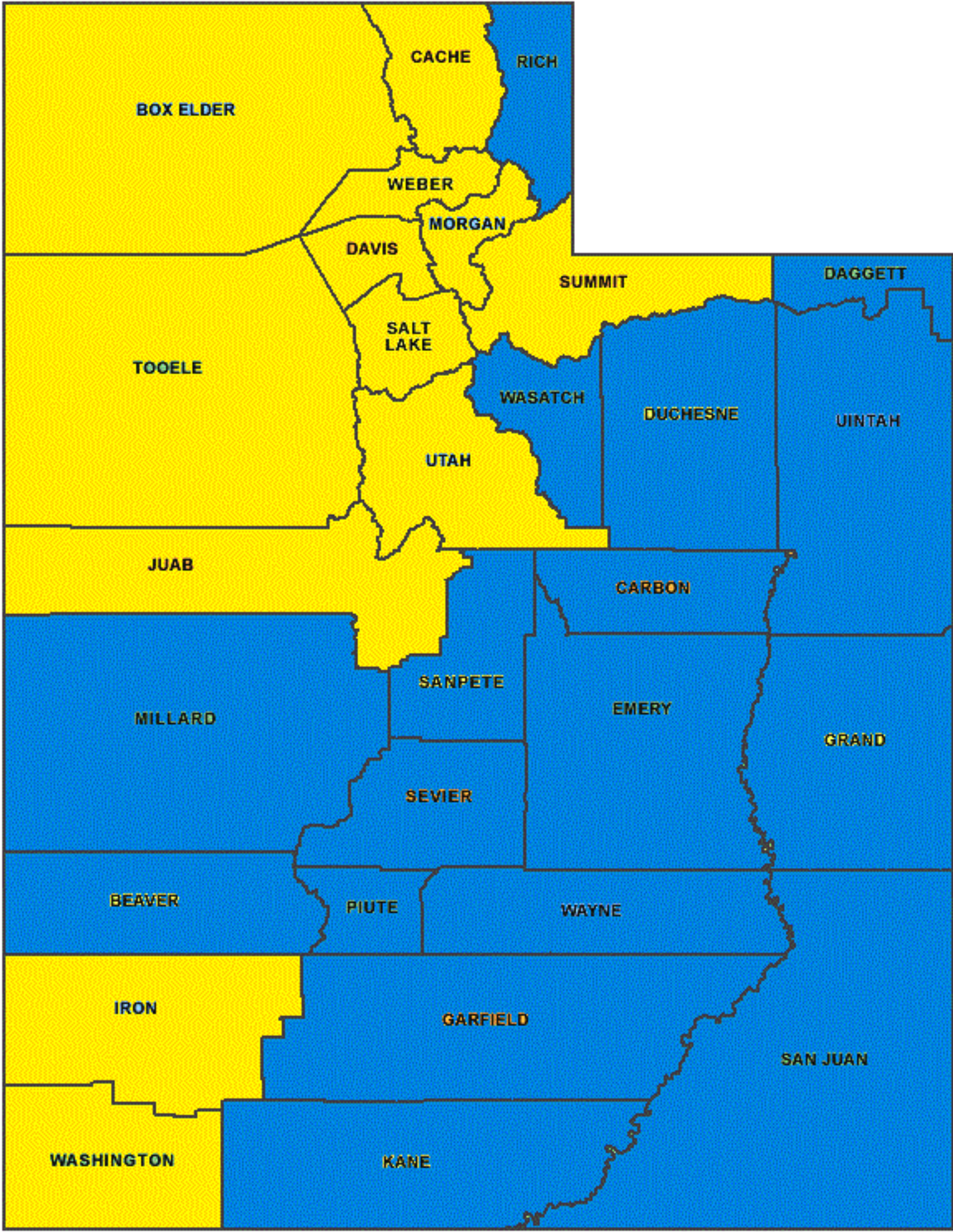


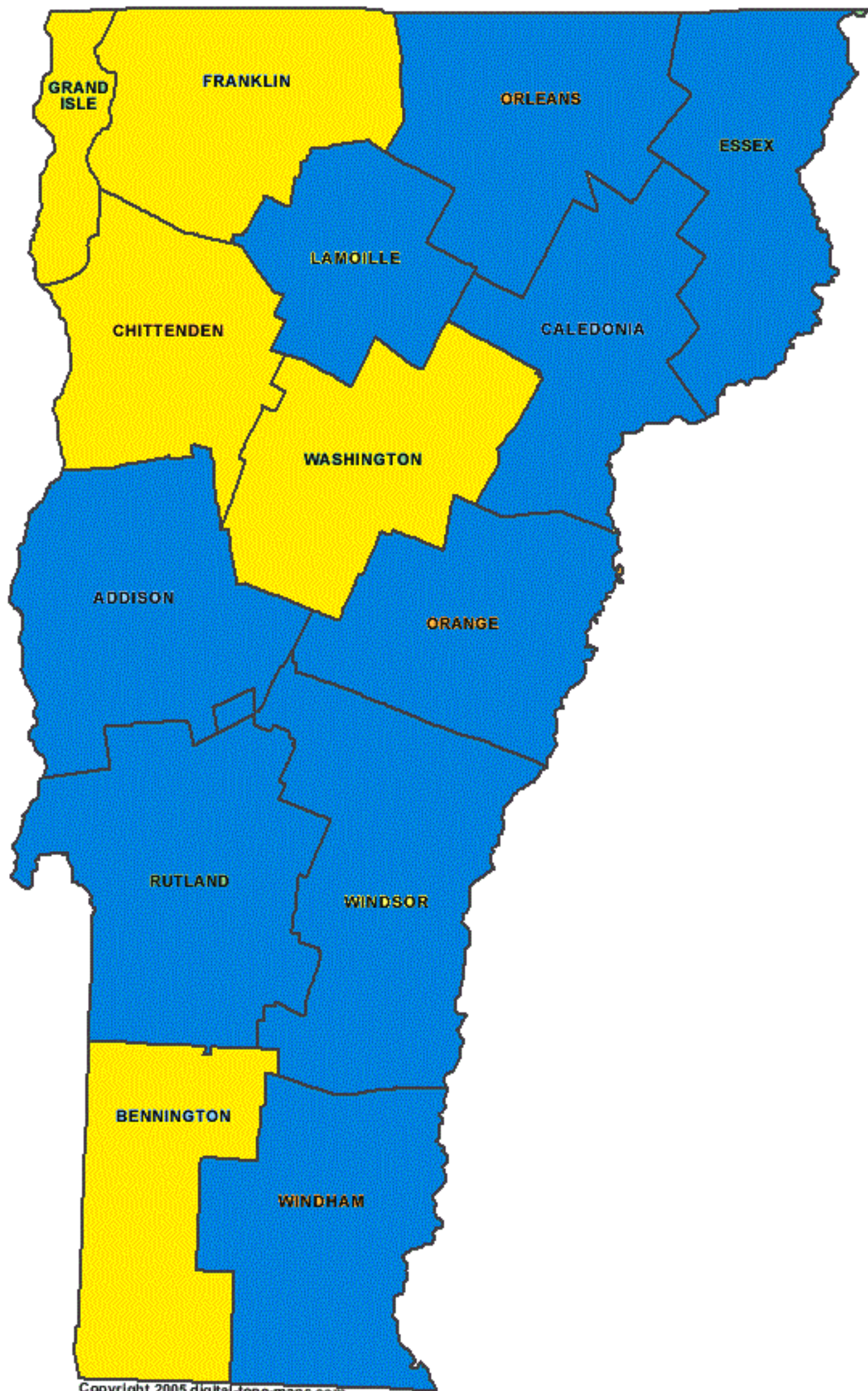












INDEPENDENT CITIES INCLUDE:

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|---------------------|--------------------|
| 1. ALEXANDRIA | 21. LYNCHBURG |
| 2. BEDFORD | 22. MANASSAS |
| 3. BRISTOL | 23. MANASSAS PARK |
| 4. BUENA VISTA | 24. MARTINSVILLE |
| 5. CHARLOTTESVILLE | 25. NEWPORT NEWS |
| 6. CHESAPEAKE | 26. NORFOLK |
| 7. CLIFTON FORGE | 27. NORTON |
| 8. COLONIAL HEIGHTS | 28. PETERSBURG |
| 9. COVINGTON | 29. POQUOSON |
| 10. DANVILLE | 30. PORTSMOUTH |
| 11. EMPORIA | 31. RADFORD |
| 12. FAIRFAX | 32. RICHMOND |
| 13. FALLS CHURCH | 33. ROANOKE |
| 14. FRANKLIN | 34. SALEM |
| 15. FREDERICKSBURG | 35. STAUNTON |
| 16. GALAX | 36. SUFFOLK |
| 17. HAMPTON | 37. VIRGINIA BEACH |
| 18. HARRISONBURG | 38. WAYNESBORO |
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| 20. LEXINGTON | 40. WINCHESTER |

