

STATE ACTIONS IN 1976

ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

Washington, D.C. 20575
(202) 382-2114
February 1977

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Preface

From its first years, the Advisory Commission on Intergovernmental Relations has studied the actions states have taken as they seek to solve problems and strengthen relationships in our increasingly complex society. Balance in the American federal system can only be achieved if there is a continuing process of adjustment in relationships and responsibilities among the levels of government as new intergovernmental problems emerge.

This information report provides a selective summary of state constitutional, legislative, and executive actions during 1976 with emphasis on those with strong intergovernmental implications.

For the most part, this report concentrates on subjects where the Commission has made policy recommendations for strengthening the performance of the states, but it does not contain new suggestions of a policy nature. It is issued strictly as an information and reference report.

Robert E. Merriam
Chairman

Acknowledgments

While the ACIR staff relies on the Commission's own information sources in preparing *State Actions* each year, the job of verifying the information in this report could not have been done without the help of many other organizations and individuals.

The ACIR staff drew freely from legislative summaries prepared by the state legislative service agencies and from governors' press releases. In addition, we gratefully acknowledge the assistance of staff members of, and reports published by the Council of State Governments, the Federation of Tax Administrators, Commerce Clearing House, Tax Foundation, National Association of Counties, National Municipal League, National League of Cities, Common Cause, and the Conference on Alternative State and Local Public Policy. Special thanks are due Neal R. Peirce, contributing editor of the *National Journal*, for allowing us to reprint his article "Overruling the Rule-Makers," and to Common Cause for permitting us to reprint the table on "State Accountability Action."

Lynn D. Ferrell, state-local relations associate, wrote the report and was assisted in his research by Elliott R. Good and Michael J. Sheehan. Gordon Folkman researched and wrote the chapter on "State Fiscal Actions." The typing burdens fell on Elizabeth A. Bunn, Linda Silberg, and Jean Ryan. Overall supervision was provided by Lawrence D. Gilson, director of policy implementation, and several other ACIR staff members contributed to the preparation of *State Actions*.

Wayne F. Anderson
Executive Director

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Introduction

The national economic picture was the dominant influence on state legislative and executive actions in 1976 just as it was in 1975. While inflation drove the price of running state government even higher, the recession cut into tax revenues. Thus, many states had to choose between increasing taxes or cutting budgets in order to make ends meet.

The fact that 1976 was an election year further restricted the type of experimental, new legislation enacted. Legislative sessions were shorter because of the election campaigns, and legislators were understandably concerned about enacting controversial new programs so shortly before the election.

Thus, economic and political constraints conspired to curtail the type of innovative action which has, in past years, earned for state governments the title "laboratories of democracy."

Past debates over the appropriate role of each level of government in many policy areas continued. The role of the states and federal government in setting standards for public sector labor relations, strip mining, land use, and no fault automobile insurance was unchanged. The states remain the laboratories.

However, in many other areas, state actions taken in 1976 were in response to federal requirements. State enactments of laws setting new standards for drinking water quality, pesticide application, coastal planning, and establishing state programs to

create housing opportunities for low and moderate-income families were largely in response to federal legislation. This trend will continue, of course, as the federal government sorts through the nation's problems and decides which call for the setting of national goals and standards. For example, a great deal of state activity can be expected in 1977 in the area of criminal justice planning as the states move to comply with 1976 amendments to the *Safe Streets Act*.

A trend which continued from the previous few years gained new importance in 1976. Legislatures moved to take a stronger role in overseeing state programs. This may be explained as a parallel to the activity of the Congress to establish greater control over the Presidency. But it is probably more appropriate to attribute the growing voice of the legislatures to a need to develop ways to use limited state money more effectively, to meet the citizens' cry for a more accountable government, and as a logical next step in the process of modernizing and professionalizing legislatures which has been seen over the past decade.

Several types of 1976 actions illustrate this growing influence of the legislative branch of state government. Many legislatures moved to strengthen their power to confirm gubernatorial appointments. The legislatures of 24 states have now created mechanisms to oversee state administrative rules and regulations to assure that they meet the legislative intent of the laws being administered. But the most dramatic illustration of the growing importance of the legislatures is the adoption of "sunset" legislation by four states and its consideration in several others.

The Advisory Commission on Intergovernmental Relations prepared this annual summary of state actions in policy areas which have been selected by the staff. This compendium is intended to fulfill two major needs: to draw a sketch of general developments in the states in 1976; and to serve as a source of information which the states, and perhaps the federal government, may use to find possible solutions to particular problems, learning from the experience of others. Some of the major actions observed in the states in 1976 follow.

State Government Modernization

The past dozen years have been marked by a dramatic growth in the range of services provided by state governments at their own initiative and by the extent to which the federal government relies on states to achieve national objectives. Not surprisingly, this increased reliance on the states to meet human needs has resulted in efforts to modernize the structures and service delivery systems of states.

The movement to modernize state governments began in the mid-1960s. The Advisory Commission on Intergovernmental Relations, recognizing the need for state government modernization, has identified many actions which states should take.

The governor should be given broad powers to reorganize state government by executive order, subject to legislative veto. The governor's term should be for four years, and he should be allowed to succeed himself.

Legislatures should meet annually, legislative staff should be provided on a year-round basis, and legislative pay commissions should be created to determine the salaries of legislators and state officials fairly and outside the political spotlight.

The rush of the states to adopt these reform measures in recent years meant that, by the beginning of 1976, much progress had already been made and the reform agenda was shorter in many states. Four-year terms for

the governor are now the law in 42 states, and 37 state legislatures meet annually.

In 1976, only one state — Louisiana — went through a complete state government reorganization. The method for determining the salaries of state officials was changed in four states — Alaska, Idaho, and Maryland created pay commissions, and Arkansas removed salaries from the state constitution to allow them to be set by statute. In two states — Arkansas and Hawaii — the voters approved the convening of a constitutional revision convention, while Georgia voters approved a rewritten, modernized state constitution.

With the growth in importance of state government has come an increased interest in assuring that state government programs are properly evaluated and held accountable. Thus, legislatures have been moving to strengthen their role in overseeing the executive branch.

That trend continued in 1976. Oregon voters approved a constitutional amendment which allows the legislature to call itself into special session independent of the governor. The power of the legislature to confirm gubernatorial appointments was strengthened in Arizona and California. Colorado and West Virginia became the 23rd and 24th states to adopt legislation establishing procedures for the legislature to overturn state administrative agency regulations which run contrary to the intent of the law being administered. See the case study in this chapter for a discussion of this trend.

But if any single word could be chosen to describe 1976, it would be "sunset." This pioneering concept requires the legislature to systematically review the operation and effectiveness of state agencies. The review, required every six years, is then supposed to give the legislature information it needs to determine whether the agency should be re-created. Lacking such action by the legislature, the agency automatically goes out of business. Prior to 1976, no such law had been adopted by any state. But this year, the concept became law in Alabama, Colorado, Florida, and Louisiana. The Iowa Legislature passed a sunset bill, too, but Governor Robert D. Ray vetoed the law because of his prefer-

ence for "citizen legislators" rather than the full-time, professional legislature which he felt it would promote.

Following is a summary of the year's major efforts directed at modernizing state government.

The **Alabama Sunset Law of 1976** (Act 512) was adopted to provide for the automatic termination of state agencies and establish procedures for recommending the continuance or termination of the agencies after a zero-based budget review. By year's end, a sunset committee had begun reviewing 400 state agencies to make recommendations on their continuing existence. Act 494 established a comprehensive system for budgeting, performance auditing, and financial management responsibilities of the governor, legislature, and state agencies.

Alaska Chapter 97 transferred the Division of Budget and Management from the Department of Administration to the Office of the Governor to give the governor greater control in preparing and administering the state budget. In other reorganization measures, Governor Jay Hammond issued executive orders to move the Manpower Division from the governor's office to the Department of Community and Regional Affairs, the Equal Employment Opportunity Office to the Department of Administration, and the Energy Allocation Assistance Office to the Department of Commerce. The reduction of the number of offices in the governor's office was characterized by Governor Hammond as "part of our continuing effort to improve efficiency and lines of responsibility in state government. One way of doing this is to move those offices with operating functions out of the Office of the Governor into line departments."

The **Alaska** Legislature adopted two measures to modernize the legislative process in the state. Chapter 42 requires that fiscal notes be prepared before legislation proposed by the governor through the Rules Committee is introduced. Chapter 263 established an Alaska salary commission to conduct an ongoing review of compensation and retirement benefits for legislators, the governor, and other state officials.

Arizona voters approved a series of amendments to the state constitution which will

strengthen the senate's confirmation powers over appointments to various posts in the state government.

At the November 2 election, **Arkansas** voters approved a call for a constitutional revision convention. A similar measure approved last year was overturned by the courts because the convention was restricted in the parts of the present constitution which it could consider. The voters also approved a constitutional amendment setting higher salaries for the governor and other constitutional officers and allowing future increases by statute.

California voters approved a measure which requires legislative confirmation of the governor's appointees to fill vacancies in constitutional offices.

A 1976 **Colorado** law (SB 76) declared that rules of state agencies which conflict with state law are void. The act requires all rules and amendments to rules to be submitted to the appropriate committee of the legislature for a review to determine whether the rule is within the agency's delegated power and authority.

Colorado HB 1088 — the state's sunset law — requires legislative review of the state's 43 regulatory agencies every six years with a legislative option to terminate, continue, or reestablish the agency. The act requires a legislative audit of each agency three months before the agency's expiration date. A public hearing must be held to review that audit. At the end of its six-year cycle, each regulatory agency must demonstrate a need for its continued existence and the extent to which a change in the administrative structure would increase the efficiency of the agency.

Connecticut voters approved a constitutional amendment intended to streamline the procedure for reapportioning the legislature.

Florida also adopted a sunset law, the *Regulatory Reform Act of 1976* (Chap. 76-168). The act provides legislative review every six years of agencies which license or regulate the entry into a profession, occupation, business, industry, or other endeavor. The act created a joint legislative committee to establish procedures for implementing the act. The new law also provides criteria for review-

ing the programs and functions to determine the economic effects of continued regulation.

On November 2, **Georgia** voters approved 27 amendments to the state constitution. Among those measures were amendments to allow the governor to succeed himself for one four-year term, to provide for the removal of disabled executive branch officials, and to prohibit legislators from changing their compensation during their term of office. Another one of the measures approved was a revised state constitution. The "new" constitution is basically a change in the order and a restructuring of the old constitution in order to make it clearer and to remove extraneous language.

Hawaii voters approved the convening of a constitutional convention. The 1977 session of the legislature will determine when the convention will meet.

On November 2, **Idaho** voters approved an amendment which removes constitutional limits on legislators' pay. The amendment will also establish a citizens committee to recommend legislative compensation.

Candidates for governor and lieutenant governor of **Indiana** will now run as a team, as required by HB 1046.

Louisiana Act 277, a sunset statute, provides for the termination of all statutory entities on particular dates. A statutory entity is defined as any office, department, agency, board, commission, institution, division, officer, or other functional group created and continued in existence by a statute or legislative resolution to which state funds are appropriated. A companion measure (Act 146) adopts zero-based budgeting for the preparation of the executive budget.

Acting to implement a provision in the 1974 state constitution, **Louisiana** also reorganized hundreds of state agencies into 12 cabinet-level departments. Eight other departments are due to be reorganized by the 1977 session of the legislature.

Voters in **Maryland** approved a measure which requires the legislature rather than the governor to fill a vacancy in the Office of State Treasurer. Another measure approved November 2 creates a commission to recommend the salary of the governor and lieutenant governor. Chapter 281 expanded the membership of the legislature's Commission

Case Study

Overruling
The Rule-Makers

by Neal R. Peirce

A 19th century sage — reportedly Daniel Webster — once observed: “Now is the time when men work quietly in the fields and women weep softly in the kitchen; the legislature is in session, and no man’s property is safe.”

Now the tables may be turning, as state legislatures emerge as the people’s protectors against a modern threat — haughty bureaucracies and their unnecessarily meddlesome regulations, in every area from utilities to health care, from water systems to professional licensing.

Riding a wave of intense citizen resentment against excessive bureaucratic regulation, 24 state legislatures have set up mechanisms to review and overturn bureaucratic rules and regulations that they consider — in the words of an Iowa law — “unreasonable, arbitrary, capricious or beyond the scope of agency authority.”

The review procedures vary greatly in thoroughness and “teeth” in the enabling statutes. But more and more legislatures are acting. The latest is West Virginia, which overrode the governor’s veto to set up a legislative rule-making review committee that can suspend objectionable regulations issued by state agencies.

“Our citizens,” according to State Rep. Dan Tonkovich, D., a key supporter of the West Virginia bill, “are being governed

more and more by bureaucratic red tape and less and less by laws and statutes. Unelected bureaucrats are going so far as to issue rules and regulations that directly contradict legislative intent and acts.”

Says South Dakota Rep. Beverly Halling, R., “So often legislators get blamed for things that are done by rule or regulation. We pass a bill and when the bureaucrats get through with it, it scarcely resembles what we passed.” Halling, a member of her state’s six-year-old rules review committee, says it has had some “real knock-down, drag-out fights” with bureaucrats, often forcing them to back off on proposed regulations.

Legislators in several states, including Florida and New York, say they’ve discovered instances in which executive departments issue regulations that are practically verbatim copies of bills that the legislature has considered and refused to pass.

The idea of legislative review of executive rules is not new. Michigan, for example, has had a review system since 1947. But the issue has surfaced anew with increased vigor in the 1970s as a reaction to alleged abuse of rule-making power by the vastly expanded state bureaucracies created during the past 15 years. Of the 24 states now involved, all have started up or substantially strengthened review procedures since 1970.

The standard procedure is for all the bureaucracy’s rules and regulations to be submitted to a special bipartisan review committee of both houses of a legislature, or alternatively to regular legislative committees. When the committees

on Intergovernmental Cooperation. Most states have such commissions to deal with interstate concerns. The expansion of Maryland’s commission to include representatives of local governments will allow it to act as a quasistate advisory commission on intergovernmental relations.

A 1976 amendment to the **Nebraska** constitution gives the legislature the power to line-item override the governor’s line-item appropriation vetoes.

A measure approved by **Nevada** voters will permit the legislature to adopt a consent calendar for uncontested bills. A consent

find objectionable regulations, they're often able to persuade the executive departments to modify or withdraw them altogether.

When negotiation doesn't work, 13 states — Alaska, Arkansas, Colorado, Florida, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Missouri, Nebraska, Oregon, and Washington — refer the dispute to the full legislature, which can pass a statute repealing the offensive regulation. In five others — Idaho, Michigan, Minnesota, Montana, and South Dakota — the regulation can be overturned by a simple resolution of both houses, an easier method because the governor's signature isn't required.

Finally, there are six states — Connecticut, Wisconsin, West Virginia, Tennessee, South Dakota, and Oklahoma — where it's even easier to stop a new regulation in its tracks, or at least hold it in abeyance until the next legislative session. Connecticut's method is the strictest of all: not only can the legislative regulations review committee suspend a regulation, but the rule is never implemented unless the full legislature later reverses the decision of its committee.

In many states there are doubts about the constitutionality of permitting a single legislative committee to suspend an executive department rule. This year, voters in Florida and Missouri rejected constitutional amendments that would have made the practice indisputably legal.

Thin staffing for the special rules and regulations oversight committees is another problem. The Connecticut review committee, for instance, has a paltry

annual budget of \$10,000. South Dakota's Rep. Halling, a true citizen-legislator (she operates a motel in Spearfish), complains of having virtually no staff and having "a hard time keeping on top of everything."

In Florida, by contrast, the joint administrative procedures committee has six full-time attorneys and an annual budget of \$250,000. Not a single new rule of the Florida bureaucracy escapes review, including a check to see if it's a copy of legislation that failed to pass. The Florida attorneys are even combing over thousands of regulations of earlier years, to make sure they conform to state law and legislative intent.

"This is the first time in Florida's history," according to Carroll Webb, director of the joint committee there, "that the legislature is attempting to represent the people fully, on a continuing, day-to-day basis, as the people's board of directors."

In 1975, its first full year of operation, the Florida committee discovered that 79 percent of the rules issued by the bureaucracy had technical errors of one type or another, and that 6 percent exceeded statutory authority. This year the percentage of technically flawed regulations has dipped to 60 percent, suggesting the agencies are responding to the legislature and doing their own homework more carefully.

Eventually, such finely honed procedures should make clear to legislators how often their own bills are technically flawed, vaguely worded, or hard to interpret — thus inviting the kind of abuse they accuse the bureaucrats of perpetrating.

calendar speeds up the legislative process by allowing bills to pass without an actual floor vote if no legislator objects after an item has been on the calendar for a designated time.

New Mexico Governor Jerry Apodaca reorganized his cabinet under 12 instead of 14 secretaries. The governor said he would place

as many agencies as possible under the supervision of the secretaries and that he would present some reorganization bills to the legislature. On November 2, voters approved an amendment limiting the legislature to its present size and requiring that members be elected from single-member districts.

Governor James Rhodes of **Ohio** appointed a ten-member task force to find and investigate obsolete state commissions and make recommendations for their dissolution. The task force was to report its findings by December 1, 1976. Ohio voters approved a constitutional amendment which provides for gubernatorial succession when the governor can no longer serve.

A new article in the state constitution requires the **Oklahoma** Legislature to reapportion itself within 90 legislative days after the convening of the first regular session following a federal decennial census.

Oregon voters approved a constitutional amendment which permits the legislature to

convene itself in special session at any time upon the written request of a majority.

Measures adopted by **South Carolina** voters on November 2 permit the state house of representatives to meet for an organizational session and allow the revision of an entire article of the constitution rather than the previous one-change-at-a-time method.

The **West Virginia** Legislature overrode a veto by Governor Arch Moore, Jr., to provide for legislative review of rules and regulations promulgated by state administrative agencies. The act also created a state register in which rules and regulations will be printed. Public hearings must be held on proposed rules before they may go into effect.

Local Government Modernization

Just as state governments have been working to streamline and rationalize their structures so, too, have local governments sought to achieve greater efficiency and accountability. The duplication of functions and the overlap of structures at the local level could be reduced if a series of local government modernization efforts were adopted.

The obstacles to local government modernization are many. Too often, local governments are reluctant to undertake restructuring, and the voters seem even more reluctant to approve such measures. Other obstacles are state laws — or the absence of state laws — frequently restricting local initiatives and local reform efforts.

Since its earliest days, the Advisory Commission on Intergovernmental Relations has recommended that states grant broad home rule powers to their local governments, that local governments be authorized to consolidate either their complete structures or the provision of a given service, and that local governments have a range of optional forms of government which they may adopt.

The 1976 legislative sessions saw approval of about the same number of such reforms as in 1974 and 1975. Home rule powers were extended to Idaho municipalities. Arkansas, Georgia, and Ohio enacted statutes broadening local governments' discretionary powers

to consolidate services. Missouri passed a new law allowing cities to consolidate. Local governments were granted wider latitude in determining their own structure by the Colorado, Maine, Mississippi, and South Dakota Legislatures.

In 1974, five city-county consolidations were proposed and all were rejected. The track record improved in 1975 when two of three such proposals were adopted. Again in 1976, three such consolidations were proposed — all in Montana — and two were adopted. One of the consolidations approved in 1975, however, was nullified by the courts (Las Vegas and Clark County, Nevada).

The United States District Court for the Southern District of **Alabama** ordered the city of Mobile to change its method of electing the members of its city council to afford greater representation of blacks. See the case study.

Alaska provided that a consolidated municipi-

ality would continue to receive at least as much revenue sharing from the state as the separate governments would have received if consolidation had not occurred (Chap. 265). SB 683 revised the standards and procedures for municipal incorporation. The bill prescribes new standards relating to proposed boundaries, economy, stability of population, and the need for local government.

Arkansas enacted legislation to permit two or more cities to have the same elected judge to serve in municipal courts (HB 1218).

California extended to general law counties the authority now possessed by charter counties to determine whether the county superintendent of schools is elected or appointed. AB 3369 authorizes counties to contract with, and charge fees to, any special or school district to provide financial and accounting services.

The **Colorado** Legislature passed SB 58 to

Case Study

Federal Court Orders Change In Mobile, Alabama, Form Of Government

In 1976, the United States District Court for the Southern District of Alabama ordered Mobile, Alabama, to change its form of government on the grounds that the present at-large commissioner system discriminates against blacks. This decision is one which could have a strong affect on future state and local actions with regard to the structure of local governments.

Residents of the City of Mobile brought the civil action against members of the Mobile City Commissioners, charging that the current multimember, at-large election of Mobile city commissioners results in an unconstitutional dilution of black voting strength and violates the one man-one vote principle.

The task of the court was to determine whether the black community had an

equal opportunity to participate and be represented in the political process. According to earlier court decisions in other cases, "Access to the political process and not (the size of the minority) population is the key determinant in ascertaining whether there has been invidious discrimination."

Mobile is the second largest city in Alabama, located in the southwestern part of the state. In 1970, the population was 190,000; approximately 35 percent of that total was black.

According to a University of Alabama housing survey of Mobile, "the housing patterns in the city are so segregated it is impossible to divide the city into three contiguous zones of equal population without having at least one predominately black district." Segregated housing patterns have resulted in a concentration of black voting power.

Mobile is governed by a three-person commission form of government adopted in 1911. Each commissioner holds his elected office for four years with the mayoralty rotating among the commissioners every 16 months.

give home rule counties permissive powers which non-home rule counties are given by statute, unless those powers are prohibited by the county charter or state constitution. The act also provides that any power, function, service, or facility vested by statute in a particular county officer, agency, or board may be exercised by any other county officer, agency, or board designated in the charter.

Connecticut SB 18 allows two or more regional planning agencies to establish joint committees to recommend policies relating to interregional concerns and to share staff.

Counties and municipalities in **Georgia** may combine to jointly exercise their planning and zoning powers (HB 1324).

Idaho granted home rule provisions to its cities (HB 422). HB 542 prevents cities and counties from enacting ordinances which carry less stringent penalties than those provided by state law.

Indiana got first approval of a constitutional amendment to allow a person to serve an unlimited number of terms as sheriff (HJR 10). The amendment must be passed by the next general assembly as well before being placed on the ballot for final approval.

The legislature proposed an amendment to the **Iowa** Constitution which would grant home rule powers to counties and the authority for city-county consolidation (SJR 1006). The power to tax would be limited unless authorized by the general assembly. Before it can become effective, the amendment will have to be approved by the legislature again in 1977 and placed on the ballot in 1978.

Kansas gave boards of county commissioners the power to enforce all resolutions passed under their county home rule powers. The boards were also given the power to prescribe penalties for violations (SB 3).

The **Maine** Legislature (LB 2251) passed

Individuals are elected at-large by the voters of Mobile. While commissioner candidates must be residents of Mobile, there is no requirement for residency in any particular district.

One indication that local political processes are not equally open is the fact that no black person has ever been elected to the at-large city commission.

In the Mobile of the 1960s and 1970s, there has been a general polarization in the black and white voting.

Most active candidates for public office testified that it was very unlikely that a black could be elected against a white under the at-large system. Most agreed that racial polarization was the basic reason.

Since the 1972 creation of single-member state legislative districts, three blacks of the present 14-member Mobile County delegation have been elected. Their districts are more heavily populated with blacks than whites.

The court ordered a committee of three to draft a "strong" mayor-council form of government with the mayor to be chosen at-large. The councilmen are to

be chosen from nine single-member districts.

The court's decision could have implications for other cities as the one man-one vote principle is extended to cover local governments as well as state legislatures and racial as well as urban-rural malapportionment.

The Mobile decision will be appealed by the city commissioners to the Fifth Circuit Court of Appeals and may ultimately reach the U.S. Supreme Court.

The Mobile decision is the second recent federal court decision which voided a city's commission form of government. In July 1976, a federal district court in Louisiana declared the city of Shreveport's commission form of government, also with at-large election, as operating "impermissibly to dilute the minority voting strength of black electors."

The Louisiana decision did not, however, mandate a specific form of government. Rather the court ordered the city to develop language to change its charter to bring it into compliance with the U.S. Constitution. The revisions will be voted on by the Shreveport electorate.

an act to enable counties to hire county administrators. LB 2253 was enacted to change the county budgetary process to an annual basis.

A new **Maryland** law (Chap. 431) requires that counties promptly report to certain state agencies after adoption or rejection of a change in the form of county government.

County boards in **Minnesota** were authorized to establish a personnel administration system for all county employees. The act also includes, at the option of the county board, any or all employees presently in the state-wide merit systems. Certain positions such as elected positions, court appointed employees, department heads and their chief deputies or principal assistants and their personal secretaries are excluded from coverage. The bill (Chap. 182) further establishes minimum requirements and procedures which must be followed if the county elects to establish a personnel system, including the creation of a personnel department.

Mississippi (HB 387) made the mayor-council form of government available to all municipalities in the state. Prior to this, cities had the choice of three forms of government: mayor-alderman, commission, and council-manager. Chapter 327 established the position of chief administrative officer within the municipal form of government.

Missouri law now allows contiguous cities to consolidate upon approval of the voters of the affected jurisdictions (HB 1295).

Montana's unique experiment requiring a review of all local governments in the state ended in 1976 when several elections were held to ratify or reject recommendations of the local government study commissions. Two of the three proposed city-county consolidations were approved. Twenty-six municipalities changed their form of government, and 15 of

those adopted home rule. Four counties adopted a new form of government and two chose home rule. Two service consolidations were adopted, consolidating the municipal police and sheriff's departments. The total of 32 changes in the form of government completed the process of government review in 126 municipalities and 56 counties in Montana.

The consolidation of Las Vegas and Clark County, **Nevada**, which was enacted by the 1975 legislature, was overturned by the state supreme court. The court ruled that the statute, which applied only to Las Vegas and Clark County, violated the state constitution's prohibition of special legislation.

A new **Ohio** law (HB 111) permits certain political subdivisions to join in the creation of a joint recreation district. The bill authorizes a joint recreation district to levy property taxes and issue bonds for the purpose of acquiring, operating, equipping, and maintaining recreational facilities.

The consolidation of county offices upon a majority vote is now permitted in **South Dakota** (SB 8). SB 22 allows any of the remaining three "unorganized counties" to merge by local prerogative. An unorganized county is an area with too small a tax base to support a local government, usually due to a large amount of non-taxable federal land in the area.

Virginia extended the term of the commission on city-county relationships (Chap. 578).

Wisconsin local governments may, under the provisions of AB 1227, purchase warehoused materials and equipment from the state's Department of Administration. As the state expands its warehousing and transportation networks, the measure is expected to result in substantial savings to towns, cities, villages, school districts, counties, and quasi-public corporations.

Fiscal Overview And Trends

State fiscal activity in 1976 was characterized by continued restraint. Many people perceived the fiscal restraints imposed by the states during 1975 simply as a reaction to the national economic condition. Although the economy operated well below its capacity in 1976, it did experience a modest trend toward recovery throughout the fiscal year. However, with this improvement, restraint still dominated thought and action. This indicates that the fiscal restraint among the states may be something more than a temporary reaction to adverse economic conditions — it may represent a general desire among the public and among government officials to slow down the growth in government. A “hold the line” public attitude was clearly revealed in the 1976 ACIR public opinion survey which showed that only 5 percent of the respondents favored increased government services and higher taxes.¹

The posture towards government restraint is perhaps the strongest in the Northeast where several states faced budget deficits in 1976. For example, New York Governor Hugh Carey noted, “So we enter a new age in which our goals are less government; less spending; fewer government employees. . . .” Maine’s Governor James B. Longley, stressed the need for “fiscal responsibility.” Governor Michael S. Dukakis of Massachusetts declared the most important goal for 1976 was

to continue the tough fiscal and management policies begun in 1975 and to increase government efficiency. The feeling of restraint was also expressed by governors from other regions. Governor Richard D. Lamm of Colorado stated that the time of unlimited growth is over and Governor Edmund Brown of California considered the "era of limits" a welcomed challenge.²

A survey conducted for the National Governors' Conference also showed that the governors perceived the improved economic conditions not as a signal to "loosen the purse strings," but as an opportunity to "consolidate a balanced budget without new taxes."³ As a consequence, only 17 states increased taxes in 1976 and only seven states anticipated new taxes in 1977. A further indication of fiscal restraint was reflected when the governors recommended an increase of only 7 percent in state general fund expenditures for fiscal year 1977. This projected increase barely keeps pace with the current inflation rate and is below the estimated 9.8 percent expenditure increase experienced in 1976.⁴

Despite the recent policy initiatives and desire to limit the growth in government, there is mixed indication as to whether the growth in the state-local sector will continue to increase at an increasing rate (see Table 1). Pushed by expanding federal aid, total expenditures amounted to \$238.4 billion in 1976, a 12.4 percent increase over 1975. In 1976 state-local expenditures comprised 14.9 percent of current GNP, an increase of almost 1

percent since 1974. State-local employment also increased as a percent of the labor force from 12.6 percent in 1975 to 12.8 percent in 1976. The significance of the state-local sector relative to the federal sector, however, continued to decline. In 1976, state-local expenditures comprised only 42.9 percent of all government expenditures compared to 44.7 percent in 1974. In addition, between 1969 and 1975, state-local expenditures, excluding federal aid, increased at an annual rate faster than GNP, 9.8 percent compared to 8.7 percent respectively. The estimate for fiscal year 1976 does, however, indicate a relative slowdown in the state-local growth with current GNP increasing by 12.3 percent and state-local expenditures increasing by only 10 percent.⁵

The state-local fiscal sector is becoming more sensitive to fluctuations in the national economy. In recent years, state and local revenue systems have continuously shifted towards broader based taxes. The state personal income tax has increased in relative importance, while relative reliance on the property tax has diminished. Currently, only nine states are without a comprehensive personal income tax: Connecticut, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming. Individual income tax collections in 1976 accounted for 15.9 percent of total state-local tax revenue (Table 2). More importantly, however, income tax collections have been increasing at an average annual rate of 13.5 percent during

Table 1
State-Local Public Sector Growth: 1974-1976

Fiscal Year	State Local Expenditures¹ (millions)	Percent Change Over Previous Fiscal Year	State-Local Expenditures¹ as a Percent of all Government Expenditures	State-Local Expenditures¹ as a Percent of GNP	State-Local Employment as a Percent of Labor Force
1974	\$190,500	10.7%	44.7%	14.0%	12.4%
1975	212,000	11.3	43.0	14.7	12.6
1976	238,375	12.4	42.9	14.9	12.8

¹Includes federal aid.

Source: Survey of Current Business, various issues and ACIR staff compilation.

Table 2
Changes In The Big Three State-Local Taxes:¹
Fiscal Years 1971-1976

Fiscal Year	Individual Income Tax (millions)	Percent of Total Taxes	Percent Change Over Previous Fiscal Year	General Sales Tax (millions)	Percent of Total Taxes	Percent Change Over Previous Fiscal Year	Property Tax (millions)	Percent of Total Taxes	Percent Change Over Previous Fiscal Year
1971	\$11,544	12.2%	8.0%	\$17,710	18.8%	8.8%	\$38,260	40.6%	7.1%
1972	15,411	14.2	33.5	20,418	18.8	15.3	42,713	39.3	11.6
1973	17,977	15.0	16.6	22,884	19.1	12.1	45,302	37.9	6.1
1974	19,607	15.1	9.1	26,267	20.2	14.8	48,836	37.5	7.8
1975	21,703	15.4	11.1	29,075	20.5	10.7	51,792	36.6	6.0
1976	24,715	15.9	13.9	32,144	20.6	10.6	56,332	36.2	8.8

¹Current dollars.

Source: ACIR staff compilations based on data from U.S. Bureau of the Census, *Quarterly Summary of State and Local Revenue*, various issues.

the past five years, while sales tax revenue and property tax revenues have increased at only 10.4 percent and 6.8 percent respectively during the same period.

Federal aid is the only state-local revenue source growing at a faster rate than income tax revenue, increasing at an average rate of 14.2 percent since 1971.⁶ The increase in federal aid, especially over the last two decades, has been a major contributor to the rapid increase in state and local fiscal activity. In 1954, federal aid accounted for 8.5 percent of total state and local revenue and by 1976 that figure more than doubled to 19.9 percent with the fastest growth occurring between 1965 and 1973.⁷ During this period,

federal aid not only boosted state and local expenditures, but may have also stimulated state and local taxing as a result of matching type categorical grants.

Broad-based taxes, such as the income tax, tend to be more responsive to economic growth, but also more sensitive to economic stagnation or decline. The increased state-local reliance on the personal income tax and Federal revenue may produce more of an ebb and flow in state-local budgets reflecting swings in national economic trends. Of course, the national economy affects state economies differently, thus some states will enjoy surpluses while others experience deficits, as is the case at present.

Table 3
State-Local Taxes:¹
Fiscal Years 1972-1975

Fiscal Year	Percent Change in Current GNP	State-Local Taxes (millions)	Percent Change Over Previous Fiscal Year	State Only Taxes (millions)	Percent Change Over Previous Fiscal Year
1972	9.0%	\$108,570	15.2%	\$59,940	17.6%
1973	11.4	119,508	10.1	67,689	13.0
1974	9.7	130,126	8.9	73,966	9.3
1975	6.0	141,375	8.7	80,045	8.3
1976	11.4	155,477	10.0	88,900	11.6

¹Current dollars.

Source: U.S. Bureau of the Census, *Quarterly Summary of State and Local Tax Revenue*, various issues. *Survey of Current Business*, various issues.

Case Study

New Jersey Income Tax Package

New Jersey became the first state since 1971 to legislate a comprehensive personal income tax. The action was prompted by the New Jersey Supreme Court which found in 1973 (*Kenneth Robinson v. William T. Cahill*) that the method of financing the state's public schools violated the state's constitution. The New Jersey Legislature responded on September 29, 1975, by enacting the *Public School Education Act* which required the state to assume 38 percent of the average per pupil cost of education, but did not provide a system for raising the required additional revenue. On January 30, 1976, the State Supreme Court upheld the constitutionality of the new law on condition that it be fully funded, and established July 1, 1976 as the deadline for the legislature to provide a new financing program. When that deadline was not met, the court closed public schools for eight days. On July 8, 1976, the legislature enacted a graduated personal income tax to take effect July 1, 1976.

The New Jersey personal income tax applies to individuals, estates, and trusts at the rate of 2 percent on taxable income less than \$20,000, and \$400 plus 2.5 percent of income over \$20,000. The withholding of the tax began on September 1. The tax base consists of the usual income categories. Each taxpayer is al-

lowed a \$1,000 personal exemption. Additional exemptions of \$1,000 are allowed for spouses filing jointly, dependents, senior citizens, disabled persons, dependent college students, and dependent children attending private or parochial elementary or secondary schools. Tenants are also eligible for a \$65 credit against the tax and a \$100 credit if the person is a senior citizen or permanently and totally disabled.

The actual implementation of the income tax was contingent upon the enactment of several other tax and fiscal measures which were to combine with the income tax in order to compensate for the maldistribution of property tax resources and reduce the incidence of the tax. The passage of AB 1663 established a revenue sharing fund equal to \$50 million of net revenues from the personal income tax. The fund will be distributed to municipalities which have an effective tax rate in excess of \$1 per \$100 of true valuation according to a population formula. Municipalities will also be reimbursed for senior citizens' and veterans' deductions. The primary purpose of these funds is to provide property tax relief. Residential tenants and landlords will receive, through the passage of SB 1546, some benefits from the property tax savings resulting from the revenue sharing plan. In general, 50 percent of the state aid to each locality is apportioned among qualified rental property according to a specific formula (ratio of assessed value of the particular property to assessed value of all taxable property in the locality). The resulting amount is the reduction of annual tax for the property owner. This reduction is then passed to the tenants in the form of a rebate according to each tenant's pro-

portionate share of total annual rental from the property.

A third supporting measure, AB 1330, provided a homestead exemption applicable to real property taxes due and payable on and after January 1, 1977. The legislation allows an exemption on the dwelling and land which is owned and used as the principal residence of the taxpayer. The exemption is (a) \$1.50 per \$100 of equalized value up to \$10,000 of equalized value, or two-thirds of equalized value, whichever is less; plus (b) 12.5 percent of the effective tax rate in the municipality when the exemption is granted multiplied by \$10,000 of equalized value or two-thirds of equalized value, whichever is less. An additional exemption of \$50 is allowed to senior citizens, permanently and totally disabled persons under 65, and their surviving spouses for the 1977 tax year and thereafter. The total exemption is limited to 50 percent of the property tax otherwise due for the pre-tax year.

New Jersey also enacted, as part of the tax reform package, two bills which placed fiscal limitations on the state and on local jurisdictions. The legislation, which places a "cap" on spending increases by municipal and county governments, marks a substantially tighter form of state imposed limits on local tax and spending power than have heretofore been tried. In general, the legislation prohibits municipalities from increasing their "final appropriations" by more than 5 percent over the previous year with certain exemptions. Exemptions apply to capital expenditures funded by any source other than the local property tax. In addition, programs funded wholly by state or federal funds are exempt. Furthermore,

partially funded state or federal programs are exempt when the financial share paid by the municipality is not required to increase the final appropriations by more than 5 percent. Municipalities may increase spending in three ways: (1) by selling municipal assets or by imposing new or raising old service fees; (2) by increasing the valuation for new construction or improvements; and (3) by voter authorization. The "cap" on county spending parallels the municipal spending limitations. Counties, however, have a "cap" on the county tax levy rather than on "final appropriations."

New Jersey also implemented the *State Expenditure Limitation Law*. The state spending "cap" applies to the general operations and capital outlay sections of the budget. State aid to local governments, expenditures of federal aid moneys received by the state, and principal and interest payments on state general obligation bonds authorized by referendum are all exempt from the limitation. The maximum expenditure of the 1977-78 fiscal year is calculated by multiplying the rate of growth in state per capita personal income between the previous fiscal year (1975-76) and the current fiscal year (1976-77) by the base amount of expenditure of the previous fiscal year (1975-76). The maximum expenditure may be exceeded only if approved by voters through a public referendum.

It is estimated that New Jersey's new personal income tax will raise \$775 million, including \$375 million in school funds. In addition, the tax will finance about \$250 million in local property tax reductions and municipal aid. Surplus funds in the first year will go into a pool to fund school aid in later years.

The state-local sector's sensitivity to recessionary and recovery periods was demonstrated over the past two years. The rate of increase in state-local tax collections reached a relatively low point during fiscal year 1975 (Table 3) increasing only 8.7 percent over 1974. Corresponding with the slower growth in revenue was an increase of only 6 percent in the nation's current GNP. During the 1976 fiscal year, when the economy began to improve, state-local tax revenues increased by 10 percent over the previous year. Although political factors are inherent in these figures, given the level of tax legislation during this period, most of the change in tax revenue can probably be attributed to economic determinants.

State Tax Increases

Legislative action on state taxes in 1976 was relatively light, reflecting the attitude expressed by the governors in urging the legislatures to hold the line on spending and taxing. The amount of revenue from new taxes totaling some \$975 million falls considerably short of the \$1.7 billion proposed early in the year.⁸ Altogether 17 states extracted more tax revenues from one or more of the major state levies. The largest single source of new funds will be the gross personal income tax enacted in New Jersey. Elsewhere, general sales taxes were most frequently tapped — rates of these taxes were increased in five states for some \$380 million.⁹ Personal income tax rates were raised in three states. One state raised its corporate income tax rates, and eight states increased either their excise tax rates on motor fuels, alcoholic beverages, or tobacco. Table 4 shows the major tax credits by creating, expanding, or increasing

State Tax Reduction

Some of the increases realized in state-level taxes would be partially offset by reductions in other taxes. Fifteen states legislated reductions in one or more major tax sources. Utah reduced its personal income tax by 0.25

percent in each bracket. Seven states reduced their personal and corporate income tax credits by creating, expanding, or increasing standard deductions and personal exemptions. Four states reduced their sales tax by either rate reductions on certain transactions or by providing provisions for additional specific exemptions from the general sales tax (Table 5).

In order to offset the effects of inflation, at least ten states in 1976 increased inheritance tax exemptions for all or certain categories of heirs. **Delaware** raised the inheritance tax exemption for surviving spouses from \$20,000 to \$70,000. **Idaho** raised the exemption substantially for most categories of heirs. **Illinois** doubled the exemption for spouses and children from \$20,000 to \$40,000 each. **Iowa** doubled the exemption for transfers to children and other lineal descendants. **Kentucky** doubled its inheritance tax exemption for surviving widows and quadrupled the exemption for surviving widowers. **South Dakota** increased its inheritance tax exemption for transfers to lineal descendants or any adopted or mutually acknowledged child of any lineal descendant from \$10,000 to \$30,000 of clear value. **West Virginia** doubled its existing exemptions and added a new exemption for siblings if the descendant dies unmarried.

Estate and gift taxes were reduced in **Vermont** according to a formula tied to the amount of the federal taxable estate.

The **Ohio** electorate authorized the legislature to determine the size of estates exempt from tax. The limit had previously been \$20,000 under the state constitution.

Local Revenue Diversification

Three important trends are developing on the local finance front (see Table 6): (1) total tax revenue as a percent of local own-source revenue has declined at an annual average rate of .68 percent. Thus, local governments are becoming more dependent upon current charges, fees, and other types of nontax revenue; (2) local property tax revenue has declined in relative importance as a local tax source; and (3) income and general sales

Table 4
State Tax Increases: 1976

	<i>General Sales</i>	<i>Income Individual Corporate</i>	<i>Motor Fuel</i>	<i>Alcoholic Tobacco Beverage</i>	<i>Other</i>	<i>Remarks</i>
COLORADO				X		
CONNECTICUT			X			Raised its tax rate from 10 to 11¢ per gallon.
DISTRICT OF COLUMBIA	X	X	X	X		General sales tax increased on various items: parking from 8 to 12% and restaurant meals, transient accommodations, and alcoholic beverages for on-premise consumption increased from 6 to 8%. (General sales tax in D.C. is 5%). The individual income tax rates were raised on all income above \$4,000 taxable income. The rate in the over \$25,000 bracket was increased from 10 to 11%. The District imposed a surtax equal to 10% of the tax on corporations and unincorporated businesses for 1976 and 1977 tax years. Cigarette tax rate increased from 10 to 13¢.
IDAHO			X			Raised its tax rate from 8.5 to 9.5¢ per gallon.
KANSAS			X			Raised motor fuel tax from 7 to 8¢ per gallon; diesel fuel from 8 to 10¢ per gallon; and liquified petroleum from 5 to 7¢ per gallon.
KENTUCKY					X	Increased the state real property tax rate from 1.5 to 31.5¢ per \$100 of assessed value, and the tax rate on other property for which a rate is not specified was increased from 15 to 45¢ per \$100 assessed value. Coal severance tax was also increased effective 7/1/76 (from 4 to 4.5% of gross value of coal mined in the state; their minimum tax was also increased from 30 to 50¢ per ton).
MAINE		X				Raised its tax on taxable income above \$4,000. The maximum rate was increased from 6% on income over \$50,000 to 8% in 1976, and to 10% on income over \$25,000 in 1977 and thereafter.
MARYLAND			X			Eliminated corporate income tax deductions for non-business interest and dividend income.
NEBRASKA	X	X	X			State sales tax increased from 2.5 to 3% through 5/31/77; individual income tax rate increased from 15 to 17% of federal tax liability; corporation taxes increased from 3.75% on income up to \$25,000 and 4.125% on additional amounts to 4.25% and 4.67%, respectively.
NEW JERSEY		New				Individual income tax took effect 7/1/76 to individuals, estates, and trusts at the rate of 2% on taxable income up to \$20,000, and \$400 plus 2.5% on income over \$20,000. Withholding began in September. (For specific detail see New Jersey case study.)

	General Sales	Income Individual Corporate	Motor Fuel	Alcoholic Tobacco Beverage	Other	Remarks
OKLAHOMA					X	Excise tax rates on oil and gas revised. Tax on petroleum oil produced in Oklahoma has increased from .025% per barrel to .085% of gross value per barrel. The tax rate for natural and/or casinghead gas is also .085% (formerly .05% per 1,000 cubic feet).
RHODE ISLAND	X					The rate increased from 5 to 6%.
SOUTH CAROLINA				X		Imposed a 9% surtax on all taxes on alcoholic liquors.
TENNESSEE	X					General sales tax increased from 3.5 to 4.5% for the period to 4/1/77. The rate is then scheduled to revert to 3%. Sales tax rate on gas, electricity, fuel oil, coal and other energy sources sold to or used by manufacturer was increased from 1 to 1.5%, and the 1.5% rate was also applied to residential use.
VERMONT				X		Tax on various beverages increased from 25 to 50¢ per gallon.
VIRGINIA				X		The tax on all alcoholic beverages increased. The rates vary with type of beverage and if sold through state alcoholic control commission.
WASHINGTON	X					General sales tax increased from 4.5 to 4.6%.

Table 5
State Tax Reductions: 1976

	General Sales	Individual Income	Corporate Income	Personal Retirement Plans	Other	Remarks
CALIFORNIA		X				A larger tax reduction for low-income persons. Credit equals \$40 for single and married persons filing separately having Adjusted Gross Income (AGI) less than \$5,000; credit equals \$80 for heads-of-households having AGI less than \$10,000. The current law provides a special 100% credit for AGI less than \$4,000 (single) and \$8,000 (Married). The new credit is reduced by 50¢ for each \$1 of income over the AGI amounts.
CONNECTICUT	X					Reduced the tax on machinery used exclusively in manufacturing and certain business services to 3.5 from 7%.
HAWAII		X		X		Increased the schedule of income tax credits based on income brackets. Increased state income tax deductions by conforming to federal provisions for retirement deductions.

ILLINOIS			X	Individuals, trusts, and estates can deduct amounts included in their AGI (federal) or taxable income (federal) under Sec. 408 (individual retirement accounts) and 409 (retirement bonds) of the <i>Internal Revenue Code</i> for the purpose of determining their Illinois income tax base.
INDIANA			X	<i>Income tax credit is given for certain contributions to an approved neighborhood association or investment in an impoverished area.</i>
KANSAS			X	An income tax credit is allowed for new business facilities. Credit equals \$50 for each new employee plus \$50 for each \$100,000 in new business facility investment and credit applies for first ten years.
KENTUCKY	X		X	Increased the standard deduction and also increased the amount of the additional personal income tax credit for senior citizens and blind persons from \$20 to \$40. Federal service retirement annuities are excluded from the gross income of persons 50 (formerly 65) years of age or older.
MAINE	X		X	Increased the standard deduction. The insurance premiums tax does not apply to individual retirement account premiums.
MISSOURI			X	The premium tax does not apply to premiums received from policies issued in connection with the funding of an individual retirement annuity qualified or exempt under Sec. 408 of the <i>Internal Revenue Code</i> .
NEW JERSEY			X	The capital gains and other unearned income <i>Tax Act</i> , the <i>Emergency Transportation Tax Act</i> (imposing a tax on New York residents working in New Jersey), and the <i>Transportation Benefits Tax Act</i> (imposing a tax on Pennsylvania residents working in New Jersey) were repealed effective July 1, 1976).
PENNSYLVANIA			X	Increased the maximum amount of the tax credit a corporation may claim for investment in an approved neighborhood assistance program, from \$175,000 to \$250,000.
SOUTH CAROLINA	X		X	Exempted prescription drugs from sales tax. Retirement pay received by police officers and firemen from a municipality or county which has a group retirement plan is not included in gross income.
TENNESSEE	X	X		Exempted prescription drugs from sales tax. Income of low-income elderly are exempt from income tax if single person has income less than \$4,800 and if married filing jointly have combined income less than \$6,000.
UTAH	X	X		Exempted prescription drugs from sales tax. Income tax rate was reduced by .25% in all brackets.
VIRGINIA			X	Retirement income tax credit adopted equal to 5% of maximum amount allowable as a benefit under Title II of <i>Social Security Act</i> .

Table 6
Local Government Revenue, By Source: 1970-1975

Fiscal Years	Total General Revenue from Own Source	Total Tax Revenue from Own Source	Taxes as Percent of Total General Own-Source Revenue	Property Tax as Percent of Total General Own-Source Revenue	Income and Sales Tax as Percent of Total Own-Source Revenue
1970	51,392	\$38,833	75.6%	64.1%	9.2%
1971	57,491	43,434	75.6	63.9	9.4
1972	64,449	48,930	75.9	63.4	10.1
1973	70,489	53,032	75.2	62.4	10.4
1974	76,742	56,515	73.6	60.5	10.3
1975	84,357	61,310	72.7	59.4	10.8
1976*	93,200	66,600	71.5	58.3	10.8

* Estimate based on ACIR compilation.
Source: U.S. Census Bureau: *Government Finances 1970-1975*.

tax revenues have increased in relative significance.

Although the property tax is still by far the most important source of local revenue, its rate of decline has been relatively steady for two decades. This shift can be attributed partially to a desire among public officials to broaden the local tax base. Another important factor has been taxpayer unwillingness to bear higher property taxes. As a result, local governments have had to seek alternative non-property tax sources to provide the marginal increments needed to keep pace with the steady rise in expenditures. Legislation in 1976 continued to show local jurisdictions becoming more reliant on nonproperty taxes.

The State of **Florida** authorized a 1 percent county sales tax for the purpose of financing rapid transit systems. Transit authorities in the State of **Kentucky** are allowed to impose a general sales tax of .5 percent. **Virginia** authorized its counties and cities to increase the license tax imposed on persons engaging in severing coal or gases from .5 percent to 1 percent of gross receipts from the sale of such resources. Virginia also gave approval to cities and counties in the Washington, D.C., metropolitan area to levy a 4 percent tax on motor fuel if other local jurisdictions in the metropolitan area take similar legislative action, but this unanimity proved impossible to attain. **New York** City increased its tax rates

on transportation corporations from 1 to 1.5 mills per dollar and also increased its gross earnings tax from .5 to .75 percent. The city was also authorized to continue its 4 percent city sales tax on selective services. The maximum municipal sales tax rate in **New Mexico** was increased from .25 to .5 percent. Cook County in **Illinois** was authorized to levy a 1 cent gasoline tax. Counties in **Kansas** have been given authority to fix retailer's sales tax rates at .5 or 1 percent; the amount is to be determined by the Board of County Commissioners. Finally, **Missouri** authorized counties to levy a cigarette tax not to exceed 2.5 mills per cigarette sold in the county.

Property Tax Relief

Legislative action in 1976 provided additional property tax relief, largely based upon the effect of the property tax on business location and on home improvements. In addition, 16 states raised their existing property tax relief programs by either expanding or liberalizing reductions in payments or exemptions from the property tax.

To stimulate a better business climate, the City of **New York** has been given authority to grant partial real property tax exemptions for the construction or the reconstruction of certain commercial and industrial properties

in vacant, unsuitable, or substandard areas. Under the reconstruction exemption, only 5 percent of the new value is subject to the tax in the first year, with incremental increases of 5 percent for each of the next 19 years. Thus, at the end of 20 years the added value due to reconstruction would be fully taxable. Similarly, under the construction exemption, only 5 percent of the new value is subject to the tax in the first year, with incremental increases of 5 percent for the next ten years at which time the value of the new construction is fully taxable. In addition, other exemptions can be granted for certain business improvements outside New York City.

The State of **Colorado**, in order to encourage homeowners to make improvements, now defers the property tax that is levied upon the improvement which is made on older homes.

New Jersey enacted three property tax relief measures in order to make operative the state's new personal income tax. In all, the legislative package will provide about \$250 million dollars in local property tax reductions and municipal aid. For a detailed description, see the New Jersey case study.

Six states (including New Jersey) expanded property tax relief to senior citizens. In **California**, the assistance available to persons 62 and over now ranges from 96 percent of the property tax paid on the first \$7,500 of the assessed value for household incomes not more than \$2,000 (formerly \$1,400), to 4 percent of the tax paid on the first \$7,500 of assessed value for household incomes of not more than \$10,500 (formerly \$10,000). In addition, California voters approved a referendum that allows homeowners aged 62 and over — with low or moderate incomes — to postpone payment of property taxes on their principal place of residence. **Connecticut** extended tax relief for the elderly to special district levies. **Alaskan** renters age 65 and over are now eligible for tax equivalency payments which are calculated by applying either a property tax equivalent percentage to their annual rent or \$375, whichever is less. In **South Dakota**, low-income senior citizens are eligible (effective January 1, 1977) for a tax refund of from 25 percent of the tax due if household income is less than \$2,200, to 9

percent of the property tax if income is greater than \$3,601 but less than \$3,700. However, persons receiving refunds for retail sales and service taxes are not eligible. Incorporated municipalities in **South Carolina** may adopt a homestead exemption for senior citizens and disabled persons who qualify for such an exemption against county, school, and special assessment districts.

Two states expanded their homestead exemption to low and moderate income families. **Idaho** extended its hardship exemption to claimants whose household incomes are between \$5,001 and \$5,500—the tax reduction is either \$75 or actual tax, whichever is less. The homestead exemption in **Hawaii** now applies to property values less than or equal to \$12,000 (formerly \$8,000) or is exempt in the amount of \$12,000 (formerly \$8,000) if property value is greater than \$12,000 (formerly \$8,000).

Other states which legislated property tax relief included **Ohio** which provides real property inflation relief and a reduction of 2 percent on personal property tax rates on business property; effective January 1, 1978, the **Louisiana** homestead exemption from state, parish, and special property taxes increased from \$2,000 to \$5,000; the **Maryland** circuit-breaker program was expanded to include disabled persons; and the voters of **Montana** approved Referendum 72 which provides a reduction of owner's tax liability on residential property (effective July 1, 1977); the governor must request, however, the legislature to appropriate funds to pay the taxes on the first \$5,000 of the home's assessed value.

Special property tax treatment has been given as an incentive for installing alternative heating and cooling systems. In 1974, Indiana was the only state that provided a property tax deduction for the installation of solar energy devices. During 1975, however, nine states followed suit: Colorado, Illinois, Maryland, Massachusetts, Montana, New Hampshire, North Dakota, Oregon, and South Dakota. In 1976, four additional states legislated property tax deductions for alternate energy systems and one state revised its program. **Connecticut** authorized municipalities to provide property tax exemptions for buildings equipped

with solar heating and cooling systems. **Hawaii's** program exempts the value of property actually used for an alternate energy improvement. In **Michigan**, solar, wind, or water energy conservation devices may be certified as exempt from property taxes. **Vermont** towns may provide real and personal property tax exemptions for alternate energy sources. Last year **Maryland** placed a ceiling on the assessment of solar energy units. In 1976 the state authorized local property tax credits, the duration of the credit and all other specifics are to be provided by the local enacting ordinance. The State of **Virginia** passed a constitutional amendment that would provide a property tax exemption for real and personal property used to transfer or store solar energy.

Multistate Tax Commission

The U.S. District Court, Southern District of New York, ruled on July 8, 1976, that the Multistate Tax Commission is a lawfully constituted body. The stated purposes of the *Multistate Tax Compact* are to (1) facilitate the proper determination of state and local tax liability; (2) promote uniformity among state tax systems; (3) ease taxpayer compliance; and (4) minimize the risk of duplicative taxation of the multistate taxpayer. Currently, there are 21 states which belong to the compact: Alaska, Arkansas, California, Colorado, Hawaii, Idaho, Indiana, Kansas, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. In 1976, the State of Florida withdrew from the compact and South Dakota became a new member.

The corporations which filed the suit contended that the entire compact was invalid because the U.S. Constitution — Article 1, Sec. 19, clause 3 — requires Congressional approval for interstate compacts. Specifically, the court had to determine whether the formation of the compact tended to increase the political power in the states which may encroach upon, or interfere with, the supremacy of the United States. The court ruled that such power did not exist since: (1) the com-

mission has no taxing authority or legislative power; (2) the taxes which it administers are imposed by the respective states; and (3) the model regulations proposed by the commission may be adopted, modified, or rejected by officials of the individual states. In addition, while the commission has the power to conduct audits, it may do so only at the request of a party state or its subdivisions. Because of these limitations, the court determined that since the states may act individually there is no greater encroachment upon federal interest by their acting cooperatively.

The court also rejected claims that the compact imposed an unreasonable burden upon interstate commerce and that it discriminated against multistate taxpayers.

Voters Speak

Reflecting the atmosphere of fiscal restraint, constitutional amendments calling for state and/or local fiscal limitations were proposed in six states. In each state, however, the voters rejected the proposals. Proposal C in **Michigan** represented the most comprehensive state and local tax limitation amendment. Its primary thrust was to provide an overall limitation or ceiling on state revenues in relation to personal income in the state and to limit state expenditures to the amount of the revenue limitation. In addition, Section 30 of the proposed amendment would have limited the authority of local units of government, authorities, and other political subdivisions to impose new taxes or increase the rate or base of existing taxes without voter approval. **North Dakota** voters turned down—by a 2-to-1 margin — a proposal that would have limited state spending to \$332 million for the next two bienniums. This would have approximated a 25 percent reduction from the current budget year. Voters in **Utah** rejected an initiative that would have frozen the state budget at the current level for the next five years and reduced federal expenditures by 20 percent each year until federal funds would have been phased out completely. Similarly, **Montana** voters turned down an amendment that would have frozen the state budget at \$375 million for the next five years. The proposal

also included a reduction in the use of federal funds until 1984, at which time such funds would not be expected. In **Colorado**, Proposal 10 went down to defeat. This measure would have added a new article to the state constitution requiring elector approval of all state and local executive or legislative acts which result in new or increased taxes. A different type of limitation was defeated in **Florida**. The proposed amendment would have limited the number of full-time salaried state employees, excluding elected and appointed officials, to not more than 1 percent of the official estimate of the state population for the preceding year. The proposal also would have limited the number of part-time state employees.

Several states had statewide tax proposals on the November 2nd ballot encompassing a variety of taxes. **Colorado's** electorate turned "thumbs down" to Proposal No. 7 which would have repealed the sales tax on food or food products for human consumption after July 1, 1977. The same proposal would have increased the tax upon corporations with net profits in excess of \$50,000 and would have imposed taxes upon the severance of metallic minerals, coal, oil shale, and oil and gas. **Massachusetts** and **Michigan** voters rejected the adoption of graduated personal income tax rates. The voters in **Missouri** rejected a proposal which would have exempted food and drugs from the sales and use tax.

Proposals winning approval were, however,

not extinct. Major tax proposals in **North Dakota** and **Oregon** were accepted. The North Dakota initiative amends the sales, use, and motor vehicle excise tax acts (effective January 1, 1977) to make the rate 2 percent on sales of farm machinery and irrigation equipment and 3 percent on all other taxable sales and uses. Oregon's proposal increases the motor fuel tax rate, from 7 cents to 8 cents per gallon, effective January 1, 1977. A Missouri measure to increase funding for wildlife programs by levying an additional sales and use tax of .125 percent was also approved by the electorate.

Reaction to bond issues was mixed. Those approved included \$375 million in **California** for parks, \$100 million in **Texas** for sewers, \$225 million in three **New Jersey** issues, \$162 million in six **Alaska** issues, \$33.7 million in three **Rhode Island** issues, and \$10 million in **Nevada** for parks.

Balancing The Budget

For many states, 1975 represented a very crucial period when fiscal ease succumbed to fiscal pressure and surpluses turned to impending deficits. The budgetary picture for 1976 did not brighten appreciably in many states. The fiscal condition for 1977, assuming economic recovery and a continued policy of fiscal restraint among the states, can be viewed with some optimism. On the basis of

Table 7

General Fund Expenditure And Revenue Summary

(In billions of dollars for fiscal years; 37 annual appropriating states)

	1974	1975	Estimated 1976	Estimated 1977
Revenue	54.8	60.9	66.1	72.7
Percent increase		11%	8%	10%
Expenditure	53.9	61.9	68.5	73.1
Percent increase		15%	11%	7%
Excess-revenues over expenditures	0.9	(1.0)	(2.4)	(0.4)
Balance at end of fiscal year	4.4	3.4	1.7	1.5
Percent of revenue	0.8%	5.6%	2.6%	2.1%

Source: *Fiscal Profiles of the States: Survey #2*, prepared for the National Governors' Conference by the National Association of State Budget Officers, June 1976.

a survey conducted for the National Governors' Conference, the 1977 budget estimates of 37 states show that revenues may increase by 10 percent while expenditures may increase by only 7 percent (Table 7). If this prediction holds up, it would be a reversal of the trend in the previous two years where expenditure growth exceeded revenue growth. The revenue increase is a result of a relatively optimistic expectation that larger receipts will be realized from the income and sales taxes. According to the survey, state budget officers estimated a rise of 13 percent in individual income taxes. Corporation net income taxes are expected to increase by 14 percent, and sales tax receipts by 13.5 percent. The rapid rate of expenditure growth during the previous two years, however, would still leave anti-

pated expenditures exceeding revenues by \$400 million in 1977. If this projection proves accurate, state general fund balances will decline to \$1.5 billion in 1977.

FOOTNOTES

¹ACIR, *Changing Public Attitudes on Government and Taxes: 1976*, S-5 (July 1976).

²*State Government News*, "Era of Limits," The Council of State Governments, February 1976.

³National Governors' Conference, *Fiscal Profiles of the States*, Survey No. 2, June 1976.

⁴State expenditures separated from state-local figures is an estimate based on ACIR computations.

⁵ACIR staff computations.

⁶ACIR staff computations.

⁷ACIR staff computations.

⁸Tax Foundation's *Tax Review*, "State Tax Action in 1976," October, 1976, Vol. 37, No. 9.

⁹*Ibid.*

Environment, Development, and Growth

An issue which has been debated consistently over the past decade has been how to protect the nation's environment, scenic areas, and scarce resources without stifling the economic growth which is so often associated with the depletion of these national assets. The intergovernmental relationships in any effort to reconcile these sometimes conflicting aims are crucial: national, state, and local actions may often conflict.

Because of the intergovernmental nature of so many of the issues in this important policy area, many state actions are due to the action or inaction of either the federal government or local governments. For example, in response to federal requirements, Georgia and Nebraska tightened their state standards on safe drinking water while Georgia, Idaho, and Nebraska moved to regulate the application and use of pesticides. While federal strip mining reclamation measures came up again this year at the federal level without becoming law, two states — Ohio and West Virginia — enacted legislation in 1976 to strengthen their statutes designed to assure that mined lands will be reclaimed.

Questions of encouraging development and growth in target areas are particularly crucial during times of economic recession. In 1976, Massachusetts adopted a pair of far-reaching laws designed to revitalize depressed areas and create jobs. In addition, five states — Ar-

kansas, Colorado, Hawaii, Illinois, and Maryland—passed bills which give greater authority to local governments to create development authorities or development districts to encourage revitalization of older areas and attract business and industry.

Two states enacted comprehensive land use planning measures. California's new plan and procedure to preserve the state's coastline is the most comprehensive state action taken to date in response to the federal *Coastal Zone Management Act*. Minnesota adopted a land use planning law for the Twin Cities area which is significant for the inter-governmental system of planning which it establishes.

Alaska cities and boroughs were authorized to exempt from taxation land used by a nonprofit corporation for agricultural purposes (Chap. 265). The corporation must convey the rights to subdivide the land to the state with a covenant restricting the use of the land to agricultural purposes. Chapter 17 extended the life of the joint federal-state land use planning commission to June 30, 1978. Chapter 143 authorized cooperative resource management or development agreements between the federal government and state and local governments in Alaska. Agreements must be submitted to the legislature within 30 days of the beginning of each regular session. Also enacted in 1976 was a comprehensive *Tank Vessel Traffic Regulation Act* and *Alaska Oil Discharge Prevention and Pollution Control Act* (Chap. 266). Among the provisions of the act are requirements that all tank vessels operating in state waters be equipped with certain navigation control, communications, and other position location equipment and requirements that a certificate of risk avoidance be issued by the department of environmental conservation before an oil terminal facility may begin operation. The act also provides that oil terminal facility and tank vessel operators are strictly liable, without regard to fault, for all acts and omissions of their employees and agents.

Arkansas HB 1164 authorizes municipalities or counties to establish public facilities boards to secure and develop industries.

Arizona voters rejected a proposal on the November 2 ballot which would have repealed

the state's mandatory auto emissions inspection program. HB 2080 was adopted to create an emissions inspection program study commission to evaluate the state inspection program and issue a final report to the legislature and the governor by October 1, 1977.

The preservation of prime agricultural land in and around **California's** urban areas will be further encouraged by AB 2222. The act increased the amount of the state's subvention payments to local governments from \$3 to \$8 an acre for such land. SB 1584 expended the Office of Planning and Research's area of concern to include the social and economic implications of land use decisions. The state Air Resources Board voted to require the elimination of the major portion of lead additives in gasoline in the state over a three-year period beginning in 1977. No other state had adopted a similar measure. On November 2, the voters approved a general obligation bond issue of \$280 million to acquire coastlands for recreational purposes. The measure, similar to bond issues of \$150 million approved in 1964 and \$250 million approved in 1974, will provide funds for grants to local governments to preserve parks, beaches, recreation facilities, and historic sites. The 1976 California Legislature also approved a long-term plan to protect the state's 1,100-mile coastline. The plan gives a statutory basis to a planning process involving state and local governments and citizens created for a four-year period by Proposition 20, approved in 1972.

Colorado municipalities were authorized to establish downtown development authorities to combat deterioration of property values in the central business district. The act (HB 1152) establishes the procedure to be followed in creating such a development district. A five to 11 member board must be created to oversee the planning and development of projects, and the acquisition, improvement, leasing, and disposition of property. Revenue bonds may be issued for such development, and an ad valorem tax of up to five mills may be levied on all real and personal property in the downtown development district.

The 1976 session of the **Georgia** Legislature enacted two new laws to control pollution resulting from the use of pesticides. The

Case Study

Two New Massachusetts Programs Hope To Stimulate Economic Recovery

Massachusetts Governor Michael Dukakis signed into law two economic development bills on January 12, 1976. These bills were designed to assist business and industry and create jobs in the state.

The Massachusetts Industrial Mortgage Insurance Agency (MIMIA) is a new public financial assistance agency of the commonwealth created by one measure. The agency is authorized to provide insurance on loans to industries which need funding for the acquisition, construction, or alteration of industrial enterprises. It is hoped that this measure will help provide primary employment in high unemployment areas throughout the state.

A \$2 million fund will be overseen by a five-member board of directors including the commissioner of commerce and development. This board will review and approve qualified individual mortgage insurance applications and set premiums to be paid. It is projected that, in time, these premiums will increase the fund.

The duration of the mortgage loans cannot exceed 30 years on land and buildings and 15 years on machinery and equipment.

The second bill creates the Community Development Finance Corporation

(CDFC). That agency is designed to provide equity and venture capital to businesses in order to create jobs. It is desired that the CDFC will target its efforts in those geographic areas where economic conditions are most severe and where "front-end capital" is in the shortest supply.

The CDFC will be financed by \$10 million in general obligation bonds. This public corporation will then make project-by-project investments in businesses. When a business becomes successful and generates revenues, it will pay off the loans. Private companies having sound business plans and a need for "front-end financing" and a desire to locate or expand in high unemployment areas are eligible through any licensed, not-for-profit community development corporation, industrial development finance authority, economic development investment corporation, or local development corporation.

The CDFC will be run by a nine-member commission, including representatives from the Departments of Administration and Finance, Manpower Affairs, and Communities and Development. Estimates are that the CDFC will generate \$30 million in additional private financing, and after ten years of operation it will bring back \$40 million in increased tax revenues and decreased costs of unemployment.

It is hoped that the CDFC will provide venture capital to stimulate community revitalization through industrial or commercial projects.

Georgia Pesticide Control Act of 1976 (Act 844) regulates the distribution, sale, transportation, use, and disposal of pesticides. The act, which will be administered and enforced by the state commissioner of agriculture, also prohibits the distribution of certain pesticides, provides for the registration of pesticides, and allows the issuance of experimental use permits. The *Georgia Pesticide Use and Applica-*

tion Act of 1976 (Act 880) regulates the application of pesticides and enumerates licensing requirements for pesticide contractors and certified pesticide applicators. The commissioner of agriculture will administer the act. A third Georgia law, the *Water Well Standards Act of 1976 (Act 1139)*, creates the Water Well Standards Advisory Council in the Department of Natural Resources to study the

need for standards relating to the siting, construction, operation, maintenance, and abandonment of water wells. Act 1208 created a 15-member economic development council to encourage economic development in the state and to develop a state policy for economic growth and development.

Hawaii created a state community development authority in the Department of Planning and Economic Development. The law (Act 153) allows the legislature to designate any area of the state as a community development district if there is a need for replanning, renewal, or redevelopment of the area. The authority is to draw up a community development plan for each designated district. The cost of providing districtwide improvements will be assessed against the property in the district benefiting from the improvements. Act 27 amended the state environmental policy to require all agencies to promote the optimal use of solid wastes through programs of waste prevention, energy resource recovery, and recycling in any development programs. Act 63 requires the director of planning and economic development to hold public hearings and informational meetings at least six months before submitting the state plan to the legislature. He must also submit to the legislature semiannual status reports on the progress of the plan.

Commercial sprayers and dusters applying pesticides in **Idaho** must now be licensed by the state (HB 469).

The **Illinois Depressed Areas Land Use Community Development Act** (HB 3973) created an authority to assist those areas in need of development or redevelopment.

All counties and municipalities in **Maryland** may now create industrial development authorities which may issue revenue bonds and act as mortgagors under the *Maryland Industrial Development Financing Authority Act*. Prior to the adoption of the 1976 law (Chap. 421) only charter cities and counties could create such authorities. Chapter 643 requires the Maryland Environmental Service to consult with any municipality affected by any proposed five-year state plan for water supply projects, waste water purification, and solid waste projects before the plan may be adopted.

Metropolitan Land Planning Law Adopted For The Twin Cities

In 1976 the State of Minnesota enacted a new, integrated metropolitan system of land use planning at the local and metropolitan levels within the seven-county, St. Paul-Minneapolis Metropolitan Area. The legislation was signed into law on March 30, 1976, by Governor Wendell Anderson.

The Metropolitan Council, created in 1967, is now required by the law to review the municipal land use plans. The council was created to develop area-wide plans for land use and policy and system plans for waste water management, transportation, parks, open spaces, and airports. The council is to indicate where changes must be made in local plans to bring about conformity with the Metropolitan Council's areawide system plans and development framework.

The legislature took seven related actions which together constitute the new planning package relating to the Metropolitan Council. They are as follows:

1. *Metropolitan Land Planning Act*. This requires that all municipalities in the seven-county metropolitan area prepare comprehensive land use plans within a three-year period. The Metropolitan Council may require modifications in the local plans if necessary to bring about conformance with the Metropolitan Council's systems plans for parks and open spaces, transportation, sewers, and airports.

2. *Metropolitan Significance.* The essence of this measure is that any public or private proposed matter which is determined to have metropolitan significance and will adversely impact on the metropolitan systems or local plans can be suspended by the council for a period of one year.
3. *Planning Grant Bill.* The *Metropolitan Land Planning Act* listed above contains a funding provision. Monetary grants for this provision were contained in a statewide planning assistance grants measure which provides \$1.1 million to the council to make grants to local units of government for the purpose of carrying out requirements contained in the *Metropolitan Land Planning Act*.
4. *Modest Cost Private Housing.* The council is required to establish the Modest Cost Private Housing Advisory Committee to study the effects of government regulations, taxes, financing and housing industry practices on the cost of housing. Following the work of the advisory committee, the council is required to report to the legislature on recommendations for ensuring an adequate supply of modest cost private housing by January 15, 1977.
5. *Payment of Metropolitan Council Costs.* The Metropolitan Council is authorized to charge the four metropolitan commissions for council expenses incurred in carrying out council responsibilities relating to the commissions. This affects the Metropolitan Waste Control Commission (Sewer Board), Metropolitan Transit Commission, Metropolitan Airports Commission, and the Metropolitan Parks and Open Space Commission.
6. *Solid Waste Act.* This is a major amendment to the existing *Metropolitan Solid Waste Disposal Act* which spells out responsibilities and authorities for the Metropolitan Council, the Metropolitan Waste Control Commission, the seven metropolitan counties, municipalities, and the Minnesota Pollution Control Agency. The council has been given the authority to approve or disapprove permits for solid waste facilities based upon the council's criteria, standards, and policy plans.
7. *Government Structure Study Committee.* A joint house-senate legislative study committee composed of two house and two senate standing committees of the legislature was established to study government structure in the metropolitan area. The committee's assignment covers city and county governments' responsibilities, roles, and functions as they relate to the Metropolitan Council. (This measure was adopted as a substitute for a measure which called for the election of Metropolitan Council members.)

Eugene Franchette, director of the Metropolitan Council Department of Physical Planning and Development said, "The bills were developed over a two-year period with the participation of local elected officials, city managers, and interested citizens. It was supported by the Association of Metropolitan Municipalities, the Citizens League, and received extensive newspaper editorial support. We believe it represents another significant step taken by the Minnesota Legislature, Metropolitan Council, and the local units of government in coming to grips with the need to establish a meaningful system to manage the physical development of this metropolitan area."

On November 2, **Maine** voters approved a measure requiring a minimum five cent deposit on beverage bottles and cans.

Massachusetts enacted two new laws designed to assist business and industry in creating new jobs, especially in high unemployment areas. See the case study. Voters at the general election approved a question directing the legislature to allow, with local approval, construction of an oil refinery and deep water port. The question was a non-binding advisory one.

Michigan voters approved an initiative measure to ban nonreturnable bottles and cans for soft drinks, to outlaw flip-top cans, and to require a minimum deposit on returnable beverage containers.

Minnesota established a land use planning assistance program to provide grants to local governments. The program, created by Chapter 167, is to be administered by the State Planning Agency. The 1976 session of the Minnesota Legislature also enacted a cluster of new metropolitan land use planning procedures for the Twin Cities area. See the case study.

The **Nebraska Safe Drinking Water Act** (LB 821) was adopted in 1976, giving the director of health the responsibility for promulgating minimum standards of purity of drinking water. Beginning January 1, 1978, all public water supply systems must obtain a permit to operate. The director is to inspect supply systems and adopt rules for the construction and operation of water supply systems. LB 332 requires the cooperative extension service of the University of Nebraska to provide training sessions on the use of restricted use pesticides. The act also requires each commercial applicator of restricted use pesticides to demonstrate competence in the use and handling of pesticides and to be certified by the director of agriculture after passing a written exam.

New York AB 10243 established new noise level standards for trucks weighing over 10,000 pounds.

Ohio HB 28 placed a severance tax on coal, oil, and gas produced in the state. The act created an unreclaimed lands fund to reclaim abandoned strip mine lands and control mine drainage, and an oil and gas well plugging fund for plugging abandoned oil and gas wells. The severance taxes collected will be divided so that 75 percent of the money goes into the fund for strip mines and 25 percent into the gas and oil well fund.

The **Oklahoma Controlled Industrial Wastes Disposal Act** (HB 1811) created the Controlled Industrial Waste Management Section in the Department of Health. The section is authorized to designate materials as controlled industrial waste and develop rules and regulations for the construction and operation of processing facilities and disposal sites. The section will also inspect facilities and sites, and develop, maintain, and monitor reports of the source and amount of industrial waste processed in the state.

The **West Virginia** Legislature enacted three measures to assure that land will be reclaimed after mining operations. SB 454 requires the reclamation of deep mine openings and prohibits new openings unless certain reclamation requirements are met. Specifically, the act increases the bond required to open or reopen a deep mine from \$500 to \$5,000 per acre of disturbed land. The act also prohibits the Department of Mines from giving its approval for a deep mine opening within 300 feet of an existing active opening unless the existing site has been reclaimed in the same manner that surface-mined land must be reclaimed. SB 183 makes it illegal for any person to construct, install, or modify any mine, quarry, or preparation plant if the activity might cause a discharge into, or the pollution of waters of, the state without a permit from the chief of the Division of Water Resources of the Department of Natural Resources. And SB 157 establishes requirements for the reclamation of oil and gas well sites. Well operators are required to post bond to insure that reclamation is carried out.

Energy

In 1976, states continued their efforts to cope with the long-term effects of the scarcity of energy. The type of action taken in 1975 was common again this year.

A continuing state attention to the problems of conserving energy and planning for future energy needs was signified by the adoption of laws to create state bodies or expand the powers of existing energy planning entities in Colorado, Georgia, Minnesota, New York, Ohio, Pennsylvania, Washington, and Wisconsin.

Realizing that mere conservation of fossil fuels is not enough, the states have been moving to encourage the conversion to alternative energy sources. Legislation requiring state and local governments to consider conservation measures and/or alternative energy sources when constructing new government buildings was adopted by California, Massachusetts, and Minnesota.

The biggest single type of energy policy activity in 1976 was the adoption of tax breaks for the installation of various types of alternative energy equipment in homes and businesses. Nine states — California, Georgia, Hawaii, Idaho, Kansas, Maryland, Massachusetts, Michigan, and Virginia — adopted such incentives.

Alaska HB 779 creates the Alaska Power Authority to provide a means of constructing, acquiring, financing, and operating hydro-

electric and fossil fuel generating projects. The directors are the Commissioner of Commerce and Economic Development and four public members appointed by the governor. The authority has the power to enter into contracts for the construction, acquisition, and operation of a power plant. It may also enter into contracts for the purchase, sale, exchange, transmission, or use of power generated by a project. The legislature must approve any project whose cost exceeds \$1,000,000. The authority may issue tax exempt bonds to create a power plant project revolving fund which may be used to make loans for power projects and for fuel storage facilities. The budget of the authority must be approved by the legislature.

Arizona requires that agricultural improvement districts provide public notice of proposed changes in electric rates and make available to interested persons any pertinent reports, recommendations, and financial and planning information. The act (SB 1343) would also provide an opportunity for interested persons to submit comments and present questions at meetings of the board of such districts.

California AB 3590 established an inter-agency task force to conduct a study of geothermal energy resources in the state. SB 1747 provides that consumers of submetered gas and electric service be charged at the same rate they would be charged for direct service. The bill allows residents of mobile home parks and apartments whose gas or electricity is supplied indirectly through the owner's meter to take advantage of lifeline rates. Lifeline rates assure that households receive minimum energy needs at a reasonable rate. SB 218 gives a tax break of up to \$1,000 for homeowners who install solar energy devices in their residences.

California now requires that new nuclear plants certify approval by the federal government before they may open. The method and technology for the permanent storage of toxic radioactive wastes and for recycling nuclear fuel must also be approved by the State Energy Commission. AB 2820-22 also call for a study to determine if new nuclear plants should be built underground for safety. AB 2740 allows cities and counties to require

that new buildings be constructed to facilitate the installation of solar heating or nocturnal cooling devices.

HB 1231 authorizes the **Colorado** Housing Finance Authority to make, invest in, and participate in thermal performance loans to low and moderate-income families whose homes use excessive energy due to inadequate insulation. Architectural problems and the absence of materials that could reduce energy requirements also add to the problem, but many families are not financially able to remedy such inefficiencies under available assistance programs. HB 1206 requires the state to insure that energy conservation practices in state construction and renovation are followed. The bill provides that the Office of State Agencies develop and maintain life-cycle cost analyses for the construction of new facilities and for existing facilities. Municipalities and counties are exempted from the act. The act defines "life-cycle costs" to include alternatives for initial cost, cost of energy consumed over the economic life of the facility, replacement cost, and cost of operation and maintenance. SB 61 adds to the existing power of Colorado cities and towns to contract for the establishment of a power authority by allowing them to contract with cities and towns of an adjoining state that own an electric system and are located not more than 15 miles from the state line.

Georgia created an 11-member council for energy resources to evaluate and assess state energy policies and their impact (HB 1698). The act established within the Office of Planning and Budget an office of energy resources which is to administer the act. SB 284 was submitted to the voters as a referendum measure in November. The act was approved, thus exempting solar energy heating or cooling systems from ad valorem taxation. HB 1480 exempted equipment used in the conversion of solar energy from sales and use taxes.

Hawaii is encouraging conservation of energy by providing tax incentives for the installation of solar energy equipment. Tax credits are provided for individuals and corporations who buy and put into operation a solar energy device. The credit applies the year the device was purchased and put into

use and continues until the credit is exhausted. Property actually used for an alternate energy improvement must be installed and placed into service between June 30, 1976, and December 31, 1981, (SB 2467). HB 2359 provides for a full-time public utilities commission and staff. HB 3280 gives greater independence to a gasoline dealer operating under a franchise from a distributor. Under the law, the distributor is prohibited from dictating the retail price charged by the service station.

Idaho taxpayers will now be able to deduct from their taxable income the cost of new insulation for their homes. Staggered deductions may also be taken for the cost of any alternative energy device a taxpayer installs in his home (HB 468). A constitutional amendment approved November 2 allows the use of revenue bonds to repair local government-owned electrical generating facilities.

Kansas law now provides tax incentives for the installation or acquisition of solar energy systems (HB 2969).

Maryland provides for property tax credits for using solar energy heating or cooling units (HB 1222).

Massachusetts SB 1418 was enacted to encourage the use of solar and other alternative energy sources in public buildings. Bids for public buildings must include estimates of the life-time cost of maintaining and supplying energy for that building in addition to the initial construction costs. Solar and other alternative energy sources must be specifically considered in the building process. HB 613 provides a real estate tax exemption for the utilization of solar or wind-powered systems. Massachusetts is also now sponsoring free adult education courses on energy conservation. The courses could help homeowners save an average of \$138 per year on fuel bills.

Michigan passed a three-bill package to give tax breaks for the use of solar, wind, or hydrothermal energy systems to heat homes or businesses. HB 4137 exempts the systems from the state sales tax; HB 4138 exempts them from the use tax; and HB 4139 allows property owners to apply for a property tax exemption through the local assessor if such an energy system is in use.

Minnesota established an energy conservation information center. Chapter 333 pro-

hibits the use of decorative gas lamps after April 20, 1977. The act also requires conservation surveys of certain public buildings. Chapter 313 authorizes cities to establish municipal power agencies which may construct electricity generation and transmission facilities.

On November 2, **Missouri** voters approved an initiative measure which prohibits utilities from charging for electricity based on the cost of construction in progress.

New Mexico Chapter 48 authorizes the Energy Resources Board to construct, own, and lease for operation natural gas pipeline systems and natural gas gathering systems and storage facilities. For this purpose, \$7 million in severance tax bonds may be issued by the Board of Finance.

New York opened a new state energy office within the Executive Department. The office is responsible for preparing a comprehensive energy policy. The energy related responsibilities of other agencies are consolidated in the new office. Its powers include the allocation of energy resources, the imposition of use restrictions, and temporary waiving of state and local environmental protection requirements. SB 10673 requires independent management and operations audits of each of the state's largest electric and gas utilities, including an examination of its construction programs and its operating efficiency, at least once every five years. The act also confirms the Public Service Commission's authority to have the utilities carry out any reasonable and necessary changes recommended by the auditors.

North Dakota voters approved an initiative measure to exempt electricity from the state sales tax.

The **Ohio** Legislature enacted SB 299 which directs the Board of Building Standards to adopt rules governing the conservation of energy in buildings, in power, refrigerating, hydraulic, heating, and gas piping systems, and in boilers. SB 1213 prohibits gas companies from raising rates for residential customers to offset the cost of special discounts for industrial users. HB 579 limits the costs that privately owned electric companies may pass through to their customers without a hearing. The bill establishes a limited rate

hearing process to review fuel cost adjustment clauses every six months. The companies are further required to report their fuel costs and fuel procurement practices to the State Public Utilities Commission.

Pennsylvania created the Bureau of Conservation, Economics, and Energy Planning in

the Public Utility Commission to conduct research and provide advice to the commission. The bureau will deal with matters pertaining to economic forecasting and expansion and/or production of energy.

The **South Dakota** Legislature enacted a bill (SB 135) which authorizes the establish-

Case Study

Wisconsin Energy Programs Reorganized

As energy conservation, allocation, and planning have come to command greater attention in recent years, many states have created cabinet level energy offices which house all of the state's energy programs. During 1976, New York and Wisconsin acted to reorganize all of their energy programs and consolidate them under one roof. Most states, as well as the federal government, have discussed such reorganizations. Wisconsin's 1976 action is a typical example of how states have tried to cope with the growing importance of energy.

Governor Patrick J. Lucey moved on September 2, 1976, to incorporate and strengthen various aspects of Wisconsin's energy programs by issuing an executive order which transferred the state's emergency energy office functions to the Office of State Planning and Energy.

"Integrating energy into the overall economic, physical and environmental planning and coordination activities of state planning will greatly enhance our ability to deal with the complex problems we face in a more comprehensive way," Lucey said.

Lucey noted that the freestanding Office of Emergency Energy Assistance, created during the 1973 oil embargo, had rendered useful and crucial service. Moreover, he pointed out that now the federal government is more concerned with advance planning for energy policy

and conservation instead of the crisis orientation caused by the embargo.

The governor said that recent disclosures, such as forced curtailment of individual natural gas use for industrial purposes, indicate that the "state will be better served through this action which gives the planning office the broadest possible context."

In the executive order Lucey pointed to three key functions for Wisconsin's new Energy Policy and Planning Office: (1) to respond quickly and effectively when critical energy shortages develop; (2) to ease long-term energy allocation problems through the formulation and analysis of determinative, comprehensive energy policies; and (3) to collect and process energy information critical to planning and policy development.

Lucey cited other benefits of the transfer: (1) the planning office already has statutory and executive responsibility to coordinate long-range planning among numerous state agencies, thus interagency energy questions could be more effectively considered through that arrangement; (2) energy conservation steps throughout state government such as facility design and use could be studied and implemented better through a planning energy function in the Department of Administration; and (3) coordination of federal grants, including energy-related grants, will be more efficient in the Department of Administration, which houses the Office of State-Federal Relations.

Governor Lucey said his action would "help state government make better decisions in meeting Wisconsin's future energy needs."

ment of joint or cooperative electric generation and transmission facilities between municipalities and other governmental entities.

Virginia now allows property tax exemptions for solar energy property and products.

The **Washington** Legislature created a state energy office (HB 3172). The act provides for emergency energy powers, broadens the re-

sponsibilities of the Energy Facilities Site Evaluation Council, and provides for preempting local zoning laws for power plant siting approved by the council.

Wisconsin Governor Lucey transferred the functions of the governor's Emergency Energy Office to the Office of State Energy. See the case study.

Human Services

Each year programs are proposed and considered to improve the quality of life — programs running the range from protecting the rights of the mentally ill, to providing state money or guarantees to assume that low and moderate income families and senior citizens can get adequate housing, to providing coordinated multimodel transportation planning and service. Even within the constraint of generally tight budgets, several states did take significant action in these fields in 1976.

Alaska, Florida, Georgia, and Hawaii enacted provisions to broaden their state programs aimed at providing housing to those who need it but cannot afford it and to plan for future housing needs.

Six states — Hawaii, Missouri, Nebraska, Nevada, Pennsylvania, and Wisconsin — adopted legislation to guarantee due process rights to the mentally ill.

Massachusetts and Ohio passed laws to permit the creation of health maintenance organizations.

Two states — Minnesota and Oklahoma — created new state departments of transportation, while Delaware recreated its existing DOT.

Alaska Chapter 273 requires the Department of Health and Social Services to give an annual report to the legislature on a detailed statewide plan for the coordination, develop-

ment, and delivery of social services throughout the state. Chapter 238 creates a senior citizen housing development fund in the Department of Community and Regional Affairs. Chapter 239 authorizes, subject to voter approval, the issuance of general obligation bonds to construct and provide senior citizen housing.

Colorado counties and municipalities having zoning ordinances are now required to provide for the location of group homes for the use of senior citizens. The act (HB 1058) also sets restrictions on the number of people who may be placed in each home and requires that 90 days written notice be given a person before he may be transferred from a skilled or intermediate care facility to a group home. HB 1243 authorizes the creation of community centers for the retarded and seriously handicapped to provide special education services. HB 1018 requires hospitals and related facilities or institutions to make a patient's records available to him for inspection if he requests to see them. A statement concerning the act's requirements must be conspicuously posted in each hospital, and each patient must be given a copy of the statement upon admission.

The **Delaware** Legislature recreated the Department of Transportation set up in 1970 (HB 1230).

A state housing finance agency was created in **Florida**. The agency will issue mortgages to prospective home buyers who are currently squeezed out of the market because of high interest rates. However, a measure on the November 2 ballot which would have allowed the state to sell revenue bonds to pay for the mortgages was turned down by the voters.

Georgia Act 1195 created a joint advisory board of family practice to locate and determine areas of the state which have unmet needs for family physicians. A housing section was created and placed under the Bureau of Community Affairs (Act 1026). The section will be responsible for the planning, development, and general implementation of a coordinated state housing program.

The mentally ill in **Hawaii** are guaranteed due process of law in hearings and notices prior to being committed (Act 130). The act

also entitles persons faced with possible involuntary commitment to specific protective procedures. Act 166 created a council of housing construction in the governor's office. The 24-member council is responsible for surveying statewide housing needs on a five, ten, and 20-year basis; analyzing state consumer attitudes on the marketability of change in designs and materials; investigating whether smaller sized lots and streets are required for the future; and reviewing federal programs to see if Hawaii gets its fair share. Act 178 permits the State Housing Authority to lend up to \$10,000 to qualified residents to rehabilitate or renovate their homes. A measure approved November 2 allows the state to provide housing, clear slums, and rehabilitate housing.

A lower court in **Illinois** weakened the state's comprehensive antiredlining legislation which was adopted in 1975. The judge enjoined the Department of Financial Institutions from enforcing provisions of the *Financial Institutions Act of 1975*. The judge ruled that the department cannot require national banks and federally chartered savings and loan institutions to disclose by zip code and by census tract where they make their home mortgage loans. The court also ruled that the department cannot require the disclosure of home mortgage loans made prior to October 1, 1975, by state-chartered lending institutions. The director of the Department of Financial Institutions has requested the attorney general to appeal the decision.

The **Indiana** Legislative Council and the Transportation Advisory Commission were directed by SB 278 to conduct a study of the financing of the state's streets and roads and of the state's role in the financing of the various transportation modes.

Maryland Chapter 234 was enacted to establish a program for the development and operation of community adult rehabilitation centers. Voters at the general election approved an amendment to the state constitution to permit state aid to rail lines.

The **Massachusetts** Legislature adopted a bill to make it easier to establish health maintenance organizations (HB 5274) and a hospital cost control bill to help hold down the cost of health care. Massachusetts also

adopted a \$383 million transportation bond issue which Governor Michael Dukakis said would provide "vitally needed transit, rail, and highway projects throughout the state as well as some 40,000 jobs for the construction industry."

Minnesota local governments will be entitled to state formula grants to design and operate delivery systems for a variety of health and health-related services. The act (Chap. 9) also includes incentives for the establishment of multicounty or multicity boards of health. Each local board of health is required to draw up an annual community health services plan which has to be approved by each city and county affected as well as by the State Board of Health. The State Board of Health will then allocate funds to each local board on the basis of a formula relating to various economic and demographic factors. Local matching funds will be required. Chapter 325 created the Office of Health Facility Complaints in the Department of Health. The director is responsible for investigating any action or failure to act by a health care provider or health facility. Hospitals and outpatient surgery centers are required by the act to implement patient grievance systems designed to quickly settle complaints about billing and treatment.

Minnesota Chapter 305 authorized the commissioner of public welfare to operate two pilot programs — one rural and one urban — to provide dental care to low-income senior citizens. The act stipulates that each participating senior citizen must have a free choice of the dentist he sees.

Minnesota Chapter 166 created a state department of transportation. Among the duties of the department, which will be headed by a commissioner of transportation, are the provision of technical assistance to regional planning bodies for transportation planning; a study of rural railroad freight transportation as part of a statewide rail transportation plan; and the development of a statewide transportation plan, priorities, and schedule of capital expenditures. The commissioner is also required to review applications by political subdivisions for state or federal financial assistance for transportation-related projects. Projects that substantially affect the statewide transportation plan and priorities must be con-

sistent with the plan and priorities developed by the commissioner. Chapter 204 established a rail service improvement account. The account will provide \$3 million to the State Planning Agency to be used exclusively for the rehabilitation of rail lines.

Under the provisions of HB 1023 enacted in 1976, the state of **Missouri** will assume the full costs of indigent mental patients referred by counties, and HB 1277 expanded the rights of patients in mental institutions. SB 570 prohibits municipalities from changing zoning ordinances to prohibit low income housing developments by housing authorities. And SB 875 created the Elderly and Handicapped Transportation Assistance Program.

Commitment proceedings were revamped by **Nebraska** LB 806 in order to comply with recent court decisions. In addition, the act created mental health boards in each county with the power to issue subpoenas and hold hearings. Nebraska also adopted uniform standard codes to guarantee the health and safety of mobile home parks (LB 91) and manufactured housing units (LB 248).

In **Nevada**, the legal rights of mental patients were spelled out (Chap. 745).

New Jersey AB 3570 moved to regulate the conversion of rental units to condominiums. A landlord must give tenants 60 days notice of his intent to convert and must provide equivalent housing if the tenant requests it within 18 months after the initial 60-day period has expired. The landlord must give three years notice before evicting a tenant and contribute toward the moving expenses in the form of a waiver of one month's rent. A landlord may also buy out a tenant after one year by waiving five months rent.

A \$25 million bond issue was floated to provide funds for the **New Jersey** Housing Finance Agency to help build apartment houses for senior citizens and low and moderate income families. In another 1976 action, Governor Brendan T. Byrne ordered New Jersey communities to provide the zoning and planning necessary to encourage housing for the poor, elderly, and families with small children. The governor warned that communities would lose state aid if they did not comply with state laws requiring a variety and choice of housing for all people.

The **New York** Banking Department issued regulations requiring state-chartered banks to identify geographic sites of their mortgage loans. The regulations, which went into effect April 1, are part of a new effort to eliminate redlining. AB 272 permits a party in an action between a landlord and tenant to raise as a defense that a lease or any clause in it is unconscionable. If a court determines that a lease or clause is unconscionable it may refuse to enforce it. Such a defense has been applicable in the area of sales in New York for some time.

Ohio adopted a law which permits the creation of health maintenance organizations. The act (HB 296) requires the director of health to examine and certify certain arrangements and operations of HMOs.

Another 1976 **Ohio** law was enacted to make it easier for cities to foreclose for back taxes to gain control of abandoned property. Cities are no longer required to find and notify property owners individually. Instead, a locality may buy property at minimum cost after notice has been placed in newspapers and after being put up for a sheriff's sale a second time. The act will permit the formation of land banks to return tax-delinquent lands to a revenue-producing status or to devote them to public use.

Ohio SB 427 prohibits the establishment of county transit systems in a county that is wholly or partially included in a regional transit authority. The act does allow municipalities in counties adjacent to another state or located in counties that are contiguous with a county adjacent to another state to join in creating a regional interstate transit commission.

Oklahoma created a new Department of Transportation and a transportation commission (HB 1791). The department will coordinate the planning and development of transportation facilities in the state. The old Department of Highways, Highway Safety Coordinating Committee, and Railroad Maintenance Authority were abolished and their

powers were transferred to the new department. The responsibilities and personnel relating to transportation planning in the Department of Economic and Community Affairs were also transferred to the new Department of Transportation.

Pennsylvania SB 1025 established a comprehensive system to protect the due process rights of the mentally ill during voluntary and involuntary commitment proceedings.

Rhode Island Chapter 195 established a state radiation control agency in the Health Department to administer regulations regarding the use of radiation sources and nuclear material. Also in 1976, a new statewide building code was adopted. The code will have to be observed by local building officials by July 1, 1977. Any future changes in the standards will need the approval of the legislature before they can take effect.

Two or more municipalities in **Vermont** may form a mass transportation authority (Act 153).

The **Washington** Department of Social and Health Services was authorized by HB 1316 to develop and administer a multifaceted program of community-based services for low-income senior citizens, including general nursing, personal care, nutrition, counseling, and limited legal services.

Urban mass transit authorities were removed from the jurisdiction of the **West Virginia** Public Service Commission (SB 174). The act provides a legal notice and public hearing procedure by the Mass Transit Authority for the purpose of setting fees and other charges. The act exempts urban mass transit authorities from all taxation of the state or any local government.

Wisconsin Chapter 430 was adopted to guarantee the rights of the mentally ill. The act establishes due process protections for persons involuntarily committed to mental health facilities and outlines the rights of the mentally ill during commitment procedures and after being committed.

Consumer Protection

A function of government which has increased in visibility and citizen demand in recent years is consumer protection. It is an area of public policy in which similar laws are enacted almost simultaneously in several states in response to a new awareness of the consumer public.

About 20 states now have laws authorizing pharmacists to substitute cheaper, generically equivalent drugs for those prescribed. Eighteen of those laws have been adopted in the last three years, a dozen of them in 1976 — Alaska, Colorado, Connecticut, Delaware, Florida, Iowa, Kentucky, New Mexico, New York, Rhode Island, West Virginia, and Wisconsin.

In the last five years, most states have adopted comprehensive statutes regulating landlord-tenant relationships. In 1976, most of the legislative activity in this area was directed toward amending existing laws to strengthen them or to bring new provisions (e.g., stricter regulation of security deposits) under them. Alaska, Delaware, Georgia, Hawaii, and New York took such actions in 1976.

Three states — Hawaii, Ohio, and Pennsylvania — adopted laws designed to strengthen the power of the state to enforce consumer protection laws.

Two types of business received attention through the enactment of measures designed to regulate their practices in order to protect consumers. Alaska, Delaware, and Washing-

ton passed stricter laws regulating the practices of utility companies, and Alaska, Arizona, and Michigan moved to regulate the insurance business.

The **Alaska** Legislature enacted a 1976 law (Chap. 187) which provides the conditions under which a pharmacist may substitute a cheaper, generically equivalent drug for the one prescribed. In addition, the act requires a pharmacist to disclose the price of filling a prescription when requested by a consumer. The state also moved to regulate the automobile repair industry. Chapter 146 requires that an auto repair shop furnish a customer with a repair order and an estimate of the charges. Repairs may not exceed the estimate without the customer's consent, and all replaced parts must be returned to the customer. Auto repair shops must also post the customer's rights in a conspicuous place.

Chapter 86 prohibits **Alaska** utilities from charging a fee for the connection, disconnection, or transfer of services which is in excess of the actual cost of the utility for the service, plus a profit at a reasonable percentage established by the regulations of the State Public Utilities Commission. The insurance industry came under greater regulation with the enactment of Chapter 163, which clarified and expanded unfair trade practices in that business. The new act defines prohibited unfair claim settlement practices and establishes standards of unfair claim practices. The director of the Division of Insurance was given the authority to investigate complaints and issue orders requiring persons to stop acts or practices in violation of the chapter. A related act (Chap. 205) instructs the director of the Division of Insurance to prepare and publish an information pamphlet on insurance, detailing the rights of an insurance consumer and telling how one may take advantage of the services of the division.

The landlord-tenant relationship between mobile home park owners and dwellers was brought under the provisions of the **Alaska Residential Landlord and Tenant Act**. The act prohibits the inclusion of certain terms in rental agreements and stipulates that a tenant may be evicted only for specific reasons included in the act. Chapter 8 directs the Division of Consumer Protection in the Depart-

ment of Law to publish a pamphlet on the rights of tenants and landlords and the means of making complaints to appropriate state agencies.

Alaska Chapter 197 regulates the mortuary science profession, and Chapter 25 was enacted to broaden the state's "anti-diploma mill" law by establishing minimum educational, ethical, and fiscal standards which post-secondary educational institutions must meet.

Arizona HB 2413 designates that a prescription drug is misbranded unless the final dosage bears a label containing the name and place of business of the manufacturer and distributor and an accurate description of the quantity of the contents. SB 1159 deleted the state's prohibition against pharmacists' advertising prescription drugs by price or name. HB 2367 requires that all licensed funeral establishments provide a written list of all services and prices for their services to all persons making funeral arrangements.

The **Arizona** Legislature also enacted SB 1283 to require that persons selling insurance, endowment policies, or annuity contracts be licensed by the insurance commissioner. And HB 2117 was enacted to regulate real estate advertising and promotional practices. The notice which must be given to the real estate commissioner of the intention to offer subdivided lands for sale or lease was expanded, filing fees were increased, and the commissioner was given the power to examine the books and records of the owner, agent, or subdivider if he has evidence that unlawful practices have taken place.

California adopted three new consumer protection measures in 1976. AB 1823 requires that the fat content of chopped or ground beef and hamburger be displayed on the label or a sign. AB 1325 prohibits retail food production and marketing establishments from advertising or labeling meat, poultry, or fish as fresh if it has been frozen. A third law increased the membership of the Board of Chiropractic Examiners by two, requiring that the two new members be from the general public rather than from the profession.

Pharmacists in **Colorado** are authorized to substitute a less expensive, generically and therapeutically equivalent drug for that prescribed. A physician may stipulate on a pre-

scription form that there be no such substitution. A pharmacist who makes a generic substitution must inform the purchaser verbally and in writing, label the container with the name of the drug dispensed, keep records of the substitution, and pass the total difference in cost between the two drugs to the consumer (HB 1087).

Connecticut HB 5364 permits a pharmacist to substitute a "therapeutically equivalent" drug product in place of that prescribed under specific circumstances. The act requires that all pharmacies post a sign informing consumers that such substitutions might be permissible. SB 195 substantially incorporates the federal *Fair Credit Billing Act of 1975* into state law.

The **Delaware** Legislature adopted HB 757, the *Drug Product Selection Act*, to allow the substitution of drugs for those prescribed. HB 926 establishes limitations upon the amount which may be demanded of a tenant as a security deposit. The Division of Consumer Affairs was given the authority to issue "stop and desist" orders under the landlord-tenant act. And SB 126 was approved to provide that no public utility selling gas, water, or electricity be permitted to disconnect service due to non-payment of charges without giving 72 hours notice. If the occupant is so ill that his health would be adversely affected by such a utility disconnection, the company may not terminate service.

A 1976 **Florida** law requires druggists to fill prescriptions with the least expensive, generically equivalent medication available.

During 1976, **Georgia** created regulatory boards to oversee and license three professions: occupational therapists (HB 1266), soil classifiers (HB 1620), and marriage and family counselors (HB 1478). Act 1352 revised the landlord tenant code to require disclosure of information to a tenant and to regulate security deposits.

Hawaii law now requires that consumers be informed by proper labeling when imitation milk is sold or dispensed in place of fresh milk in eating establishments. The act (SB 1553) also expands the authority of the Department of Health to prohibit the selling or dispensing of simulated dairy products or any other imitation food unless the consumer is

adequately informed of such a substitution by proper labeling or a visible sign or notice. SB 1780 enacted a new chapter of laws regulating door-to-door sales. The new chapter includes provisions refining the definition of what does and does not constitute a door-to-door sale, and provides that in the event federal and state laws conflict on door-to-door selling, the state law will apply if it offers more protection to the consumer. Another consumer protection law enacted in 1976 (SB 2140) authorizes consumers to waive in writing the requirement that a written price estimate be furnished to the consumer before motor vehicle repairs are performed. SB 2617 prohibits any person from acting as an electrician or plumber without first obtaining a license. HB 2127 expanded the subpoena powers of the Office of Consumer Protection. And SB 1785 was enacted to permit the Office of Consumer Protection to collect civil penalties against those who violate court injunctions obtained by the office. Previously, only the attorney general could collect such fines.

The 1976 session of the **Hawaii** Legislature also enacted two measures to amend the state's Landlord-Tenant Code. Act 90 requires that, prior to occupancy, a landlord must inventory and make a written record of the condition of the premises and give it to the tenant; protects a tenant's security deposit if a landlord sells an apartment dwelling; and amends the tenant's right to make repairs ordered by the Health Department or other agencies and deduct the cost of such repairs from his rent. Act 77 repealed the requirement that the Office of Consumer Protection provide legal representation for tenants unable to afford counsel in proceedings under the *Landlord-Tenant Code* and gave the Office of Consumer Protection the authority to receive, investigate, and attempt to resolve any dispute arising under the code.

Hawaii Act 124 requires the director of regulatory agencies to serve as the consumer advocate before the Public Utilities Commission. The consumer advocate's responsibilities are to be separate and distinct from the other responsibilities of the commission. The consumer advocate also has full rights to participate in all commission proceedings.

The **Iowa** Legislature enacted a statute

(HB 200) permitting pharmacists to substitute generic drugs for more highly priced prescriptions unless the patient or the physician objects.

Kentucky now requires pharmacies to post a sign where prescriptions are sold informing patrons that the pharmacy is required to select the least expensive generic drug therapeutically equivalent to the one prescribed unless the patient or the prescribing physician disapproves (HB 194).

Governing boards of nonprofit hospital and medical service organizations in **Maine** must now have a majority of consumer representatives (HB 1865). HB 2126 protects owners and purchasers of real property from unrecorded mechanics liens and double payment to contractors and subcontractors.

Maryland Chapter 507 extended the definitions of unfair and deceptive trade practices to include telephone solicitations.

The **Michigan** *Insurance Unfair Trade Practices Act* provides a clear description of positive standards of performance to guarantee fair treatment of the insurance purchaser. The act creates strict standards on claims handling, with incentives to insurance companies to pay claims promptly by requiring companies to pay 12 percent interest on claims not settled within 60 days of proof of loss; prohibits discrimination in coverage and rates based on age, race, sex, marital status, handicap, location, or occupation; and establishes a strong enforcement mechanism which will allow speedy enforcement actions.

The **Minnesota** Legislature acted to control the activities of condominium developers and owners associations. The law (Chap. 244) requires that associations of owners be incorporated, that the bylaws provide that a minimum notice be given before meetings, that apartments owned by the association of apartment owners may not vote, and that an annual report be prepared. The act also imposes restrictions on the amount of time a developer has control over a condominium and requires certain disclosures before the original sale of a condominium apartment.

New Mexico Chapter 60 allows a pharmacist to substitute one brand of drug for the brand prescribed if they are brands of generic names which are published by the Federal

Department of Health, Education, and Welfare as permissible substitutes and if the drug substituted is cheaper. However, the act retains the doctor's power to prohibit substitution if he feels it is in the best interest of the patient.

A generic drug substitution law was adopted in **New York** in 1976.

All authority and responsibility for consumer protection was transferred to the **Ohio** attorney general from the director of commerce (SB 447). HB 1227 created an occupational therapy board to regulate the practice of occupational therapy. A third consumer protection measure, adopted in 1976, requires that prescription drug pricing information be given to anyone requesting it. That bill (HB 912) allows drugstores to advertise drugs.

A new **Oklahoma** law (HB 1162) stipulates that a drug or device is misbranded unless it bears a label containing the name and place of business of the manufacturer and packer or distributor. Drugs are also considered misbranded if the packaging, name, or appearance is deceptively similar or would cause unnecessary confusion with competitive, chemically similar drug products which have an established position in the market place. SB 365 allows creditors to choose not to impose a service charge on revolving charge accounts or on consumer loans. The act also stipulates that a credit card issuer may not restrict a seller from offering a discount to a cardholder for cash payment.

Pennsylvania HB 175 created the Office of Consumer Advocate in the Department of Justice.

Four new consumer protection laws were adopted in **Rhode Island** during 1976. Chapter 302 prohibits stores from advertising brand name goods and then offering only a substitute brand. Stores must include the brand name and manufacturer of goods in any advertisement and must state in the ad if those goods are used or second hand. Advertising claims concerning safety, performance, and comparative price are considered a deceptive trade practice unless those claims can be documented (Chap. 317). Chapter 227 allows suit for damages or rescission if a person contracts to buy a condominium unit on the basis of false or misleading statements published by the owner or developer. Another law (Chap.

237) requires physicians to authorize generic equivalents for prescribed medications unless otherwise provided, and authorizes pharmacists to substitute drug equivalents unless instructed otherwise by the physician.

The **Washington** State Utilities and Transportation Commission adopted rules prohibiting utility companies from collecting deposits from customers who have good credit. Utilities must pay interest on any deposits collected. The new consumer bill of rights requires companies to tell customers they may take complaints to supervisors and establishes hearings procedures for unmet complaints.

West Virginia pharmacies are required to post a list of the 100 most commonly prescribed drugs, their prices, and their approved generic equivalents (SB 33).

A generic substitution bill was adopted in **Wisconsin**. The measure (AB 469), in addition to permitting generic substitution, requires pharmacies to display a price list of prescription drugs and their generic equivalents. It is estimated that, if fully implemented, the ge-

neric substitution could save Wisconsin consumers \$8.4 million annually. The act could also save the state \$1 million a year on the drugs purchased through medical assistance programs, a savings of 40 percent. SB 135 provides that no lender may raise the interest rate on a mortgage for the first three years of the mortgage and that four months' notice must be given of any escalation after that. Under the law no more than one rate increase is permitted in any 12-month period after the three-year restriction expires, and limits are placed on the amount of allowable increases. In signing the act, Governor Patrick J. Lucey said, "Homeowners make sizeable lifetime investments in their homes and they must be shielded from continuous, unreasonable hikes in the interest rates they have agreed to pay. The threat of interest rate hikes can discourage homeownership, when it actually is in the best interests of the community to increase homeownership." A third act, AB 48, protects consumers who join "buyers clubs."

Equal Rights

There were far fewer enactments dealing with women's rights in 1976 than in the few previous years. No state ratified the proposed Equal Rights Amendment to the U.S. Constitution; four states must still adopt it before it can take effect. Massachusetts voters approved an equal rights amendment to the state constitution, and Colorado voters defeated a referendum measure which would have repealed the state ERA.

The greatest legislative activity to assure equal rights in 1976 dealt with prohibiting discrimination against the handicapped in employment or housing. Hawaii, Kentucky, Michigan, Missouri, Ohio, and Wisconsin approved such laws. Legislation requiring that public buildings, sidewalks, or curbs be made more accessible to those in wheelchairs was enacted in Alaska, Delaware, Pennsylvania, and Wisconsin. And two states — Hawaii and Indiana — have new laws giving preference to the purchase of state and local government goods and services from the handicapped.

The deaf had more antidiscrimination legislation enacted on their behalf in 1976 than in previous years. Such legislation ranged from standard antidiscrimination measures in employment and housing to requiring that the deaf be provided with interpreters in schools or legal proceedings. California, Connecticut, Delaware, and Maryland enacted such legislation.

Alaska law now requires the Department of Public Works to prepare, promulgate, and enforce regulations governing construction of public buildings and facilities to ensure their accessibility by the elderly and the physically handicapped.

California AB 3263 includes deaf persons in the category of handicapped persons who may not be discriminated against in housing. The act also insures that a blind or deaf person may not be denied housing because that person has a dog. Another act makes it unlawful for the state to refuse to hire or promote an individual because of color blindness (AB 3073). Also in 1976, the state added race, religion, and ethnic heritage as unacceptable grounds for denying admission to a state college to anyone. And AB 3678 requires credit bureaus to cross-index joint account data.

Colorado authorized community centers for the retarded and seriously handicapped to provide special education services in cooperation with administrative units and school districts. Also specified is the procedure for determination of placement in a community center. The state now prohibits any governmental unit from discrimination based on sex.

A new **Connecticut** law (HB 5188) prohibits discrimination in public accommodations, resorts, and amusements on account of deafness. The law also extends to deaf persons owning or keeping guide dogs the same rights which blind persons have in owning or keeping dogs. HB 5780 establishes a handicapped driver training program within the Department of Motor Vehicles. The program is open to any state resident with a serious physical or mental handicap so long as that handicap does not make the person incapable of operating a motor vehicle.

Persons issued special plates for the handicapped may now use the **Delaware** Turnpike toll-free (SB 628). HB 1067 provides for interpreters and/or tutors for students with impaired hearing, and HB 320 makes provisions for interpreters for deaf persons at legal proceedings. SB 396 provides certain standards of construction for the protection of physically handicapped persons.

A 1976 **Hawaii** law (SB 1623) is intended to prevent sex bias in the public schools by

eliminating the channeling of students into stereotyped sex roles. The bill provides that "no person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational or recreational program or activity receiving state or county financial assistance or utilizing state or county facilities." SB 2739 prohibits discrimination because of physical handicap in such areas as education, real estate transactions, financial assistance, and choice of residency. HB 2102 states that when a governmental agency contracts for or purchases services, a 5 percent preference shall be given to services performed by nonprofit corporations. Public agencies operating sheltered workshops for physically or mentally handicapped persons are covered by this legislation. HB 2371 grants all the rights, privileges, and responsibilities of adults to minors who are or have been married.

Hawaii HB 2022 made the commission on aging responsible for establishing a state policy for senior citizens. The policy is to include but not be limited to: (1) the establishment of comprehensive long-range and immediate goals and objectives under the law providing for programs on aging; (2) the establishment of state standards for the operation and maintenance of senior citizen centers; (3) the establishment of priorities for program implementation and of alternatives for program implementation; (4) the delineation of the separate and mutual roles, responsibilities, and authorities of the state and counties in developing and administering senior citizen centers and their programs; and (5) the establishment of a mechanism to provide for the effective monitoring of senior citizen centers and their programs.

The **Indiana** Legislature added a new chapter creating a committee for the purchase of products and services of severely handicapped persons. The law allows goods produced and services provided by nonprofit agencies for the severely handicapped to be purchased by a unit of government without advertising for bids.

Kentucky (HB 407) bans discrimination in employment and housing on the basis of physical handicap, unless the handicap restricts

or interferes with a person's ability to engage in the job or fulfill the terms and conditions of a lease or contract. Discrimination against handicapped individuals by employment agencies and placement and labor organizations is also prohibited. Further restrictions are placed on discrimination against handicapped individuals by financial institutions in the making of commercial real estate loans. Kentucky (HB 590) will begin providing tuition-free education at any of the state colleges and universities for citizens 65 years and older. It authorizes a college or university to deny such admission when a class is filled.

A new **Maryland** law (Chap. 368) requires courts and judicial proceedings to appoint interpreters for certain deaf persons. Chapter 645 provides for the placement of teletype machines for the benefit of deaf persons in certain government agencies. The law also requires that machines be installed in other public facilities and that machines be connected to toll-free telephones. Chapter 166 was enacted to eliminate discrimination in granting certain loans, retail credit accounts, and installment sales applications solely on the basis of age.

Massachusetts increased legal protection for retarded citizens by permitting the appointment of guardians to represent their interest in litigation (SB 594). Another 1976 act prohibits discrimination based on sex by any governmental unit. On November 2, Massachusetts voters approved an equal rights amendment to the state constitution.

The 1976 session of the **Michigan** Legislature passed a law (SB 749) to prohibit discrimination against the physically and mentally handicapped in employment, housing, public accommodations, and education. HR 4963 amended Michigan's *Fair Employment Practice Act* to prohibit discrimination in employment based on marital status, height, or weight.

Minnesota Chapter 337 created an 18-member council to study all matters relating to the economic status of women in Minnesota and the adequacy of programs, services, and facilities relating to families. The council is directed to report to the governor and the legislature by February 15, 1977, and a supplemental report must be finished by June 30,

1978. The report is to recommend necessary changes in laws and programs designed to enable women to achieve full participation in the economy of the state. The council is to encourage the development of programs providing services for children, youth, and families.

Missouri HB 1438 gives equal opportunities for the handicapped and disabled in employment from public funds. Missouri SB 890 also abolished the Human Rights Commission. Complaints of discrimination will now be filed with and investigated by the attorney general. SB 853 created a council to coordinate state purchases of products and services of the blind and other handicapped people.

SB 29 establishes a new program for assisting **New Mexico** senior citizens who need more care than is available in boarding homes but who do not qualify for medical assistance in nursing homes. The measure gives the Health and Social Services Department the authority to establish certain program requirements for sheltered care facilities. The act also provides a daily financial supplement to the individuals who qualify for care in the facilities. The supplement is entirely state money to augment the income of individuals receiving supplemental security assistance from the federal government.

Ohio SB 162 prohibits discrimination against handicapped persons in employment, public accommodations, housing practices, housing assisted by the State Housing Development Board, the extension of credit, or the issuance of insurance policies. The act also requires licensed driver education programs to provide teachers for handicapped persons and entitles handicapped persons to special parking places and certain overtime parking privileges. The director of transportation was directed to make rules facilitating the use of mass transit by the handicapped. The act also gave a tax break to corporations who modify existing structures for use by handicapped persons. Another 1976 act (SB 351) requires that any state agency rule, plan, or program primarily affecting people age 60 or older must be reviewed by the Commission on Aging before it can take effect.

Pennsylvania now requires the State De-

partment of Transportation and all municipalities to install ramps at crosswalks when installing new sidewalks, curbs, or gutters.

Rhode Island allows motor carriers to provide lower fares for elderly person (Chap. 113). Chapter 228 allows the physically handicapped, under certain conditions, to ride public transportation for free. Chapter 174 allows totally disabled persons to use state-owned recreational facilities without charge. The legislature also authorized the administrator of personnel to prepare special lists of handicapped persons to be trained for state civil service jobs.

The **South Carolina** Legislature passed a law (Act 662) to prohibit state agencies from discriminating against the handicapped in psychometric testing procedures.

South Dakota enacted a bill of rights for the blind and other handicapped people (SB 163).

The fair employment law in **Wisconsin** was amended to prevent discrimination on the basis of handicap. The new law (AB 1) requires that fringe benefits, including life and disability insurance, be extended to handicapped employees and includes physically and developmentally disabled under the protection of the equal housing laws. The law provides that polling places have at least one entrance accessible to the handicapped, and

it permits absentee ballots to be sent to anyone who signs an affidavit declaring he or she is confined because of physical illness, infirmity, or disability. No school supported by public funds may refuse to admit a student to courses of instruction solely because of a physical or developmental disability. There is an exemption when the student does not meet the minimum physical standards for a particular activity or when the student would be involved in handling hazardous materials. Lending organizations may not discriminate on the basis of physical condition or developmental disabilities in granting loans or credit. State administrative agencies are prohibited from making rules that discriminate for or against the handicapped except when justified by statistics. Physical handicap may not be grounds for excluding a person from jury service unless a judge finds the person is clearly unable to fulfill the responsibilities involved.

Wisconsin AB 155 requires that all places of employment and public buildings be designed throughout to accommodate the physically handicapped. The bill expands previous law which required that external entrances and exits be accessible to the disabled. The new requirements cover any construction and remodeling begun after the effective date of the legislation.

Criminal Justice

An integral component of any effort to modernize state government is the reform of the state judicial system. The Advisory Commission on Intergovernmental Relations has made several recommendations which the states should adopt to restructure their judicial systems.

State judicial systems should be molded into a unified court system headed by the chief justice of the state supreme court. When selecting judges, states should use the "Missouri Plan" — a merit system for making judicial appointments.

During 1976, five states adopted new laws which will restructure their courts into a more unified system — Colorado, Georgia, Kansas, Missouri, and West Virginia. Seven states — California, Connecticut, Florida, Maryland, New York, Vermont, and Wyoming — enacted new standards or procedures regarding the selection or removal of judges on a merit basis.

The states have also become concerned in recent years with their often antiquated, ineffective, corrections systems. In 1976, Maine, New Jersey, and Rhode Island restructured their state departments of corrections. Alabama enacted a law to allow prisoners to participate in work release programs, and Colorado adopted a new statute which authorized the establishment of community-based corrections facilities and programs.

Because of the flurry of state activity to modernize their judicial systems in recent years, tables at the end of this chapter present a summary of the current provisions in the 50 states regarding state court administration, the selection of judges, and methods for discipline and removal of judges.

Alabama Act Number 136 provides for the temporary release of certain convicted and sentenced felons to allow them to participate in vocational or educational study or to seek employment and a place of residence in the community where they will live after being released from custody. Act Number 637 authorizes the establishment of a joint state-county work-release program. The Board of Corrections will administer the program.

Alaska HB 417 charges the Governor's Commission on the Administration of Justice with the regulation of law enforcement intelligence information.

On November 2, **California** voters approved an amendment to the state constitution changing the name of the existing Commission on Judicial Qualifications to the Commission on Judicial Performance and changing its duties. Subject to review by the state supreme court, the commission may warn judges privately of any improper conduct or failure to perform their duties. If the commission recommends the reprimand, removal, or retirement of a supreme court justice, the matter must be decided by a court of seven judges of courts of appeal who are temporarily assigned for that purpose.

Colorado established, for a three-year period, a small claims court division of county courts having concurrent original jurisdiction with the county and district court for civil cases not exceeding \$500. The act (SB 52) requires that only individuals or personal representatives, not attorneys, may begin or defend actions. The trial is not bound by formal rules of procedure; the parties may agree in advance that there be no appeal; and the judge decides the claim without a trial by jury. Another act (SB 4) authorizes local governments to establish community corrections facilities and programs.

The **Connecticut** Legislature established a mechanism for the removal or censure of non-elected judges.

An amendment to the **Florida** Constitution was enacted to provide for the merit retention of state supreme court and district court of appeals judges. The amendment allows voters to decide whether or not to retain sitting appellate judges.

The **Georgia** *Judicial Administration Act of 1976* (Act 1130) creates ten judicial administration districts, provides for judicial administration district councils composed of all superior court judges within the district, and provides for the election of a superior court judge by the judges of each district council to serve as district administrative judge. The district councils are authorized to hire administrative assistants. On November 2, the voters approved a constitutional amendment which allows the legislature to set minimum standards and training requirements for sheriffs.

Hawaii Act 155 established a prepaid legal service plan patterned after health maintenance organizations. Under the new law, a person may prepay legal services and then draw on them as needed.

The monetary civil jurisdiction of **Idaho** small claims courts was increased to \$500 (SB 383). Another act (SB 1317) provides that criminal prosecutions may take place in one or more counties if a city is located in two counties.

The **Illinois** Legislature implemented Article 1, Section 7 of the state constitution by amending the *Code of Criminal Procedure* to provide that criminal charges be dismissed unless an accused person who requests a preliminary hearing is granted such a hearing within 60 days (HB 3420).

Kansas HB 2729 implemented more of the requirements of a 1972 constitutional amendment calling for the creation of a unified court system. The 1976 act provides for statewide administration of the judicial system by the Kansas Supreme Court. Except for municipal courts, all courts of limited jurisdiction were abolished, and their jurisdiction was placed in the district court. The act created three classes of judges: district judges, associate district judges, and district magistrate judges.

The 1976 session of the **Maine** Legislature approved a bill to overhaul the state's correctional system. The purpose of the reorganiza-

tion is to free more money for priority corrections programs, particularly at the state prison. The act authorizes the Department of Corrections to implement a controversial plan to redistribute inmate and corrections staff.

Maryland law was amended to create a new organization and system for the prosecution of state and local crimes by creating the Office of State Prosecutor (Chap. 612). On November 2, voters approved an amendment to the state constitution adopting a modified "Missouri Plan" which will allow incumbent appellate judges to run on their records for reelection rather than against opponents.

Massachusetts adopted three measures aimed at eliminating conflicts of interest by judges and easing the backlog of court cases in the superior court. HB 6842 and HB 6907 will end the part time practice of law by so-called special justices. In signing those acts, Governor Michael Dukakis said, "This legislation will finally end the disturbing spectre of a judge who wears the robe of public servant in the morning and the hat of private advocate in the afternoon. An undivided loyalty to the public interest, as this measure assures, lies at the heart of our judicial system's integrity." The third act (HB 6902) permits the recall of retired superior court judges for temporary service.

Community correctional facilities in **Minnesota** were brought within the jurisdiction of the state ombudsman. The act (Chap. 318) also grants the ombudsman and his staff immunity from subpoena, grants him subpoena powers, and permits him to attend parole and parole revocation hearings. The ombudsman was also granted immunity from civil suits unless an act or omission by him is grossly negligent or motivated by malice. Letters to inmates from the ombudsman may not be opened by correctional authorities.

Missouri voters approved a constitutional amendment on court reform. Effective in 1979, magistrate and probate courts will be consolidated into circuit courts.

On November 2, **Nevada** voters approved three referendum measures to provide for merit selection and appointment of judges, central court administration, and discipline of incumbent judges.

A new Department of Corrections was cre-

ated by the **New Jersey** Legislature. See the case study.

New York adopted two measures aimed at protecting the rights of those who have been convicted or accused of crimes. SB 4222 provides that a license or employment may not be denied an individual on the basis of a previous criminal conviction unless the criminal conduct for which he was convicted has a direct bearing upon his ability or fitness to perform responsibilities or duties necessarily related to the license sought, or unless granting the application would pose an unreasonable risk to the property, health, or safety of others. SB 9924 provides for the return of fingerprints and photographs and the sealing of arrest records in all criminal cases not resulting in a conviction. No inquiry may be made into any prosecution not resulting in a conviction except where authorized by statute or a court, nor may such a prosecution serve as a disqualification of any kind.

A 1975 amendment to the **New York** Constitution was implemented (SB 10374) by making a temporary state commission on judicial conduct the permanent body required by the constitution. The commission is to investigate complaints of the public with respect to the qualifications, conduct, or fitness to perform or the performance of the official duties of any judge or justice within the unified court system. The commission also is empowered to recommend to the chief judge of the court of appeals that he convene the court on the judiciary to hear and determine charges against a judge or determine that a judge be censured, suspended, or retired as provided by law.

Rhode Island Chapter 312 grants the Commission on Judicial Tenure and Discipline the power of subpoena, reprimand, and immediate temporary suspension. Chapter 71 provides, under certain conditions, for the destruction of criminal records after conviction for a misdemeanor. The State Department of Corrections was restructured by another 1976 act. The director of the department will now serve at the pleasure of the governor instead of having a five-year term as in the past. This will assure each new governor a chance to appoint his own director. The act also gives the director broad managerial

Case Study

New Jersey Creates New Department Of Corrections

During its 1976 session, the New Jersey Legislature created a new department of corrections—the 19th cabinet-level agency of the executive branch and the second created under the administration of Governor Brendan T. Byrne. The state constitution provides for a maximum of 20 departments in the Executive Branch.

The growth of the Department of Institutions and Agencies (I&A) in recent years was seen as the primary motivation for creating the new department. I&A has had responsibility for parole and 11 penal and correctional institutions; 22 community mental health facilities; eight schools and centers for the mentally retarded; and two veterans' hospitals. Because of its size—an \$850 million budget for fiscal year 1977 and 20,470 employees—I&A was regarded as unmanageable.

A 24-member state correctional master plan policy council recommended in April that the Division of Corrections and Parole be removed from I&A and elevated to a cabinet level. The council ar-

gued that the separation of corrections from the Department of Institutions and Agencies would enable corrections to be "more humane and efficient, and less confusing."

In recent years, prison overcrowding has resulted in the transfer of prisoners to other institutions within the I&A system. A controversial issue for many years has been the state's practice of placing criminal inmates in psychiatric hospitals and other facilities unrelated to corrections. Prisoners have escaped from the less secure institutions, and mental health officials have complained that the intermixing of prisoners and hospital patients has been detrimental to the patients in those institutions.

Ann Klein, commissioner of the Department of Institutions and Agencies, endorsed the idea of creating a separate department of corrections. She expressed concern that the growing problems of corrections would ultimately detract from I&A's overall ability to fund and deliver other services. Other officials supporting the creation of the new department included the attorney general, the chairman of the State Parole Board, the New Jersey Association of Corrections, and the state correctional officers. Supportive arguments ranged from the need for restructuring the criminal justice system to improving communications and professionalism in the field of corrections.

authority and sets up four divisions under assistant directors. On November 2, voters approved a measure to allow six-member juries to hear civil cases.

The 1976 **Vermont** Legislature amended the procedures for the nomination and retention of judges. The former Judicial Selection Board was redesignated as the Judicial Nominating Board. All functions previously assigned to the board relating to the retention and continuance in office of judges were removed and placed in the legislature. A joint

committee on judicial retention was created by the legislature to fulfill its new role in carrying out the provisions of the act.

The **West Virginia** Legislature implemented part of the judicial reform amendment to the state constitution by providing for a magistrate court system (HB 1087). The first magistrates were elected in the 1976 general election.

Wyoming voters approved a constitutional amendment providing for merit retention of judges with electoral approval.

State Court Administration

STATES	State Court Adminis- trator	Flexible Assignment of Judges	Uniform Rules of Procedure and Practice	Intermediate Appellate Courts
Alabama	x	x	x	x
Alaska	x	x	x	
Arizona	x	x	x	x
Arkansas	x	x	x	
California	x	x	x	x
Colorado	x	x	x	x
Connecticut	x	x	x	
Delaware	x	x	x	
Florida	x	x	x	x
Georgia	x		x	x
Hawaii	x	x	x	
Idaho	x		x	
Illinois	x	x	x	x
Indiana	x	x		x
Iowa	x		x	
Kansas	x		x	x ¹
Kentucky	x	x	x	x
Louisiana	x		x	x
Maine	x	x	x	
Maryland	x	x	x	x
Massachusetts	x		x	x
Michigan	x	x	x	x
Minnesota	x	x	x	
Mississippi			x	
Missouri	x		x	x
Montana	x		x	
Nebraska	x	x	x	
Nevada	x		x	
New Hampshire			x	
New Jersey	x	x	x	x
New Mexico	x	x	x	x
New York	x	x	x	x
North Carolina	x	x	x	x
North Dakota	x	x	x	
Ohio	x	x	x	x
Oklahoma	x	x	x	x
Oregon	x	x	x	x
Pennsylvania	x	x	x	x
Rhode Island	x	x	x	
South Carolina	x	x	x	
South Dakota	x		x	
Tennessee	x	x	x	x
Texas	x		x	x
Utah	x	x	x	
Vermont	x	x	x	
Virginia	x		x	
Washington	x	x	x	x
West Virginia	x		x	
Wisconsin	x	x	x	
Wyoming	x		x	

¹Effective January 1977.

Methods Of Discipline And Removal Of Judges

STATES	Impeachment	Address	Recall	Council, Commission, or Court on the Judiciary
Alabama	AGL			x
Alaska	AGL			x
Arizona ¹	AGL		AGL	x
Arkansas	AG	AG		
California	AG		AGL	x
Colorado ²	AGL			x
Connecticut	AGL	AG		x
Delaware				x
Florida	AG			x
Georgia	AGL			x
Hawaii				x
Idaho	AG			x
Illinois	AG			x
Indiana				x
Iowa	AG			x
Kansas	AG			x
Kentucky	AGL	AG		
Louisiana	AG			x
Maine	AGL	AGL		
Maryland	AGL	AGL		x
Massachusetts	AGL	AGL		
Michigan	AGL	AGL		x
Minnesota	AG			x
Mississippi	AGL	AGL		
Missouri				x
Montana	AGL			x
Nebraska	AGL			x
Nevada ³	AGL	AGL	AGL	
New Hampshire	AGL	AGL		
New Jersey ⁴	AG	AGL		x
New Mexico	AG			x
New York	AGL	AGL		x
North Carolina				x
North Dakota	AG		AGL	x
Ohio	AGL	AGL		x
Oklahoma	AGL			x
Oregon				x
Pennsylvania	AGL			x
Rhode Island	AGL	A		
South Carolina	AGL	AGL		
South Dakota	AG			x
Tennessee	AGL	AGL		x
Texas	AG	AG		x
Utah ⁵	AGL	AGL		x
Vermont	AGL			x
Virginia	AGL	AGL		x
Washington ⁶	AGL	AGL		
West Virginia	AGL	AGL		
Wisconsin	AGL	AG	AG	
Wyoming ⁷	AGL			x

¹A - judges of courts of last resort and appellate courts.

G - judges of courts of general jurisdiction.

L - judges of courts of limited jurisdiction.

²Only justices of courts not of record subject to impeachment.

³Except judges of Denver County Court.

⁴Except justices of the peace.

⁵Judges of supreme court only subject to impeachment.

⁶Justices of peace not subject to impeachment.

⁷Only judges of courts of record subject to impeachment.

⁸Except justices of the peace.

Final Selection Of Judges

STATES	ELECTED		APPOINTED WITHOUT SCREENING			APPOINTED AFTER SCREENING		
	Partisan	Nonpartisan	Governor	Legislature	Other	Governor	Legislature	Other
Alabama ¹	AGL				L			
Alaska ²					L	AG		
Arizona ³	L	G			L	AG		
Arkansas	AGL							
California		GL	A					
Colorado ⁴					L	AGL		L
Connecticut ⁵	L			AGL				
Delaware			AGL					
Florida		AGL						
Georgia ⁶	AGL		L					
Hawaii			AG		L			
Idaho		AG						
Illinois	AG							
Indiana ⁷	G		L			AL		
Iowa						AG		
Kansas		G				A		
Kentucky	L	AG						
Louisiana	AGL							
Maine ⁸	L		AGL					
Maryland			AGL					
Massachusetts			AGL					
Michigan ⁹		AGL			L			
Minnesota		AGL						
Mississippi ¹⁰	AGL				L			
Missouri ¹¹	GL					AGL		
Montana		AGL						
Nebraska						AGL		
Nevada		AGL						
New Hampshire			AGL					
New Jersey ¹²			AGL		L			
New Mexico	AGL							
New York ¹³	AGL		AL		GL			
North Carolina	AGL							
North Dakota		AGL						
Ohio ¹⁴		AGL			L			
Oklahoma ¹⁵		AG			L	AG		
Oregon ¹⁶		AGL			L	AG		
Pennsylvania	AGL							
Rhode Island ¹⁷			GL	A	L			
South Carolina ¹⁸	L		L	AG				
South Dakota		AG						
Tennessee ¹⁹	AGL					A		
Texas ²⁰	AGL				L			
Utah ²¹		L			L	AGL		
Vermont	L					AG		
Virginia				AGL				
Washington ²²		AGL			L			
West Virginia	AGL							
Wisconsin		AGL						
Wyoming		L				AG		

*A - judges of courts of last resort and appellate courts
 G - judges of courts of general jurisdiction
 L - judges of courts of limited jurisdiction

Final Selection Of Judges *(continued)*

FOOTNOTES

- ¹Municipal court judges appointed by governing body of municipality as of 1977.
- ²Magistrates appointed by, and serve at pleasure of, presiding judges of each judicial district.
- ³Maricopa and Pima County superior court judges appointed by governor from a list submitted by appointments commission for each county; all others elected on nonpartisan ballot. Justices of the peace elected on partisan ballot; city and town magistrates usually appointed by mayor and council.
- ⁴Denver County judges appointed by mayor from list submitted by nominating commission. Municipal judges appointed by city councils or town boards.
- ⁵Probate judges elected on partisan ballot.
- ⁶County and some city court judges appointed by governor with consent of senate.
- ⁷Several counties have judicial nominating commissions which submit a list to governor for appointment.
- ⁸Probate judges elected on partisan ballot.
- ⁹Municipal judges appointed by city councils.
- ¹⁰City police court justices appointed by governing authority of each municipality.
- ¹¹Circuit and probate court judges in St. Louis City and County; Jackson, Platte, and Clay Counties; and St. Louis Court of Criminal Correction initially appointed by governor from nominations submitted by special commissions.
- ¹²Municipal court magistrates serving one municipality appointed by governing bodies.
- ¹³Governor appoints judges of court of claims and designates members of appellate division of supreme court. Mayor of City of New York appoints judges of city criminal and family courts.
- ¹⁴Court of claims judges may be appointed by chief justice of supreme court.
- ¹⁵Judges of court of appeals, district and associate district judges elected on nonpartisan ballot in adversary popular election.
- ¹⁶Most municipal judges appointed by city councils.
- ¹⁷Probate and municipal court judges appointed by city or town councils.
- ¹⁸Probate and some county judges elected on partisan ballot.
- ¹⁹Judges of intermediate appellate courts initially appointed by governor from nominations submitted by special commission.
- ²⁰Most municipal judges appointed by municipal governing body.
- ²¹Juvenile court judges appointed by governor from list submitted by commission. Town justices of the peace appointed by town trustees. City judges and county justices of the peace elected.
- ²²Municipal judges in second, third, and fourth class cities appointed by mayor.

DEFINITIONS

- Court administrator*—person responsible for the management of the nonjudicial business of the court system. The scope of responsibilities may include fiscal and budgetary matters, project planning, calendaring, case assignment, payroll administration, drafting of legislation, collection and analysis of statistics, and liaison duties with bar associations, citizen groups, and legislatures.
- Court of last resort*—an appellate court that has jurisdiction over final appeals in a state.
- Court of intermediate appeals*—an appellate court that is limited in its appellate jurisdiction by state law or at the discretion of the state court of last resort.
- Court of general jurisdiction*—a trial court of unlimited original jurisdiction in civil and/or criminal cases.
- Court of limited jurisdiction*—a trial court with legal jurisdiction covering only a particular class of cases, such as probate, juvenile, or traffic matters; and cases where the amount in question is below a prescribed sum.
- Impeachment*—the hearing of charges of misconduct against a public official conducted by the legislature. Generally, the lower house draws up the articles of impeachment, and a trial is held before the upper house. A two-thirds majority usually is required for conviction.
- Address*—usually a formal request by both houses of the legislature to the governor for the removal of a judge. A two-thirds vote generally is required. In some instances, the governor does not participate, and a two-thirds vote of the legislature is sufficient for removal.
- Recall*—an action originating with the electorate in which a specified percentage of qualified voters sign a petition requiring a public official to face a special election.

Council, commission, or court on the judiciary—specially constituted group which handles matters relating to the removal, retirement, or discipline of judges. May have a variety of titles such as: court on the judiciary; qualifications, tenure, standards, or disabilities commission; or judicial, review, or fitness council.

Appointed without screening—direct appointment of judges by the governor, legislature, or other official(s) such as a mayor, local governing body, or judicial officer.

Appointed after screening—appointment of judges made from a list of recommendations submitted by a nominating, qualifications, or other special commission.

Flexible assignment of judges—authority to assign judges to other courts when necessary.

Uniform rules of procedure and practice—generally issued by the chief judge of the state, or by the highest court as a whole, governing overall procedural and administrative matters such as appellate procedures, codes of professional responsibilities, legal practice, lower court procedures, continuing education, etc.

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Government Accountability

In the past four years, state governments have adopted or strengthened an array of measures intended to make state and local government more accountable to the people. Beginning with the overwhelming approval of citizen initiatives in Colorado and Washington in 1972, every state except New Hampshire has taken significant action to deal with such accountability issues as campaign financing, financial disclosure, open meetings, and lobbying disclosure.

While these reform measures are uneven in quality and breadth of coverage, they do represent a remarkable record of reform over a short period. Each of the last two annual volumes of *State Actions* reported on these developments in a chapter called "Government Accountability." What follows is a summing up of the cumulative record of the past four years — a record unmatched since the turn-of-the-century Populist era.

—*Open Meetings*. With passage of comprehensive open meetings legislation in New York and Rhode Island in 1976, all 50 states now have open meetings laws that apply to state and local government. Thirty-three of these laws have been enacted or strengthened in the last four years. Thirty-seven states now require advance public notice of meetings; 32 require minutes; and 34 provide

State Accountability

(November 1972-November 1976)

State	Financial Disclosure	Lobbyist Disclosure	Campaign Financing	Open Meetings	Independent Enforcement Body
Alabama	✓	✓			✓
Alaska	✓*	✓+	✓		✓
Arizona	✓	✓	✓	✓	✓
Arkansas	✓		✓		✓
California	✓*	✓*	✓*	✓*	✓*
Colorado	✓*	✓*	✓	✓*	✓
Connecticut		✓	✓+	✓	✓
Delaware		✓+	✓	✓+	✓
Florida	✓+		✓		✓
Georgia			✓		✓
Hawaii		✓	✓+	✓+	✓
Idaho		✓*	✓*	✓+	✓
Illinois	✓		✓		✓
Indiana	✓		✓+		✓
Iowa		✓	✓+		✓
Kansas	✓	✓	✓	✓	✓
Kentucky	✓+		✓+	✓	✓
Louisiana	✓		✓	✓	✓
Maine	✓	✓+	✓	✓+	✓
Maryland	✓		✓		✓
Massachusetts		✓+	✓*		✓
Michigan			✓	✓+	✓
Minnesota	✓	✓	✓	✓	✓
Mississippi			✓	✓	✓
Missouri	✓*	✓	✓*	✓	✓*
Montana			✓	✓	✓
Nebraska	✓+	✓+	✓+	✓	✓
Nevada		✓	✓	✓	✓
New Hampshire			✓	✓	✓
New Jersey	✓	✓	✓	✓	✓
New Mexico		✓		✓	
New York			✓+	✓+	✓
North Carolina	✓	✓	✓	✓	✓
North Dakota	✓	✓		✓*	
Ohio	✓+	✓+	✓	✓	✓
Oklahoma	✓	✓+	✓		✓
Oregon	✓*	✓	✓	✓*	✓
Pennsylvania	✓	✓+	✓	✓	✓
Rhode Island	✓+	✓	✓	✓+	✓
South Carolina	✓		✓		✓
South Dakota	✓		✓+	✓	✓
Tennessee		✓+	✓+	✓	
Texas	✓	✓	✓	✓	
Utah		✓	✓		
Vermont		✓+	✓+	✓	
Virginia	✓	✓+	✓	✓+	
Washington	✓	✓*	✓	✓	✓
West Virginia		✓	✓+	✓	
Wisconsin	✓		✓	✓+	✓
Wyoming			✓	✓+	

*Voter initiative.

+ 1976 enactment or major revision.

NOTE: In some instances states have not acted because they had excellent laws prior to 1972.

sanctions against officials who violate the law.

—*Lobbying Disclosure.* All states require lobbyists to register and 43 now require reporting of lobbying expenses. Thirty-two of the laws have been enacted or strengthened in the last four years. Fourteen state lobbying laws now cover those who attempt to influence executive branch decision-making; 15 require monthly lobbying reports during the legislative session; and nine are enforced by independent commissions.

—*Financial Disclosure.* Thirty-six states now require some form of financial disclosure by public officials. Twenty-eight of these requirements have been adopted or strengthened in the last four years. Twenty-one state financial disclosure laws require local as

well as state officials to file financial disclosure statements. Twenty-seven states now have independent ethics commissions.

—*Campaign Financing.* Virtually every state has enacted campaign financing legislation in the last four years, and over one-half of the states now have independent commissions to enforce these laws. Only six states do not require candidates to file campaign finance disclosure reports before elections. Twelve states have adopted some form of public financing of state campaigns through the use of dollar check-offs on state income tax forms.

The prior table, provided by Common Cause, catalogues the actions taken by the 50 states in this important area between 1972 and 1976.

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what is acir?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public.

The Commission is composed of 26 members — nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20 — three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Conference, the Council of State Governments, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House.

Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning

of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

Studies undertaken by the Commission have dealt with subjects as diverse as transportation and as specific as state taxation of out-of-state depositories; as wide ranging as sub-state regionalism to the more specialized issue of local revenue diversification. In selecting items for the work program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policies.

