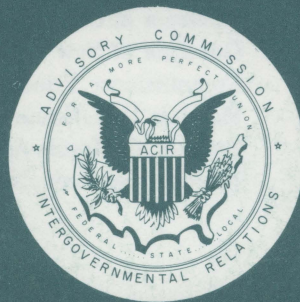


New Proposals For 1969

ACIR STATE LEGISLATIVE PROGRAM



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D. C. 20575
JUNE 1968
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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
Washington, D. C. 20575

April 1968

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New Proposals For 1969

ACIR STATE LEGISLATIVE PROGRAM



FOREWORD

The Advisory Commission on Intergovernmental Relations is a permanent, bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, state, and national levels of government. The Commission's membership, representing the legislative and executive branches of the three levels of government and the public at large, is listed on the inside of the front cover.

The Commission recognizes that its contribution to strengthening of the federal system will be measured, in part, in terms of its role in fostering significant improvements in the relationships between and among federal, state, and local governments. It therefore devotes a considerable share of its resources to encouraging the consideration and adoption of its recommendations for legislative and administrative action by government at all levels.

ACIR recommendations for State action are translated into legislative language for consideration by the State legislatures. This volume contains proposals in the form of draft bills to implement the recommendations for State action in two major studies completed since July, 1967, by the Advisory Commission: *Fiscal Balance in the American Federal System* and *Urban and Rural America: Policies for Future Growth*.

Most of the proposals are based on existing State statutes and constitutional provisions. Initial drafts were prepared by the ACIR staff. Individual proposals, in many instances, were reviewed by State officials and others with special knowledge in the subject matter fields involved.

All of the proposals have been reviewed by an Advisory Board on State Legislation and the drafts further revised where appropriate to incorporate suggestions for their improvement. Responsibility for the content of the proposals, however, rests solely with ACIR.

Members of the Advisory Board, whose valuable contributions are gratefully acknowledged, are:

Carl Everstine
Director, Maryland Department
of Legislative Reference

Carl Frasure
Dean, College of Arts and Sciences,
West Virginia University
and Chairman, Council of State Governments
Committee on Suggested State Legislation

John Sanders
Director, Institute of Government,
University of North Carolina

Charles F. Schwan, Jr.
Director, Washington Office
The Council of State Governments

Charles Wheeler
Director, North Carolina Commission on
Higher Education Facilities and
Vice Chairman, Council of State Governments
Committee on Suggested State Legislation

The Commission presents its proposals for State legislation in this volume in the hope that it will serve as a useful reference aid for State legislators, State legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Reprints of individual proposals are available in "slip bill" form upon request.

A complete list of current Commission publications will be found at the end of this volume. State legislative proposals to implement recommendations contained in Commission reports issued prior to July 1967, are available in a cumulative volume entitled *1968 State Legislative Program of the Advisory Commission on Intergovernmental Relations*. Copies of that volume, or reprints of the individual proposals that it contains, are available upon request.

Wm. G. Colman
Executive Director

June, 1968

NEW PROPOSALS FOR 1969: ACIR STATE LEGISLATIVE PROGRAM

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STATE BROAD-BASED SALES TAX

The retail sales tax ranks behind the property tax as the most widely used of the major tax sources in the State-local tax system. Less than 2 percent of the Nation's population resides in the handful of states that do not levy a sales tax. But, interstate variations in sales tax rates and coverage still loom large, indicating considerable untapped sales tax potential. Both a higher rate and a more inclusive tax base will increase the yield of the sales tax.

The rationale for the retail sales tax rests on the belief that consumption is an appropriate basis on which to distribute a substantial part of the state tax load. Most state sales taxes, however, fall far short of carrying this philosophy into practice. While the vast bulk of sales of tangible personal property are taxed, many states tax a limited number of services. Utility services and the rental of rooms to transients represent the services most frequently taxed. Only a few state sales taxes include other consumer services such as laundering and dry cleaning and automotive repairing despite evidence that expenditures of this kind bulk larger each year in aggregate consumer spending.

In general, this legislation attempts to achieve the closest possible relationship between the tax base and consumer spending — consistent with administrative feasibility. A broader base will require a lower nominal rate to obtain a desired yield. It will provide maximum responsiveness of sales tax receipts to economic growth. It will also simplify administration by avoiding the necessity for vendors and the state to distinguish between taxable and nontaxable goods and services.

The percentage of income expended on services tends to rise as incomes rise; taxation of services therefore tends to make the sales tax less regressive. The inclusion of services in the base also makes the tax yield more responsive to growth in economic activity. In addition, the sale of taxable commodities often involves services which are difficult to account for separately. Sales tax compliance and administration are therefore far simpler where the entire price is taxable than where the service and commodity elements must be segregated. The draft legislation which follows extends the sales tax base to many services rendered to individuals by firms that would frequently be sales tax collectors in any case. State sales tax statutes that include a wider variety of services thus contribute to equity, revenue productivity, and administrative ease.

The tax base encompassed in this legislation differs from many state sales tax statutes in another important respect — sales of items subject to specific excises, e.g., cigarettes, motor fuel, and alcoholic beverages, are taxed. This treatment accords more closely to the underlying rationale for the sales tax as a general levy applicable broadly to all items of consumer spending which may be supplemented by special excise taxes. States that now subject certain items to special taxation and exempt them from the general sales tax should reverse the pattern on grounds of both sales tax logic and administrative ease.

From the very beginning of the sales tax movement, this levy encountered criticism because, in concept at least, it applied to such necessities as food, clothing, shoes, and drugs. This indictment proved strong enough in many states to secure exemptions for food, drug, and other commodities as the political price for enactment. Fourteen of the forty-four sales tax states now exempt purchases of food for home consumption, and the District of Columbia taxes food at a preferential low one percent rate whereas other sales are taxed at three percent. Twenty-one states provide complete or partial sales tax exemption for purchases of prescription drugs.

Studies have shown that a food exemption may cut sales tax collections by as much as 25 percent. Part of this loss stems from a "leakage" problem now that supermarkets sell toasters as well as loaves of bread. While the exemption mitigates the regressive impact of the sales tax, several states achieve a similar result without sacrificing as much revenue. The technique, a tax credit against the state's personal income tax, almost squares the revenue circle — that of maximizing consumer tax yields while minimizing the burden

which these levies impose on low income families. Because of the merit of the tax credit-tax rebate alternative to commodity exemptions (e.g., food and drugs), this legislation assumes the states will increasingly use this approach.¹

Exemptions and exclusions from tax in this legislation are thus less numerous than in most state sales tax statutes. Sales for resale and sales for commodities that are intended to become ingredients or component parts of other commodities must, of course, be exempted to avoid sales tax pyramiding. When the tax applies to producers goods, the result may be multiple burden on the final product. It is argued that this can both retard economic growth and force certain entrepreneurs to absorb a tax not intended to rest on them. Because it is not easy to distinguish between goods intended for producer or consumer use — fuel and electricity, rugs and furnishings, typewriters and many other office supply and equipment items — the exclusion of producers' goods must be confined to clearly identifiable products. The guidelines provided in this legislation exclude from taxable sales (a) the sale of tangible personal property that is consumed, destroyed, or loses its identity in the manufacture of other property for later sale, and (b) the sale of specific machinery and processing equipment designed exclusively and made for and specifically used in the manufacture of a product or the rendering of a taxable service.

The form of the following legislation is a tax on the vendor for the privilege of selling at retail. This approach has several advantages over the other forms (a tax on the sale, the receipts from sales, or on the consumer, with the vendor being made responsible for collection and payment of the tax to the state). While clearly defining the liability, it facilitates the taxation of national banks, certain types of contracts and vending machine operators. It also avoids the necessity of exempting small sales and the useless and time consuming requirement of accounting for every penny collected under a tax imposed on the consumer. The statute expresses a legislative intent that the burden be passed on to the consumer as an item separate from the price of the product, and by appropriate provision seeks to achieve this result in a manner that has been found generally acceptable to retailers.

Several of the recent state sales tax enactments provide for a small percentage-of-tax allowance to vendors for collecting the tax from consumers. While this increases retailer acceptance of the tax, it is criticized on the grounds that a flat percentage allowance fails to account for differences in retailer compliance costs. A number of states allow retailers the right to retain "breakage," that is, the amount collected under the bracket system in excess of the amount due the state, as a means of helping them meet their compliance burden. Proponents of this method contend that under it, retailers in the same line are similarly benefitted and therefore no competitive disturbance results. They argue that breakage is usually greatest in those businesses with large numbers of small sales where highest compliance costs occur. Percentage allowances, in contrast, constitute arbitrary payments that may or may not bear a reasonable relationship to actual ratios of compliance cost to taxes paid. The "breakage" method of compensating retailers has been provided in this legislation.

The Virginia sales tax law enacted in 1966 has been used as the framework for this suggested legislation.

¹ *State Legislative Program of the Advisory Commission on Intergovernmental Relations*, (Washington, D.C.). State personal income tax legislation developed by the Advisory Commission on Intergovernmental Relations provides for a food tax credit and authorizes per capita tax rebates to low income families who would not benefit from an income tax credit.

Suggested Legislation

[Title should conform to state requirements.]

(Be it enacted, etc.)

TITLE I

RETAIL SALES AND USE TAX

1 *Section 1. Citation.* – This act shall be known and may be cited as the “Retail Sales and Use
2 Tax Act.”

3 *Section 2. Definitions.* The following words, terms, and phrases shall have the meanings
4 ascribed to them in this section, except when the context clearly indicates a different meaning:

5 (1) “Person” means any individual, firm, co-partnership, cooperative, nonprofit membership
6 corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy,
7 receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit,
8 body politic or political subdivision, whether public or private, or quasi-public, and the plural as well
9 as the singular number.

10 (2) “Sale” means any transfer of title or possession, or both, exchange, barter, lease or rental,
11 conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property
12 and any rendition of a taxable service for a consideration, and includes the fabrication of tangible
13 personal property for consumers who furnish, either directly or indirectly, the materials used in fabrica-
14 tion; and the furnishing, preparing, or serving for a consideration of any tangible personal property con-
15 sumed on the premises of the person furnishing, preparing, or serving such tangible personal property.
16 A transaction whereby the possession of property is transferred but the seller retains title as security
17 for the payment of the price shall be deemed a sale.

18 (3) “Retail sale” or a “sale at retail” means a sale to a consumer or to any person for any pur-
19 pose other than for resale in the form of tangible personal property or services taxable under this act,
20 and includes any such transaction as the commissioner upon investigation finds to be in lieu of a sale;
21 but sales for resale must be made in strict compliance with rules and regulations made under this act.
22 Any person making a sale for resale which is not in strict compliance with such rules and regulations
23 shall himself be liable for and pay the tax. “Retail sale” and a “sale at retail” include:

24 (i) the sale or charges for any room or rooms, lodging, or accommodations furnished to
25 transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other
26 place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a
27 consideration. A transient is a person who occupies rooms, lodgings, or accommodations for less than
28 a period of [ninety] continuous days.

1 (ii) sales of tangible personal property to persons for resale if, because of the operation of the
2 business, or its very nature, or the lack of a place of business in which to display a certificate of registration,
3 or the lack of a place of business in which to keep records, or the lack of adequate records, or because the
4 persons are minors or transients, or because the persons are engaged in essentially service businesses, or for
5 any other reason, there is likelihood that the state will lose tax funds due to the difficulty of policing the
6 business operations. The commissioner may promulgate rules and regulations requiring vendors of or
7 sellers to such persons to collect the tax imposed by this act on the cost price of the tangible personal
8 property to such persons and may refuse to issue certificates of registration to such persons.¹

9 (iii) the sale or charge of admissions.

10 (iv) the charge or consideration for the service of repairing, altering, mending, pressing,
11 fitting, dyeing, laundering, dry cleaning, or cleaning tangible personal property, or applying or installing
12 tangible personal property as a repair or replacement part of other personal property for a considera-
13 tion, whether or not the services are performed directly or by means of coin-operated equipment or by
14 any other means, and whether or not any tangible personal property is transferred in conjunction with
15 the service, except such services as are rendered in the construction, remodeling, repair, or maintenance
16 of real estate and such services as are rendered directly in conjunction with the processing, manufactur-
17 ing, refining, or conversion of products for sale or resale.

18 (v) the charge for the service of printing or imprinting, photographing, or copying by any
19 means whatsoever for a consideration for persons who furnish either directly or indirectly the mate-
20 rials used in conjunction with the rendition of the service.

21 (vi) the charge for barber and beauty services to persons and animals for a consideration wheth-
22 er or not any tangible personal property is transferred in conjunction with the performance of the service.

23 (vii) the charge for motor vehicle parking service or parking space in privately owned parking
24 lots or garages and the charge for docking or storage space for boats in privately owned boat docks or
24 marinas.

25 (viii) all charges for work relating to motor vehicles and boats of another whether or not
26 any tangible personal property is transferred in conjunction with services performed.

27 (ix) the furnishing of intrastate telephonic and telegraphic communications and services.

28 (4) "Gross sales" means the sum total of all retail sales of tangible personal property or services
29 as defined in this act, without any deduction whatsoever of any kind or character, except as provided
30 in this act. "Gross sales" do not include the Federal retailers' excise tax if this excise tax is billed to
31 the purchaser separately from the selling price of the article, or the retail sales or use tax, or any sales
32 tax imposed by any county or city.

¹Louisiana requires wholesalers to collect and prepay a portion of the sales tax liability of certain vendors who then merely remit the difference between the total liability and the amount they prepaid through wholesalers.

1 (5) “Sales price” means the total amount for which tangible personal property or services are
2 sold, including any services that are a part of the sale, valued in money, whether paid in money or
3 otherwise, and includes any amount for which credit is given to purchaser, consumer, or lessee by the
4 dealer, without any deduction therefrom on account of the cost of the property sold, the cost of
5 materials used, labor or service costs, losses or any other expenses whatsoever; but cash discounts al-
6 lowed and taken on sales are not included in the sales price; nor shall the sales price include finance
7 charges, carrying charges, service charges or interest from credit extended on sales of tangible per-
8 sonal property under conditional sales contracts or other conditional contracts providing for deferred
9 payments of the purchase price or transportation charges separately stated. If used articles are taken
10 in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax
11 levied by this act shall be paid on the net difference between the sales price of the new or used articles
12 and the credit for the used articles.

13 (6) “Cost price” means the actual cost of an item or article of tangible personal property com-
14 puted in the same manner as the sales price in subparagraph (5) of this section without any deductions
15 therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or
16 any expenses whatsoever.

17 (7) “Lease or rental” means the leasing or renting of tangible personal property and the pos-
18 session of use thereof by the lessee or rentee for a consideration, without transfer of the title to the
19 property.

20 (8) “Distribution” includes the transfer or delivery of tangible personal property for use, con-
21 sumption, or storage by the distributee, and the use, consumption, or storage of tangible personal
22 property by a person who has processed, manufactured, refined, or converted the property, but does
23 not include the transfer or delivery of tangible personal property for resale or any use, consumption,
24 or storage otherwise exempt under this act.

25 (9) “Gross proceeds” means the charges made or voluntary contributions received for the lease
26 or rental of tangible personal property or for furnishing services, computed with the same deductions,
27 where applicable, as for sales price in subsection (b) of this section over the term of the lease, rental,
28 service, or use, but not less frequently than monthly.

29 (10) “Storage” means any keeping or retention of tangible personal property for use, consump-
30 tion or distribution in this State, or for any purpose other than the sale at retail in the regular course
31 of business.

32 (11) “Use” means the exercise of any right or power over tangible personal property incident to
33 the ownership thereof, except that it does not include the sale at retail of that property in the regular
34 course of business.

1 (12) "Business" means any activity engaged in by any person, or caused to be engaged in by
2 him, with the object of gain, benefit or advantage, either direct or indirect.

3 (13) "Retailer" means every person engaged in the business of making sales of tangible per-
4 sonal property and taxable services as defined in this act.

5 (14) "Commissioner" means the [State Tax Commissioner].

6 (15) "Tangible personal property" means personal property, which may be seen, weighed,
7 measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible
8 personal property" does not include stocks, bonds, notes, insurance or other obligations or securities.

9 (16) "Use tax" means the tax imposed upon the use, consumption, distribution, and storage
10 of tangible personal property as herein defined.

11 (17) "In this state" or "in the state" means within the exterior limits of the state of []
12 and includes all territory within these limits owned by or ceded to the United States of America.

13 (18) The words "import" and "imported" apply to tangible personal property imported into
14 this state from other states as well as from foreign countries, and the words "export" and "exported"
15 apply to tangible personal property exported from this state to other states as well as to foreign
16 countries.

17 *Section 3. Imposition of Sales Tax.* – There is hereby levied and imposed, in addition to all other
18 taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who en-
19 gages in the business of selling at retail or distributing tangible personal property in this state, or who
20 rents or furnishes any of the things or services taxable under this act, or who stores for use or consump-
21 tion in this state any item or article of tangible personal property as defined in this act, or who leases
22 or rents such property within this state, the same to be collected in the amount to be determined by
23 applying the rate of [] percent to:

24 (1) the sales price of each item or article of tangible personal property when sold at retail or
25 distributed in this state, the tax to be computed on gross sales.

26 (2) the gross proceeds derived from the lease or rental of tangible personal property, as de-
27 fined in this act, where the lease or rental of such property is an established business, or part of an
28 established business, or is incidental or germane to the business.

29 (3) the cost price of each item or article of tangible personal property stored in this state for
30 use or consumption in this state.

31 (4) the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations
32 furnished to transients as set out in sub-paragraph (3)(i), section 2 of this act.

33 (5) the gross sales of all services taxable under this act. No services are taxable under this act
34 except those expressly enumerated and made taxable.

1 *Section 4. Imposition of Use Tax.* – There is levied and imposed, in addition to all other taxes
2 and fees of every kind except the tax imposed under section 3 of this act, a tax upon the use or con-
3 sumption of tangible personal property in this state, to be collected in the amount determined by ap-
4 plying the rate of [] percent to the cost price of each item or article of tangible personal property
5 used or consumed in this state: Provided, that tangible personal property which has been acquired af-
6 ter the effective date of this act for use outside this state and subsequently becomes subject to the tax
7 imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this
8 state for use within six months of its acquisition; but if so brought within this state six months or more
9 after its acquisition, the property shall be taxed on the basis of the current market value (but not in
10 excess of its cost price) of the property at the time of its first use within this state: Provided, further,
11 that the tax shall be based on such proportion of the cost price or current market value as the duration
12 of time of use within this state bears to the total useful life of the property (but it shall be presumed in
13 all cases that the property will remain within this state for the remainder of its useful life unless con-
14 vincing evidence is provided to the contrary).

15 *Section 5. Exclusions and Exemptions.*¹ “Retail sale” or “sale at retail,” do not include the sale of:

- 16 (1) tangible personal property which becomes an ingredient or component part or, or is con-
17 sumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale
18 but does include fuel and electricity;
- 19 (2) specific machinery and processing equipment and repair parts or replacements thereof, ex-
20 clusively designed and made for and specifically used in the manufacture of a product or the rendering
21 of a taxable service;
- 22 (3) materials, containers, labels, sacks, cans, boxes, drums or bags and other packing, packaging,
23 or shipping materials for use in packing, packaging or shipping tangible personal property;
- 24 (4) tangible personal property delivered pursuant to bona fide written contracts entered into be-
25 fore the date of the enactment of this act, provided delivery is made within ninety days after the ef-
26 fective date of this act; and building supplies, fixtures or equipment that enter into or become a part
27 of a building or other kind of structure in this state, where plans, specifications, and the construction
28 contract for a specific project has been entered into prior to the date of the enactment of this act,
29 provided delivery is made within the time specified in such contract for the completion of such specific
30 project;

¹This legislation takes the approach that exclusions and exemptions should be held to the minimum consistent with the need to avoid tax pyramiding. As the introductory statement notes, there is ample justification for reducing the regressivity of the sales tax either by providing exemptions for food and drugs or by adopting the income tax credit-tax rebate approach. There is no similar compelling justification for exempting sales to State and local governments or to nonprofit educational, religious and charitable organizations. Accordingly, this section makes no provision for any of the foregoing exemptions.

1 (5) commercial feeds, seed, plants, fertilizers, liming materials, breeding and other livestock,
2 semen, breeding fees, baby chicks, turkey poults, agricultural chemicals, fuel for drying or curing
3 crops, containers for fruits and vegetables, or farm machinery, and all other agricultural supplies pro-
4 vided they are sold to and purchased by farmers for use in agricultural production for market;

5 (6) tangible personal property sold or leased to a public utility for use or consumption by the
6 utility directly in the rendition of its public service;

7 (7) school lunches sold and served to pupils and employees of schools and subsidized by govern-
8 ment, and school textbooks sold by a local school board or authorized agency thereof; and school
9 textbooks sold by a college or other institution of learning, not conducted for profit, for use of stu-
10 dents attending the institution of learning;

11 (8) tangible personal property not held or used by a seller in the course of an activity for which
12 he is required to hold a certificate of registration, sometimes referred to as “casual sales’ ”

13 (9) tangible personal property for future use by a person for taxable lease or rental as an estab-
14 lished business or part of an established business, or incidental or germane to the business, including a
15 simultaneous purchase and taxable leaseback.

16 (10) Tangible personal property and taxable services for use or consumption by the United States;
17 but this exclusion shall not apply to sales and leases to privately owned financial and other privately
18 owned corporations chartered by the United States.

19 (11) Delivery of tangible personal property outside this state for use or consumption outside this
20 state.

21 *Section 6. Credit for Taxes Paid in Another State* – A credit shall be granted against the taxes
22 imposed by this act with respect to a person’s use in this state of tangible personal property purchased
23 by him in another state. The amount of the credit shall be equal to the tax paid by him to another
24 state or political subdivision thereof by reason of the imposition of a similar tax on his purchase or use
25 of the property. The amount of the credit shall not exceed the tax imposed by this act.

26 *Section 7. Applicability or Inapplicability of Use Tax in Certain Cases.* – The use tax does not
27 apply to tangible personal property owned or acquired in this state or imported into this state, or held
28 or stored in this state, prior to the effective date of this act. The use tax does apply to all tangible per-
29 sonal property imported or caused to be imported into this state on or after the effective date of this
30 act except as provided in this act, unless the property has previously been subject to a sales or use tax
31 in another state or political subdivision equal to or greater than the tax imposed by this act for which
32 credit is given under section 9, or unless proof is furnished that the tangible personal property imported
33 or caused to be imported into this state was owned or acquired prior to the effective date of this act, or
34 otherwise is exempt under this act, but the use tax does not apply to the use of any article or tangible

1 personal property brought into the state by a non-resident individual for his personal use while visiting
2 within the state.

3 *Section 8. Moving Residence or Business into State; Use Tax.* – The use tax does not apply to
4 tangible personal property purchased outside this state for use outside this state by a then non-resident
5 natural person or a business entity not actually doing business within this state who or which later
6 brings the tangible personal property into this state in connection with his establishment of a per-
7 manent residence or business in this state, provided that the property was purchased more than six
8 months prior to the date it was first brought into this state or prior to the establishment of the residence
9 or business, whichever first occurs. This section does not apply to tangible personal property temporar-
10 ily brought into this state for the performance of contracts for the construction, reconstruction, installa-
11 tion, repair, or for any other service with respect to real estate or fixtures thereon.

12 *Section 9. Diversion of Tangible Personal Property to Personal Use* – The use tax applies to
13 tangible personal property and taxable services of persons holding themselves out as sellers of goods
14 and services when tangible personal property or taxable services are diverted to the personal use of the
15 person, his family, or his employees.

16 *Section 10. Dealers.* The tax levied in section 3 and section 4 shall be collected from “dealers.”
17 For the purpose of this act, “dealer” means:

18 (1) any person physically located in this state who:

19 (i) manufactures or produces tangible personal property for sale at retail, for use, con-
20 sumption, or distribution, or for storage to be used or consumed in this state;

21 (ii) imports or causes to be imported into this state tangible personal property from any
22 state or foreign country, for sale at retail for use, consumption, or distribution, or for storage to be
23 used or consumed in this state;

24 (iii) sells at retail, or offers for sale at retail, or has in possession for sale at retail, or for
25 use, consumption, or distribution, or for storage to be used or consumed in this state, tangible personal
26 property and taxable services as defined in this act;

27 (iv) has sold at retail, or used, consumed, or distributed, or stored for use or consumption
28 in this state, tangible personal property or who has performed taxable services, and who cannot prove
29 that the tax levied by this act has been paid on the sale at retail, the use, consumption, distribution, or
30 storage of such tangible personal property or the charge for the rendition of taxable services;

31 (v) leases or rents tangible personal property, as defined in this act, for a consideration,
32 permitting the use or possession of the property without transferring title thereto; and

33 (2) every other person who:

34 (i) maintains or has within this state, directly, or by an agent or a subsidiary, an office,
35 distributing house, sales room, or house, warehouse, or other place of business;

1 (ii) solicits business in this state either by employees, independent contractors, agents or
2 other representatives, and by reason thereof makes sales to persons within this state of tangible per-
3 sonal property, the use of which is taxed by this act; and any other person making sales to persons
4 within this state of tangible personal property, the use of which is taxed by this act, who may be
5 authorized by the commissioner to collect such tax;

6 (iii) as a representative, agent, or solicitor, for an out-of-state principal, solicits, receives
7 and accepts orders from persons in this state for future delivery and whose principal refuses to register
8 under this act;

9 (iv) shall become liable to and shall owe this state any amount of tax imposed by this act,
10 whether or not he holds, or is required to hold, a certificate of registration under this act.

11 *Section 11. Contractors.* – (a) Any person who contracts orally in writing, or by purchase
12 order, to perform construction, reconstruction, installation, repair, or any other service with respect to
13 real estate or fixtures thereon and in connection therewith to furnish tangible personal property or tax-
14 able services, shall be deemed to have purchased the tangible personal property for use or consumption.
15 Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease
16 to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution,
17 or lease to or storage for the person shall collect the tax to the extent required by this act.

18 (b) Any person who contracts to perform services in this state and is furnished tangible personal
19 property for use under the contract by the person, or his agent or representative, for whom the contract
20 is performed, and if a sale or use tax has not been paid to this state by the person supplying the tangible
21 personal property, shall be deemed to be the consumer of the tangible personal property so used, and
22 shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective
23 of whether or not any right, title or interest in the tangible personal property becomes vested in the
24 contractor; but this subsection does not apply to the sale of tangible personal property which becomes
25 an ingredient or component part of, or is consumed or destroyed or loses its identity in the manu-
26 facture of tangible personal property for later sale or governmental exclusion set out in section 5 of
27 this act.

28 (c) Any person who contracts orally, in writing, or by purchase order to perform any service in
29 the nature of equipment rental, and the principal part of that service is the furnishing of equipment or
30 machinery which will not be under the exclusive control of the contractor, shall be liable for the sales
31 or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible per-
32 sonal property.

33 (d) Tangible personal property incorporated in real property construction which loses its identity
34 as tangible personal property shall be deemed to be tangible personal property used or consumed with-
35 in the meaning of this section.

1 (e) Nothing in this section shall be construed to affect or limit the resale exclusion provided for
2 in this act, nor shall anything contained herein be construed to impose any sales or use tax with respect
3 to the use in the performance of contracts with the United States or this State and its political sub-
4 divisions, of tangible personal property owned by a governmental body which actually is not used or
5 consumed in the performance thereof.

6 *Section 12. Certificates of Registration.* – (a) Every person desiring to engage in or conduct
7 business as a dealer in this State shall file with the Commissioner an application for a certificate of
8 registration for each place of business in this state.

9 (b) Every application for a certificate of registration shall be made upon a form prescribed by
10 the Commissioner and shall set forth the name under which the applicant transacts or intends to trans-
11 act business, the location of his place or places of business, and such other information as the Commis-
12 sioner requires. The application shall be signed by the owner if a natural person; in the case of an as-
13 sociation or partnership, by a member of partner; in the case of a corporation, by an executive officer
14 or some person specifically authorized by the corporation to sign the application.

15 (c) When the required application has been made the Commissioner shall issue to each applicant
16 a separate certificate of registration for each place of business within this State. A certificate of regis-
17 tration is not assignable and is valid only for the person in whose name it is issued and for the trans-
18 action of business at the place designated therein. It shall be at all times conspicuously displayed at
19 the place for which issued.

20 (d) Whenever any person fails to comply with any provision of this act or any rule or regulation
21 of the Commissioner relating thereto, the Commissioner, upon hearing after giving such person ten
22 days' notice in writing, specifying the time and place of hearing and requiring him to show cause why
23 his certificate of registration should not be revoked or suspended, may revoke or suspend any one or
24 more of the certificates of registration held by such person. The notice may be personally served or
25 served by certified mail directed to the last known address of the person. A dealer whose certificate of
26 registration has been previously suspended or revoked shall pay the Commissioner a fee of [] dollars
27 for the renewal or re-issuance of a certificate of registration.

28 (e) Any person who engages in business as a dealer in this State without obtaining a certificate
29 of registration or after a certificate of registration has been suspended or revoked, and each officer of
30 any corporation which so engages in business is guilty of a misdemeanor; each day's continuance in
31 business in violation of this section is a separate offense.

32 (f) If the holder of a certificate of registration ceases to conduct his business at the place speci-
33 fied in his certificate, the certificate expires; and the holder shall inform the Commissioner in writing
34 within thirty days after he has ceased to conduct the business at that place; but, if the holder of a

1 certificate of registration desires to change his place of business to another place in this State, he shall
2 so inform the Commissioner in writing, and his certificate shall be revised accordingly.

3 (g) This section also applies to any person who engages in the business of furnishing any of the
4 things or services taxable under this act. Also, it applies to any person who is liable only for the col-
5 lection of the use tax, but that person may be issued a certificate of registration in relevant form.

6 *Section 13. Exemption Certificates.* – (a) All sales or leases are subject to the tax until the
7 contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible
8 personal property is not taxable is upon the person who makes the sale, distribution, lease, or storage,
9 unless he takes from the purchaser or lessee a certificate to the effect that the property is exempt under
10 this act.

11 (b) The certificate mentioned in this section relieves the person who takes the certificate from
12 any liability for the payment or collection of the tax, except upon notice from the commissioner that
13 the certificate is no longer acceptable. The certificate shall be signed by and bear the name and ad-
14 dress of the purchaser or lessee, indicate the number of the certificate of registration (if any) issued
15 to the purchaser, or lessee, indicate the general character of the taxable service rendered or tangible
16 personal property sold, distributed, leased, or stored (or to be sold, distributed, leased, or stored under
17 a blanket exemption certificate) and be substantially in such form as the commissioner prescribes.

18 (c) If a purchaser or lessee who gives a certificate under this section makes any use of the proper-
19 ty other than an exempt use or retention, demonstration, or display while holding property for resale,
20 distribution, or lease in the regular course of business, the use shall be deemed a taxable sale by the
21 purchaser or lessee as of the time the property or service is first used by him, and the cost of the
22 property to him shall be deemed the sales price of the retail sale. If the sole use of the property other
23 than retention, demonstration, or display in the regular course of business is the rental of the property
24 while holding it for sale distribution, or lease, the purchaser shall pay the tax on the cost of the proper-
25 ty to him and when the property is sold shall collect and pay the tax on the difference between the
26 cost of the property to him and the retail sales price.

27 (d) If a purchaser gives a certificate under this section with respect to the purchase of fungible
28 goods and thereafter commingles these goods with other fungible goods not so purchased, but of such
29 similarity that the identity of the constituent goods in the commingled mass cannot be determined,
30 sales or distribution from the mass of commingled goods shall be deemed to be sales or distributions
31 of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased
32 goods so commingled has been sold or distributed.

1 *Section 14. Collection.* – The tax levied by this act shall be paid by the dealer, but the dealer
2 shall separately state the amount of the tax and add the tax to the sales price or charge; and thereafter,
3 the tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be re-
4 coverable at law in the same manner as other debts, but no action at law or suit in equity under this act
5 may be maintained in this state by any dealer who is not registered under this act, or is delinquent in
6 the payment of the taxes imposed under this act.

7 To eliminate separate statement of the amount of tax in fractions of one cent, dealers shall add
8 to the sales price or charge and collect from the purchaser, consumer, or lessee such amounts as may
9 be prescribed by the commissioner to carry out the purposes of this section.

10 Notwithstanding any exemption from taxes which any dealer enjoys under the Constitution or
11 laws of this or any other state, or of the United States, the dealer shall collect the tax from the pur-
12 chaser, consumer, or lessee and shall pay it over to the Commissioner as herein provided.

13 Any dealer who neglects, fails, or refuses to collect the tax upon each and every taxable sale,
14 distribution, lease or storage of tangible personal property made by him, his agents, or employees
15 shall be liable for and pay the tax himself, and the dealer shall not thereafter be entitled to sue for or
16 recover in this state any part of the purchase price or rental from the purchaser until the tax is paid.
17 Also, any dealer who neglects, fails or refuses to pay or collect the tax herein provided, either by him-
18 self or through his agents or employees, is guilty of a misdemeanor.

19 *Section 15. Absorption of Tax Prohibited.* – No person shall advertise or hold out to the pub-
20 lic, in any manner, directly or indirectly, that he will absorb all or any part of the sales or use tax, or
21 that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of the tax, ex-
22 cept as authorized under section 31. Any person who violates this section is guilty of a misdemeanor.

23 *Section 16. Returns by Dealers.* – Every dealer required to collect or pay the sales or use tax,
24 on or before the [twenty-eighth] day of the month following the month in which the tax shall become
25 effective, shall transmit to the Commissioner, upon a form prescribed, prepared and furnished by him,
26 a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all trans-
27 actions taxable under this act during the preceding calendar month; and thereafter a like return shall
28 be prepared and transmitted to the Commissioner by every dealer on or before the [twenty-eighth]
29 day of each month, for the preceding calendar month. The return also shall contain a statement show-
30 ing the amount in each class of exclusions and exemptions which are not subject to the tax imposed by
31 this act, or if the form so provides, the total amount thereof without specifying each class. In the
32 case of dealers regularly keeping books and accounts on the basis of an annual period which varies
33 fifty-two to fifty-three weeks, the Commissioner may make rules and regulations for reporting con-
34 sistent with the accounting period. When the tax for which any dealer is liable under this act does not
35 exceed [] dollars in any month, or [] dollars in any annual reporting period, the Commissioner

1 may permit a dealer upon written application to file an annual return and pay the amount of tax due
2 on the last day of the month following the end of the annual period. When the tax for which any deal-
3 er is liable under this act does not exceed [] dollars in any month, or [] dollars in any annual
4 reporting period, the Commissioner may permit a dealer upon written application to file a quarterly
5 return and pay the amount of tax due on the last day of the month following end of the quarterly
6 period.

7 *Section 17. Payment to Accompany Dealer's Return.* — At the time of transmitting to the
8 Commissioner the return required under section 16, the dealer shall remit to the Commissioner therewith
9 the amount of tax due under the applicable provisions of this act after making appropriate adjustments
10 for purchases returned, repossessions, and accounts uncollectible and charged off as provided in sections
11 18, 19, and 20. The tax imposed by this act for each month becomes delinquent on the day following
12 the [twenty-eighth] day of the succeeding month if not theretofore paid.

13 *Section 18. Returned Goods.* — If purchases are returned to the dealer by the purchaser or con-
14 sumer after the tax imposed by this act has been collected or charged to the account of the purchaser,
15 the dealer is entitled to reimbursement of the amount of tax collected or charged by him, in the man-
16 ner prescribed by the commissioner, but the amount of tax so reimbursed to the dealer shall not in-
17 clude the tax paid upon any cash retained by the dealer after the return of merchandise; and if the tax
18 has not been remitted by the dealer, the dealer may deduct it in submitting his return. The dealer shall
19 be issued a refund by the commissioner equal to the net amount remitted by the dealer for the tax
20 collected if the dealer can establish that the tax was not due.

21 *Section 19. Repossessions.* — A dealer who has paid the tax on tangible personal property sold
22 under a retained title, conditional sale, or similar contract, may take credit for the tax paid by him
23 upon the unpaid balance due him when he repossesses the property, the credit to be administered by
24 the commissioner in the same manner as provided for returned purchases under section 18. When re-
25 possessed property is resold, the sale is subject in all respects to this act.

26 *Section 20. Bad Debts.* In any return filed under the provisions of this act, the dealer, under
27 rules and regulations prescribed by the commissioner, may credit against the tax shown to be due on
28 the return the amount of sales or use tax previously returned and paid on accounts which during the
29 period covered by the current return have been found to be worthless and actually charged off for in-
30 come tax purposes; except that if any accounts so charged off are thereafter in whole or in part paid to
31 the dealer, the amount paid shall be included in the first return filed after the collection and the tax
32 paid accordingly.

33 *Section 21. Extensions.* — The commissioner may grant an extension upon written application
34 therefor to the end of the calendar month in which any tax return is due hereunder or for a period not
35 exceeding thirty days, and no interest or penalty shall be charged, assessed or collected by reason of

1 the granting of the extension, except that when an extension is granted beyond the end of the calendar
2 month in which any tax return is due, interest on the tax at the rate of one-half of one percent per
3 month, or fraction thereof, shall be charged.

4 *Section 22. Civil Penalties.* — When any dealer fails to make any return and pay the full amount
5 of the tax required by this act, there shall be imposed, in addition to other penalties provided herein,
6 a specific penalty to be added to the tax in the amount of [\$10] and ten percent of the tax due if the
7 failure is for not more than thirty days, with an additional five percent for each additional thirty days,
8 or fraction thereof, during which the failure continues, not to exceed twenty-five percent in the ag-
9 gregate; but, if the failure is due to providential cause shown to the satisfaction of the Commissioner,
10 the return with remittance may be accepted exclusive of penalties. In the case of a false or fraudulent
11 return, where willful intent exists to defraud the state of any tax due under this act, a specific penalty
12 of fifty percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by
13 this act shall be payable by the dealer and collectible by the commissioner as if they were a part of the
14 tax imposed.

15 *Section 23. Assessment Based on Estimate.* — (a) If any dealer fails to make a return as pro-
16 vided by this act, or makes a grossly incorrect return, or a return that is false or fraudulent, the com-
17 missioner shall make an estimate for the taxable period of the retail sales or distributions of the deal-
18 er, or of the gross proceeds from leases of tangible personal property, or taxable services by the dealer,
19 or the cost price of all articles of tangible personal property imported by the dealer for use or con-
20 sumption in the state or storage by the dealer of tangible personal property to be used or consumed in
21 the state, and assess the tax, plus penalties. The commissioner shall give the dealer ten days' notice in
22 writing requiring the dealer to appear before him or an assistant with such books, records, and papers
23 as he requires relating to the business of the dealer for the taxable period; and the commissioner may
24 require the dealer or the agents and employees of the dealer to give testimony or to answer interroga-
25 tories under oath administered by the commissioner or his assistants respecting the sale, distribution,
26 lease, use, consumption, or storage of tangible personal property, or taxable services or the failure to
27 make a return thereof as provided in this act. If any dealer fails to make any return or refuses to permit
28 an examination of his books, records, or papers, or to appear and answer questions within the scope
29 of an investigation relating to the sale, distribution, lease, use consumption, or storage of tangible per-
30 sonal property, or taxable services, the commissioner may make the assessment based upon informa-
31 tion available to him and issue a warrant for the collection of the taxes and penalties found to be due.
32 The assessment shall be deemed prima facie correct.

33 (b) If the dealer has imported the tangible personal property and fails to produce an invoice
34 showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as
35 defined in this act, the Commissioner shall ascertain, in any manner feasible, the true sales price and

1 assess and collect the tax, with penalties, to the extent they have accrued, on the true sales price as
2 ascertained by him. The assessment shall be deemed prima facie correct.

3 (c) In the case of the lease of tangible personal property, if the consideration given or reported
4 by the dealer, in the judgment of the commissioner, does not represent the true or actual consideration,
5 the commissioner may fix it and assess and collect the tax thereon as above provided, with penalties as
6 have accrued. The assessment shall be deemed prima facie correct.

7 *Section 24. Records.* – (a) Every dealer required to make a return and pay or collect any tax
8 under this act shall keep and preserve suitable records of the sales, leases, or purchases, as the case may
9 be, taxable under this act, and other books of account as necessary to determine the amount of tax
10 due hereunder, and other pertinent information as required by the commissioner; and every dealer shall
11 keep and preserve for a period of four years all invoices and other records of goods, wares, and mer-
12 chandise, or other subjects of taxation under this act, and all the books, invoices, and other records
13 shall be open to examination at all reasonable hours by the commissioner or any of his duly authorized
14 agents.

15 (b) In order to aid in the administration and enforcement of the provisions of this act, all whole-
16 salers and jobbers in this state shall keep a record of all sales of tangible personal property, whether the
17 sales be for cash or on terms of credit. The records required to be kept by all wholesalers and jobbers
18 shall include the name and address of the purchaser, the number of the certificate of registration issued
19 to the purchaser, the date of the purchase, the article purchased, and the price at which the article is
20 sold to the purchaser. These records shall be kept for a period of four years and shall be open to the
21 inspection of the commissioner or his authorized agents at all reasonable hours during the day. The
22 failure of any wholesaler or jobber in this state to keep the records, or the failure of any wholesaler or
23 jobber in this state to permit an inspection of the records by the commissioner as aforesaid, is a mis-
24 demeanor. Moreover, if any person who is both a retailer and a wholesaler or jobber fails to keep proper
25 records showing wholesale sales and retail sales separately, he shall pay the tax as a retailer on both
26 classes of his business.

27 (c) For the purpose of enforcing the collection of the tax levied by this act, the commissioner
28 through his authorized agents may examine at all reasonable hours during the day the books, records,
29 and other documents of all transportation companies, agencies, firms, or persons that conduct their
30 business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing
31 or otherwise are shipping articles of tangible personal property which are liable for the tax. If the
32 transportation company, agency, firm or person refuses to permit an examination of its or his books,
33 records, and other documents by the commissioner, it or he shall be deemed guilty of a misdemeanor.
34 Moreover, the Commissioner may proceed by citing the transportation company, agency, firm, or
35 person to show cause before any court of record why the books, records, and other documents should

1 not be examined pursuant to the injunction of the court, and why a bond should not be required with
2 proper security in the penalty of not more than \$2,000 conditioned upon compliance with the pro-
3 visions hereof for a period of not more than one year.

4 *Section 25. Sale of Business.* – If any dealer liable for any tax, penalty, or interest levied here-
5 under sells out his business or stock of goods or quits the business, he shall make a final return and
6 payment within fifteen days after the date of selling or quitting the business. The return shall include
7 any sales made at retail during liquidation. His successors or assigns, if any, shall withhold sufficient of
8 the purchase money to cover the amount of taxes, penalties, and interest due and unpaid until the
9 former owner produces a receipt from the commissioner showing that they have been paid or a certifi-
10 cate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods
11 fails to withhold the purchase money as above provided, he shall be personally liable for the payment
12 of the taxes, penalties and interest due and unpaid on account of the operation of the business by any
13 former owner. Nothing heren shall be deemed to qualify or limit the exemption as to such a sale as is
14 covered by section 5.

15 *Section 26. Bond.* – The commissioner, if necessary and advisable in order to secure the col-
16 lection of the tax levied by this act, may require any person subject to the tax to file with him a bond
17 of a surety company authorized to do business in this state as surety, in such reasonable amount as the
18 commissioner fixes, to secure the payment of any tax, penalty or interest due or which may become
19 due from the person. In lieu of a bond, securities approved by the commissioner may be deposited
20 with the [state treasurer] which securities shall be kept in the custody of the [state treasurer], and
21 shall be sold by him, at the request of the commissioner, at public or private sale, without notice to
22 the depositor thereof, if necessary in order to recover any tax, penalty or interest due the state under
23 this act. Upon the sale, the surplus, if any, above the amounts due under this act, shall be returned
24 to the person who deposited the securities.

25 *Section 27. Jeopardy Assessment.* – If the Commissioner deems that the collection of any tax
26 or any amount of tax, required to be collected and paid under this act, may be jeopardized by delay,
27 he shall make an assessment of the tax or amount of tax required to be collected and shall mail or is-
28 sue a notice of the assessment to the taxpayer together with a demand for immediate payment of the
29 tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for
30 a current period, the commissioner may declare the taxable period of the taxpayer immediately
31 terminated and shall cause notice of the finding and declaration to be mailed or issued to the taxpayer
32 together with a demand for immediate payment of the tax based on the period declared terminated
33 and the tax shall be immediately due and payable, whether or not the time otherwise allowed by law
34 for filing a return and paying the tax has expired. Assessments provided for in this section shall become
35 immediately due and payable, and if any tax, penalty or interest is not paid upon demand of the

1 Commissioner, he shall proceed to collect it by legal process, or, in his discretion, he may require the
2 taxpayer to file a bond sufficient to protect the interest of the state.

3 *Section 28. Direct Payment Permits.* – (a) Notwithstanding any other provision of this act,
4 the commissioner may authorize (1) a manufacturer, mine operator, or public service corporation that
5 is a user, consumer, distributor, or lessee to which sales, distributions, leases, or storage of tangible
6 personal property are made under circumstances which normally make it impossible at the time there-
7 of to determine the manner in which the property will be used by the person, or (2) any person who
8 stores tangible personal property in this state for use both within and outside this state, to pay any tax
9 levied by this act directly to this state and waive the collection of the tax by the dealer; but no such
10 authority shall be granted or exercised except upon application to the Commissioner and the issuance
11 by the Commissioner of a direct payment permit. If a direct payment permit is granted, payment of
12 the tax on all sales, distributions, and leases, including sales, distributions, leases, and storage of tangible
13 personal property and sales of taxable services for use known at the time thereof, shall be made directly
14 to the commissioner by the permit holder.

15 (b) On or before the [twenty-eighth] day of each month every permit holder shall make and
16 file with the commissioner a return for the preceding month in the form prescribed by the Commis-
17 sioner showing the total value of the tangible personal property used, the amount of tax due from the
18 permit holder (which amount shall be paid to the commissioner with such return) and such other in-
19 formation as the commissioner deems necessary. The commissioner, upon written request by the
20 permit holder, may grant a reasonable extension of time for making and filing returns and paying the
21 tax. Interest on the tax at the rate of one-half of one percent per month, or fraction thereof, shall be
22 charged on every extended payment.

23 (c) It is the duty of every permit holder required to make a return and pay tax under this sec-
24 tion to keep and preserve suitable records of purchases, together with invoices of purchases, bills of
25 lading, and other pertinent records and documents in the form the commissioner requires by regula-
26 tion. All records and other documents shall be open during business hours to the inspection of the
27 commissioner or his duly authorized agents and shall be preserved for a period of four years, unless
28 the commissioner, in writing, authorizes their destruction or disposal at an earlier date.

29 (d) A permit granted pursuant to this section shall continue to be valid until surrendered by the
30 holder or cancelled for cause by the commissioner.

31 (e) Persons who hold a direct payment permit which has not been cancelled shall not be re-
32 quired to pay the tax to the dealer as otherwise herein provided. Such persons shall notify each dealer
33 from whom purchases or leases of tangible personal property are made of their direct payment permit
34 number and that the tax is being paid directly to the commissioner. Upon receipt of the notice, the
35 dealer shall be absolved from all duties and liabilities imposed by this act for the collection and

1 remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal proper-
2 ty to the permit holder. Dealers who make sales upon which the tax is not collected by reason of the
3 provisions of this section shall maintain records in such manner that the amount involved and identity
4 of each purchaser may be ascertained.

5 (f) Upon the cancellation or surrender of a direct payment permit, the provisions of this act,
6 shall thereafter apply to the person who previously held the permit, and the person shall promptly
7 notify in writing dealers from whom purchasers, leases, and storage of tangible personal property are
8 made of the cancellation or surrender. Upon receipt of the notice, the dealer shall be subject to the
9 provisions of this act, with respect to all sales, distributions, leases, or storage of tangible personal
10 property thereafter made to the person.

11 *Section 29. Vending Machine Sales.* – Whenever a dealer makes sales of tangible personal
12 property through vending machines, or in any other manner making collection of the tax impractical,
13 the commissioner may authorize the dealer to prepay the tax and waive collection from the purchaser
14 and may require the dealer to furnish bond sufficient to secure prepayment of the tax. The dealer
15 shall be required to print upon the property sold or post on the vending machine a statement to the
16 effect that the tax has been paid in advance. The terms and conditions of this section are inapplicable
17 unless the dealer makes application to the commissioner for the authority herein contained, and un-
18 less the commissioner finds that the collection of the tax in the manner otherwise provided in this act
19 is impractical.

20 *Section 30. Tax Warrants.* – The commissioner, when any tax becomes delinquent under this
21 act, may issue a warrant for the collection of the tax, penalty, and interest from each delinquent tax-
22 payer.

23 *Section 31. Erroneous Assessments.* – Upon any claim of an erroneous or illegal assessment
24 or collection, the taxpayer shall have his remedy under the [cite applicable statutes]. The sections
25 cited are applicable to all sales and use taxes imposed under this act.

26 *Section 32. Period of Limitations.* – The taxes imposed by this act shall be assessed within
27 three years from December 31 of the year in which the taxes became due and payable; but in the case
28 of a false or fraudulent return with intent to evade payment of the taxes imposed by this act, or a
29 failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such
30 taxes may be begun without assessment at any time within six years from December 31 of the year in
31 which the taxes became due and payable.

32 *Section 33. Violation of Act by Dealer a Misdemeanor.* – Any dealer subject to the provisions
33 of this act who fails or refuses to furnish any return herein required to be made, or fails or refuses to
34 furnish a supplemental return or other data required by the commissioner, or who makes a false or
35 fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim

1 for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who
2 violates any other provision of this act, punishment for which is not otherwise herein provided, is
3 guilty of a misdemeanor.

4 *Section 34. Administration.* – The commissioner shall administer and enforce the assessment
5 and collection of the taxes and penalties imposed by this act. He shall design, prepare, print, and
6 furnish to all dealers, or make available to them, all necessary forms for filing returns together with
7 instructions to assure a full collection from dealers and an accounting for the taxes due, but failure of
8 any dealer to receive or procure forms or instructions, or both, shall not relieve him from the payment
9 of the tax at the time and in the manner herein provided.

10 *Section 35. Rules and Regulations.* – The commissioner may make and publish reasonable
11 rules and regulations not inconsistent with this act, other applicable laws, or the Constitution of this
12 state, or of the United States, for the enforcement of the provisions of this act and the collection of
13 the revenue hereunder.¹

14 *Section 36. Administration of Oaths.* – The commissioner and such other officers or employ-
15 ees of the [department of taxation] as the commissioner authorizes in writing, may administer oaths
16 for the purpose of enforcing and administering the provisions of this act.

17 *Section 37. Secrecy of Information.* – Except in accordance with proper judicial order, or as
18 provided by law, it is unlawful for the commissioner or any agent, auditor, or other officer or em-
19 ployee to divulge or make known in any manner the amount of sales, the amount of tax paid, or any
20 other particulars set forth or disclosed in any return required by this act. Nothing in this act shall be
21 construed to prohibit the publication of statistics so classified as to prevent the identity of particular
22 reports or returns and the items thereof, or the inspection by the legal representative of this state of
23 the report or return of any taxpayer who applies for a review or appeal from any determination or
24 against whom an action or proceeding is about to be instituted or has been instituted to recover any
25 tax or penalty imposed by this act.

26 *Section 38. Exchange of Information with Other Tax Officials.* – The commissioner may
27 furnish to the tax officials of any other state and its political subdivision, the political subdivisions of
28 this state, the District of Columbia, and the United States and its territories, any information contained
29 in tax returns and reports and related schedules and documents filed pursuant to the tax laws of this

¹ States with personal income tax statutes may wish to add a provision as follows: The commissioner shall promulgate and publish sales tax deduction guides for the purpose of aiding the taxpayer in calculating allowable deductions, relevant to income taxes, which guides shall be based on the following factors: size of income, size of family, and rate of tax. The guides so promulgated shall not preclude any taxpayer from claiming as a deduction the amount of taxes, levied under the provisions of this act, actually paid by him.

1 state, or in the report of an audit or investigation made with respect thereto: Provided, that said juris-
2 dictions grant similar privileges to this state and that the information is to be used only for tax pur-
3 poses.

4 *Section 39. Personnel, Supplies, Equipment, Other Expenses.* – The commissioner may em-
5 ploy all necessary personnel and purchase supplies and purchase or rent equipment and incur other
6 expenses necessary for the administration of this act. All the costs and expenses shall be paid out of
7 appropriations made to the [department of taxation].

8 *Section 40. Separability.* – If any provision of this act be held unconstitutional or invalid by
9 a court of competent jurisdiction the same shall not affect the remaining provisions of this act but all
10 such provisions not held unconstitutional or invalid shall remain in full force and effect. If, however,
11 a court of competent jurisdiction holds that the sales tax or the use tax levied by this act is for any
12 reason invalid in its relationship to national banks, it is hereby provided that state banks shall thence-
13 forth enjoy immunity from such tax or taxes to the same extent as national banks.

14 *Section 41. Effective date of tax.* – The taxes imposed by this act shall be in full force and
15 effect on and after [insert date].

METROPOLITAN EDUCATIONAL EQUALIZATION AUTHORITY

Shortcomings in educational programs resulting from the unequal distribution of tax resources and the unequal costs of educating children can be tackled by marshalling resources within a region rather than the entire state. If a state does not provide a fully effective statewide program for equalizing opportunity, a limited or metropolitan approach offers a method for supplementing a deficient state aid program. This metropolitan educational finance measure is designed to deal with one of the most pressing social problems of our time – the need to design a system for financing education that enables all school districts within the metropolitan area to implement the concept of equal educational opportunity. While the disparities between central city and suburbs claim most public attention, anyone familiar with the fiscal landscape of suburbia is keenly aware of the fact that it does not present a uniform picture of affluence. On the contrary, suburbia fairly bristles with contrasts between rich, poor, and middle income jurisdictions.

To create a financial environment that contributes substantially to equality of educational opportunity, four remedial financial steps should be taken.

1. To eliminate the accidents of local property tax geography, the measure set forth below would subject all taxable property within the metropolitan area to a basic school levy and thereby largely remove the possibility that industrial enclaves and local fiscal zoning will shield certain property from the legitimate burdens borne by the wider community for public schools.

2. To provide special assistance to those school districts confronted with the task of educating a disproportionately large number of “high cost” students (the educational over-burden problem), the formula for distributing the proceeds of the areawide tax would recognize and compensate for the unequal distribution of socially and culturally deprived students among the school districts within the metropolitan area.

3. To provide special assistance to those school districts hampered in their efforts to finance an acceptable level of education due to extraordinary tax demands for their municipal-type functions such as public safety, public welfare, and other public services and facilities (the municipal over-burden problem), the formula for distributing the proceeds of the areawide tax would give due weight to the overall local tax burden (school and non-school) borne by taxpayers in each local school district.

4. To assure that state aid to local school districts within the metropolitan area reinforces this compensatory approach, this measure would direct the head of the State education department to channel all general state aid compensatory funds for local school districts within the metropolitan region through the regional financing authority. These state aid funds could then be distributed in the same equalizing fashion as the locally derived funds are distributed among local school districts.

The proposal embodied in the following draft legislation would increase fiscal support of the schools in greatest need while keeping school policy and school administration in the hands of the area’s individual school districts.

It will *not* interfere with the right of each local school district to (a) select its own superintendent, (b) to chart its own educational policy consistent with state law and (c) to impose a supplemental rate if it wants to underwrite a program above the areawide standard.

In order to match resources with educational needs, the proposed legislation directs the Governor to create a metropolitan educational equalization authority if the chief educational officer of the State finds that significant disparities exist among school districts in the metropolitan area. The proposal sets forth specific guidelines for determining the existence of significant disparities between resources and educational needs.

In addition, equalization guidelines are provided for the members of the metropolitan equalization authority to follow in drawing up a specific formula for distributing the proceeds of the areawide tax among the constituent school districts. The guidelines place heavy emphasis on the need to compensate for both educational and municipal over-burden factors.

To insure that a substantial degree of equalization is effected, the draft legislation sets forth a “standby” distribution formula that becomes operative unless representatives of the local school boards representing at least 80 percent of the school children within the metropolitan area concur in their own formula for inter-district equalization. As an additional incentive to encourage agreement on a local formula, the draft bill provides that state aid be channeled to local districts in accordance with a local formula approved with the concurrence of representatives of school districts containing a large proportion of the combined pupil enrollment.

In some states, a constitutional amendment may be necessary prior to the enactment of this legislation. A suggested amendment is set forth below, following the proposed legislation.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: “An Act to Authorize Metropolitan Educational Equalization Authorities.”]

(Be it enacted, etc.)

1 *Section 1. Purpose.* The purpose of this act is to lessen fiscal disparities among the various
2 school districts within the same metropolitan area and thereby more nearly equalize educational op-
3 portunity for all public school students residing in that area.

4 *Section 2. Urban Metropolitan School Districts.* Within each Standard Metropolitan Statistical
5 Area (SMSA), as defined by the U. S. Bureau of the Census,¹ that lies wholly or partly in this state,
6 the [chief state school officer] shall designate as an urban-metropolitan school district any local
7 school district in which [50] percent or more of the student body reside in the urbanized area of
8 the SMSA.

9 *Section 3. Determination of Resources and Needs.* The [chief state school officer] shall deter-
10 mine and report to the governor the percentage by which each urban-metropolitan district deviates
11 from the average of all urban-metropolitan districts within a Standard Metropolitan Statistical Area
12 with respect to the following indicators of resources and needs:

- 13 (1) equalized property tax value per pupil;
- 14 (2) current operating expenditures per pupil;
- 15 (3) proportion of students who fall below minimum educational competence as determined
16 on the basis of standardized tests authorized for use by the [chief state school officer] ;

¹States may wish to establish the definition of an urbanized area in accordance with their own demographic, economic, and jurisdictional criteria.

1 (4) proportion of school age population not attending school;

2 (5) proportion of educationally deprived students as defined under Title I of Public Law 89-10,
3 20 U.S.C.A. 241c.

4 *Section 4. Metropolitan Educational Financing Districts.* Whenever, pursuant to section 3, an
5 urban-metropolitan school district is reported to fall at least [25] percent below the average of all
6 urban-metropolitan school districts within a SMSA with respect to any of the indicators of resources
7 and needs contained in subdivision (1), (2), (3), (4), or (5) of section 3, the governor shall establish a
8 metropolitan educational financing district embracing all urban-metropolitan school districts within
9 the SMSA.

10 *Section 5. Metropolitan Educational Equalization Authority.* The governor shall create, for
11 each metropolitan educational financing district, a metropolitan educational equalization authority
12 that shall be comprised of [at least one]¹ school board member appointed by the school board of
13 each urban-metropolitan school district in the metropolitan educational financing district. The authority
14 shall convene for purposes of carrying out the provision of this act upon notification by the governor
15 that a metropolitan educational equalization authority has been created.

16 The authority shall meet at least once each year at the time and in the place its members may
17 determine and may meet at other times at the call of the chairman. The members of the authority
18 shall elect a chairman and may make and alter by-laws for its organization and the conduct of its af-
19 fairs. A majority of the members from the urban-metropolitan school districts represented in the
20 authority constitutes a quorum for the transaction of the business and the exercise of the power of
21 the authority.

22 *Section 6. Determination of Levy Rate.* A metropolitan educational equalization authority
23 shall levy a tax rate which when applied to the equalized assessed value of taxable property in the
24 metropolitan educational financing district will produce an amount equivalent to the combined
25 amount required by [cite appropriate state school aid statutes] to be raised from local revenue sources
26 in each urban-metropolitan school district.

27 *Section 7. Distribution Formula. (a) Adoption of Formula.* The metropolitan educational
28 equalization authority shall distribute the proceeds of the levy to each urban-metropolitan school
29 district in accordance with a formula adopted by the authority. The formula shall equalize, as nearly
30 as possible, educational opportunity by taking into account educational cost and tax burden differen-
31 tials among local school districts within the metropolitan area.

32 (b) *Consideration of High Cost Students.* In order to compensate the urban-metropolitan school
33 districts which have a disproportionately large number of high cost students, the distribution formula

¹Representation should be consistent with constitutional and statutory requirements regarding representation on elected local governing bodies.

1 shall give due weight to the relative proportion of school age children in each district that: (a) fall
2 below minimum educational competence, (b) fail to complete twelve grades prior to reaching age [19]
3 and (c) are counted as educationally deprived children for purposes of determining the grant from the
4 Federal government under Title I of Public Law 89-10, 20 U.S.C.A, 241c.

5 (c) *Consideration of Local Tax Burdens.* In order to compensate the urban-metropolitan school
6 districts hampered in the competition for tax dollars by demands for expenditures on public safety,
7 public health, public welfare, and other municipal-type services and facilities, the distribution formula
8 shall also give due weight to the overall local tax burden in each urban-metropolitan district.

9 (d) *Lack of Concurrence on a Formula.* Unless the representatives of the urban-metropolitan
10 school districts containing at least [80] percent of the combined pupil enrollment of a metropolitan
11 educational financing district concur in a formula, the proceeds of the levy provided for in section 6
12 shall be distributed among urban-metropolitan school districts as follows:

13 (i) [50] percent of the proceeds in the proportion that the school age population in each com-
14 ponent school district bears to the total school age population in the metropolitan educational financing
15 district, and

16 (ii) [50] percent of the proceeds in the proportion that each component district shares in the
17 funds for educationally deprived children provided to all component districts comprising the metro-
18 politan educational financing district under Title I of Public Law 89-10, 20 U.S.C.A. 241c.

19 (e) *State Educational Aid Funds.* If a metropolitan educational equalization authority approves
20 a formula with the concurrence of representatives of urban-metropolitan school districts containing
21 more than [80] percent of the combined pupil enrollment, the [chief state school officer] shall dis-
22 burse any state educational aid entitlement of an urban-metropolitan school district to the metropolitan
23 educational equalization authority for distribution in accordance with the approved formula.

24 *Section 8. Responsibilities of the [chief state school officer].* The [chief state school officer]
25 shall collect, compile, and make available to a metropolitan educational equalization authority, all
26 records necessary to determine an equitable distribution formula. The records shall include, for each
27 local school district: (1) the number of pupils falling below minimum educational competence as
28 established by standardized tests, (2) the number of children under [19] not attending school who
29 have not completed twelve grades, (3) the number of children counted in determining a grant from
30 the Federal government under Title I of Public Law 89-10, 20 U.S.C.A. 241c, and (4) the relative local
31 tax burden for education and non-educational purposes.

32 *Section 9. Tax Collections.* The taxes levied pursuant to this act shall be assessed and collected
33 in the same manner as other taxes and the proceeds shall be deposited to the credit of the metropolitan
34 educational equalization authority.

35 *Section 10. Permission to Levy Additional Taxes.* Nothing in this act shall preclude any individual

1 school district or municipality within a metropolitan educational financing district established by
2 this act from levying additional taxes for the support of its own school program.

3 *Section 11. Separability* [Insert separability clause].

4 *Section 12. Effective date* [Insert effective date].

Suggested Constitutional Amendment

1 *Section 1.* The [legislature] may authorize the establishment of educational financing districts
2 consisting of one or more counties or parts thereof and may authorize a uniform property tax rate
3 within the districts for the support of public education.

4 *Section 2.* [All parts of the Constitution in conflict with this amendment are hereby repealed.]
5 [sections (identify those sections of Constitution to be repealed) are hereby repealed.]

6 *Section 3.* [Insert appropriate language, consistent with state election laws, for submission of
7 the proposed amendment to the electorate.]

REMOVAL OF CONSTITUTIONAL RESTRICTIONS ON STATE BORROWING

Because of the financial crises of the nineteenth century and ill-fated State efforts to finance internal improvements, the great majority of States have placed severe restrictions on the legislature's power to incur public debt.

Only nine States (Connecticut, Delaware, Louisiana, Maryland, Massachusetts, Minnesota, New Hampshire, Tennessee, and Vermont) permit their legislatures to borrow without restriction as to amount. The rest limit the legislature by constitutional provisions, or by the requirement of electoral referendum approval, or both.

Today, however, States increasingly are asked to participate in numerous Federal grant-in-aid programs for capital improvement projects, such as airports, hospitals, and university buildings. In addition, local governments have sought State aid in contributing to the non-Federal share of Federally-aided programs administered locally.

These demands, added to the State's own growing needs, have created intense pressure for expanded borrowing authority, leading to circumventions of various kinds. There has been increased use of revenue bonds, public corporations, lease-purchase agreements, and reimbursement obligations. The debt created by these devices is called non-guaranteed debt, since the States do not pledge their general funds to repay it.

Use of these methods to by-pass restrictive debt limits has had some undesirable consequences. Because the States do not pledge their credit or taxing power to retire the bonds, they pay higher interest rates. Frequently, States have had to create, at additional cost, special administrative organizations. Whenever an independent authority administers an activity financed with non-guaranteed debt, it has the further undesirable effect of moving political accountability one step further from the public than when the legislature itself authorizes debt secured by the full faith and credit of the State.

The severity of business downturns, one of the causes of past bond defaults, has diminished. Countercyclical devices now are built into the American economy, and the Federal Government has developed fiscal tools to dampen fluctuations of the business cycle. Moreover, the growth and expansion of each State's economic base in recent years, coupled with the diversified tax systems now found in many States, assure greater stability in State revenues.

In the face of urgent needs, and in the light of new economic circumstances, States should re-examine constitutional restraints on State borrowing authority to assure that the State is not deprived of any legitimate fiscal power.

The provisions which follow are patterned after the Maryland constitutional convention draft. The legislature is given authority to incur indebtedness "for any public purpose," to be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the State.

The virtue of placing the full faith and credit of the State and its unlimited taxing power behind such indebtedness is that it expresses clearly and precisely the concept of a State debt. This approach strengthens the State's credit by removing ambiguity that has often led to a stream of litigation. The provision in the fourth sentence, which in effect makes the State debt a first charge upon the general funds of the State, also serves to strengthen the State's credit position.

Nothing in this amendment precludes the State or any of its agencies from continuing to issue revenue

bonds secured, not by a pledge of the full faith and credit of the State, but by the revenues of the project for which the revenue bonds are issued.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to State practice and requirements.]

1 *Section 1.* The [legislature] may incur indebtedness for any public purpose prescribed by law.
2 All such indebtedness shall be secured by an irrevocable pledge of the full faith and credit and unlimited
3 taxing power of the state. Unless the law authorizing the creation of an obligation includes such an
4 irrevocable pledge, the obligation shall not be considered an indebtedness of the state. If at any time
5 the [legislature] fails to appropriate sufficient funds to provide for the timely payment of the interest
6 upon and installment of principal of all state indebtedness, there shall be set apart from the first revenues
7 thereafter received applicable to the general funds of the state a sum sufficient to pay such interest and
8 installments of principal. All state indebtedness shall mature within [] years from the time such
9 indebtedness is incurred. The legislature may authorize the issuance of revenue bonds, which shall not
10 be an indebtedness of the state, but which shall be secured by receipts from the project for which the
11 bonds are issued.

12 *Section 2.* [All parts of the constitution in conflict with this amendment are hereby repealed.]
13 [Sections (identify those sections of constitution to be repealed) are hereby repealed.]

14 *Section 3.* [Insert appropriate language, consistent with the referendum requirements for amend-
15 ing the constitution and with state election laws, for submission of the proposed amendment to the
16 electorate.]

PROPERTY TAX RELIEF FOR LOW-INCOME FAMILIES

The property tax can quickly create a disproportionate claim on a family's financial resources once retirement, the death or physical disability of the bread-winner, or unemployment reduces sharply the flow of income. Local governments as a rule have neither the legal authority nor the fiscal capacity to alleviate these potential property tax over-burden situations, but States have both. Wisconsin and Minnesota have developed an efficient tax relief mechanism designed to avoid the special hardships frequently experienced by low-income property-owners. Low-income, elderly homeowners and renters in these states either claim a credit against their State income tax liability or, if the credit exceeds their income tax liability, receive a rebate from the State for that portion of their property tax liability deemed by the legislature to be excessive in relation to their household income.

In a number of States, homestead exemption, a durable by-product of the 1930's depression, offers some protection from undue property tax burdens on low-income occupants of dwellings and farms. This method, however, bestows property tax relief to all homeowners, not just those with low incomes, and misses completely the low-income families in rented properties. The policy of granting homestead exemptions involves a substantial amount of injustice among individual taxpayers and taxing jurisdictions at a large and usually unwarranted sacrifice of local property tax revenue.¹ If the exemption privilege is restricted to low income households and the State reimburses local governments for the cost of this program, the more obvious defects of the exemption approach could be minimized. It is not, however, flexible enough to alleviate extraordinary property tax burdens that may be experienced indirectly by low income households in rented quarters.

As a means of preventing fiscal overburdens, the tax credit-tax rebate technique has unique advantages. Because this tax relief program is financed from State funds and administered by a State agency, it neither erodes the local tax base nor interferes in any way with the local assessment or rate-setting processes. It can be designed to maximize the amount of aid extended to low-income homeowners and renters while minimizing loss of revenue. It operates in the "right" direction from both inter-jurisdictional and inter-personal standpoints; because the poor tend to be clustered together, the major portion of the relief will redound to the benefit of low-income households and low-income communities.

To assure that the aid goes only to those in need of it, this legislation restricts the benefits to households with annual incomes below a maximum set by the State legislature and requires that the beneficiaries report all money income. Income for this purpose means not only income as defined for income tax purposes but also social security, pension and annuity payments, nontaxable interest, workman's compensation, and the gross amount of "loss of time" insurance. To protect the State against "doubling-up" on the charge against public funds, any person who is a recipient of public funds for the payment of taxes or rent during the period for which the claim is filed may not claim tax relief under the act.

To the extent that landlords can shift the property tax to tenants, low income households in rented quarters also feel the pinch of extraordinary property tax burdens in relation to current income. Minnesota and Wisconsin have recognized this by establishing percentages, 20 and 25 percent respectively, of gross rent as rent constituting property taxes accrued. This percentage serves as the property tax equivalent which renters may use in claiming income tax credit or rebate.

¹ Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax* (Washington, D.C., 1963).

The following suggested legislation is of course patterned after the pioneering Wisconsin and Minnesota statutes but language has been included for States without a personal income tax that desire to grant this type of relief, (alternative Section 5) that would provide outright rebate to those who qualify.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to Reimburse Low-Income Householders for Extraordinary Property Tax Burdens.]

(Be it enacted, etc.)

1 *Section 1. Short Title.* This act may be cited as the "Extraordinary Tax Relief Act."

2 *Section 2. Purpose.* The purpose of this act is to provide relief, through a system of income tax
3 credits and refunds and appropriations from the general fund, to certain persons who own or rent their
4 homestead.

5 *Section 3. Definitions.* As used in this act:

6 (1) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue
7 Code of the United States,¹ the amount of capital gains excluded from adjusted gross income, alimony,
8 support money, nontaxable strike benefits, cash public assistance and relief (not including relief granted
9 under this act), the gross amount of any pension or annuity (including railroad retirement benefits, all
10 payments received under the federal social security act, State unemployment insurance laws, and
11 veterans disability pensions), nontaxable interest received from the Federal Government or any of its
12 instrumentalities, workman's compensation, and the gross amount of "loss of time" insurance. It does
13 not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a
14 governmental agency.

15 (2) "Household" means a claimant and spouse.

16 (3) "Household income" means all income received by all persons of a household in a calendar
17 year while members of the household.

18 (4) "Homestead" means the dwelling, whether owned or rented, and so much of the land sur-
19 rounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and
20 may consist of a part of a multi-dwelling or multi-purpose building and a part of the land upon which
21 it is built. ("Owned" includes a vendee in possession under a land contract and of one or more joint
22 tenants or tenants in common.) It does not include personal property such as furniture, furnishings or
23 appliances, but a mobile home may be a homestead.

¹ Minnesota uses gross income as defined in its statutes; Wisconsin uses adjusted gross income as defined in its statutes.

1 (5) "Claimant" means a person who has filed a claim under this act and was domiciled in this
2 state during the entire calendar year preceding the year in which he files claim for relief under this
3 act. In the case of claim for rent constituting property taxes accrued, the claimant shall have rented
4 property during the entire preceding calendar year in which he files for relief under this act and shall
5 have occupied the same residence quarters for at least six months of the preceding calendar year.¹
6 When two individuals of a household are able to meet the qualifications for a claimant, they may de-
7 termine between them as to who the claimant shall be. If they are unable to agree, the matter shall
8 be referred to the [tax commissioner] and his decision shall be final. If a homestead is occupied by
9 two or more individuals, and more than one individual is able to qualify as a claimant, and some or all
10 the qualified individuals are not related, the individuals may determine among them as to who the
11 claimant shall be. If they are unable to agree, the matter shall be referred to the [tax commissioner],
12 and his decision shall be final. If a homestead is occupied by two or more individuals, and more than
13 one individual is able to qualify as a claimant, and some or all the qualified individuals are not related,
14 the individuals may determine among them as to who the claimant shall be. If they are unable to
15 agree, the matter shall be referred to the [tax commissioner], and his decision shall be final.

16 (6) "Rent constituting property taxes accrued" means [20 or 25²] percent of the gross rent
17 actually paid in cash or its equivalent in any calendar year by a claimant and his household solely for
18 the right of occupancy of their (name of state) homestead in the calendar year, and which rent con-
19 stitutes the basis, in the succeeding calendar year, of a claim for relief under this act by the claimant.

20 (7) "Gross rent" means rental paid solely for the right of occupancy (at arms-length) of a home-
21 stead, exclusive of charges for any utilities, services, furniture, furnishings or personal property ap-
22 pliances furnished by the landlord as a part of the rental agreement, whether or not expressly set out
23 in the rental agreement. If the landlord and tenant have not dealt with each other at arms-length, and
24 the [tax commissioner] is satisfied that the gross rent charges was excessive, he may adjust the gross
25 rent to a reasonable amount for purposes of this act.

26 (8) "Property taxes accrued" means property taxes (exclusive of special assessments, delinquent
27 interest, and charges for service) levied on a claimant's homestead in this State in [calendar year] or
28 any calendar year thereafter. If a homestead is owned by two or more persons or entities as joint
29 tenants or tenants in common, and one or more persons or entities are not a member of claimant's
30 household, "property taxes accrued" is that part of property taxes levied on the homestead which
31 reflects the ownership percentage of the claimant and his household. For purposes of this paragraph

¹ Sentence included in Minnesota statute; omitted in Wisconsin.

² Twenty percent used in Minnesota; 25 percent in Wisconsin.

1 property taxes are “levied” when the tax roll is delivered to the local [treasurer] for collection. If a
2 claimant and spouse own their homestead part of the preceding calendar year and rent it or a different
3 homestead for part of the same year, “property taxes accrued” means only taxes levied on the home-
4 stead when both owned and occupied by the claimant at the time of the levy, multiplied by the per-
5 centage of 12 months that such property was owned and occupied by the household as its homestead
6 during the preceding year. When a household owns and occupies two or more different homesteads in
7 this State in the same calendar year, property taxes accrued shall relate only to that property occupied
8 by the household as a homestead on the levy date. If a homestead is an integral part of a larger unit
9 such as a farm, or a multi-purpose or multi-dwelling building, property taxes accrued shall be that per-
10 centage of the total property taxes accrued as the value of the homestead is of the total value. For pur-
11 poses of this paragraph “unit” refers to the parcel of property covered by a single tax statement of which
12 the homestead is a part.

13 *Section 4. Claim is Personal.* The right to file claim under this act shall be personal to the
14 claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his
15 legal guardian or attorney-in-fact. If a claimant dies after having filed a timely claim, the amount
16 thereof shall be disbursed to another member of the household as determined by the [tax commis-
17 sioner]. If the claimant was the only member of his household, the claim may be paid to his executor
18 or administrator, but if neither is appointed and qualified within 2 years of the filing of the claim, the
19 amount of the claim shall escheat to the state.

20 *Section 5. Claim as Income Tax Credit or Rebate.* Subject to the limitations provided in this
21 act, a claimant may claim in any year as a credit against [name of State] income taxes otherwise due
22 on his income, property taxes accrued, or rent constituting property taxes accrued, or both in the
23 preceding calendar year. If the allowable amount of such claim exceeds the income taxes otherwise
24 due on claimant’s income, or if there are no [state] income taxes due on claimant’s income, the amount
25 of the claim not used as an offset against income taxes, after audit [or certification] by the [tax commis-
26 sioner], shall be paid to claimant from balances retained by the [treasurer] for general purposes. No
27 interest shall be allowed on any payment made to a claimant pursuant to this act.¹

28 [Alternative Section 5 for States not imposing a personal income tax. *Claim as Rebate From*
29 *State Funds.* Subject to the limitations provided in this act, a claimant may claim in any year a rebate
30 for property taxes accrued or rent constituting property taxes accrued or both in the preceding year.
31 The amount of the rebate, after audit or certification by the [tax commissioner] shall be paid to
32 claimant from balances retained by the [treasurer] for general purposes.]

¹Minnesota permits interest to be paid; Wisconsin does not.

1 *Section 6. Filing Date.* No claim with respect to property taxes accrued or with respect to rent
2 constituting property taxes accrued shall be paid or allowed, unless the claim is actually filed with and
3 in the possession of the [tax department] on or before [date for filing initial claim]. Subject to the
4 same conditions and limitations, claims may be filed on or before (income tax filing date or other
5 specified date) with respect to property taxes accrued of the next preceding calendar year.

6 *Section 7. Satisfaction of Outstanding Tax Liabilities.* The amount of any claim otherwise pay-
7 able under this act may be applied by the [tax department] against any liability outstanding on the
8 books of the department against the claimant, or against his or her spouse who was a member of the
9 claimant's household in the year to which the claim relates.

10 *Section 8. One Claim Per Household.* Only one claimant per household per year shall be en-
11 titled to relief under this act.

12 *Section 9 (based on Wisconsin statute). Limits.* The amount of any claim pursuant to this act
13 shall be determined as follows:

14 (1) If the household income of the claimant's household was [\$1,000] or less in the year to
15 which the claim relates, the claim shall be limited to [75] percent of the amount by which the proper-
16 ty taxes accrued or rent constituting property taxes accrued in such year on the claimant's homestead
17 is in excess of [3%] of household income exceeding [\$500] but not exceeding [\$1,000].

18 (2) If the household income of the claimant's household was more than [\$1,000] in the year to
19 which the claim relates, the claim shall be limited to [60%] of the amount by which the property tax-
20 es accrued, or rent constituting property taxes accrued in such year on the claimant's homestead is in
21 excess of [3%] of the household income exceeding [\$500] but not exceeding [\$1,000], [6%] of the
22 household income exceeding [\$1,000] but not exceeding [\$1,500], [9%] of household income ex-
23 ceeding [\$1,500] but not exceeding [\$2,000], [12%] of household income exceeding [\$2,000] but
24 not exceeding [\$2,500] and [15%] of all household income over [\$2,500].

25 (3) The [tax commissioner] shall prepare a table under which claims under this act shall be de-
26 termined. The table shall be published in the department's official rules and shall be placed on the ap-
27 propriate tax blanks. The amount of claim as shown in the table for each bracket shall be computed
28 only to the nearest 10 cents.

29 (4) The claimant, at his election, shall not be required to record on his claim the amount claimed
30 by him. The claim allowable to persons making this election shall be computed by the department,
31 which shall notify the claimant by mail of the amount of his allowable claim.]

32 *Section 9 (based on Minnesota statute). Limits.* The amount of any claim pursuant to this act
33 shall be determined in accordance with the following schedule:

<i>Income Range</i>	<i>Percent Tax</i>
0 — 499	(75) percent
500 — 999	(70) percent
1,000 — 499	(50) percent
1,500 — 1,999	(40) percent
2,000 — 2,499	(30) percent
2,500 — 2,999	(20) percent
3,000 — 3,499	(10) percent

1 In any case in which property taxes accrued, or rent constituting property taxes accrued, or both, in
2 any one year in respect of any one household exceeds [\$300], the amount thereof shall, for purposes
3 of this act, be deemed to have been [\$300/].

4 *Section 10. Administration.* The [tax commissioner] shall make available suitable forms with
5 instructions for claimants, including a form which may be included with or as a part of the individual
6 income tax blank. The claim shall be in such form as the [tax commissioner] may prescribe.

7 *Section 11. Proof of Claim.* Every claimant under this act shall supply to the [department of
8 taxation], in support of his claim, reasonable proof of rent paid, name and address of owner or man-
9 aging agent of property rented,¹ property taxes accrued, changes of homestead, household member-
10 ship, household income, size and nature of property claimed as the homestead and a statement that the
11 property taxes accrued and used for purposes of this act have been or will be paid by him and that
12 there are no delinquent property taxes on the homestead.

13 *Section 12. Audit of Claim.* If on the audit of any claim filed under this act the [tax commis-
14 sioner] determines the amount to have been incorrectly determined, he shall redetermine the claim
15 and notify the claimant of the redetermination and his reasons for it. The redetermination shall be
16 final unless appealed within 30 days of notice.

17 *Section 13. Denial of Claim.* If it is determined that a claim is excessive and was filed with
18 fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has
19 been allowed against income taxes otherwise payable, the credit shall be canceled and the amount
20 paid may be recovered by assessment (as income taxes are assessed), and the assessment shall bear in-
21 terest from the date of payment or credit of the claim, until refunded or paid, at the rate of one per-
22 cent per month.² The claimant in such case, and any person who assisted in the preparation or filing
23 of such excessive claim or supplied information upon which such excessive claim was prepared, with

¹Omitted in Wisconsin statute; included in Minnesota

²Minnesota provides "A penalty of 25 percent shall be imposed and such assessment shall bear interest from the due date of the return, until refunded or paid, at the rate of four percent per annum."

1 fraudulent intent, is guilty of a misdemeanor. If it is determined that a claim is excessive and was
2 negligently prepared, 10 percent of the corrected claim shall be disallowed, and if the claim has been
3 paid or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and
4 the proper portion of any amount paid shall be similarly recovered by assessment (as income taxes
5 are assessed), and the assessment shall bear interest at one percent per month from the date of pay-
6 ment until refunded or paid.

7 *Section 14. Rental Determination.* If a homestead is rented by a person from another person
8 under circumstances deemed by the [tax commission] to be not at arms-length, he may determine
9 rent constituting property taxes accrued as at arms-length, and, for purposes of this act, such deter-
10 mination shall be final.

11 *Section 15. Appeals.* Any person aggrieved by the denial in whole or in part of relief claimed
12 under this act, except when the denial is based upon late filing of claim for relief [or is based upon a
13 redetermination of rent constituting property taxes accrued as at arms-length]¹ may appeal the
14 denial to the [appropriate state agency] by filing a petition within 30 days after such denial.

15 *Section 16. Public Welfare Recipients Excluded.* No claim for relief under this act shall be al-
16 lowed to any person who is a recipient of public funds for the payment of the taxes or rent during
17 the period for which the claim is filed.

18 *Section 17. Disallowance of Certain Claims.* A claim shall be disallowed, if the department
19 finds that the claimant received title to his homestead primarily for the purpose of receiving benefits
20 under this act.

21 *Section 18. Extension of Time for Filing Claims.* In case of sickness, absence, or other disabil-
22 ity, or if, in his judgment, good cause exists, the [tax commissioner] may extend for a period not to
23 exceed six months the time for filing a claim.

24 *Section 19. Separability* [Insert separability clause].

25 *Section 20. Effective date.* [Insert effective date].

¹Omitted in Minnesota statute.

CONSTITUTIONAL PROVISION FOR SHORT BALLOT FOR STATE OFFICIALS

In several States, executive authority has been fragmented by the “long ballot,” in which the heads of major administrative agencies are either elected independently or are appointed by elected boards or commissions over which the governor lacks substantive control. Despite the progress which has been made through reorganization efforts, the number of elected executive and administrative officials in many States is still considerable, averaging between ten and eleven per State. In nearly one-half of the States the head of the State educational agency is elected, and many State departments of health, mental health, highways, and welfare are administered by complex systems of boards and commissions, usually comprised of a large bipartisan membership serving for long overlapping terms.

This electoral fragmentation often is complicated further by the existence of an unnecessarily large number of separate, autonomous agencies. The relatively large number of administrative agencies in most States may be attributed to such factors as the “normal” drive for agency autonomy, traditions of separate responsibility of administrative officials to the electorate, reform movements designed to remove agencies from the governor’s control in order to keep them “out of politics,” and the desire of interest groups to insulate certain agencies from executive or legislative authority.

The major impact of this diffusion of administrative responsibility is to prevent governors from exercising effective supervision and control over the executive branch. In order to strengthen the governor’s position, States should limit the number of separately elected administrative officials.

The following amendment, which draws upon the Alaska, Hawaii, Michigan, and New Jersey constitutions, is suggested for adoption as a means of eliminating the “long ballot” by enabling the governor to appoint and remove the heads of principal administrative agencies. This would establish direct channels of responsibility between the governor and agency heads charged with formulating and implementing policies within the framework of the governor’s program. The amendment also provides for gubernatorial appointment of boards and commissions which direct major administrative departments as a means of further buttressing the governor’s authority as the head of the State administration.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to State practice and requirements.]

1 The head of each administrative department shall be a single executive unless otherwise provided
2 by law. The heads of all State administrative departments shall be appointed by the governor, with the
3 advice and consent of the Senate, and shall serve at the pleasure of the governor or until the appoint-
4 ment and qualification of their successors.¹

5 Whenever the head of an administrative department is a board, commission, or other body, the
6 members thereof shall be appointed by the governor, with the advice and consent of the Senate. The

¹Recent trends in State constitutional revision indicate a preference for the appointment of the heads of all administrative departments, including the secretary of state, the state treasurer, and the attorney general. The governor and lieutenant governor run for election as a team.

1 term of office and removal of the members shall be provided by law. The board, commission, or other
2 body may appoint a principal executive officer when authorized by law, but the appointment shall be
3 subject to the approval of the governor. All principal executive officers so appointed shall be removable
4 by the governor.

AUTHORIZATION FOR THE GOVERNOR TO SUCCEED HIMSELF

If the States are to serve as viable partners in the American federal system, and if unnecessary centralization of power and responsibility in the national government is to be avoided, it is imperative that the States be equipped with the tools necessary to cope effectively with the problems of the twentieth century.

In many States the Office of Governor needs to be strengthened. Relatively few governors actually command the entire executive branch of State government due in part to restrictions which have been placed upon the office.

Constitutional limitations upon gubernatorial succession represent a major constraint upon the development of strong executive leadership. In the past, a major justification for provisions restricting the term of the governor was the fear that he would become so powerful through perpetuation in office that neither the electorate, the legislature, nor the courts could keep him in check.

However, current trends indicate that other factors have emerged which effectively serve to restrain excessive gubernatorial authority. For example, the marked increase in inter- and intra-party competition – particularly for the governorship – in practically all States; the growing strength and professionalism of State bureaucracies; the impact of interest groups upon the State political process; the progress being made in reapportionment; and the structural and procedural modernization of State legislative machinery combine to create a complex of forces which serve to prevent arbitrary gubernatorial actions.

Tenure limitations disregard the need for long-range program and policy planning, restrict the opportunity for the development of gubernatorial expertise, and ignore the growing influence of many line agency officials who are often more concerned with their own particular function than with its contribution and relationship to overall State policy. Tenure limitations also prevent the reelection of governors of proven ability, and remove from the electoral field candidates about whom voters usually are most fully informed. An important effect of these restrictions is to weaken the position of the States in the federal system.

The following draft constitutional amendment draws upon the Pennsylvania and Wisconsin constitutions.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

1 The governor shall be elected by a direct vote of the people at the general election every fourth
2 year, beginning in _____. The candidate receiving [the greatest number] [a majority] of votes cast
3 for that office shall be elected governor. The governor shall serve for a term of four years, beginning
4 on the [first] day of [December] [January] next following his election. He is eligible for election as
5 his own successor. Any qualified voter who is at least [30] years of age at the time of the election, and
6 who has resided in this state for a period of not less than [5] years immediately preceding the election,
7 is eligible to the office of governor.

REORGANIZATION OF THE STATE EXECUTIVE BRANCH

The burgeoning demands on State government to expand traditional services and initiate new programs emphasizes the need for greater flexibility in administrative reorganization. Reorganization of State government structure can be facilitated and the governor's role as chief administrator can be strengthened by authorizing the chief executive to submit reorganization plans to the legislature subject to legislative veto. A similar procedure is provided at the Federal level under the Reorganization Act of 1949, as amended. It permits the President to initiate modifications in the Federal Executive Branch, subject to Congressional veto. Under such a plan at the State level, the governor's responsibility for the efficient day-to-day operation of the government would be accompanied by authority to propose the revision of outmoded administrative structures and practices.

In its "pure" form, the plan provides for executive initiation of reorganization proposals, subject to legislative veto. The governor presents the proposals to the legislature and, after a specified time, the plans go into effect unless the legislature disapproves them. A legislative veto over executive initiative is substituted for the more common executive veto over legislative enactment.

This "pure" form is authorized by the constitutions of three States — Alaska, Massachusetts, and Michigan. In three other States — Kentucky, Pennsylvania, and South Carolina — reorganization proposals must be introduced as regular bills requiring legislative approval. In a seventh State — Georgia — the "pure" form exists along with a later version which requires affirmative legislative action approving or disapproving the governor's reorganization proposal. In two other States and in Puerto Rico, the plan once existed but now has lapsed, either through expiration of its temporary authority or, as in New Hampshire, through a State Supreme Court ruling of unconstitutionality.

In order to strengthen the role of the States in the federal system, it is desirable to provide an expeditious method by which administrative agencies may be organized into a rational structure with the governor serving as the major top management official.

A strong legislative branch, well organized and equipped with the necessary staff, can maintain continuing review of the operations of a strong executive branch. This will assure effective functioning of appropriate checks and balances.

The following amendment draws upon the Alaska, Massachusetts, and Michigan constitutions. It is consistent with the "Executive Reorganization Act" contained in the Council of State Government's 1957 *Suggested State Legislation*.

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

- 1 Except for organizational arrangements specified in this constitution, the governor may make
- 2 such changes in the organization of the executive branch or in the assignment of functions among its
- 3 units as he considers necessary for efficient administration. Changes that would modify statutory law,
- 4 shall be set forth in executive orders and submitted to the legislature while it is in session. Thereafter,
- 5 the legislature shall have [60] days of a regular session, or a full session if of shorter duration, to

1 disapprove each executive order. Unless disapproved by resolution concurred in by a majority of the
2 members of either house, each order shall become effective at a later date designated by the governor.
3 Changes in statutory law effected by this Section shall be incorporated in [session laws and subsequent
4 codes or supplements].

STRONG EXECUTIVE BUDGET

The principal tool for controlling the activities of state government is the budget. All but three states have adopted, to some extent, an executive budget system, but in many cases its effectiveness is vitiated by gaps in the overall picture of fiscal resources and needs, or by agency practices that contravene the authority of the governor.

The executive budget system contemplates that the governor be given full authority and responsibility for preparing a budget that reveals the full scope of administrative operations, and that the legislature review and render judgment on the budget that the governor presents. The governor should be cognizant of all funds from every source coming into State agencies, even the independent ones. Earmarked funds should be reflected in the analysis accompanying the budget presentation, even though their expenditure is not subject to ordinary executive or legislative controls. Similar treatment is warranted for the large and growing portion of State income that arrives in the form of grants or other aid [loans] from the Federal Government. This draft amendment, by requiring a plan of expenditures for all agencies, assumes that the state's higher education system is not constitutionally independent, although in some states the university system has separate constitutional status.

All budget requests should be channelled exclusively through the governor. In some states, the legislature receives the agency estimates at the same time the governor does. In many states, agencies are free to argue for their original requests in hearings before legislative committees. Either situation is undesirable to the extent that it permits the administrative agencies to play off the legislature against the governor.

The proposed amendment designates the governor as the state-budget officer. It clearly establishes the authority and responsibility of the governor for budget preparation and execution, and anticipates that the budget staff would be an integral part of the executive office of the governor. This kind of flexibility takes on increasing significance with the growing emphasis on the development of the so-called "Planning, Programming and Budgeting System."¹

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirement.]

1 *Section 1. Governor's Budget and Recommendations as to Revenue.* The governor shall be
2 the state budget officer and shall submit to the [legislature], at a time fixed by law, but not later
3 than [10] days after it convenes in each regular [or budget] session,² a budget for the ensuing
4 fiscal period, setting forth a complete plan of proposed expenditures [by program] of the state

¹The Advisory Commission on Intergovernmental Relations has developed draft legislation on state planning which contains a provision designating the governor as the State Planning Officer. (See bill 405 in this volume.)

²States should consider the desirability of an arrangement in the schedule for submitting the budget that will allow an incoming governor enough time, after his inauguration, to study the budget prepared by his predecessor, and to make changes that reflect his own plans and programs.

1 and all its agencies, together with the governor's estimate of available revenues and his recommenda-
2 tions for raising any additional revenues that may be needed.

3 *Section 2. Power of Partial Veto of Appropriation Bills; Procedure; Limitations.* The governor
4 may disapprove or reduce one or more items of appropriation of money in any bill presented to him,
5 while approving other portions of the bill. On signing the bill he shall append to it a statement of the
6 items which he has disapproved or reduced, and these items or portions of items shall not take ef-
7 fect. If the [legislature] is in session he shall transmit to the house in which the bill originated a copy
8 of the statement, and the items he has disapproved or reduced shall be reconsidered separately. If
9 the [legislature] is not in session he shall transmit the bill within [forty-five] days to the office of
10 the secretary of state with his approval or reasons for disapproval. The governor shall not reduce any
11 appropriation below the amount necessary for the payment of principal and interest on the public
12 debt.

13 *Section 3. Power of Governor to Control and Reduce Expenditures.* The governor, at his
14 discretion, may control the rate at which any appropriation to a department or agency of the ex-
15 ecutive branch is expended during the period of the appropriation, by allotment, or other means, and
16 may reduce the expenditures of any department or agency of executive branch below the amounts
17 appropriated.

18 *Section 4.* [All parts of the Constitution in conflict with this amendment are hereby repealed.]
19 [Sections (identify those sections of the Constitution to be repealed) and hereby repealed.]

20 *Section 5.* [Insert appropriate language, consistent with the referendum requirements for
21 amending the Constitution and with state election laws, for submission of the proposed amendment
22 to electorate.]

STATE AND REGIONAL PLANNING

The increasingly complex responsibilities of State government have created a need for strong, well-staffed, strategically located planning services to assist in formulating short and long-term State goals and needs and an inventory of resources for meeting them. The sophisticated task of relating innumerable programs and policies to one another and to those of other levels of government is a responsibility that States cannot avoid.

The vital need for such a planning capability is nowhere more clearly illustrated than by the problems arising from the increasing concentrations of population in urban areas, the plight of rural communities, and the attendant difficulty of matching needs for public services with available resources. While Federal grant-in-aid programs represent the major current national effort to assist the States and local governments, the constantly increasing number and complexity of grant programs frequently have served as an impediment to their effective utilization. These developments clearly underscore the need for a strong State and regional planning capability.

Governors and State legislatures must be able to allocate current resources among a number of competing needs through the budgetary and appropriation process. They need to analyze and assess the impact of individual programs on one another and to anticipate emerging problems and demands. These responsibilities require the closest relationship between highly qualified budget and planning staffs and call for a continuing, close, functioning relationship.

The need is increasingly recognized for a planning organization and for planning procedures capable of developing urbanization policies for the States and relating the complex federal grant programs to one another and to State and local activities and resources. There is a pressing need for a method of coordinating departmental plans, many of which are required by federal grant legislation as a condition for receiving funds. Yet most states do not have an effective means of coordination, and in only one-third of the States are State agencies required to obtain the approval of the governor prior to submitting applications for Federal grant assistance. The necessity of relating those grant-assisted local projects and programs which have a significant impact outside their own borders to areawide needs and objectives and to State plans and policies is still another complicating factor. Federal legislation now requires review of urban development grant applications from metropolitan areas either by a metropolitanwide or State agency and State offices of planning are sometimes assigned a coordinative role for the utilization of federal funds by both State agencies and their local units. However, effective planning and coordination often still is lacking.

Not only do States have a responsibility for coping with urbanization after it has taken place; they also have a responsibility to plan for urbanization to come. The States need to *act* rather than merely to *react*. For States to fulfill their key role in the development of urbanization policy they must have a planning process that will develop the policies needed to channel and guide the growth of the State. The States through their constitutions and statutes determine the general outline and many of the details of the specific structure, form, and direction of urban growth. They should supply guidance for specific local government, metropolitan, and multicounty planning and development programs. They should establish a link between urban land use and development oriented local planning efforts and broader regional and national objectives. Although the evolution of effective State planning can be seen in a few States, it is doubtful if planning in any State government has arrived yet at a stage adequate for assuming its appropriate role in the development of State land use and urbanization policy.

Two reports of the Advisory Commission on Intergovernmental Relations include consideration of this problem and recommend that each State develop a strong planning capability in the executive branch of its State government. The Commission recommends that the planning function include formulation for consideration by the governor and the legislature of comprehensive policies and long-range plans for the effective

and orderly development of the human and material resources of the State, including specifically plans and policies to guide decisions which affect the pattern of urban and social growth. The provision of a framework for coordinating functional, departmental, regional, and local plans is recommended. Further a method of formal review of State, regional, and local plans and projects and, where relevant, local implementing ordinances for their conformity with State urbanization plans and policy is recommended. More specifically, it is urged that multicounty planning agencies be assigned responsibility for reviewing applications for federal or State physical development project grants from constituent local jurisdictions and that provision be made for review and comment on all local and areawide applications for urban planning assistance. Finally, it is recommended that State legislatures provide within their standing committee structure a means to assure continuing, systematic review and study of the progress toward the State urbanization policy.¹

The following suggested legislation presents a general planning act, provides the framework for overall State and regional planning procedures, and incorporates the specific recommendations mentioned above. It is based on a number of State acts, earlier model legislation, and report recommendations. Recent Florida and Georgia statutes as well as earlier Connecticut, Minnesota, Missouri, Wisconsin, and Tennessee legislation, have been used. The recommendations of the Virginia Metropolitan Areas Study Commission report, *Metropolitan Virginia: A Program for Action* and the accompanying implementing bills, and the National Municipal League's, "Model State and Regional Planning Law" also were of assistance. Finally, several of the reports and policy statements issued over the last decade by the Council of State Governments, the National Governors' Conference, and the American Institute of Planners were helpful.²

The provisions of the suggested bill incorporate several basic assumptions regarding State planning. First, as provided in Section 2, the State planning staff is directly responsible and immediately accessible to the governor who must be able to use planning as a management tool to guide programs and policies. This objective is furthered by identifying the governor as the State Planning Officer. The governor appoints a State director of planning to head the planning staff. The responsibility for the detailed administrative organization and location of the office is left to the governor.

Second, the overall, comprehensive planning function must be continuous and integrated with the executive budget function. In a proposed State Constitutional Amendment which appears elsewhere in this volume, the governor is designated as the budget making authority. When the governor is also the budget officer, a close administrative relationship is assured by giving the governor latitude in making specific organizational arrangements such as locating both the planning and budget agency in his executive office or in a combined planning, budgeting, and programming agency. Procedurally, the relationship between planning and budgeting is maintained by the requirement that a development program for the next six years be submitted annually by the governor to the State legislature along with the executive budget. The current year's (or biennium's) development program is incorporated in the budget requests and the succeeding five (or four) year's plan accompanies it in order to facilitate consideration by the legislature of the future implications of current expenditure decisions.

Third, planning is basically a management tool and is concerned not only with physical development but also with related social and economic programs and policies. Nevertheless, it is necessary to produce a

¹ *Fiscal Balance in the American Federal System*, Report No. A-31, (Washington, D.C.: October 1967) Chapters 2 and 5 and *Urban and Rural America: Policies for Future Growth*, Report No. A-32 (Washington, D.C.: April 1968) Chapter 6, Recommendation Three.

² The Council of State Governments, *Planning Services for State Government*, (Chicago, Illinois, 1956); the National Governors' Conference, Subcommittee on State Planning, *State Planning, A Policy Statement*, (Chicago, Illinois: The Council of State Governments, 1962), and the Committee on State Planning, *A Strategy for Planning*, October 18, 1967. American Institute of Planners, Committee on State Planning, *State Planning: Its Function and Organization*, October 10, 1958 and "State Responsibilities for Urban Development," in Proceedings of AIP Second Biennial Government Relations and Planning Policy Conference, Washington, D.C., 1963.

plan not only as a concept but also as a document. It is easier to include consideration of social and economic factors in the planning process than it is to express them specifically in a plan as a document. However, the plan as a document provides a point of reference for State agencies, local governments, and the public. It represents a public commitment analogous to the executive budget in the fiscal management field and similarly should be approved, in its essentials, by both the executive and the legislature. If the actions of other governments are to be influenced or guided by State policies as incorporated in a plan, they must be clearly stated through a combination of maps and other visual presentations and text, descriptions, and policy statements. There must be clear standards made public, against which programs, projects, and policies can be evaluated and judged. The suggested bill emphasizes both planning procedures and the need for certain specific plans as well as methods of reporting and communicating, such as periodic special reports, expert testimony, and consultation and advice.

A fourth basic assumption of the draft, incorporated in Section 9 thru 17, is that State and regional planning are only one element in an overall picture including national, interstate regional, and local elements. The provisions of the act acknowledge these relationships by assigning responsibility to the State planning agency for coordinating State and local planning with interstate, regional and national plans and policies, by providing for planning districts, and by authorizing the formulation of planning district commissions to undertake regional planning within the State. The State planning agency is assigned responsibility for reviewing and commenting on the comprehensive plans of planning district commissions for conformity with plans and policies issued by the State government. Planning district commissions may review local plans, proposals for projects, and land use development and control ordinances which have an impact outside the borders of the local governments adopting them and may make recommendations for modifications where needed to achieve conformity with plans and policies issued by the district commissions or by the State agency. For areas where no district commissions have been established, the State agency would make the review and formulate recommendations. To allow for differences among States, the draft provides an option as to whether the commissions and the agency should be authorized to require submission for review and recommendations or merely to request it.

Regional plans and local government plans, projects, and ordinances having an impact outside their borders cannot be in conflict with State plans and policies which have been approved by the legislature. The state agency, or a planning district commission, by delegation from the state government, must make a finding that no conflict exists before the plans, projects, or ordinances can go forward. For formal coordination and review procedures such as those established by this model act to operate effectively, it is essential to have a continuing cooperative relationship among the levels of government. It is assumed that there would be frequent consultation so that potential conflicts could be avoided.

Finally, to be fully effective, State planning activities must be directly related and conducted pursuant to the State legislative process, so that the use of plans in the formulation of legislative policy may be facilitated. This objective is carried out in Section 18 by assigning to a standing legislative committee in each branch (or a joint committee of the two branches) the responsibility for reviewing and reporting out State comprehensive and functional plans and by providing that the plans have full force and effect as State policy only upon their approval by the State legislature. The committees would review and amend plans and make recommendations regarding their adoption as State policy by the legislature. The committees would also be assigned responsibility for reviewing proposed state legislation that would have a significant impact on previously adopted State comprehensive plans. This might involve the multiple reference of bills to the subject matter committees, to the planning committees, and in some instances to the finance or appropriations committees as well.

A continuing cooperative relationship is anticipated between the executive agency staff, on the one hand, and the legislative committee and its staff on the other. This has been the general experience in the relationship of executive budget agencies and parallel legislative fiscal review agencies.

A special feature of the bill, incorporated in Sections 4 thru 8, is a systematic schedule for planning. The State comprehensive plan, covering physical resources, human or social resources, economic resources, public safety, and the structure and services of government, establishes broad general directions to at least ten years ahead. It is a document largely policy oriented. The series of functional plans should be formulated with at least a four year forward time span. These intermediate statewide plans for highways, health, outdoor recreation, and so on, are within the framework of the State's broad comprehensive plan, and in part provide the basis for keeping the State comprehensive plan current. Finally, the annual development program should be prepared on at least a one year and a three year basis. (Where there are biennial legislative sessions the program should be based on a two and four year time period.) The development program establishes and recognizes long-term goals and short-term program objectives. It draws on the functional plans and includes consideration of regional and local planning objectives. It is the governor's program for the years just ahead. The governor's budget proposals reflect these judgments.

Another special feature of the bill is the effort to provide a framework for designating regions which will serve several purposes and thus avoid overlapping, confusion, and conflict. The State planning agency is directed to divide the State into planning districts based on relevant social, economic, political, and other factors indicating a community of interest. These regions would then become basic units for regional arrangements. They would serve as regional components in State planning procedures and provide the area-wide focus for local planning. They would also serve as an intermediate level, for planning purposes, between local governments and the State somewhat analogous to the position of interstate regional planning agencies in relation to national planning. Furthermore, State agencies are directed to use them to the extent possible for their regional purposes and, pursuant to the President's memorandum of September 2, 1966 and the implementing Bureau of the Budget Circular,¹ they would become the boundaries for planning and development districts assisted by the Federal Government.

At the initiative of local governments representing at least fifty percent of the population within any proposed planning district, a planning district commission could be established to undertake regional planning within the area. Finally, the districts and the planning district commissions, with necessary modifications and additional authority, could become regional planning and development commissions or service districts to provide areawide services such as water supply, sewage disposal, mass transportation, park and recreation programs, and public works. They could apply for, administer, and coordinate grants and contracts available through programs authorized by State and federal laws for physical, economic, and human resource planning and development.²

The creation of advisory committees is provided for in Section 3 of the proposal. Such groups can serve a number of functions or assignments. They can, for example, provide representation for and coordination with the State legislature, the planning district commissions, local governments, and State agencies and departments. They can also provide representation for the general public. More specialized, ad hoc advisory committees could permit the governor and planning agency to draw on specialized talent for particular studies and projects. If some States deem it desirable to assure certain types of representation in the State planning activity, a planning advisory council could be established specifically by legislation, and discretion left to the governor and the planning agency to appoint such additional advisory committees and commissions as they deem necessary.

¹Memorandum from the President Requesting Coordination at the Federal Level, September 2, 1966 and Bureau of the Budget Circular No. A-80, January 31, 1967.

²A suggested act, "Regional Planning and Development Commissions," appearing in the *1968 State Legislative Program of the Advisory Commission on Intergovernmental Relations*, can be used to authorize the transforming of a planning district commission, established under this act, into a planning and development commission or a service district commission.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act relating to state and regional planning, establishing a state planning agency and program, and providing for the creation of regional planning agencies."]

(Be it enacted, etc.)

Section 1. Findings and Purpose. The legislature hereby finds and declares that:

1 (1) the people of this state have a fundamental interest in the orderly development of the state
2 and its regions;

3 (2) the state has a positive interest in the establishment of a comprehensive state and regional
4 planning process and in the preparation and maintenance of a long-term, comprehensive plan for the
5 physical, social, and economic development of the whole state and of each of its regions, which plan
6 can serve as a guide for local governmental units and state departments and agencies;

7 (3) the continued growth of the state, particularly in urban areas, and the general readjustment
8 of people and the economy in many of the state's rural regions, present problems which cannot be
9 met by individual counties or cities;

10 (4) local government planning can be strengthened when conducted in relation to studies and
11 planning of both statewide and regional character; and

12 (5) To assure orderly and harmonious coordination of state and local plans and programs with
13 those of the Federal Government, state and regional planning and programming require direct leader-
14 ship by the governor.

15 It is the purpose of this act to promote the development of the state's human, economic, and
16 physical resources, and to promote the health, safety, and general welfare of its citizens, by creating,
17 within the executive branch, an agency for comprehensive statewide planning. The agency shall act as
18 a directing, advisory, consulting, and coordinating agency to harmonize activities at all levels of govern-
19 ment, render planning assistance to all governmental units, and stimulate public interest and participa-
20 tion in the social, economic and physical development of the state.

21 *Section 2. State Planning Agency: Creation and Organization.* (a) There is created a state plan-
22 ning agency [in an appropriate administrative unit of government such as the executive office of the
23 governor or as an independent agency in the executive branch]. The state planning agency shall consist
24 of the governor as the state planning officer, a director of planning, who shall be appointed by the
25 governor and serve at his pleasure, and other employees appointed [in conformance with the require-
26 ments of the state civil service provisions] [strictly on the basis of merit].

27 (b) The governor, through the state planning agency, shall encourage comprehensive and co-
28 ordinated planning of the affairs of state government. He may inquire into the methods of planning

1 and program development in the conduct of the affairs of state government; he shall provide adequate
2 systems of records for planning and program purposes; and he may prescribe the institution and uses
3 of standards for effective planning and programming.

4 (c) The governor may direct any state department or other agency of the state government to
5 furnish the state planning agency with such personnel, equipment, and services as are necessary to en-
6 able it to carry out its responsibilities and duties, prescribe the terms thereof, including reimbursement
7 of costs thereof.

8 (d) The governor may delegate any of his powers, duties, and responsibilities, as conferred by this
9 act, to the director of planning or to any other state officer or department.

10 *Section 3. Advisory Committees or Councils.* The governor may establish advisory committees
11 or councils and appoint the members thereof, who shall serve at his pleasure. Members shall serve with-
12 out compensation, but shall be reimbursed for the necessary expenses incurred in the performance of
13 their duties. The governor shall designate the chairman and such other officers as he may deem neces-
14 sary for each advisory committee or council. Advisory committees or councils established pursuant to
15 this section shall meet at the call of their chairmen, or of the state director of planning.

16 *Section 4. State Planning Agency: General Powers, Duties and Functions.* The state planning
17 agency shall be the principal staff agency of the executive branch to plan for the comprehensive devel-
18 opment of the state's human, economic, and physical resources and their relevance for programs ad-
19 ministered by the state and the governmental structure required to put such programs into effect. It
20 shall provide information, assistance, and staff support by all appropriate means. The agency shall:

21 (1) formulate a long-range state comprehensive plan, to be submitted by the governor to the
22 [legislature] for its consideration, as provided for in section 5;

23 (2) formulate, for approval by the governor and the legislature, long-range plans and policies
24 for the orderly and coordinated growth of the state, including but not limited to, functional plans as
25 provided for in section 6;

26 (3) prepare special reports and make available the results of the agency's research, studies, and
27 other activities, through publications, memoranda, briefings, and expert testimony;

28 (4) analyze the quality and quantity of services required for the continued orderly and long-
29 range growth of the state, taking into consideration the relationship of activities, capabilities, and
30 future plans of local units of government, area commissions, development districts, private enterprise,
31 and the state and federal government;

32 (5) encourage the coordination of the planning activities of all state departments, agencies and
33 institutions, local levels of government, and other public and private bodies within the state;

34 (6) advise and consult with regional and local planning agencies;

1 (7) work with the state budget agency and other state departments, agencies, and institutions
2 to study and review plans and federal aid applications filed with the Federal Government;

3 (8) at the direction of the governor, and in cooperation with the state budget agency, survey,
4 review and appraise the accomplishments of state government in achieving the goals and objectives
5 set forth in the [annual] [biennial] development program;

6 (9) borrow money and apply for and accept advances, loans, grants, contributions and any
7 other form of assistance from the federal government, the state, or other public body, or from any
8 sources, public or private, for the purposes of this act, and give such security as may be required and
9 enter into and carry out contracts or agreements in connection therewith; and include in any contract
10 for financial assistance with the federal government such conditions imposed pursuant to federal laws
11 as it may deem reasonable and appropriate and which are not inconsistent with the purposes of this
12 act;

13 (10) review and comment on all local and areawide applications for federal planning assistance,
14 or delegate such authority to district commissions created pursuant to section 13;

15 (11) exercise all other powers necessary and proper for the discharge of its duties, including the
16 promulgation of reasonable rules and regulations.

17 *Section 5. State Comprehensive Plan.* (a) The governor, through the state planning agency,
18 shall prepare, and upon legislative approval, issue, and have in continuous process of revision, the long-
19 range state comprehensive plan based on studies, plans, needs, and operations of every department,
20 agency and institution of the state, local and regional units of government, and the federal govern-
21 ment, taking into account the existing and prospective resources and capabilities of the state govern-
22 ment. The state comprehensive plan shall identify and stress statewide goals, objectives and opportuni-
23 ties.

24 (b) The state comprehensive plan shall provide long-range guidance for the physical, economic,
25 and social development of the state and shall include, but not be limited to, the following:

26 (1) population and economic analysis with projections for each region and sub-region of
27 the state;

28 (2) general land use policies for urban development, agriculture, mineral extraction,
29 forests, open space, and other purposes;

30 (3) policy and goals for housing and urban renewal;

31 (4) policy for the balanced development of airport, highway and public transportation
32 facilities;

33 (5) policy for health services, manpower planning, employment opportunity, education,
34 elimination of poverty, law enforcement, and other programs;

1 (6) projection of needs for public facilities, including but not limited to, headquarters and
2 district state office buildings, state colleges and universities, state health and welfare, and correctional
3 institutions;

4 (7) recreation and open spaces for state facilities, major local facilities, and federal recre-
5 ation areas;

6 (8) inventory and appraisal of the state's natural resources, setting forth state policy for
7 their prudent exploitation, conservation, and replenishment; and

8 (9) policies for intergovernmental relations and governmental structure.

9 (c) The state comprehensive plan and revisions thereof shall be transmitted to the legislature for
10 its consideration and action. They shall be referred to committees as provided in section 18. The plan
11 and revision thereof, when approved by the legislature, shall become effective as state policy.

12 *Section 6. Long-Range Functional Plans.* (a) The state planning agency may prepare, or cause
13 to be prepared, and issue on behalf of the governor, a series of long-range functional development plans
14 relating, but not necessarily limited, to outdoor recreation, water resources, transportation, housing,
15 education, economic development, health services and facilities, employment, poverty, manpower plan-
16 ning, and other broad areas of state responsibility.

17 (b) To assist in the development of plans and programs of the state, the governor, through the
18 state planning agency, may direct each department, agency, and institution of the state to designate
19 from among its employees and officers, a planning officer or representative who shall be responsible
20 for the planning and coordination of the activities and responsibilities of the department, agency or
21 institution. Such planning officer or representative shall coordinate program plans prepared for each
22 area of program responsibility within his agency.

23 (c) Long-range functional plans and revisions thereof shall be transmitted to the legislature for
24 its consideration and action. They shall be referred to committees as provided in section 18. The plans
25 and revisions thereof, when approved by the legislature, shall become effective as state policy.

26 *Section 7. Development Program.* The governor shall prepare and submit to the legislature [an-
27 nually] [biennially], for review concurrently with the [annual] [biennial] budget document, a develop-
28 ment program covering the forthcoming [four] [six] years. The development program shall consist of
29 the following:

30 (1) an analysis of the current posture of state development in terms of long range needs and
31 opportunities, together with a review of present factors and activities affecting the development of the
32 state. This analysis shall present past accomplishments and the current status of programs and activities
33 and review such factors as the overall economic posture of the state; the major problems confronting
34 the state; the activities of the private sector, local and federal activities; and state operations designed
35 to meet the responsibilities of overall state development and activities;

1 (2) a statement of specific policies, as prescribed in section 5, for at least each of the following
2 general functional areas: economic development, social and human resource development, natural re-
3 source development, transportation, regional and local development, and other areas;

4 (3) details of state programs and the quantified annual objectives of each program over the
5 forthcoming six (6) years. Analysis of the relationship of these programs to policies enunciated in sec-
6 tion 6 shall be described in detail. New programs, elimination or modification of existing programs,
7 and the anticipated performance or accomplishment of current, new or modified programs shall be
8 described in detail;

9 (4) identification of the methods and requirements for implementing the proposed annual devel-
10 opment program which shall describe, for each year, the fiscal resources, capital facilities, other re-
11 sources, and any administrative changes or new legislation required; and

12 (5) a [four] [six] year schedule of proposed capital improvements, to be compiled from
13 schedules of proposed capital improvements submitted to the state planning agency by each state
14 agency, board and commission.

15 *Section 8. Annual Economic Report; Special Reports.* (a) The governor, as state planning of-
16 ficer [and budget officer] shall annually present to the legislature and to the people a report apprais-
17 ing the state's economy, reviewing the extent to which economic growth and development have pro-
18 vided employment and income, and other appropriate economic factors and indicators. This report
19 shall contain timely and authoritative information concerning current and prospective economic
20 growth and development in the state, an analysis and interpretation of such information in the light
21 of existing state economic policies, and an appraisal of the various programs and activities of the state
22 in effectuating these policies. The report shall be related to, and developed in close conjunction with,
23 the [annual] [biennial] development program.

24 (b) The state planning agency shall also prepare special reports on those aspects of the agency's
25 work which are of current interest. Special reports on major research and planning projects shall be
26 made public promptly after completion.

27 *Section 9. Review of Local Plans in Specified Circumstances.* Where no planning district com-
28 mission has been established, the state planning agency may [require] [request]¹ local governments
29 to submit to the agency all proposed local government comprehensive land use, circulation, and public
30 facilities plans; proposals for public works projects; zoning and subdivision regulations; and official
31 maps and building codes, and all amendments or revisions thereof, when such plans, proposals, regu-
32 lations, codes, and ordinances have an impact outside the local borders. The agency may review such

¹In deciding whether to authorize the State Planning Agency to require or merely to request local governments to submit plans, proposals, and ordinances for review and recommendations as here provided, states will want to consider the status of planning in the state and the capability and readiness of the legislature to assume responsibility for approving all the necessary plans and policies to make the provisions of section 10 effective.

1 plans, proposals, regulations, codes, and ordinances for conformity with state plans and policies issued
2 by the State Planning Agency on behalf of the governor; and may make recommendations within
3 [thirty] days for their modification where deemed necessary to achieve conformity.

4 *Section 10. Prohibition of Conflict with State Policies.* (a) No state agency functional plan may
5 be promulgated, nor may any state agency project be undertaken, unless the state planning agency
6 finds that they are not in conflict with state plans adopted by the legislature.

7 (b) No planning district commission comprehensive plan shall be promulgated unless the state
8 planning agency finds that it is not in conflict with state plans and policies adopted by the legislature.

9 (c) No municipal or other local government comprehensive land use, circulation, or public facili-
10 ties plan; zoning and subdivision regulations; official maps or building codes; nor public works projects
11 which have an impact outside the local borders, shall be promulgated or undertaken unless the state
12 planning agency, or when authorized pursuant to subsection (d) of this section, a planning district
13 commission, shall find, within [thirty] days of submission by the local government, that such plans,
14 projects, and ordinances are not in conflict with State plans and policies adopted by the legislature.

15 (d) The state planning agency may authorize a planning district commission, created pursuant
16 to section 13, to make the findings required by subsection (c) of this section for plans, regulations,
17 and maps of local governments located within their jurisdiction, but the state agency shall have the
18 right to review the findings of the planning district commission pursuant to rules and regulations
19 promulgated by the state planning agency. Such review shall be completed within [thirty] days. Lo-
20 cal governments may appeal a finding of a conflict with state plans and policies by a planning district
21 commission to the state planning agency within [fifteen] days of such a finding. The state planning
22 agency shall promulgate rules and regulations governing such appeals. In exercising either its review
23 or appeal responsibilities, the state planning agency may amend, reverse, or affirm the planning district
24 Commission findings. The state planning agency and planning district commissions shall follow proce-
25 dures required by the [state administrative procedures act] in making the findings required by this
26 section.

27 (e) Within [thirty] days after a finding made by the state planning agency, a municipality or
28 other local government may petition the [insert name of appropriate court] for review of the finding
29 in the manner provided in [cite appropriate provisions of judicial review statute]. The court may af-
30 firm or reverse the finding or may return it to the state planning agency for further action.

31 *Section 11. Definition and Redefinition of State Planning Districts.* (a) To assure the economic
32 and orderly development of the state through the encouragement of sound state and regional planning,
33 the application of long-range programming, the renewal of substandard, obsolescent, and blighted
34 areas, and the appropriate development of land in the various regions of the state, the state planning

1 agency shall undertake the studies and surveys necessary to group all governmental subdivisions into
2 logical economic development and planning districts.

3 (b) Planning districts may consist of a single county or of any combination of two or more con-
4 tiguous counties or other governmental subdivisions. No governmental subdivision shall be divided in
5 forming a planning district.

6 (c) In conducting the studies and surveys required, the state planning agency shall consult with
7 the governing bodies of the governmental subdivisions within, and adjoining, a proposed planning dis-
8 trict, and shall hold at least one public hearing in the proposed planning district.

9 (d) In determining which governmental subdivisions to include in a planning district, the agency
10 shall consider such factors as community of interest and homogeneity; existing metropolitan and
11 regional planning agencies; patterns of communication and transportation; geographic features and
12 natural boundaries; extent of urban development; relevancy of the district for provision of govern-
13 mental services and functions and its use for administering state and federal programs; the existence
14 of special agricultural, forestry, conservation, or other rural problems; uniformity of social or economic
15 interests and values; park and recreational needs; and the existence of physical, social, and economic
16 problems of a regional character. Furthermore, in determining the boundaries of a planning district,
17 the agency shall consider the wishes of governmental subdivisions within or surrounding the district,
18 as expressed by resolution of their governing bodies.

19 (e) The state planning agency shall define the boundaries of planning districts in such manner
20 that by [insert date] each of the governmental subdivisions of the state shall fall within the boundaries
21 of a planning district. Upon formal promulgation of a planning district, the state planning agency shall
22 notify the governing body of each governmental subdivision included within the district.

23 (f) The state planning agency shall make studies and surveys of the boundaries of planning dis-
24 tricts on a continuing basis, either on its own initiative or upon formal application for the establish-
25 ment of a planning district commission as provided in section 13. From time to time, the agency may
26 adjust the boundaries of the planning districts, giving consideration to the factors set forth in subsection
27 (d) of this section.

28 *Section 12. Use of State Planning Districts for Other Programs.* State planning districts, estab-
29 lished pursuant to section 11 of this act, shall be used, to the extent feasible, as the basis for designating
30 districts for the administration of state programs. Such districts shall also, to the extent possible, be
31 used as the basis for proposing or designating areas for the purposes of the following federal acts:

- 32 (1) the Economic Opportunity Act of 1964;
- 33 (2) Section 403 of the Public Works and Economic Development Act of 1965;
- 34 (3) Section 301 of the Appalachian Redevelopment Act of 1965;
- 35 (4) Section 701 of the Housing Act of 1954, as amended; and

1 (5) such other federal acts which authorize financial assistance and require, or permit, the
2 formation of districts for undertaking fiscal, economic, and human resource planning and development
3 programs.

4 *Section 13. Planning District Commissions. (a) Formation.* At any time after the establishment
5 of a planning district, pursuant to section 11 of this act, the governmental subdivisions embracing the
6 majority of the population within the district, acting through their governing bodies, may organize a
7 planning district commission by written agreement among them, subject to approval by the state plan-
8 ning agency. Any governmental subdivision within the planning district not a party to such agreement
9 shall continue as part of the planning district, but until such governmental subdivision elects to become
10 a part of the planning district commission, as hereafter provided, shall not be represented in the mem-
11 bership of the planning district commission.¹

12 (b) *The Agreement.* The agreement shall set forth:

13 (1) the name of the planning district;

14 (2) the governmental subdivision in which its principal office shall be situated;

15 (3) the effective date of the organization of the planning district commission;

16 (4) the membership of the planning district commission, at least a majority, but not more
17 than [two-thirds], of which shall be representatives of participating governments, or stipulated com-
18 binations thereof. The other members shall be residents of the district who have demonstrated out-
19 standing leadership in community affairs. In addition, a representative of state government may be
20 designated by the governor as a [voting] [nonvoting] member of the Commission. The total number
21 of members and their terms shall be specified in the agreement;

22 (5) the formula by which participating governments shall contribute to the financing of
23 the Commission; and

24 (6) the procedure for amendment, for addition of other governmental subdivisions with-
25 in the planning district which are not parties to the original charter agreement, and for the withdrawal
26 from the charter agreement by a governmental subdivision.

27 (c) *Status.* A planning district commission shall be a public body corporate and politic. It may
28 perform the planning and other functions provided by this section, and exercise all other powers in-
29 cidental thereto.

30 (d) *Purpose.* The purpose of a planning district commission is to promote the orderly and ef-
31 ficient development of the physical, social and economic resources of the district by planning and by
32 encouraging and assisting governmental subdivisions to plan for the future.

¹Several other approaches to organizing for the provision of regional planning services are provided elsewhere in the 1968 State Legislative Program of the Advisory Commission on Intergovernmental Relations. The 1968 ACIR State Legislative Program contains suggested legislation for "Metropolitan Area Planning Commissions," "Regional Planning and Development Commissions," "Metropolitan Functional Authorities" and "Regional Councils of Public Officials."

1 (e) *Area of Jurisdiction.* The area of operation of a planning district commission shall be co-
2 terminous with the area of the planning district as defined or redefined by the state planning agency.

3 (f) *Powers and Duties.* Without in any manner limiting or restricting the general powers con-
4 ferred by this act, the planning district commission may:

5 (1) adopt and have a common seal and alter the same at pleasure;

6 (2) sue and be sued;

7 (3) adopt bylaws and make rules and regulations for the conduct of its business;

8 (4) make and enter into all contracts or agreements necessary or incidental to the per-
9 formance of its duties;

10 (5) borrow money and apply for and accept advances, loans, grants, contributions and any
11 other form of assistance from the federal government, the state, or other public body, or from any
12 sources, public or private, for the purposes of this act, and give such security as may be required and
13 enter into and carry out contracts or agreements in connection therewith; and include in any contract
14 for financial assistance with the federal government such conditions imposed pursuant to federal laws
15 as it may deem reasonable and appropriate and which are not inconsistent with the purposes of this
16 act;

17 (6) prepare a comprehensive plan and functional plans for the guidance of the development
18 of the district;

19 (7) as hereinafter provided, review any applications to agencies of the state or Federal
20 Government for loans or grants-in-aid for projects by governmental subdivisions within the planning
21 district;

22 (8) review local plans, proposals for projects, and ordinances having an impact outside
23 the boundaries of the local government subdivisions and within the planning district;

24 (9) employ a director, engineers, attorneys, planners, consultants and other employees,
25 and prescribe their powers and duties and fix their compensation;

26 (10) prepare, and from time to time revise, recommended zoning, subdivision, platting,
27 building code, and other appropriate regulations which would implement the comprehensive plan
28 developed by the Commission;

29 (11) prepare studies of the region's resources with respect to existing and emerging prob-
30 lems of industry, commerce, transportation, population, housing, agriculture, public services, local
31 governments, and any other matters which are relevant to regional planning;

32 (12) collect, process, and analyze at regular intervals the social and economic statistics
33 for the region which are necessary to planning studies and make the results available to the general
34 public;

1 (13) participate with other government agencies, educational institutions, and private or-
2 ganizations in the coordination of the research activities defined above;

3 (14) cooperate with and provide planning assistance to county, municipal, and other local
4 governments, instrumentalities, or planning agencies within the region, and coordinate regional area
5 planning with planning activities of the state and of the counties, municipalities, special districts, or
6 other local governmental units within the region as well as neighboring regions and with the programs
7 of federal departments and agencies;

8 (15) provide information to officials in state departments, agencies, and instrumentalities;
9 to federal, and local governments, and to the public at large, in order to foster public awareness and
10 understanding of the objectives of the comprehensive plan and the functions of regional and local
11 planning, and in order to stimulate public interest and participation in the orderly, integrated develop-
12 ment of the region; and

13 (16) execute any and all instruments and do and perform any and all acts or things neces-
14 sary, convenient, or desirable for its purposes or to carry out the powers expressly given in this section.

15 (g) *Organization and Committees.* The commission shall elect a chairman from among its mem-
16 bers and shall publish rules and establish committees to carry on its work. Such committees may have
17 as members persons other than members of the commission and other than elected officials. The com-
18 mission shall meet as often as necessary but no less than four times a year.

19 (h) *Director and Staff.* The commission shall appoint a director who shall be qualified by train-
20 ing and experience and shall serve at the pleasure of the commission. The director shall be the chief
21 administrative and planning officer and regular technical advisor of the commission and shall appoint
22 and remove the staff of the commission. The director may make agreements with local planning
23 agencies, within the jurisdiction of the planning district commission, for temporary transfer or joint
24 use of staff employees and may contract for professional or consultant services from other govern-
25 mental and private agencies.

26 (i) *Comprehensive Plan.* (1) Each planning district commission shall prepare, adopt, and from
27 time to time revise or amend a comprehensive plan for the development of the district. The plan shall
28 guide a coordinated, adjusted, efficient and economic development of the district which will, in ac-
29 cordance with present and future needs and resources, best promote the health, safety, order con-
30 venience, prosperity and welfare of the citizens, provide for patterns of urbanization and the uses of
31 land and resources for trade, industry, recreation, forestry, agriculture, and tourism, and create con-
32 ditions favorable to the development of human resources, and otherwise promote the general welfare
33 of the citizens. Such plan shall identify the public interest and the necessity for public action and in-
34 tergovernmental cooperation within the district and shall be coordinated with the efforts of the private

1 sector within the district. The comprehensive plan shall embody the policy recommendations of the
2 planning district commission and shall include, but not be limited to:

3 (i) a statement of the objectives, standards, and principals sought to be expressed in the
4 plan;

5 (ii) recommendations for the most desirable pattern and intensity of general land use
6 within the region in the light of the best available information concerning natural environmental
7 factors, the present and prospective economic and demographic basis of the area, and the relation of
8 land use within the area to land use in the adjoining areas. The land use pattern shall provide for open
9 space as well as urban, suburban, and rural development, and shall include classification of urban devel-
10 opment into major components of resident, industry, commerce, and parks;

11 (iii) recommendations for the general circulation pattern for the area including land, water,
12 and air transportation and communication facilities whether used for movement within the area or to
13 and from adjoining areas;

14 (iv) recommendations concerning the need for and proposed general location of public
15 and private works and facilities which by reason of their function, size, extent, or for any other cause
16 are of a regional as distinguished from purely local concern;

17 (v) recommendation for the long range programming and financing of capital projects and
18 facilities;

19 (vi) recommendations for meeting housing needs of existing and prospective in-migrant
20 population of the region;

21 (vii) recommendations for the development of programs and improvements within the
22 region for health services, manpower planning, employment opportunity, education, elimination of
23 poverty, and law enforcement, taking into account the purpose, nature, and methods of regional
24 physical planning programs; and

25 (viii) such other recommendations as it may deem appropriate concerning current and
26 impending problems as may affect the district.

27 (2) Before the comprehensive plan shall be adopted it shall be submitted to the state planning
28 agency and to the local planning commission, or if there be none, to the governing body, of each
29 governmental subdivision within the district, for a period of not less than thirty days prior to a hearing
30 to be held by the planning district commission thereon after adequate notice. The state planning
31 agency shall make recommendations to the planning district commission, on or before the date of said
32 hearing, for its modification where deemed necessary to achieve conformity with state plans and poli-
33 cies issued by the state planning agency on behalf of the governor, and shall make any findings required
34 by subsection (b) of section (10). A local planning commission may make recommendations to the

1 planning district commission with respect to the effect of the plan within its governmental subdivision
2 on or before the date of said hearing.

3 (3) Upon approval of the comprehensive plan by a planning district commission after the
4 public hearing, it shall be submitted to the governing body of each governmental subdivision within the
5 district for adoption and, upon adoption thereof by the governing bodies of a majority of such govern-
6 mental subdivisions, the comprehensive plan shall become effective with respect to all action of a plan-
7 ning district commission.¹

8 (4) When the comprehensive plan is adopted, the planning district commission shall not
9 establish any policies or take any action which is not in conformity therewith.

10 (5) The comprehensive plan shall become effective with respect to the actions of the govern-
11 ing body of any governmental subdivision within the district upon its adoption by such governing body.
12 When the comprehensive plan shall have become effective in any governmental subdivision, such govern-
13 mental subdivision shall not proceed with the construction of any public improvement or public institu-
14 tions, or with the acquisition of any land for public purposes, or the disposition of any public land, in con-
15 flict with the district plan.

16 (6) The comprehensive plan may be amended in the same manner as provided for the
17 original adoption, but if the planning district commission determines that a proposed amendment has
18 less than districtwide effect such amendment may be submitted only to the local planning commissions
19 and governing bodies of those governmental subdivisions which the planning district commission shall
20 determine to be affected.

21 (j) *Cooperation.* A planning district commission may cooperate with other planning district
22 commissions or the legislative and administrative bodies and officials of other districts or governmental
23 subdivisions, within or outside a district, so as to coordinate the planning and development of a district
24 with plans of other districts and governmental subdivisions and the state. A planning district commis-
25 sion may appoint committees and adopt rules as needed to effect such cooperation. A planning district
26 commission shall also cooperate with the state planning agency and use information furnished by it and by
27 other state and federal officials, departments and agencies. State and local officials, departments, and
28 agencies having information, maps, and data pertinent to planning and development of a district may
29 make the same, together with services and funds, available for use of a planning district commission.

30 *Section 14. Authorization for Appropriations to Planning District Commissions.* The governing
31 bodies of the governmental subdivisions within a planning district may appropriate or lend funds to
32 the planning district commission.

¹ Some states may wish to require action by the governing bodies of participating jurisdictions for final adoption of a district commission comprehensive plan. Under the provisions of paragraph (4) of this subsection, such actions by local jurisdictions would make the plan binding upon them.

1 *Section 15. State Aid.* A planning district commission may receive state financial support. State
2 aid shall not exceed \$[] for each [25,000] persons residing in the governmental subdivisions which
3 are parties to the charter agreement, but in any event shall not be less than \$[] for any planning
4 district commission. In order to be eligible for state aid, a planning district commission shall prepare
5 and submit annually to the governor, in such manner as he shall direct, a budget showing its estimated
6 receipts and expenditures for the next fiscal year. After review of such budget, the governor shall,
7 subject to the availability of funds, allocate such amount as will enable the planning district commis-
8 sion to carry out its functions.

9 *Section 16. Review of Grant-in-Aid Applications.* (a) In each planning district in which a plan-
10 ning district commission has been organized, the governing body of each governmental subdivision
11 shall, before such application is submitted to the state or federal agency, submit to the planning district
12 commission, for review, any application to agencies of the state or Federal Government for loans or
13 grants-in-aid for projects.

14 (b) The planning district commission shall advise a governmental subdivision within [ten] days of
15 the date of the submission of the application as to whether or not the proposed project for which funds are
16 requested has a significant impact outside the local borders. If it does not have such an impact, the
17 planning district commission shall certify that it is not in conflict with the district plan or policies. If
18 it does have such an impact, the planning district commission shall determine, within [forty] days from
19 the date of the submission of the application, whether or not it is in conflict with the district plan or
20 policies. In making such determination it may also consider whether the proposed project is properly
21 coordinated with other existing or proposed projects within the district. [Only upon a finding by the
22 planning district commission that the project is not in conflict with the district plan or policies, may
23 the application be forwarded by the subdivision to the appropriate state or federal agency.]

24 *Section 17. Planning District Commission Review of Proposed Local Plans, Projects, and*
25 *Ordinances.* Planning district commissions may [require] [request]¹ local governments to submit all
26 proposed local government comprehensive land use, circulation, and public facilities plans; proposals
27 for public works projects; zoning and subdivision regulations; official maps and building codes, and
28 all amendments and revisions thereof, when such plans, proposals, and ordinances have an impact out-
29 side their local borders; may review such plans, proposals, and ordinances for conformity with planning
30 district commission comprehensive plans and with state plans and policies issued by the planning agen-
31 cy on behalf of the governor; and may make recommendations within [thirty] days for their modifica-
32 tion where deemed necessary to achieve conformity.

¹In deciding whether to authorize Planning District Commissions to require or merely to request local governments to submit plans, proposals, and ordinances for review and recommendation as here provided, states will want to consider the status they wish to give regional planning in the state and the capability and readiness of the legislature to assume responsibility for approving all the necessary plans and policies to make the provisions of section 10 effective.

1 *Section 18. Consideration of State Plans and Legislation Affecting Plans by Legislative Standing*
2 *Committees [Joint Committees].*

3 (a) [A standing committee in each branch of the state legislature] [A joint standing committee
4 of the two branches of the state legislature] shall be assigned responsibility for:

5 (1) reviewing the state comprehensive plan and functional plans, formulating proposed
6 amendments thereto and for recommending action thereon by the [legislature] ; and

7 (2) reviewing all relevant proposed state legislation for conformance with the state com-
8 prehensive plan and functional plans, including but not limited to such functional areas as highway
9 construction, housing, mass transit facilities, airport development, open space, urban planning assistance,
10 water and sewer facilities, public works planning, outdoor recreation, water and air pollution abatement,
11 hospital and health facilities, and solid and liquid waste disposal systems.¹

12 (3) Exercising legislative oversight with regard to the planning activities of the State in a
13 manner comparable to that exercised by other standing committees over state activities within their
14 respective jurisdictions.

15 (b) The provisions contained in this Section shall be considered as a rule of procedure in the
16 Senate and [House of Representatives] until otherwise expressly provided.

17 *Section 19. Separability Clause.* [Insert separability clause].

18 *Section 20. Effective Date.* [Insert effective date].

¹The responsibilities enumerated in this section could be assigned to a present standing committee in each branch (or a joint committee) where appropriate ones exist, or new standing committees (or a joint committee) could be established. A joint resolution to create a joint committee on state planning follows this suggested act.

JOINT LEGISLATIVE COMMITTEE ON STATE PLANNING

While every State has some planning capability, support for State planning varies widely, as does the organization and authority of the agency or agencies involved in this activity. The evolution of effective State planning is evident in some States, but virtually no State planning effort has reached a stage where it is fully capable of carrying out the responsibility for the development of an urbanization and economic growth policy (such as that recommended in the draft state planning bill, pp 405–1). To date, no state has prepared an entirely adequate state urban development plan, although the Hawaii zoning plan meets most of the criteria and indicates the direction for future action.

In a recent report, the Advisory Commission on Intergovernmental Relations stressed the importance of a strong well-staffed planning program directly under the governor, and recommended that each state develop such a planning capability in its executive branch.¹ The planning function should include, for the consideration of both the governor and the legislature: formulation of comprehensive policies and long-range plans for the orderly development of human and material resources; provision of a framework for functional, departmental, and regional plans; and assistance to the governor in his budget-making and program evaluation roles. However, it also should be recognized that one of the principal reasons underlying the failure of many States to develop an effective planning capability has been the neglect of the proper role of the legislature as an integral part of the planning process. While the governor should have direct control of the State planning function, the legislature's involvement should not be limited to formal ratification of completed plans, but should include participation in their formulation and revision.

The following concurrent resolution is offered as a means of providing the legislature with the organizational structure needed to assure continuing study and review of the progress toward a State policy dealing with urbanization and economic growth. The resolution establishes a joint legislative standing committee to serve as the focal point in the legislature for the development, review, modification, and implementation of the State comprehensive plan. Its intent then is to make the legislature a critical, central, and constructive component in the state planning process. The committee would receive from the governor or the State planning agency the proposed State comprehensive plan and related functional plans submitted by the State planning agency or other State agencies, for review and recommendation concerning legislative action. The committee would be responsible for reviewing and recommending changes in all proposed legislation affecting the plan and approving these modifications for conformance with the state comprehensive plan. Further, the committee would develop and introduce legislation affecting the plan.

A joint committee — rather than separate standing committees — is suggested because effective coordination between the two houses of the legislature is required for adequate consideration of the State comprehensive plan and related functional plans, and for review of relevant proposed legislation. A joint committee would also tend to facilitate close cooperation between the legislature and the governor, the State planning agency, and other parts of the executive branch. Finally, because of the scope and complexity of its functions, the joint legislative committee on State planning should have substantial powers and should be staffed with the professional, clerical, and other personnel needed to carry out its responsibilities.

Some States may prefer to assign direct responsibility for State planning review to a joint legislative committee already in existence on an interim basis. This committee would continue to function as a standing committee during the legislative session. Another alternative would be the establishment of a special joint subcommittee of legislative fiscal committees.

¹*Fiscal Balance in the American Federal System*, Report No. A-31, (Washington, D.C.: October 1967), Volume 1, Recommendation No. 21.

CONCURRENT RESOLUTION

“Providing for the Establishment of a Joint Legislative Committee on State Planning.”

1 WHEREAS, a continuation of recent urbanization, rural-urban migration and economic growth
2 trends is likely to produce consequences of critical importance to the well-being of the state and its
3 local governments; and

4 WHEREAS, there is a need to formulate and implement a state comprehensive plan to guide
5 public policies and programs affecting the nature, quantity, location, and quality of urbanization
6 and economic growth; and

7 WHEREAS, there is a need for continuing overall review by the [legislature] of the state com-
8 prehensive plan, and related functional plans; and

9 WHEREAS, a joint legislative committee is a means of assuring continuing, systematic review
10 and study of the progress toward a state comprehensive plan and of providing a framework within
11 which relevant policies and programs may be evaluated;

12 NOW, THEREFORE, BE IT RESOLVED, by the [legislature] of the state of [], that a
13 joint legislative committee on state planning is created to: (1) receive from the state planning agency
14 the state comprehensive plan, and functional plans from the planning agency and other state agencies
15 for review and recommendation for action thereon by the [legislature]; (2) review all relevant pro-
16 posed state legislation for conformance with the comprehensive plan, and related functional plans,
17 including but not limited to, such areas as highway construction, housing, mass transit facilities, air-
18 port development, open space, urban planning assistance, water and sewer facilities, public works
19 planning, outdoor recreation, water and air pollution abatement, hospital and health facilities, and
20 solid and liquid waste disposal systems; (3) develop and introduce legislation affecting the plan.

21 AND BE IT FURTHER RESOLVED, that the joint legislative committee on state planning
22 shall consist of [] members, [] of whom shall be members of the Senate to be appointed by
23 the [president of the Senate], and [] of whom shall be members of the [House of Representatives]
24 to be appointed by the [speaker of the House of Representatives].

25 AND FURTHER, that any vacancy on the committee shall be filled by appointment by the
26 officer authorized to make the original appointment.

27 AND FURTHER, that the committee shall choose a chairman, a vice-chairman, and a secretary
28 from its membership, and may employ professional, clerical, stenographic, and other assistants and
29 fix their compensation. Members of the committee shall serve without compensation, but shall be
30 reimbursed for any expenses incurred by them in the performance of their committee duties.

31 AND FURTHER, the committee may: (1) request from any department, division, board, com-
32 mission, or other agency of the state or any political subdivision of the state, such information and

1 assistance as may be necessary for the committee's review of proposed legislation for conformance
2 with the state comprehensive plan; (2) subpoena witnesses, take testimony, compel the production
3 of books, records, documents, papers, and other sources of information deemed by the committee
4 to be relevant to its investigation; (3) have access to all books, records, documents, and papers of
5 any political subdivision of the state; (4) exercise all the powers and authority of other standing
6 committees of the [legislature]; and (5) sit anywhere within or without the state to conduct the
7 review herein described.

REMOVAL OF CONSTITUTIONAL RESTRICTIONS ON LEGISLATIVE SESSIONS AND COMPENSATION

American State legislatures frequently have served as the focal point of State governmental reform. It is widely recognized that the modernization of State legislative machinery is imperative if the States are to be politically viable partners in the federal system, but progress in this area has been slow. The attempts of many State legislatures to equip and organize themselves to cope effectively with twentieth century problems, particularly the increasing needs and demands of their local governments, have been frustrated by constitutional provisions which were responses to nineteenth century conditions. Requirements for biennial sessions of limited length are symbolic of the variety of impediments to effective legislative action which still are found in many State constitutions.

Perhaps the most important element in the State legislative process is the continuity of the legislature's attention to State affairs. The amount of legislative time which may be devoted to policy issues varies greatly among the States. At the end of World War II, only four State constitutions provided for annual regular sessions. Presently, fifteen State legislatures have annual regular sessions, while seven others meet annually, with off-year sessions being limited primarily to budgetary or fiscal matters, but ordinarily with some provision for the consideration of other areas. In Tennessee, sessions held in odd-numbered years may be reconvened the following year if desired. At its 1968 session, the Ohio legislature passed a law providing for regular annual sessions. Constitutional amendments to provide a shift from biennial to annual sessions will be voted on in 1968 in at least four States — Idaho, Iowa, Utah, and Wisconsin.

States still holding biennial sessions should give serious consideration to the adoption of annual regular sessions of unlimited duration. This would strengthen the legislature's capacity to deal effectively with policy, program, administrative, and fiscal issues, and would facilitate its continuing oversight of the activities of the executive branch. By becoming more active, the legislature's public visibility also would be increased.

Closely related to the question of annual sessions is the problem of legislative compensation. Despite significant efforts in many States to increase the salary, per diem, and living expense allowances of legislators, the median compensation for the 1965-67 biennial period ranged from \$6,025 to \$8,300, based on compensation rates prevailing or authorized in 1966.

Inadequate compensation has eliminated some potential candidates who lacked sufficient financial resources to sustain them during their term of office. Severe financial hardships have also been placed upon many incumbent legislators.

The salutary features of annual sessions will fail to have maximum impact if legislative stipends fail to keep pace with the increases in the time, responsibilities, and prestige of State legislators which are implicit in a change to annual sessions. State legislators should be compensated on an annual basis in an amount commensurate with growing demands on their time.

Because of the close interrelationship between the length and frequency of sessions and increased compensation, it is suggested that the following two amendments, which are based upon the Michigan, Missouri, and New Jersey constitutions, should be considered together. The first provides for annual regular sessions of unlimited duration, and also offers a procedure by which either the governor or the legislature itself may call special sessions. Since the exact amount of the legislative stipend should not be frozen into a State constitution, the second amendment is advanced as a means of providing the necessary flexibility to enable the legislature to adjust the compensation of its members to amounts commensurate with the increases in their time, responsibilities, and prestige resulting from the adoption of annual sessions. However, the amendment also stipulates that these changes will not be applicable to the members during the term for which they are elected.

LENGTH AND FREQUENCY OF LEGISLATIVE SESSIONS

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirement.]

1 The [legislature] shall be a continuous body during the term for which the members of the more
2 numerous house are elected. It shall meet as provided by law. The legislature may be convened in
3 special session by the governor or, at the written request of a majority of the members of each house,
4 by the presiding officers of both houses.

LEGISLATIVE COMPENSATION

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

1 Members of the legislative body shall receive an annual salary and such other compensation as
2 may be prescribed by law, but no change in salary shall become effective until the next succeeding
3 [legislature] [general assembly] convenes.

YEAR-ROUND PROFESSIONAL STAFFING OF MAJOR STATE LEGISLATIVE STANDING COMMITTEE

A critical factor affecting the capacity of State legislative leaders, committees, and individual members to carry out their growing responsibilities is the availability of adequate staff assistance. In most States, active legislative participation in the framing of statewide programs is hampered by the shortage or absence of staff help. Too often State legislators are not kept fully informed concerning developments in Federal-State and State-local program relationships which might have an impact on future legislative decisions. Efforts by the State executive to keep the legislature advised of important developments experience, at best, only limited success.

The development of permanent legislative research agencies or councils in at least 44 States represents one attempt to fill at least partially the legislature's need for professional staff assistance. In a few States, the legislative councils provide some staff help to legislative committees between sessions. In other States interim committees are created and authorized to employ professional aides.

In 40 States, secretarial assistance is provided to all standing committees, but in the remaining States this aid is limited to committees on finance, appropriations, ways and means, and judiciary. Fiscal committees in all States have clerical assistance. In 13 States, some research assistance is provided to the general membership. Staff aid is furnished to legislative leaders in 32 States, and 22 of these States also provide some technical assistance to legislators. At the present time, only California and New York have all of their major legislative standing committees staffed on a year-round basis.

In most States, under the present circumstances, the legislature in general — and the major standing committees in particular — are ill equipped to deal effectively with national developments or with State and local problems. The staff of the legislative council or special interim committee often is overloaded with its usual interim assignments and unable to perform satisfactorily the added task of providing a full range of staff services for standing committees.

Much of this information gap could be bridged if the major standing committees of State legislatures were professionally staffed on a year-round basis, and if these staffs were made responsible for keeping abreast of major statewide issues and developments in Federal-State and State-local relations. In this way a great deal of valuable investigatory and preparatory work, including bill drafting, dealing with initiation of legislation, as well as budget review, analysis, and evaluation could be performed by legislative committees between sessions. Improving legislative information resources and communications channels should also generally strengthen the State legislature's capacity to develop programs and to exercise oversight of the executive branch.

To achieve this objective it may be advisable in some States to expand substantially the staff of the legislative council to provide the necessary additional personnel. In others it may be preferable to set up separate staffs for each of the major committees. The following concurrent resolution is offered as one means of providing year-round professional staff assistance for major legislative standing committees. General guidelines for the selection of staff members should include education, experience, and competence. Salary and compensation should be commensurate with the qualifications of and the responsibilities assigned to the professional staff and be competitive with other areas of the public service and the private sector. Finally, to provide continuity the tenure of the staff members should not be limited to a specified period; they should be employed as long as they continue to render satisfactory service.

CONCURRENT RESOLUTION

“Providing for Continuing Year-Round Professional Staffing of Major State Legislative Standing Committees.”

1 WHEREAS, the scope and complexity of the problems of modern society, including urbaniza-
2 tion, economic development, and population growth, have greatly increased the [legislature’s] need
3 for technical research and information service; and

4 WHEREAS, there is a need for the [legislature] to participate actively in the framing of state-
5 wide policies and Federal-State and State-local cooperative programs, as well as to keep abreast of
6 the executive branch in maintaining complete, accurate, and current information concerning these
7 areas; and

8 WHEREAS, there is a need for major legislative standing committees to be provided with year-
9 round professional staff assistance to conduct research and provide other technical services during
10 interim periods as well as during legislative sessions;

11 NOW, THEREFORE, BE IT RESOLVED, by the [legislature] of the state of [] [That
12 major legislative standing committees, including but not limited to finance, ways and means, appropria-
13 tions, and judiciary] shall be provided with professional staff personnel to serve on a year-round basis.

14 AND BE IT FURTHER RESOLVED, that these staff personnel shall be appointed by the
15 [appropriate committees or officers of the respective houses] of the [legislature] on the basis of
16 education, competence, and experience, rather than political affiliation, and shall remain in their
17 positions so long as they continue to render satisfactory performance. Staff members shall receive
18 salary and other compensation as determined by the [appropriate committees or officers of the
19 respective houses] of the [legislature]. [Staff members shall be assigned to the chairman and rank-
20 ing minority member of each committee.]¹

¹The legislative body may select all professional personnel on a strictly non-partisan basis, in which case appointment by committee chairmen or other appropriate officers of the legislature would be in order. However, if staffing is done by the Chairmen of individual committees, it may be desirable to provide for “minority staffing.”

STATE LEGISLATIVE CONTACT WITH CONGRESS

Studies of the impact of Federal grant-in-aid programs on State government administration reveal that there is insufficient communication between members of Congress and State legislatures at the time that important policy decisions are being made. The witnesses appearing before congressional committees dealing with Federal legislation affecting the States and their local governments usually include a wide assortment of local officials and representatives of other interests. State administrative officials participate occasionally in these hearings, and governors testify from time-to-time. But State legislators seldom appear as witnesses before congressional committees. The traditional State legislative practice of presenting memorials to Congress is largely unsatisfactory as a form of communication on policy questions and in no sense is it an adequate substitute for direct dialogue with members of Congress.

A fuller interchange of views between key State legislators and members of congressional committees would strengthen the role of State legislatures in the formulation of important policies affecting the nation's domestic affairs. It would improve intergovernmental relations, and would assist congressional committees in their deliberations. Appropriate coordination of a State's legislative views with the views of the State's executive branch may be assured by advance consultation.

The following concurrent resolution suggests one method of formally instructing and authorizing State legislative leaders to make personal appearances before congressional committees when Federal programs significantly affecting their State are under consideration.

Concurrent Resolution

"Providing for State Legislative Contact with Congress"

1 WHEREAS, it is important that the legislature make known its views concerning the formulation,
2 financing, and operation of Federal programs affecting the State and its political subdivisions; and

3 WHEREAS, a fuller interchange of views between state legislators and congressional committees
4 is a necessary means of strengthening the state's role in the formulation of policy decisions affecting
5 major areas of the nation's domestic affairs; and

6 WHEREAS, the legislature recognizes that there is no substitute for direct dialogue between
7 members of the Congress and the legislature;

8 *NOW, THEREFORE, BE IT RESOLVED by the [legislature] of [insert name of state]:* That
9 the presiding officers of the [legislature], the majority and minority leaders, and the chairmen of
10 committees having jurisdiction in fields involving Federal-State relations, are authorized and directed
11 to follow the development of proposed legislation in the Federal Executive Branch and the Congress
12 and to present their views through personal testimony or by written statement to congressional
13 committees considering new or modified Federal programs significantly affecting the state.

14 AND BE IT FURTHER RESOLVED, that the presiding officers arrange meetings, in the state
15 capital and in Washington, D.C., with the Members of Congress from this state, for the purpose of
16 discussing matters affecting the state that are under consideration by Congress or that should be
17 brought to the attention of Congress.

STATE LAND DEVELOPMENT AGENCY¹

Land development agencies created by the States and empowered to undertake large-scale urban and new community land purchase, assembly, and improvement offer a promising means of implementing State and local urban growth policies. Specifically, such agencies could: (1) acquire land by negotiation and through the exercise of eminent domain; (2) arrange for site development and construct or contract for the construction of utilities, streets, and other related improvements; (3) hold land for later use; (4) sell, lease, or otherwise dispose of land or rights thereto to private developers or public agencies; and (5) establish local or regional land development agencies. The following draft legislation grants such powers and requires that they be exercised in accordance with, and in furtherance of, the State's urbanization plan.

Particular care should be taken in drafting State legislation authorizing the exercise of eminent domain powers by land development agencies. Such legislation should include a clear and definite finding by the legislature that the acquisition of land for future development is needed to assure the best use for public purposes of an important natural resource. Courts increasingly defer to legislative findings of public purpose. The existence of a formally adopted State urbanization policy identifying certain patterns of development as being in the public interest would substantially buttress such a finding.

The following draft legislation is based in part on the 1968 act that established the New York State Urban Development Corporation.

Section 1 sets forth the findings and purpose. This section declares that a land acquisition program is a major component of state and local urban growth policies. It also notes the difficulties experienced by private enterprise in assembling land suitable for large-scale development. It recognizes the lack of private capital to finance such projects, and declares it to be in the public interest to encourage private enterprise to participate in these programs.

Section 3 of the draft bill establishes a state land development agency within an appropriate state agency or department. As a means of encouraging participation by the private sector, the governor may appoint a land development advisory council to advise the agency with respect to development policies and programs. In addition, the land development agency may establish local committees to advise it concerning the development of an area or local project.

Section 4 empowers the state land development agency to acquire land by negotiation or condemnation, to arrange for site development including construction of utilities, streets, and other related improvements; to hold land for later use; to sell, lease, or otherwise dispose of land to private developers or public agencies; and to establish local land development agencies. The powers assigned to the land development agency are broad enough to meet long-range needs and objectives and they allow flexibility in choosing among various developmental alternatives, so that a wide range of local government and private participation can be encouraged.

Section 5 sets forth procedures to guide the agency and stipulates certain conditions that must exist before site acquisition and improvement is undertaken. The section requires that local needs and desires be given primary consideration when consistent with the goals set forth in State urbanization policies and plans.

Section 6 provides for the disposition of land by the state agency to public agencies or private developers, and Section 7 provides for letting construction contracts. Section 8 authorizes the establishment of local

¹This draft bill incorporates one of several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, as measures for States to consider in implementing policies for urban growth and new community development.

land development agencies. Section 9 sets forth the requirements for acquisition of real property by the state land development agency.

Section 10 provides that the state agency's rules and regulations for project development shall prevail over local regulations where there is a conflict. Existing local controls usually are designed basically to deal with problems in built up areas or those experiencing gradual growth and accretion, and often do not produce satisfactory results under the extreme pressures of rapid urbanization.

Section 11 authorizes the state land development agency to issue bonds on the full faith and credit of the state within limits set by the legislature, the bonds to be retired out of revenues and receipts derived from the lease or sale of land by the agency. Section 12 provides for the creation of a special revolving account to be known as the land development financing fund to which the legislative may appropriate funds and in which are deposited proceeds from the sale of bonds and land as well as any other monies made available to the state land development agency for the purposes of this act.

To prevent undue loss of revenues to local governments while land is being held by the agency for future project development, Section 13 provides for annual State reimbursement of a portion of the local property taxes on the land.

Section 14 requires the agency to submit an annual report to the governor and the legislature at the end of each fiscal year. Section 15 provides for a separability clause and Section 16 specifies the effective date of the bill.

Suggested State Legislation

*[Title should conform to state requirements. The following is a suggestion:
"An act establishing a State Land Development Agency."]*

(Be it enacted, etc.)

Section 1. Findings and Purpose. It is hereby found and declared that:

- 1 (1) local planning and development controls in this state are inadequate to cope with the pres-
2 sures placed on land and its development in rapidly growing urban areas;
- 3 (2) efficiency and economy in the provision of public services, both in capital outlay and op-
4 erating cost, depends upon a sound method of acquiring land and for the planning of its use for future
5 public and urban development uses;
- 6 (3) public acquisition of land, the planning of its use, and the establishment of sound develop-
7 ment standards would help preserve one of the state's primary resources;
- 8 (4) private enterprise has encountered difficulty in providing new industrial, commercial, and
9 residential facilities in new large-scale urban development, because of problems in assembling land suit-
10 able for building sites, the difficulty of attracting private capital at reasonable cost to finance develop-
11 ment, and the difficulty of private enterprise alone to plan, finance, and coordinate industrial and
12 commercial development with residential developments for persons and families of low-income and
13 with adequate public services to serve the development;

1 (5) state acquisition of land, site improvement, and disposition of land around the fringe of
2 urban growth areas, and at other points in anticipation of future growth, provide a major method for
3 implementing state and local urban growth policies for assisting private developers.

4 It is further declared that it is the policy of this state to promote the safety, health, and welfare
5 of the people through sound community development by private enterprise, and public acquisition of
6 land for public and private use.

7 *Section 2. Definitions.* As used in this act:

8 (1) "Agency" means State Land Development Agency created by section 3 of this act.

9 (2) "Bonds" means bonds issued by the Agency pursuant to this act.

10 (3) "Local Land Development Agency" means an agency created by section 8 of this act.

11 (4) "Municipality" means any county, city, town, or village.

12 (5) "Director" means [the head of the department or agency charged with carrying out this act].

13 (6) "Project" means an undertaking or improvement including lands, buildings and improvements
14 for community use, real properties or any interest therein, that are acquired, owned, constructed, or
15 improved by the agency or local land development agency in accordance with, and in furtherance of,
16 the state's urbanization plan. A project shall consist of at least [1,000] acres, or a smaller area only if
17 it is found by the agency to be an integral part of a large-scale development or new community estab-
18 lished in accordance with the state's urbanization plan.

19 (7) "Improvements" means provision of public improvements, such as streets, sewer and water
20 lines and other utilities, recreational facilities, and other community amenities.

21 (8) "State Urbanization Plan" means [cite appropriate statutes, official documents, and other
22 instruments which set forth the state's policies and official guidelines for promoting and encouraging
23 urban growth].

24 *Section 3. State Land Development Agency.* (a) There is created a State Land Development
25 Agency in [appropriate state agency or department in charge of local affairs]. The [appropriate state
26 agency or department in charge of local affairs] shall administer this act through the agency, which
27 shall be headed by a director appointed by the head of the [appropriate state agency or department in
28 charge of local affairs] [subject to the approval of the governor].

29 (b) The governor may appoint a land development advisory council to advise and make recom-
30 mendations to the agency with respect to development policies and programs in order to encourage
31 maximum participation by the private sector of the economy. The council may consist of not more
32 than [twenty-five] members who shall serve at the pleasure of the governor. Members shall serve with-
33 out salary but shall be entitled to reimbursement for their actual and necessary expenses incurred in
34 the performance of their duties.

35 (c) The agency may establish one or more local advisory committees to consider and advise the

1 agency upon matters submitted to it concerning the development of any area or any project. The
2 members of such committees shall serve at the pleasure of the head of the [appropriate state agency
3 or department in charge of local affairs] , but shall be entitled to reimbursement for their actual and
4 necessary expenses incurred in the performance of their duties.

5 *Section 4. Powers and Duties.* The agency shall have the power to:

6 (1) make and execute contracts and all other instruments necessary or convenient for the exer-
7 cise of its powers and functions under this act;

8 (2) acquire or contract to acquire from any person, firm, corporation, municipality, federal or
9 state agency by grant, gift, purchase, condemnation, or otherwise, leaseholds, real, personal or mixed
10 property or any interest therein; and to own hold, clear, improve and rehabilitate, and to sell, assign,
11 exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same;

12 (3) carry out its responsibilities and perform its functions through one or more local land devel-
13 opment agencies. To carry out the purpose of this act, the state agency may transfer to any local devel-
14 opment agency any monies, real or personal property, mixed property, or any project.

15 (4) acquire, construct, reconstruct, improve, alter, or repair or provide for the construction, re-
16 construction, improvement, alteration, or repair of any project for site development and construction
17 of utilities, streets, and related improvements;

18 (5) arrange or contract with a local government for the planning, replanning, opening, grading,
19 or closing of streets, roads, roadways, alleys, or other places or for the furnishing of facilities or for the
20 acquisition by a municipality of property or property rights or for the furnishing of property or services
21 in connection with a project;

22 (6) sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber
23 any project, and in the case of the sale of any project, to accept a purchase money mortgage in connec-
24 tion therewith; and to lease, repurchase or otherwise acquire and hold any project which the corpora-
25 tion has theretofore sold, leased, or otherwise conveyed, transferred or disposed of;

26 (7) grant options to purchase any project or to renew any leases entered into by it with respect
27 to any of its projects, on such terms and conditions as it may deem advisable;

28 (8) prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the
29 construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project for site
30 improvement and construction of streets, utilities, and related improvements; from time to time to
31 modify such plans, specifications, designs or estimates; and to hold public hearings on such plans;

32 (9) manage any project, whether then owned or leased by the agency, and to enter into agree-
33 ments with any state agency, municipality, county, or any agency or instrumentality thereof, or with
34 any person, firm, partnership or corporation, either public or private, for the purpose of causing any
35 project to be managed;

1 (10) provide advisory, consultative, training and educational services, technical assistance, and
2 advice to any state agency, municipality, county, or agency or instrumentality thereof, any person,
3 firm, partnership or corporation, either public or private, in order to carry out the purposes of this act;

4 (11) lend funds, secured or unsecured, grant funds, to any local land development agency, and
5 to purchase, sell, or pledge the shares, bonds, or other obligations or securities thereof, on such terms
6 and conditions as the agency may deem advisable;

7 (12) make mortgage loans, including temporary loans or advances, to any local land development
8 agency, or to any person, firm, partnership or corporation, and to undertake commitments therefor.
9 Any such commitment, mortgage, or bonds or notes secured thereby may contain such terms and con-
10 ditions not inconsistent with the provisions of this act as the agency may deem necessary or desirable
11 to secure repayment of its loan, the interest thereon, and other changes in connection therewith;

12 (13) subject to the provisions of any contract with noteholders or bondholders, to consent to
13 the modification, with respect to rate of interest, time of payment of any installment of principal or
14 interest, security, or any other term, of any mortgage, mortgage loan, mortgage loan commitment,
15 contract or agreement of any kind to which the agency is a party;

16 (14) in connection with any property on which it has made a mortgage loan, to foreclose on
17 any such property or commence any action to protect or enforce any right conferred upon it by any
18 law, mortgage, contract or other agreement, and to bid for and purchase such property at any fore-
19 closure or at any other sale, or acquire or take possession of any such property; and in such event the
20 agency may complete, administer, pay the principal of and interest on any obligations incurred in con-
21 nection with such property, dispose of, and otherwise deal with such property, in such manner as may
22 be necessary or desirable to protect the interests of the agency therein;¹

23 (15) borrow money and to issue its negotiable bonds and notes and to provide for the rights of
24 the holders thereof;

25 (16) as security for the payment of the principal of and interest on any bonds so issued and any
26 covenants made with respect thereto, mortgage and pledge any or all of its projects, whether then owned
27 or thereafter acquired, pledge the revenues and receipts therefrom or from any thereof, assign or pledge
28 the lease or leases on any portion or all of said projects, and assign or pledge the income received by
29 virtue of said lease or leases;

30 (17) invest any funds held in reserve or sinking funds or any monies not required for immediate
31 use or disbursement, at the discretion of the agency [and with the approval of the state treasurer], in
32 obligations of the state or of the United States Government or obligations the principal and interest of
33 which are guaranteed by the state or the government of the United States;

¹States may wish to make general foreclosure laws applicable.

1 (18) procure insurance against any loss in connection with its property and other assets and op-
2 erations in such amounts and from such insurers as it deems desirable;

3 (19) engage the services of consultants on a contract basis for rendering professional and tech-
4 nical assistance and advice;

5 (20) contract for and to accept any monies, gifts, grants or loans of funds or property or financial
6 or other aid in any form from the Federal Government or any agency or instrumentality thereof, or from
7 the state or any agency or instrumentality thereof, or from any other source and to comply, subject to
8 the provisions of this act, with the terms and conditions thereof; and

9 (21) do any and all other things, not in conflict with other provisions of this act, necessary or
10 convenient to carry out the purposes and exercise the powers given and granted in this act.

11 *Section 5. Findings for Land Acquisition.* Notwithstanding any other provision of this act, the
12 agency shall not be empowered to undertake the acquisition, and improvement of a project unless:

13 (1) primary consideration has been given to local needs and desires as expressed in local and
14 regional plans and to statewide needs set forth in state urbanization policies and plans;

15 (2) project plans have been filed with local officials of the municipalities involved, including the
16 local and areawide planning agency;

17 (3) there is published in at least one newspaper of general circulation in the county or counties
18 in which the project is proposed to be located¹ a notice of public hearing to be held on the plan for
19 acquisition, such hearing to be held not less than [30] days after publication;

20 (4) there exists, in the area in which the project is to be located, a need for safe and sanitary
21 housing accommodations for persons or families of low-income, which the operations of private enter-
22 prise cannot provide;

23 (5) the acquisition and construction, proposed leasing, operation and use of such project will
24 aid in the development, growth and prosperity of the state and the area in which such project is lo-
25 cated;

26 (6) the plan or undertaking affords maximum opportunity for participation by private enter-
27 prise, consistent with public needs; and

28 (7) there is a feasible method for the prompt relocation of families and individuals displaced
29 from the project area, where such displacement occurs, into decent, safe, and sanitary dwellings, which
30 are or will be provided in the project area or in other areas not generally less desirable in regard to pub-
31 lic utilities and public and commercial facilities, at rents or prices within the financial means of such
32 families or individuals, and reasonably accessible to their places of employment. The agency may

¹States should follow their usual practice with regard to publication of notices of public hearings.

1 render to business and commercial tenants displaced from the project area such assistance as it may
2 deem necessary to enable them to relocate.

3 *Section 6. Sale or Lease of Land.* (a) The agency may sell or lease for a term not exceeding
4 ninety-nine years all or any portion of the real property constituting a project to any public agency,
5 person, firm, partnership or corporation, either public or private, upon such terms and conditions as
6 may be approved by the agency whenever the agency shall find that such sale or lease is in conformity
7 with a plan or undertaking for large-scale or new community development in the municipality in which
8 the project is located. Such sale or lease may be made:

9 (1) to any local land development agency, subject to public notice and hearing; and

10 (2) to any person, firm, partnership or corporation, [without public bidding subject to
11 public notice and hearing].

12 (b) There shall be published in at least one newspaper of general circulation in the county or
13 counties in which the project is located a notice which shall include a statement of the identity of the
14 proposed purchaser or lessee and of his proposed use or reuse of the project area or applicable portion
15 thereof, the price or rental to be paid by such purchaser or lessee, all other essential conditions of such
16 sale or lease, and a statement that a public hearing upon such sale or lease will be held before the agen-
17 cy at a specified time and place on a date not less than ten days after such publication, and provided
18 further that such public hearing is held in accordance with such notice.

19 (c) The agency may sell or lease for a term not exceeding ninety-nine years any project, or part
20 thereof, to the state or to any agency or instrumentality thereof, to any municipality or agency or in-
21 strumentality thereof, or to any non-profit corporation established for a public purpose, for use not
22 inconsistent with the purposes of this act. Any such sale or lease may be made without public bidding,
23 upon such terms and conditions as the agency, within its discretion, may determine to be necessary
24 or desirable. The agency may enter into a contract for a sale or lease at the date of, or subsequent to
25 the completion of the project by the agency. Where such contract for sale or lease is entered into af-
26 ter the commencement of construction and prior to the physical completion of the improvement to be
27 sole or leased, the agency may complete the construction and development of such improvement prior
28 to the actual conveyance or lease.

29 *Section 7. Improvement Construction Contracts.* (a) Construction contracts let by the agency
30 shall be in conformity with [cite appropriate state law], provided, however, that construction contracts
31 let by local land development agencies shall be governed by the applicable provisions of [cite appropriate
32 local government enabling legislation].

33 (b) The agency may, in its discretion, assign contracts for supervision and coordination to the
34 successful bidder for any subdivision or work for which the agency receives bids. Any construction
35 contract awarded by the agency shall contain such other terms and conditions as the agency may deem

1 desirable. The agency shall not award any construction contract except to the lowest bidder who, in
2 its opinion, is qualified to perform the work required and who is responsible and reliable.

3 *Section 8. Local Land Development agencies authorized.* Subject to the approval of the governor,
4 the agency may authorize any city or county, [or other designated unit of local general government],
5 or combination thereof, to establish a local Land Development Agency. Such authorization shall
6 prescribe the purposes for which the local land development agency is to be formed.

7 *Section 9. Acquisition of Real Property.* (a) The agency, upon making a finding that it is neces-
8 sary or convenient to acquire any real property for its immediate or future use, may acquire such
9 property in any lawful manner, including condemnation pursuant to the provisions of the condemna-
10 tion law where not inconsistent with this act, notwithstanding that such property may already be de-
11 voted to a public use, nor shall such property thereafter be taken for any other public use without the
12 consent of the governor.

13 (b) Every reasonable effort shall be made to acquire the real property by negotiated purchase.
14 It shall be the policy of the head of the agency, before initiating negotiations for real property, to es-
15 tablish a price which he believes to be a fair and reasonable consideration therefor, and to make a
16 prompt offer to acquire the property for the full amount so established.

17 (c) Prior to the commencement of condemnation proceedings, the agency shall cause a survey
18 and map to be made of the property to be condemned and file the same in its office. There shall be
19 annexed thereto a certificate, executed by such officer or employee as the agency may designate,
20 stating that the property described in such survey and map is necessary for public purposes.

21 (d) It shall be lawful for the duly authorized agents of the agency to enter the real property,
22 at reasonable hours, and with adequate notice, for the purpose of making such surveys and maps, or
23 for the purpose of making such soundings, borings and appraisals as may be deemed necessary.

24 (e) All condemnation proceedings hereunder shall be brought in the [cite court of appropriate
25 jurisdiction] and the compensation to be paid shall be determined by the court.¹

26 (f) The court may in its discretion decree that title to any real property acquired hereunder by
27 condemnation shall vest in the agency upon the entry and filing of an order of immediate possession.

28 (g) No award of compensation shall be increased by reason of any increase in the value of real
29 property caused by the actual or proposed acquisition or the use or disposition by the agency of any
30 other real property for public purposes.

31 (h) No owner will be required to surrender possession of real property before the head of the
32 state agency (1) pays the agreed purchase price, (2) makes available to the owner, by court deposit or
33 otherwise, an amount not less than [75] per centum of the appraised fair value of such property, as

¹States may desire to make general condemnation laws apply to these proceedings.

1 approved by such state agency head, without prejudice to the right of the owner to contest the amount
2 of compensation due for the property, or (3) deposits or pays the final award of compensation in the
3 condemnation proceeding for such property.

4 (i) Any decrease in the value of real property prior to the date of valuation caused by the public
5 improvement for which such property is acquired, or by the likelihood that the property would be ac-
6 quired for the proposed public improvement, other than that due to physical deterioration within the
7 reasonable control of the owner, will be disregarded in determining the compensation for the property.

8 (j) For the purposes of determining the extent of the acquisition of real property and the value
9 thereof, no building, structure, or other improvement will be deemed to be other than a part of the
10 real property solely because of the right or obligation of a tenant, as against the owner of any other
11 interest in the real property, to remove such building, structure, or improvement, and than an amount
12 not less than the value which such building, structure, or improvement contributes to the value of the
13 real property acquired, or the value of such building, structure, or improvement for removal from the
14 real property, whichever is the greater, will be paid to the tenant therefor.

15 (k) All persons in possession of such property at the time of such vesting of title, shall at the op-
16 tion of the agency become tenants at will thereof, and pay a rent to be agreed upon, unless within ten
17 days after vesting such persons actually remove from the premises.

18 (l) In no event shall the interest upon any claim arising from condemnation hereunder exceed
19 [] per cent per annum.

20 *Section 10. Regulations.* All projects acquired, constructed, improved, maintained or operated
21 by the agency, or by any local land development agency, shall comply with the rules and regulations
22 of the agency. If the requirements of any local law, code, charter, ordinance, zoning ordinance, rule or
23 regulation, is in conflict with the rules and regulations of the agency, the agency's rules and regulations
24 shall prevail.

25 *Section 11. Bonds.* The agency may from time to time issue bonds on the full faith and credit
26 of the state not to exceed an aggregate principal amount of [] dollars, and may issue revenue bonds,
27 payable out of revenues and receipts derived from the lease or sale by the agency of its projects and
28 properties.

29 *Section 12. Land Development Financing Fund.* There is hereby created a special account in
30 the state treasury to be known as the Land Development Financing Fund to which shall be credited the
31 amount appropriated pursuant to this act, subsequent appropriations made by the legislature for this
32 purpose, any proceeds of sale of bonds to the extent provided by the agency authorizing issuance there-
33 of, and any other monies which may be made available to the agency for the purposes of this act from
34 its own operations and from any other source or sources. The sum of [] dollars is hereby authorized
35 for establishing the fund. The agency may expend whatever amounts are needed for the payments

1 authorized by this act. If at any time the governor determines that the amount of the land develop-
2 ment financing fund is greater than the amount needed to carry out the provisions of this act, he may
3 transfer to the general fund of the state treasury whatever amount he finds to be in excess.

4 *Section 13. Payments to Local Governments.* In order to prevent undue loss of revenues to
5 political subdivisions during the period when land is being held by the agency for project development,
6 there shall be annually apportioned and paid by the state to any political subdivision in which a project
7 is located, a sum equal to [] per cent of the annual real property taxes on such land, paid or due
8 to the political subdivision.

9 *Section 14. Annual Report.* The agency shall submit to the governor and the legislature at the
10 end of each fiscal year a report setting forth its operations and accomplishments, its receipts and ex-
11 penditures, its assets and liabilities, and a schedule of its outstanding bonds.

12 *Section 15. Separability.* [Insert separability clause].

13 *Section 16. Effective Date.* [Insert effective date].

STATE HIGHWAY INTERCHANGE PLANNING DISTRICTS¹

Highways, along with water and sewer lines and facilities, are among the major determinants of the location of urban development. Public decisions regarding the provision of these facilities are a major influence in determining where and when urban growth will occur. A judicious use of development controls along highways, coupled with an access policy related to areawide development plans, can exert a significant influence upon development patterns. Highway planning clearly should be an integral part of overall physical planning conducted by the State and its localities.

Local control of land use around highway interchanges should be relied upon to the greatest possible extent. In some instances, however, state action may be necessary, especially in rural areas where special problems are created by the extension of major limited access highways. In such areas, counties and smaller municipalities normally do not have adequate land-use, subdivision, and other developmental controls to regulate increased commercial, industrial, and homebuilding activities generated by the highways. Although the rights-of-way of Federal interstate highways are rigidly regulated, the areas immediately beyond, and particularly along the access roads, in numerous instances are becoming dreary, unsightly, honky-tonk strip developments. The very rigidity of some highway controls generates a clustering of motel, restaurant, drive-in, and other type of activities along the rights-of-way at access points and at interchanges. Highway development has also generated isolated, small industrial, warehouse and similar installations and subdivisions. Another problem arises from the fact that, once established, many of the uses are protected as "nonconforming uses" even when controls finally are inaugurated.

The draft bill below seeks to control development at highway interchanges in those cases where municipalities or counties are not exercising effective land use and development controls. This is done by charging a state agency with exercising land-use controls according to prescribed standards. The agency, located within the department of community affairs, has authority, subject to the governor's approval, to decide whether local controls are effective or not. A county or municipality may appeal to the courts any decision declaring its controls inadequate. Finally, provision is made for establishing or reestablishing local controls when the county or municipality shows readiness to exercise such controls. The point should be emphasized that any control over land use and development at highway interchanges, whether State or locally administered, should be consistent with the State urbanization plan or policies where such exists.

In maintaining control over land use, a wider range of techniques may be utilized. Many of these techniques are already available to larger municipalities and urban counties. These techniques can be grouped under four major headings: eminent domain, police powers, contractual agreements, and doctrine of nuisance laws. Of these four, eminent domain and police powers have been the most widely used to date. The methods generally used under eminent domain include: (1) the acquisition in fee simple of land surrounding interchanges and its retention or long-term lease; (2) acquisition of development rights or easements; (3) temporary acquisition of land and its resale according to a development plan (urban renewal approach); and (4) acquisition of access rights. The four major police power controls are: (1) zoning; (2) setback requirements; (3) subdivision controls; and (4) the official map.

Every effort should be made to retain effective land use controls at the local level, but, where this is impossible, State control may be necessary. In planning a State program for land-use control, it is important to know which protective devices are institutionally feasible as well as effective. The selection of

¹This draft bill incorporates one of several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, as measures for the States to consider in implementing policies for urban growth and new community development.

appropriate controls and the granting of rights to use these controls will vary from State to State. The draft legislation below provides a combination of eminent domain and police powers such as: (1) acquisition of development rights by States; (2) acquisition of access rights by States; (3) the urban renewal approach (temporary acquisition); (4) State land use controls to implement an interchange plan; and (5) zoning at the local level.

Section 1 of the draft bill enunciates a State policy for the control of highway interchange, as one of the major determinants of orderly urban growth. Section 2 defines the terms necessary to an understanding of the bill.

Section 3 establishes a State Commission to control land use around highway interchanges. It is located within an appropriate State agency or department in charge of local affairs, rather than being set up as a new independent commission or using the State highway commission. The Commission consists of five members appointed by the governor, with local government and the public represented equally. One State official, designated by the governor, serves as chairman. The powers and duties, voting procedures, staff, and compensation for the commission are handled in Section 4.

Section 5 stipulates procedures for the Commission to follow in carrying out its duties. After the Commission conducts studies and hearings, it can establish a State highway interchange planning district, if it finds that a local plan is inadequate and that an adequate plan is necessary for effective development of the area. Any decision of the Commission, however, is subject to the approval of the governor.

Section 6 authorizes the Commission to enact zoning controls, and Section 7 prohibits any person from subdividing land within an interchange area unless approved by the Commission. Section 8 provides controls over the issuance of building permits in an interchange district. Section 9 establishes the procedure for review and appeal for variances or exceptions.

Section 10 prevents construction or relocation of buildings around an existing or proposed highway interchange until the Commission can take action to accept a local plan for land use control or establish a State highway interchange planning district. Section 11 provides judicial review for any individual or local jurisdiction aggrieved by any regulation or order of the Commission.

Section 12 provides a penalty for any person violating any rule or order of the Commission. The remaining two sections consist of a separability clause and effective date for the Act.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act Providing for the Control and Development of Land Surrounding Highway Interchanges."]

(Be it enacted, etc.)

1 *Section 1. Findings and Purpose.*

2 (a) The [legislature] finds that:

3 (1) highways and their interchanges are a major determinant of the location and quality
4 of urban development;

1 (2) special problems are created by the extension of major limited access highways
2 through the rural countryside;

3 (3) counties and smaller municipalities normally do not have adequate land-use devel-
4 opment, subdivision, and other development controls to regulate the increased commercial, indus-
5 trial, and home-building activities generated by the highways;

6 (4) areas immediately beyond the rights-of-way of interstate highways and particularly
7 along access roads are being developed at a level and pace which threatens to impair the usefulness
8 of many highway interchanges as traffic facilities and which severely hampers orderly urban growth.

9 (b) The purpose of this act is to insure the greatest possible benefits from the limited access
10 portion of the state highway system and from the public investment therein. To this end, it is
11 necessary to:

12 (1) promote the safety, convenience, and enjoyment of public travel on or about state
13 highway interchanges and connecting streets;

14 (2) lessen congestion on such highway interchanges and connecting streets;

15 (3) protect the public investment in highway interchanges;

16 (4) regulate the development of land abutting on or lying near highway interchanges;

17 and

18 (5) control the subdivision, division, and use of land abutting on or lying near state
19 highways, limited access highways, and connecting street interchanges.

20 *Section 2. Definitions.* As used in this act, and unless the context clearly requires otherwise:

21 (1) "Commission" means the Highway Interchange Planning and Development Commission¹
22 created by this act.

23 (2) "Highway" means a limited access highway, parkway, freeway, or connecting street.

24 (3) "Interchange" means an intersection which provides for the interchange of traffic be-
25 tween a limited access facility or highway as defined herein and one or more other highways which
26 may be either of the conventional type of the limited access type. Such highways may intersect at
27 the same grade or level or at different grades or levels. If two interchanges are 500 feet or less apart,
28 measured along the center line of a limited access highway, they may be considered as a single in-
29 terchange for the purposes of this act.

30 (4) "Interchange centerpoint" means the point at which the center lines of the intersecting
31 highways meet or cross if at the same grade or level, or the point at which the center lines of

¹Some states may wish to use the state highway commission or another existing body rather than creating a new commission.

1 highways which cross or meet at different grades or levels would meet or cross if they intersected
2 at the same grade or level. Two interchanges whose centerpoints are 500 feet or less apart measured
3 along the center line of a limited access highway may be considered for the purposes of this act as a
4 single interchange, if the centerpoint lies halfway between the centerpoints of the two intersections.

5 (5) "District" means an interchange planning district created by the [Highway Interchange
6 Planning and Development Commission] as authorized by this act.

7 (6) "Division" means the division of a lot, parcel, or tract of land by the owner thereof or his
8 agent for the purpose of sale, contract, or building development, except:

9 (i) transfer of interest in land by will or pursuant to court order;

10 (ii) mortgages or easements;

11 (iii) the sale or exchange of parcels of land between owners of adjoining property if ad-
12 ditional lots are not thereby created.

13 (7) "Subdivision" is a division of a lot, parcel, or tract of land by the owner thereof or his
14 agent for the purpose of sale or building development where the act of division creates two or more
15 parcels or building sites of ten acres each or less in area; or where two or more parcels or building
16 sites of ten acres each or less in area are created by successive divisions within a period of five years.

17 *Section 3. Creation of Highway Interchange Planning and Development Commission.*¹ There
18 is hereby created in [the state agency or department in charge of local affairs] the highway inter-
19 change planning and development commission. The commission shall consist of [five] members
20 to be appointed by the governor, and shall include the director of the state planning office, or other
21 official of the executive branch, two local government officials, and two persons who are not public
22 officials.² The [director of the state planning office or the executive official designated by the
23 governor] shall be the chairman of the commission. The local officials shall consist of [one munic-
24 ipal official and one county official]³ to be appointed by the governor from a panel submitted by
25 the [state municipal league] [and the state association of county officials] respectively. Members
26 of the commission shall be appointed for [four] years, and serve until their successors take office,
27 with the exception of the chairman, who shall serve at the pleasure of the governor.

¹An alternative to the single commission would be separate commissions organized on a regional basis, with the local membership representative of the region. The state members would remain the same for each region, and the commissions, for administrative purposes, could still be placed under the state agency in charge of local affairs.

²Some states may wish to expand the commission to include the state highway commissioner or his representative.

³Those States who do not operate on a county basis may wish to alter this section to their own needs.

1 Members of the commission may be removed by the governor for inefficiency, neglect of duty,
2 or malfeasance in office upon the filing of written statement of charges and reasons for removal. Any
3 member so charged may request a public hearing and can then be removed only if such hearings re-
4 sult in substantiation of the charges filed against him.

5 *Section 4. Powers and Duties of the Commission.* (a) In carrying out the purposes of this
6 act, and in the absence of effective local control (as determined in accordance with Section 5(b) of
7 this Act) the Highway Interchange Planning and Development Commission shall:

8 (1) conduct studies involving the development of highway interchanges and the evalua-
9 tion of the effectiveness of local land use controls;

10 (2) publish and distribute copies of its plans and reports and employ such other means
11 of publicity and education as necessary to carry out the purposes of this act;

12 (3) propose establishment of highway interchange planning districts, when local land
13 use controls are found, on the basis of its initial studies, to be ineffective.

14 (4) review proposed local plans and ordinances that are received from affected local
15 governing bodies, and hold public hearings on such plans and ordinances;

16 (5) establish, subject to approval of the governor, highway interchange planning dis-
17 tricts, when the public hearing record indicates inadequate local land use controls in the highway
18 interchange area;

19 (6) divide highway interchange planning districts into areas of such number, shape, and
20 size as are best suited to carry out the purposes of this act;

21 (7) create zoning controls to regulate and restrict the division, subdivision, or other
22 use of land and the erection, construction, alteration or use of buildings and other structures in such
23 districts;

24 (8) acquire by lease, grant, gift, devise, purchase, or condemnation such real property
25 in fee simple or any interest, right, easement, or privilege therein, including development rights and
26 scenic easements, within any interchange planning district;

27 (9) dissolve, by resolution, any state highway planning district on a finding by the
28 commission that effective land use controls can be administered by the affected local jurisdiction
29 or jurisdictions; and

30 (10) adopt rules and regulation necessary to carry out the purposes of this act.

31 (b) *Vote.* An affirmative vote by a majority of the commission is required to take action.

32 (c) *Compensation.* Each member of the commission is entitled to the compensation of \$[]
33 per diem plus travel and other reasonable expenses for meetings, hearings, and other official busi-
34 ness.

1 *Section 5. Procedures of the Commission. (a) Planning Districts.* In the absence of effective
2 local land use controls, as determined pursuant to subsection (b) of this Section, the commission
3 may, subject to the approval of the governor, establish by resolution, planning districts for state
4 highway interchanges and shall define the boundaries thereof, not to encompass an area of a radius
5 greater than [one and one-half miles] in any direction from the centerpoint of the interchange, but
6 an interchange planning district may include additional contiguous areas located further than [1 and
7 1/2 miles] from the centerpoint of the interchange, if the commission find that such additional
8 areas bear substantial relation to the planning and development of the interchange area, or to the
9 traffic movement or control functions associated with the interchange. Such districts may be dis-
10 solved on a finding by the commission that local land use controls are adequate.

11 *(b) Determining the Effective Use of Local Controls.*

12 *(1) Commission Studies.* The commission at its discretion or upon written request of
13 any areawide planning body, county, municipality, or special district may conduct studies on re-
14 lated local land use controls at a highway interchange and the need for a highway interchange plan-
15 ning district. Such studies shall be made for areas where it is found that a highway interchange is
16 creating or will create problems affecting the orderly urban growth of the area, or where develop-
17 ment around an interchange threatened to contravene state or regional urbanization plans. Such
18 studies in conjunction with any local plan submitted under subsection b(3) of this section shall
19 provide the basis for a decision by the commission on the existence of effective local land use
20 control.

21 *(2) Commission Proposals.* Based on findings from such studies, the commission may
22 propose the formation of a highway interchange planning district, and shall so notify the municipal-
23 ities and counties within whose jurisdiction the interchange is located.

24 *(3) Local Plans.* Upon notification by the commission of plans to establish a state high-
25 way interchange planning district, an affected local jurisdiction shall have a period of [4] months
26 to submit to the commission a plan for the development of the area to be covered by the proposed
27 interchange planning district. Such plan shall be consistent with the state urbanization plan, and shall
28 describe the methods that will be used to control land use in the interchange area. In deciding
29 whether a local plan is adequate, the commission shall determine if the plan contains provisions,
30 when appropriate, for the following components: (i) a land use plan for the most desirable utiliza-
31 tion of land in the interchange area; (ii) street and highway plan; (iii) mass transit plan; (iv) plans
32 for public services and facilities; (v) public buildings and community design, including a subdivision
33 and zoning plan; (vi) recreation plans for parks, playgrounds, and other recreation areas; (vii) con-
34 servation plan, including plans for water and all natural resources, for flood control, and watershed
35 protection; (viii) any other component that is applicable or deemed by the commission to be

1 necessary; (ix) descriptions of the available land use controls, and combination of controls to be
2 used to implement the interchange development plan; and (x) methods by which the controls are
3 to be utilized and the goals of the plans are to be achieved.

4 (4) *Commission Hearings.* The commission shall, within [5] months of the date of notification,
5 as provided in subsection (b) (2) of this section, hold public hearings. The commission's initial study,
6 local plans submitted, and the hearings record shall form the basis for any decision by the commis-
7 sion on whether or not a state highway interchange planning district should be established.

8 (5) *Gubernatorial Approval.* Within [30] days after the completion of the hearings, the commis-
9 sion shall report its findings and recommendations to the governor. If establishment of an inter-
10 change planning district is recommended, the recommendation shall be implemented administrative-
11 ly unless vetoed by the governor within [10] days after submission.

12 (6) The commission shall conduct, at such reasonable times as it deems necessary to carry
13 out the purposes of this act, a review of (i) the effectiveness of local land use controls in those high-
14 way interchange areas that the commission has, on the basis of its initial studies or as a result of a
15 public hearing, consigned to the authority of local governing bodies; and (ii) the capability of local
16 governing bodies within established highway interchange planning districts to provide effective land
17 use controls for the interchange areas. If the commission finds that effective local land use controls
18 no longer exist in a highway interchange area, it may propose the formation of a highway inter-
19 change planning district, pursuant to subsection 5(b) of this section. If the commission finds that
20 the local governing bodies within an existing highway interchange planning district possess the
21 capabilities to provide effective land use controls, it may dissolve the district, subject to approval
22 by the governor.

23 *Section 6. Zoning Controls.* (a) The commission shall divide the districts into zoning areas
24 within which it may regulate the use of land and the construction, alteration, or use of buildings and
25 other structures.

26 (b) In the formation of zoning regulations for each district, the commission shall be guided
27 by this section and by the objectives of the state urbanization plan and policies, and shall consider,
28 but not be limited to, the existing or anticipated traffic load; existing or proposed points of ingress
29 and egress; existing land use; the most suitable and productive use of land; the extent of investment
30 in the development of land; and the extent of public investment. Land regulations which are more
31 restrictive shall apply.

32 *Section 7. Land Subdivision Control.* The commission may regulate the subdivision of land
33 within an interchange district. No person shall subdivide land lying wholly or partly within an
34 interchange district until a subdivision plat or map has been approved by the commission.

1 *Section 8. Building Permits Subject to Commission Approval.* No building permit shall be is-
2 sued by a unit of local government in an interchange district until approved by the commission.

3 *Section 9. Variances; Exceptions.* The commission may (1) hear and decide appeals where it
4 is alleged there is an error in any order, requirement, decision, or determination made by an admin-
5 istrative official in the enforcement of this act or of the regulations adopted pursuant thereto;
6 (2) consider requests for special exceptions to regulations adopted under this act; and (3) consider
7 requests for variances where a literal enforcement of the regulations will result in practical difficulty
8 or unnecessary hardship.

9 *Section 10. Control of Interim Development.* No person shall construct, reconstruct, or re-
10 locate any building or other structure within one and one-half miles of the centerpoint of an ex-
11 isting, or officially designated future limited access highway interchange, until the commission,
12 pursuant to Section 5 of this act, has either (1) made a finding that local land use controls are ade-
13 quate, or (2) established a planning district for the interchange area.

14 *Section 11. Judicial Review.* Any person or local unit of government aggrieved by any regu-
15 lation, decision, or order of the commission may appeal to the [specify appropriate court and cite
16 state law pertaining to judicial review of administrative decisions].

17 *Section 12. Enforcement; Penalties.* The commission may institute injunctive or other ap-
18 propriate action or proceeding to enjoin a violation of this act or of regulations adopted hereunder.
19 Any person violating this act or the regulations adopted pursuant thereto shall be subject to a fine
20 of not more than [\$500]. Each day a violation continues shall be deemed a separate offense.

21 *Section 13. Separability Clause.* [Insert separability clause].

22 *Section 14. Effective Date.* [Insert effective date].

PRIVATE ENTERPRISE INVOLVEMENT IN URBAN AFFAIRS

During the past few years, both the Congress and the Federal Executive Branch have given consideration to methods through which the Federal Government and private enterprise could work together more effectively in meeting the crises in the Nation's cities. This concern was prompted by the growing realization that no one level of government — nor even all levels of government working in concert — could cope adequately with the manifold problems confronting local governments in our metropolitan areas; deep involvement of the private sector is required.

Many proposals have been advanced which call for a partnership between the public and private sectors in the rebuilding of the Nation's cities. For example, the use of rent supplements has been advocated as an alternative to public housing in meeting the problem of adequate shelter for low-income families.

Most of the recommendations under consideration focus upon Federal-private cooperation, and largely ignore the arrangements that State and local governments could develop in this area. However, government at all levels must assume increasing responsibilities in combating poverty, crime, unemployment and under-employment, delinquency, inadequate educational facilities, and poor housing accommodations in metropolitan areas. Remedial measures are most urgently needed in the central cities of industrial or highly urbanized States.

State constitutions and statutes should be examined to identify and evaluate restrictions upon public-private cooperation. Unless compelling reasons to the contrary are evident, States should remove existing barriers to the involvement of private enterprise in efforts directed toward enlarging and revitalizing the economic and fiscal base of their major cities. After this step has been taken, States should continue to encourage the private sector to use its resources to ameliorate urban problems.

Many potentialities exist for State-local-private cooperation which could be authorized by State constitutional or statutory action. For example, a number of State constitutions contain provisions prohibiting the use of the State's credit in private undertakings; such restrictions could be removed. State and local tax policies could also be reviewed to determine whether they encourage or discourage replacement of obsolete structures, proper maintenance of living quarters, and general rehabilitation and improvement of neighborhoods. These policies are particularly significant because of their impact upon land use and subdivision development in urban areas.

A new constitution proposed by the New York State Constitutional Convention in 1967 contained a provision permitting the State to participate with the private sector in economic and community development. The following constitutional amendment, which is based upon the New York proposal, is offered as a means of facilitating general cooperative efforts between State and local public agencies and private enterprise.

Suggested Constitutional Provision

[Title, format, and procedural practice for constitutional amendment should conform to State practice and requirements.]

- 1 Notwithstanding any other provision of this constitution, the state, its political subdivisions, and
- 2 any public corporation may, as provided by law, where a public purpose will be served, grant or lend
- 3 its funds to any individual, association, or private corporation for purposes of participating or assisting
- 4 in economic and community development.

STATE LOANS TO INDUSTRY TO PROMOTE URBAN GROWTH POLICIES¹

In order to attract business and industrial firms, many states have established industrial finance authorities. In the main, these authorities operate everywhere in the state without regard to whether economic development in some areas is necessary or desirable. This proposal is intended to focus the efforts of state financing authorities on areas designated by state's urbanization plans and policies as places where urban growth should be encouraged.

In some areas designated for urban growth, firms will be discouraged by a shortage of loan funds and by inability to meet going interest rates. State industrial credit financing can offset the market constraints felt by private lenders by guaranteeing industrial loans or making direct loans to responsible private entrepreneurs.

Both the loan guarantee and the direct loan programs utilize the appropriated and borrowed funds of a public corporation vested with financing authority by the state legislature. Where private capital is difficult to obtain, the state steps in to help finance the location of industry. It is particularly urgent to provide this type financing to attract small enterprises to urban growth areas.

In some cases, urban growth areas may extend across state lines. Common interests might indicate a need for states to pool their separate industrial financing capabilities in such cases. The suggested legislation which follows allows this flexibility.

The fact should be noted that some states may encounter constitutional prohibitions against lending the State's credit to private undertakings. Language for a constitutional amendment to permit a State to use its resources to encourage private enterprise involvement in urban growth appears elsewhere in this volume. Alternatively, the legislation can include a comprehensive statement of findings, to establish the public purpose of such an activity.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to facilitate industrial development in accordance with state urban growth policies.]

(Be it enacted, etc.)

1 *Section 1. Short Title.* This act shall be known as the "Urban Industrial Development Financing
2 Act."

3 *Section 2. Declaration of policy.*² In order to promote the health, safety, right to gainful em-
4 ployment, business opportunity and general welfare of the inhabitants of this state, there is created

¹This draft bill incorporates one of several approaches set forth in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, as measures for the States to consider in implementing policies for urban growth and new community development.

²States may find it necessary to set forth a statement of findings and declaration of public purposes in order to sustain the constitutionality of this legislation unless they have a constitutional provision such as that provided elsewhere in the Commission's State Legislative Program, allowing public financial support for private enterprise involvement in urban development.

1 the state urban development corporation, which shall exist and operate for the public purpose of en-
2 couraging urban growth by the promotion and development of industrial and manufacturing enter-
3 prises in those areas of the state in which conditions for urban growth are most desirable and necessary.
4 Such purposes are hereby declared to be public purposes for which public money may be spent.

5 *Section 3. Definitions.* The following terms, whenever used or referred to in this act, shall have
6 the following meanings, except in those instances where the context clearly indicates otherwise.

7 (1) "Corporation" means the state urban industrial development corporation created by this
8 act.

9 (2) "Urban growth area" means the area encompassing any municipality or group of municipi-
10 palities, county, group of counties or region of the state defined by the corporation as suited for
11 urbanization in accordance with the state urbanization plans and policies.

12 (3) "Industrial development agency" means any incorporated organization, foundation, as-
13 sociation or agency, to whose members or shareholders no profit shall inure and which shall have as
14 its primary function the promotion, encouragement and development of industrial and manufacturing
15 enterprises in an urban growth area.

16 (4) "Urban Industrial Development Fund" means the account created by this act.

17 (5) "Industrial development project" means any site, structure, facility, or undertaking com-
18 prising or being connected with or being a part of an industrial or manufacturing enterprise established
19 or to be established in an urban area.

20 (6) "Responsible buyer" means any person, partnership, firm, company or corporation or-
21 ganized for profit and deemed by the corporation, after proper investigation, to be financially re-
22 sponsible to assume all obligations prescribed by the corporation in the acquisition of an industrial
23 development project and in the operation of an industrial or manufacturing enterprise therein or
24 thereon.

25 (7) "Responsible tenant" means any person, partnership, firm, company, or corporation or-
26 ganized for profit, deemed by the corporation, after proper investigation, to be financially responsible
27 to assume all rental and all other obligations prescribed by the corporation in the leasing of an in-
28 dustrial development project and in the operation of an industrial or manufacturing enterprise there-
29 in or thereon.

30 (8) "Cost of establishing an industrial development project" means so much as necessary of
31 the following: the cost of construction, the cost of all lands, property, rights, easements and fran-
32 chises acquired, which are deemed necessary for construction, interest prior to and during construc-
33 tion, cost of engineering and legal expense, plans, specifications, surveys, estimates of costs and other
34 expenses necessary or incident to determining the feasibility or practicability of any industrial devel-
35 opment project; together with such other expenses as may be necessary or incident to the financing

1 and the construction of the industrial development project and the placing it in operation. The cost of
2 all machinery and equipment and its installation and maintenance, except for building service equip-
3 ment, shall not be included in the cost of establishing an industrial development project, but shall be
4 provided by the responsible tenant or responsible buyer.

5 *Section 4. State Urban Industrial Development Corporation.*

6 (a) *Corporation created; Membership.* The state urban industrial development corporation is
7 hereby created. The corporation shall be a corporate governmental agency of the state. Its member-
8 ship shall consist of [nine] directors as follows:¹ [insert titles of state officials to serve ex officio],
9 and [five] directors to be appointed by the governor with the advice and consent of the Senate. [Pro-
10 vide for length of term and succession].

11 (b) *Officers.* From among the directors appointed by him, the governor shall appoint the chair-
12 man of the corporation, who shall its chief executive officer. The directors, except for the chairman,
13 shall serve without salary, but each director shall be entitled to reimbursement for his actual and neces-
14 sary expenses incurred in the performance of his official duties, and, except in the case of [state of-
15 ficials serving ex officio], a per diem allowance of [one hundred] dollars when rendering services as
16 director, provided that the aggregate of such per diem allowance to any one director in any one fiscal
17 year shall not exceed the sum of [five thousand] dollars. The chairman of the corporation shall re-
18 ceive for his services a salary fixed by the directors.

19 (c) *Other Public Office or Employment not Prohibited.* No officer or employee of the state or
20 any civil division thereof shall be deemed to have forfeited his office or employment by reason of his
21 acceptance of membership on the corporation.² A director who holds such other public office or em-
22 ployment shall receive no additional compensation or allowance for services rendered pursuant to this
23 act, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the per-
24 formance of such services.

25 (d) *Removal of Directors.* The governor may remove any director appointed by him for inef-
26 ficiency, neglect of duty, or misconduct in office after giving the director a copy of the charges against
27 him and an opportunity to be heard, in person or by counsel, in his defense, upon not less than ten
28 days' notice. If any such director shall be removed, the governor shall file in the office of the [secretary
29 of state] a complete statement of charges made against such director and his findings thereon, together
30 with a complete record of the proceeding.

¹Titles and assigned responsibilities vary from state to state, so careful consideration needs to be given to ex officio members.

²Dual office holding is prohibited by some state constitutions.

1 (e) *Continuation of Corporate Existence.* The corporation and its corporate existence shall con-
2 tinue until terminated by law, but no such law shall take effect so long as the corporation shall have bonds,
3 notes and other obligations outstanding, unless adequate provision has been made for the payment thereof.

4 (f) *Quorum.* A majority of the directors of the corporation shall constitute a quorum for the
5 transaction of any business or the exercise of any power or function of the corporation.

6 *Section 5. Powers of the corporation.* The corporation shall have power to:

7 (1) sue and be sued;

8 (2) have a seal and alter it at pleasure;

9 (3) make and execute contracts and all other instruments necessary or convenient for the ex-
10 ercise of the powers and functions granted it under this act;

11 (4) make and alter by-laws for its organization and internal management;

12 (5) appoint officers, agents and employees, prescribe their duties and fix their compensation;

13 (6) cooperate with industrial development agencies in their efforts to promote the expansion
14 of industrial and manufacturing activity in urban growth areas;

15 (7) make, upon proper application by responsible buyers, as prescribed by the corporation,
16 loans of moneys held in the urban development fund in urban growth areas and to provide for the re-
17 payment and redeposit of such loans;

18 (8) Guarantee loan repayments to a lending institution that has provided the funding for an in-
19 dustrial development project, not to exceed [eighty] percent of the amount of the loan.

20 (9) To prescribe standards by which applications for loans or loan guarantees for industrial devel-
21 opment projects will be judged, but such standards shall not be inconsistent with the purposes of this
22 act. One such standard shall be that an application shall show evidence that the establishment of the
23 industrial development project will not cause the removal of an industrial or manufacturing plant or
24 facility from one area of the state to another area of the state.

25 (10) purchase, acquire and take assignment of notes, mortgages, and other forms of security and
26 evidences of indebtedness, attach, seize, accept, or take title by conveyance, foreclose, sell, lease, or
27 rent, and otherwise deal with property, in a manner that protects the interests of the corporation there-
28 in;

29 (11) subject to specific authorizations as may be provided by law, borrow money and issue its
30 negotiable bonds and notes and provide for the rights of the holders thereof.

31 (12) invest any funds held in reserve or in sinking funds and any monies not required for im-
32 mediate use or disbursement, in obligations of the state or of the United States government, or obliga-
33 tions the principal and interest of which are guaranteed by the state or the United States government.

34 (13) procure insurance against any loss in connection with its property and other assets and op-
35 erations in such amounts and from such insurers as it deems desirable.

1 (14) contract for and to accept any gifts or grants or loans of funds or property or financial or
2 other aid in any form from any other source, if the terms and conditions thereof are not in conflict
3 with this act;

4 (15) do any and all things necessary or convenient to carry out its purposes and exercise the
5 powers given and granted in this act.

6 *Section 6. Loans to responsible buyers.* When it has been determined by the corporation, upon
7 application and hearing thereon, that the establishment of a particular industrial development project
8 of responsible buyers in an urban growth area has accomplished or will accomplish the public purposes
9 of this act, the corporation may contract to lend the responsible buyer an amount not in excess of
10 [30%] of the cost or estimated cost of the industrial development project, as established or to be estab-
11 lished, subject to the following conditions:

12 (1) Industrial development projects to be established:

13 (i) The corporation shall have first determined that the buyer holds funds in an amount
14 equal to, or property of a value equal to, not less than [20%] of the estimated cost of establishing the
15 industrial development project, which funds or property are available for and shall be applied to the
16 establishment of the project, and

17 (ii) the corporation shall have also determined that the responsible buyer has obtained
18 from other independent and responsible sources, such as banks or insurance companies, a firm com-
19 mitment for all other funds, over and above the loan of the corporation and such funds or property
20 as an industrial development agency may hold, necessary for payment of all the estimated cost of
21 establishing the industrial development project, and that the sum of all these funds, together with the
22 machinery and equipment to be provided by the responsible tenant or responsible buyer is adequate
23 to insure completion and operation of the plant or facility.

24 (2) Industrial development projects established without initial corporation loan participation:

25 (i) the corporation shall have first determined that the responsible buyer has expended
26 funds in an amount equal to, or has applied property of a value equal to, not less than [20%] of the
27 cost of establishing the industrial development project, and

28 (ii) the corporation shall have also determined that the responsible buyer obtained from
29 other independent and responsible sources, such as banks and insurance companies or otherwise, other
30 funds necessary for payment of all the cost of establishing the industrial development project, and that
31 these funds, together with machinery and equipment provided by the responsible tenant or responsible
32 buyer, have been adequate to insure completion and operation of the plant or facility. The proceeds of
33 any loan made by the corporation pursuant to this subsection shall be used only for the expansion of
34 development projects in furtherance of the public purposes of this act.

1 Any loan of the corporation shall be for a period of time, shall bear interest at a rate determined
2 by the corporation, and shall be secured by bond of the responsible tenant and by mortgage on the in-
3 dustrial development project for which the loan was made, mortgage to be second and subordinate only
4 to the mortgage securing the first lien obligation issued to secure the commitment of funds from other
5 independent and responsible sources for use in financing the industrial development project.

6 Moneys lent by the corporation to responsible buyers shall be withdrawn from the urban indus-
7 trial development fund and paid over to the responsible buyer in such manner as the corporation
8 prescribes.

9 All payments of principal and interest on loans and the principal thereof shall be deposited by
10 the corporation in the urban industrial development fund.

11 Loans by the corporation to a responsible buyer for an industrial development project shall be
12 made only in the manner and to the extent provided in this act, except in those instances where an
13 agency of the federal government participates in the financing of an industrial development project by
14 loan, grant, or otherwise of federal funds. When any federal agency participates, the corporation may
15 adjust the required ratios of financial participation by the responsible buyer, the source of the in-
16 dependent funds, and the agency in a manner as to insure the maximum benefit available by partici-
17 pation of the federal agency, but no adjustment of ratios shall cause the corporation to make a loan to
18 the industrial development agency in excess of [30%] of the cost or estimated cost of the industrial
19 development project.

20 Where any federal agency participating in the financing of an industrial development project is
21 not permitted to take as security for such participation a mortgage the lien of which is junior to the
22 mortgage of the corporation, the corporation may take as security for its loan a mortgage junior in
23 lien to that of the federal agency.

24 *Section 7. Appropriations: Urban Industrial Development Fund.* The sum of [] dollars
25 is [authorized to be] appropriated to the corporation for the purposes set forth in this act. There is
26 created a special account in the treasury of the state to be known as the urban industrial development
27 fund to which shall be accredited any appropriations made by the [legislature] to the corporation as
28 well as other deposits as provided in this act. The fund shall operate as a revolving fund whereby all
29 appropriations and payments made may be applied and reapplied to the purposes of this act. The
30 governor shall transfer to the general fund of the state treasury funds held for the credit of the urban
31 industrial development fund that determines are in excess of the amount needed to carry out the pur-
32 poses of this act.

33 *Section 8. Exemption from taxation.* The exercise of the powers granted by this act will be in
34 all respects for the benefit of the people of this state, for the increase of their commerce, welfare, and
35 prosperity, and for the improvement of their health and living conditions, and will constitute the

1 performance of an essential governmental function. Except for estate and gift taxes and taxes on
2 transfers, any bonds or notes issued under the provisions of this act and the income therefrom shall at
3 all times be free from taxation of every kind by the state and by the municipalities and all other
4 political subdivisions of the state.

5 *Section 9. Annual report.* The corporation shall submit to the governor and to the [legislature],
6 within six months after the end of each fiscal year, a complete and detailed report of its activities for
7 the preceding year.

8 *Section 10. Conflicts of Interest.* The corporation may purchase, sell, borrow, lend, contract
9 with or otherwise deal with any corporation, trust, association, partnership, or other entity in which
10 any director of the corporation has a financial interest, direct or indirect, if such interest is disclosed
11 in the minutes of the corporation, and if no director having such a financial interest participates in any
12 decision affecting such transaction.

13 *Section 11. Inconsistent provisions of other laws superseded.* Insofar as the provisions of this
14 act are inconsistent with the provisions of any other law, general, special or local, the provisions of this
15 act shall be controlling.

16 *Section 12. Construction.* This act, being necessary for the welfare of the state and its inhabi-
17 tants, shall be liberally construed so as to effectuate its purposes.

18 *Section 13. Separability.* [Insert separability clause.]

19 *Section 14. Effective date.* [Insert effective date.]

CONDITIONAL PROPERTY TAX DEFERMENT FOR NEW COMMUNITY DEVELOPMENT¹

The financial strain on the developer of a new community is intense in the early years before sales and appreciation of values are sufficient to balance the high initial development costs. One of the large, unavoidable, out-of-pocket costs is the local property tax. Outright exemption of new-community property from local levies could severely strain local budgets when the local government is under the greatest pressure to expand services and facilities. States, with their greater fiscal capability, can assume a helpful role here in furtherance of their basic urbanization policies.

The following suggested state legislation provides that the State reimburse new community developers for local property taxes paid during the initial development stage. This approach would relieve an immediate financial burden and materially assist completion of the project. At a later date, when the developer's investment begins to pay off, the state can recoup its outlays. It should be emphasized that the developer's property tax liabilities to local government are accrued and met, but that his ultimate tax outlay is delayed, with no interest charged, until the beginning of the cash flow from the development.

In return for assistance at a critical period, the State may reasonably require the new community to conform to its urbanization plans and policies and to meet standards which promote the public interest. Among such standards should be the requirement that eligible developers provide low-income housing.

Using state funds to cover local property tax outlays would give states an opportunity to *act*, rather than *react*, as they seek orderly urban growth in accordance with the official state urbanization plans and policies. The investment envisioned here would elicit more than grudging local compliance with state urbanization plans. For the private developer of a new community, it would constitute the state's earnest money in seeing his project completed.

Some states may encounter constitutional prohibitions against this proposal, because, in effect, it calls for lending the credit of the state to the support of private undertakings. Elsewhere in the ACIR State Legislative Program is a proposed Constitutional amendment that permits the state and its political subdivisions to use their credit to encourage private enterprise involvement in urban affairs. In some instances, questions of constitutionality might be avoided by including in the legislation a comprehensive statement of findings and policy to establish the public purpose of this approach.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act temporarily to reimburse developers for local property taxes in a new community."]

(Be it enacted, etc.)

- 1 *Section 1. Short title.* This act shall be known and may be cited as the "New Community
- 2 Property Tax Financing Act."

¹This draft bill incorporates one of the several approaches set forth in the Advisory Commission's report, *Urban and Rural America: Policies for Future Growth*, as measures for the States to consider in implementing policies for urban growth and new community development.

1 *Section 2. Purpose.* The purpose of this act is to promote the urban growth policies and the
2 urbanization plan of the state by providing state funds for advances to finance local property taxes
3 on land designated for new community development and to recover such outlays.

4 *Section 3. Definitions.* The following terms, whenever used or referred to in this act, shall
5 have the following meanings, except in those instances where the context clearly indicates other-
6 wise:

7 (1) “New community development project” means an area of not less than [1,000] acres
8 under the ownership and management of a new community developer whose expressed purpose is
9 to establish within the area a settlement of at least [15,000] people in accordance with the urbani-
10 zation plans and policies established pursuant to law.

11 (2) “New community developer” means any person, partnership, firm, company, or corpora-
12 tion organized for profit who undertakes a new community development project that conforms to
13 the state urbanization plan.

14 (3) “State urbanization plan” consists of [cite the statutes, official documents, and other in-
15 struments which set forth the state’s policies and official guidelines for promoting and controlling
16 urban growth].

17 *Section 4. New Community Property Tax Financing Fund.* A special account is hereby
18 created in the state treasury to be known as the new community property tax financing fund, to
19 which shall be credited the amount appropriated pursuant to this act, subsequent appropriations
20 made by the [legislature] for this purpose, and other deposits provided for by this act. The sum
21 of [] dollars is authorized for establishing the fund. The governor may requisition from the
22 new community property tax financing fund whatever amounts are needed for the payments au-
23 thorized by this act. If at any time the governor determines that the amount of the fund is greater
24 than the amount needed to carry out the provisions of this act, he may transfer to the general fund
25 of the state treasury whatever amount he finds to be in excess.

26 *Section 5. Application for Optional Payment.* A new community developer may apply for a
27 payment from the state in an amount not to exceed the amount of the property tax paid to political
28 subdivisions in which his new community development project is located. The claim shall be filed in
29 the manner prescribed by the director of [the department of community development or office of
30 local affairs]. The application shall contain, but shall not be limited to, the following information:

- 31 (1) general description of the project;
32 (2) legal description of all real estate constituting the project;
33 (3) plans and other documents required to show the type and general character of the
project;

1 (4) general description of the structures and population contemplated upon completion of
2 the project;

3 (5) costs and cost estimates of the project;

4 (6) schedule of the time anticipated for the completion of major segments as well as the en-
5 tire project; and

6 (7) evidence of the arrangement made by the developer for financing all costs of the project.

7 Before authorizing a payment, the director of [department of community development or of-
8 fice of local affairs] shall determine that the project conforms to the state urbanization plan, and
9 that sufficient housing will be provided for low-income families.

10 *Section 7. Period in which Optional Payment may be Claimed.* A new community developer
11 may continue to apply for payments from the state in the amount of the property tax to be paid
12 by him to political subdivisions of the state in any subsequent year during a period of [5] consecu-
13 tive years, if his application for the initial claim is approved, and if he continues to conform to the
14 state urbanization plan and the financial and other criteria set forth in this act.

15 *Section 8. Repayment by the New Community Developer.* At a time designated by the new
16 community developer, but no later than [10] years after the initial state payment to the developer,
17 the [appropriate state official] shall request repayment of the amounts paid to the new community
18 developer. If the new community developer does not make prompt repayment at the time and in
19 the amounts due, the entire amount of the payments, together with interest at the rate of [6] per-
20 cent per annum, shall become due and payable and shall be a liability of the developer to the state
21 to be collected in the same manner that delinquent taxes are collected.

22 *Section 10. Separability.* [Insert separability clause.]

23 *Section 11. Effective Date.* [Insert effective date.]

PREFERENTIAL PROCUREMENT PRACTICES TO FURTHER STATE URBANIZATION POLICIES¹

One device which some States may wish to consider as an aid in achieving better geographic distribution of economic and population growth is the adaptation of their procurement practices to stimulate growth and development of particular cities and regions.

The receipt of a contract in a rural growth area, or in a labor surplus city neighborhood, can generate employment where it is needed and have a multiplier effect as supporting activities are developed. It is critically important that such a proposed preferential public contract policy be implemented selectively. If it is not administered specifically to promote balanced economic development and urbanization, it can become so widely available as to give a publicly subsidized private advantage, without any accompanying public benefits, and destroy the obvious gains made in many States through uniform purchasing practices.

The following draft legislation, therefore, should not be enacted by a state that does not have an official state plan for urban growth which designates those rural growth areas and labor surplus areas in which public contractors are to receive preferential treatment.

Legislative criteria for determining which areas should be the beneficiaries of such a preferential purchasing policy would need to be consistent with the State urban development plan. The purchasing policy would then be a tool for implementing the state plan. The legislative criteria should designate the areas where population in-migration and economic growth are to be encouraged or discouraged and should be specific, in order to avoid challenge on the grounds of unconstitutional delegation of powers. The criteria might, for example, include reference to population size and the trend of population growth in communities to be given preference.

Successful implementation of a preferential purchasing policy will require aggressive administration, not only by state purchasing officials but also by the state industrial or economic development agency, where one exists. The purchasing agents will have to pursue a positive policy of soliciting bids from the desirable growth areas. The development agency's role should be to seek out and encourage potential bidders in such areas to take advantage of their preferential position.

Section 1 of the draft bill declares that the purpose of the legislation is to encourage a better geographic distribution of economic and population growth consistent with state urban growth policies. Section 2 provides that in awarding state contracts for goods and services, the state purchasing officer shall give a credit to bids or offers on whatever amount of goods or services are to come from those rural growth areas or labor surplus city neighborhoods designated by the state urbanization plan. This practice would not discriminate among businesses, since a large firm located in another city can get a credit if the goods are produced or the service performed in a designated rural growth center or labor surplus city neighborhood. Added cost to the state will not equal the credit offered, as such credit is given only in the evaluation of bids or offers and not in a dollar addition to the offer or price.

¹This draft bill incorporates one of several approaches set forth in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, as measures for the States to consider in implementing policies for urban growth and new community development.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act allowing preferential procurement for goods and services produced or provided in those areas designated in the state urbanization plan."]

(Be it enacted, etc.)

1 *Section 1. Purpose.* The [legislature] finds that: (1) a better geographic distribution of eco-
2 nomic and population growth is essential to carry out the state's policies for urban growth; (2) deliber-
3 ate and selective measures should be adopted to channel private investment to locations where economic
4 growth will have its maximum impact on state urbanization policy goals; and (3) in order to generate
5 new employment in those rural community growth centers and city labor surplus areas designated by
6 the [appropriate state official] pursuant to the official state urbanization plan, preferential state pro-
7 curement practices based on state urban growth policies can provide a significant stimulus to the growth
8 and development of these areas and have a multiplier effect as supporting business and industrial activi-
9 ties are developed.

10 *Section 2. Preferential Deduction.* (a) Notwithstanding any other provisions of law, for the
11 purpose of determining to whom a state contract shall be awarded, the [state purchasing officer]¹
12 shall declare the final price bid, offered, quoted, or proposed, to be the price bid, offered, quoted, or
13 proposed less a deduction of [] percent of such price for goods or services rendered in a rural growth
14 area or labor surplus city neighborhood designated pursuant to the official state urbanization plan. The
15 deduction shall also apply to that portion of a price bid, offered, proposed, or quoted, which represents
16 goods to be produced or services to be rendered by the contractor in the designated areas. Deductions
17 shall be approved only upon a request by the bidder accompanied by proof of eligibility.

18 (b) The final bid, as determined by subsection (a) of this section for awarding a contract, shall
19 not affect the price the state pays the contractor.

20 *Section 3. Separability.* [Insert separability clause].

21 *Section 4. Effective Date.* [Insert effective date].

¹Where there is no centralized purchasing agency or where significant purchasing is done by a number of different agencies, specific agencies at this point should be listed.

NEIGHBORHOOD SUB-UNITS OF GOVERNMENT

A growing body of opinion points to the need for increasing citizen involvement in the governmental activities of neighborhoods within large cities. Some observers believe that the disappearance of any meaningful sense of community among residents of large cities and counties in our metropolitan areas has been one of the major causes of the "crisis in the cities." The complaint is frequently voiced that the gap between the neighborhood and the city hall or the county building has lengthened continually until the distance seems astronomical rather than a few blocks or a few miles.

States should consider legislation authorizing large cities and county governments in metropolitan areas to establish neighborhood sub-units of government with limited powers of taxation and local self-government.¹ While the establishment of neighborhood centers is by no means the complete answer to the unrest which exists in many of our large cities, there is a definite need to stimulate individual areas to develop programs of neighborhood improvement and self-improvement.

The following suggested legislation authorizes city and county governments to create neighborhood sub-units of government with elected neighborhood governing bodies. The legislation provides that these sub-units may be dissolved at will by the city or county governing body. The legislation is not intended to fragment further local government structure in metropolitan areas. However, it is designed to make it possible, through the neighborhood sub-government device, for existing large units of local government to harness some of the resources and aspirations of their inner communities. The proposed legislation suggests a means through which a local government can actively involve a neighborhood in the governmental process.

Section 1 declares that the purpose of the act is to encourage citizen participation by permitting limited self-government through the establishment of neighborhood councils as legal entities of city or county governments. Section 2 defines a neighborhood service area and a neighborhood area council. Section 3 permits the establishment of neighborhood service areas, and authorizes neighborhood area councils to finance certain governmental services at a different level than the overall city or county tax rate, so that only recipients must pay for a particular service. It should be noted that a constitutional amendment may be necessary in some States in order to permit the use of this device.

Section 4 defines the procedures for establishing a neighborhood service area, and emphasizes local initiative as reflected by the submission of a petition to the city or county by the neighborhood residents. Since the area's success depends largely on neighborhood initiative and local leadership and decisions, no provision is made for a city or county governing body unilaterally to create neighborhood service areas. Section 4 provides for a public hearing and final approval by the city or county governing body of the establishment of these areas. Section 5 permits the extension of the boundaries of an existing neighborhood service area. Section 6 prescribes legislative standards for determining neighborhood service area boundaries, and Section 7 specifies the procedures for dissolution of a service area.

Section 8 provides for the election of council members and the filling of vacancies to serve unexpired terms. Section 9 sets forth council powers and functions. A council may exercise only those powers and functions that are authorized by the city or county governing body. A power may be transferred to a neighborhood council in its entirety or may be shared with the local governing body. Neighborhood councils are authorized to initiate and carry out such self-help projects as supplemental refuse collection, beautification, street fairs and festivals, and cultural activities. Limited budget and finance authority, subject to city or county audit, may be shared or transferred to neighborhood councils for the acceptance of funds from public

¹ Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System* (Washington, D. C., 1967).

and private sources to meet overhead costs of administration and costs for services rendered. Neighborhood councils may also levy a uniform tax to finance certain special services.

Section 10 describes procedures for council meetings and provides that members shall receive no compensation other than that for actual and necessary travel and other expenses incurred in the performance of their duties. Section 11 permits the council to employ a staff consultant, while Section 12 requires the council to make an annual report to the city or county.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize cities and counties to establish neighborhood service areas to advise, undertake, and finance certain governmental services."]

(Be it enacted, etc.)

1 *Section 1. Purpose.* It is the purpose of this act to encourage citizen involvement in government
2 at the neighborhood level in urban areas by permitting limited self-government through the establish-
3 ment of neighborhood councils as legal entities of the city or county government.

4 *Section 2. Definitions.* As used herein:

5 (1) "Metropolitan area" means an area designated as a "standard metropolitan statistical area"
6 by the U. S. Bureau of the Census.¹

7 (2) "City" means any municipality of more than [50,000] population, as determined by the
8 latest official census, located within a metropolitan area.

9 (3) "County" means any county located, in whole or in part, within a metropolitan area.

10 (4) "Neighborhood service area" means an area within a city or county, located within a
11 metropolitan area, with limited powers of taxation and local self-government.

12 (5) "Council" means a neighborhood area council created by section 8 of this act to govern a
13 neighborhood service area.

14 *Section 3. Establishment of Neighborhood Service Areas.* The [governing body] of any city or
15 county located within a metropolitan area may establish within its borders one or more neighborhood
16 service areas to provide and finance those governmental services or functions that the city or county is
17 otherwise authorized to undertake, notwithstanding any provision of law requiring uniform property
18 tax rates on real or personal property within the city of county.²

¹Particular states may find it necessary for constitutional reasons, or otherwise desirable, to apply a somewhat different definition, tailored to their special circumstances.

²If a service is to be financed wholly or partly from property tax revenues, some states may have to amend constitutional provisions which require uniform tax rates within a city or county.

1 *Section 4. Creation By Petition.* (a) A petition signed by [] percent of the [qualified voters]
2 [residents] within any portion of a city or county may be submitted to the city [governing body] or
3 county [governing body] requesting the establishment of a neighborhood service area to provide any
4 service or services which the city or county is otherwise authorized by law to provide. The petition
5 shall describe the territorial boundaries of the proposed service area and shall specify the services to
6 be provided.

7 (b) Upon receipt of the petition and verification of the signatures thereon, the city [governing
8 body] or county [governing body], within [30] days following verification, shall hold a public hearing
9 on the question of whether or not the requested neighborhood service area shall be established.

10 (c) Within [30] days following the public hearing, the city [governing body] or county [gov-
11 erning body], by resolution shall approve or disapprove the establishment of the requested neighbor-
12 hood service area. A hearing may be adjourned from time to time, but shall be completed within [60]
13 days of its commencement.

14 (d) A resolution approving the creation of the neighborhood service area may contain amend-
15 ments or modifications of the area's boundaries or functions as set forth in the petition.

16 *Section 5. Boundary Changes of a Neighborhood Service Area.* The city [governing body] or
17 county [governing body], pursuant to a request from the council, or pursuant to a petition signed by
18 at least [] percent of the qualified voters living within the neighborhood service area, may enlarge,
19 diminish, or otherwise alter the boundaries of any existing neighborhood service area following the
20 procedures set forth in section 4 (b), (c), and (d).

21 *Section 6. Considerations in Setting Boundaries.* In establishing neighborhood service area
22 boundaries and determining those services to be undertaken by the neighborhood area council, the
23 city [governing body] or the county [governing body] shall study and take into consideration the
24 following:

25 (1) The extent to which the area constitutes a neighborhood with common concerns and a
26 capacity for local neighborhood initiative, leadership, and decision-making with respect to city or
27 county government;

28 (2) City or county departmental and agency authority and resources over functions that may
29 be either transferred or shared with the council;

30 (3) Population density, distribution, and growth within a neighborhood service area to assure
31 that its boundaries reflect the most effective territory for local participation and control;

32 (4) Citizen accessibility to, controllability of, and participation in neighborhood service area
33 activities and functions; and

34 (5) Such other matters as might affect the establishment of boundaries and services which would
35 provide for more meaningful citizen participation in city or county government.

1 *Section 7. Dissolution of Neighborhood Service Area.* (a) A city [governing body] or county
2 [governing body], after public hearing, may dissolve a neighborhood service area on its own initiative
3 or pursuant to a petition signed by at least [] percent of the qualified voters living within the
4 neighborhood service area.

5 (b) The city [governing body] or county [governing body] shall give notice of a public hearing
6 in [] newspapers of general circulation in the neighborhood service area of its intention to hold a
7 public hearing on a proposed dissolution, the notice to be given not less than [14] days before the
8 date at the public hearing.

9 *Section 8. Election of Council; Vacancies.*

10 (a) The council shall consist of [five to nine] members. The term of office of each member
11 shall be [four] years, and members shall serve until their successors are elected and qualified.

12 (b) The council members shall be elected at large by the voters of the neighborhood service
13 area at the time as provided by law for holding general elections. Members shall be residents of the
14 neighborhood service area who are qualified to vote in elections for local government officials.

15 (c) A vacancy shall be filled by the [council] [city [governing body] or county [governing
16 body]]. Members so appointed shall serve for the remainder of the unexpired term.

17 *Section 9. Council Powers and Functions.* A council may exercise any powers and perform
18 any functions within the neighborhood service area authorized by the city [governing body] or county
19 [governing body], which may include but not be limited to:

20 (1) Advisory or delegated substantive authority, or both, with respect to such programs as the
21 community action program; urban renewal, relocation, public housing, planning and zoning actions,
22 and other physical development programs; crime prevention and juvenile delinquency programs;
23 health services; code inspection; recreation; education; and manpower training;

24 (2) Self-help projects, such as supplemental refuse collection, beautification, minor street and
25 sidewalk repair, establishment and maintenance of neighborhood community centers, street fairs
26 and festivals, cultural activities, recreation, and housing rehabilitation and sale;

27 (3) Budget and finance authority, subject to city or county audit, to accept funds from public
28 and private sources, including public subscriptions, and to expend monies to meet overhead costs of
29 council administration and support for self-help projects; and authority to raise revenue for special
30 services by adoption of a uniform annual levy, not to exceed [five (5)] dollars, on each [resident]
31 [head of household] of the neighborhood service area.

32 *Section 10. Compensation; Meetings; By-Laws; Quorum.*

33 (a) Members of a council shall receive no compensation but may receive reimbursement of
34 actual and necessary travel and other expenses incurred in the performance of official duties, up to a
35 maximum of [] dollars in any one calendar year.

1 (b) All meetings of a council shall be open to the public.

2 (c) A council shall adopt by-laws providing for the conduct of its business and the selection of
3 a presiding officer and other officers.

4 (d) A majority of the members of a council shall constitute a quorum for the transaction of
5 business. Each member shall have one vote.

6 *Section 11. Staff.* The council may employ staff and consult and retain experts as it deems
7 necessary.

8 *Section 12. Annual Report.* The council shall make an annual report of its activities to the city
9 or county.

10 *Section 13. Separability.* [Insert separability clause.]

11 *Section 14. Effective Date.* [Insert effective date.]

STATE AUTHORITY OVER MUNICIPAL AND SPECIAL DISTRICT BOUNDARY ADJUSTMENTS

Only the States have the power to halt the chaotic spread of special districts and small municipalities within existing and emerging metropolitan areas. States should provide rigorous statutory standards for establishing new municipalities and special districts, changing the boundaries of existing local units, and reducing, where desirable, the number of jurisdictions within metropolitan areas, through consolidation or dissolution.

States should adopt one of the two principal approaches for exercising surveillance over local government boundary adjustments. The first approach, State review of local actions, has been adopted by Minnesota, which has established a three-member State commission, appointed by the Governor, to review all incorporation proposals and to approve all proposals to annex unincorporated territory. The following draft legislation provides for State agency review of local boundary changes. The second approach has been adopted by California, and involves the establishment of local agency formation commissions, usually consisting of two county officials, two city officials, and one member representing the general public, which have jurisdiction over proposed boundary adjustments within their respective counties. For States desiring to follow the second approach, certain amendments to the draft bill, discussed later, will be necessary.

If local boundary adjustment powers are placed in the hands of a State agency, or State empowered local bodies, the State legislature should establish standards of economic, geographic, and political viability to guide these agencies. Some of the factors to be considered in evaluating the viability of local governments are: jurisdictions large enough to cope adequately with the forces that create the problems to be met; ability to raise adequate revenues equitably; flexibility to adjust governmental boundaries; organization as general purpose rather than single purpose governments; adequacy of area to permit economies of scale; and accessibility and popular control by the people.

The suggested comprehensive statute vests authority in a State board to propose and review petitions for all types of municipal and special district boundary adjustments. The legislation is based in part on the model act published in 1965 by the Harvard Student Legislative Research Bureau.¹ Section 1 enunciates a State policy of discouraging competition to extend municipal boundaries; insuring adequate quality and quantity of urban services; maintaining the financial integrity of certain municipalities and special districts; and achieving ultimately reducing the number of units of local government in metropolitan areas. Section 2 deals with definitions.

Section 3 of the statute establishes a State boundary adjustment board in an appropriate existing State agency in charge of local affairs. The board consists of three members appointed by the Governor and serving for overlapping terms. The powers and duties, voting procedures, and provisions for compensation of board members are also provided in this section.

Section 4 empowers the board to study, either at its own discretion or upon the written request of any regional planning agency or local government, the need for and the feasibility of boundary adjustments. These studies would provide the factual basis for the board's initiation of boundary adjustment proceedings. Section 5 provides two approaches by which action may be taken to change municipal or special district boundaries. The board may commence proceedings by issuing an order requiring municipalities or special districts to submit a plan for boundary adjustments. Boundary adjustment proceedings may also be initiated by

¹"An Act to Establish Standards and Procedures for Municipal Boundary Adjustment," *Harvard Journal on Legislation*, Vol. 2, No. 2 (June 1965), pp. 239-277.

governing bodies of affected municipalities; by areawide planning bodies; by ten percent of the registered voters of the municipality, special district, or territory; or by owners of 25 percent of the assessed value of real property in the territory.

Section 6 authorizes the establishment of boundary committees to hear and decide each boundary adjustment case. A committee consists of the three-member State board plus two or more residents representing the county or counties containing the territory affected by the boundary adjustment. However, in the case of consolidation proceedings, local representatives are selected by the affected municipalities. If the petition involves the creation or boundary adjustment of a special district, the legislative body of the municipality or county empowered to establish the district may appoint two residents. Each board member and each local representative has one vote, except that if there are more than two local representatives, then each is given an equal fraction of the total of two votes. This procedure is consistent with the assumption that the statewide interest should outweigh local interests.

Section 7 prescribes the hearing procedures. Notice must be given to each governmental entity involved, to each planning body that has jurisdiction in a governmental entity or entities affected, and to the general public.

Sections 8 through 10 set forth the standards for committee evaluation of proposals for annexation, detachment, consolidation, and dissolution of municipalities and special districts. The standards provide the necessary legislative guidelines for committee action, without narrowly restricting their administrative discretion.

The legislative standards for annexation are phrased rather generally to reflect a broad policy of allowing consideration of unusual factors which might require boundary adjustment prior to any actual urbanization. While there is a presumption in favor of annexation in the legislative standards of this draft bill, those dealing with detachment are restrictive.

The standards for incorporation of municipalities or the creation of special districts are flexible with respect to population limitations, since minimum size requirements for incorporation in densely populated areas should probably differ from those for sparsely populated sections. The most important standard is the requirement that the territory be amenable to separate municipal government or the establishment of a separate special district. Thus, the territory must have traits that make separation more desirable than annexation.

The criteria, for dissolution contain two distinctive features not found in other boundary adjustment proceedings. In considering dissolution the committee must consider the deviation of the municipality or the special district to be dissolved, from the regional norm with regard to (1) the ratio of assessed valuation to number of residents, and (2) the per capita cost of providing public services. These criteria would expose the more obvious enclaves and tax havens and provide the basis for meaningful action to reduce the inequities between "have" and "have not" jurisdictions.

Section 11 deals with the important question how the financial allocation should be carried out for each type of boundary adjustment. Section 14 provides for judicial review. No appeal, however, may be brought after the effective date of the boundary adjustment.

The suggested legislation may be adapted for use by those States wishing to establish local government bodies to review and approve boundary adjustments for municipalities and special districts. These agencies may be composed of executive and legislative officials of the county government and municipalities within the county and would be activated only when and if the need arose. To accomplish this approach Section 3(a) would require amendment as follows:

(a) A county boundary adjustment commission [hereafter called commission] is created in each county of the State. The Commission shall consist of [five] members selected as follows:

(1) [two] representing the county, each of whom shall be a county officer appointed by the [county governing body];

(2) [two] representing the cities in the county, each of whom shall be a city officer appointed by the [chief executive officers] of the cities within the county at a joint meeting; and

(3) [one] representing the general public, who shall be chairman of the Commission, appointed by the four other members of the Commission.

(b) The term of each member shall be four years and until the appointment and qualification of his successor, except that the term of each county officer and each city officer shall expire upon the termination of his county or city office. Any city or county member may be removed by his appointing authority.

(c) Vacancies on the Commission shall be filled for the unexpired term by the appointing authority which originally appointed the member whose position has become vacant.

Section 6 of the draft legislation would be dropped and minor changes in language within other Sections would also be required to reflect local rather than State jurisdiction and procedures. However, the legislative standards and criteria and the provision for financial allocations should require few, if any, changes.

[Title should conform to State requirements. The following is a suggestion: An act establishing a State boundary adjustment board to review proposals for the incorporation, consolidation, annexation, dissolution or detachment of municipalities and special districts.]

(Be it enacted, etc.)

1 *Section 1. Purpose.* It is the purpose of this Act to provide a method for guiding and con-
2 trolling the creation and growth of municipalities and special districts in metropolitan areas, in order
3 to prevent haphazard extension of municipal boundaries, assure adequate quality and quantity of
4 public services and the financial integrity of units of local government, and reduce the number of
5 uneconomic units of local government.

6 *Section 2. Definitions.* As used in this act:

7 (1) "Annexation" means the alteration of the boundaries of a municipality or special district
8 to add or detach territory.

9 (2) "Board" means the State Boundary Adjustment Board.

1 (3) "Boundary adjustment" means any annexation, detachment, incorporation, consolida-
2 tion, or dissolution.

3 (4) "Committee" means the board and local representatives acting together as a single body.

4 (5) "Community" means the area surrounding a municipality or special district, which forms
5 an economic and socially related region.

6 (6) "Consolidation" means the merging of two or more municipalities or two or more special
7 districts.

8 (7) "Detachment" means the alteration of a municipality or special district to exclude ter-
9 ritory.

10 (8) "Dissolution" means the dissolving of the corporate status of a municipality or special
11 district.

12 (9) "Incorporation" means the establishment of an incorporated city or village [of any class].

13 (10) "Metropolitan area" means an area designated as a "standard metropolitan statistical
14 area" by the U. S. Bureau of the Census.

15 (11) "Municipality" means an incorporated city or village [of any class].

16 (12) "Special district" means [any political subdivision of the state organized for the purpose
17 of performing prescribed functions within limited boundaries.]¹

18 (13) "Territory" means the area proposed to be annexed, detached, or incorporated.

19 *Section 3. State Boundary Adjustment Board. (a) Creation and Appointment.* A state
20 boundary adjustment board is created, and for administrative purposes is located in [appropriate
21 State agency or department in charge of local affairs]. The board shall consist of [three] members
22 appointed by the governor [with the advice and consent of the Senate]. The governor shall select
23 the chairman from among the members. The first three appointments made under the act shall be
24 for terms of [two, four, and six] years, respectively. Each subsequent regular appointment shall be
25 for a term of [six] years. If for any reason a vacancy occurs, the governor [with the advice and
26 consent of the senate] shall appoint a new member to fill the unexpired term. Members are eligible
27 for reappointment.

28 (b) *Powers and Duties.* The Board shall:

29 (1) adopt standards and procedures, consistent with the provisions of this act, for the
30 initiation and evaluation of proposals for the incorporation, consolidation, annexation, dissolution,
31 or detachment of municipalities and special districts;

¹Some States may wish to define special districts by reference to the statutes authorizing their creation.

1 (2) conduct studies of municipal and special district boundary reorganization problems
2 throughout the State;

3 (3) issue orders, when appropriate, requiring municipalities and special districts to submit,
4 individually or jointly, a plan for boundary adjustment in conformance with guidelines set forth in
5 such orders;

6 (4) initiate proceedings based on its own studies and findings for boundary adjustments,
7 and make preliminary rulings on petitions received for boundary adjustments, in accordance with sec-
8 tion 5;

9 (5) establish a committee to include local representatives to rule on a boundary adjustment
10 case, in accordance with section 6;

11 (6) hold hearings on requests for boundary adjustment and determine what, if any, finan-
12 cial allocations should be made, if the adjustment is approved.

13 (7) subpoena witnesses and documents or other materials as set forth in section 6(d);

14 (8) submit each fiscal year a written report to the legislature and the governor stating the
15 number of proceedings initiated, the outcome of the proceedings, expenses incurred, and other pertinent
16 information; and

17 (9) employ a secretary and other personnel.

18 (c) *Vote.* An affirmative vote by a majority of the board is required to take action.

19 (d) *Compensation.* Each member of the board shall receive compensation of \$[] per diem
20 plus travel and other reasonable expenses for meetings, hearings, and other official business.

21 *Section 4. Board Studies.* The board, in its discretion, or upon the written request of any re-
22 gional planning agency or any municipality, county, or special district, may conduct studies relating
23 to the need for, and the feasibility of, boundary adjustments. These studies shall be made for metro-
24 politan areas where the board finds that urban growth may require boundary adjustments in order to
25 provide and maintain essential urban services. Factors to be studied may include demographic and land
26 area characteristics, per capita assessed valuation, need for organized municipal services, topographic
27 features, cost and adequacy of governmental services and controls, future needs for such services and
28 controls, and the probable effect of alternative courses of action on the local governmental structure
29 of the community.

30 *Section 5. Initiation of Proceedings.* (a) *Board Proposals.* Based on findings in studies made in
31 accordance with section 4, the board may issue an order requiring certain municipalities or special dis-
32 tricts to submit, within [12] months, a plan for boundary adjustments. The local plan shall include
33 any needed boundary adjustments and creation of new municipalities or special districts which would
34 contribute toward the formation of local government units having adequate area, population, and as-
35 sessed valuation for: effective self-government; efficient and economic provision of services; exercise

1 of adequate land-use controls; and fiscal soundness to provide the financing of an adequate level of
2 service without placing an undue burden on the taxpayers. The local plan shall have the same effect
3 as a petition, except that a preliminary ruling under section 5(c) is not required.

4 (b) *Petitions.* The board shall initiate proceedings for boundary adjustments upon receipt of a
5 petition from the governing body of an affected municipality or special district; the governing body of
6 the county wherein the territory, or part of it, is located; the metropolitan or areawide planning au-
7 thority in the metropolitan area wherein the territory, or part thereof, is located; [ten]¹ percent of
8 the registered voters in the municipality or special district; [ten]¹ percent of the registered voters in
9 the territory; or the owners of [25]¹ percent of the assessed value of the real property in the territory.

10 A petition must contain a statement of the boundary adjustment proposed; a statement of the
11 reasons for the proposed boundary adjustment; an accurate map of every municipality, special district
12 and territory involved; and a description of the character, land-use, and facilities of either the territory
13 or, in the case of consolidation or dissolution, the municipalities, or special districts involved.

14 The Board may combine petitions which concern the same territory, or parts of it, or the same
15 municipalities or special districts, if such a combination will not cause an unreasonable delay in the
16 processing of the petitions.

17 (c) *Preliminary Rulings and Notification.* Within a reasonable time after it receives a petition,
18 the board shall meet and make a preliminary ruling on whether to dismiss the petition. The board may
19 rule to dismiss the petition only if it finds that:

- 20 (1) the petition does not comply with the provisions of this section or the standards or
21 procedures of the board;
- 22 (2) the request for boundary adjustment is frivolous; or
- 23 (3) substantially the same boundary adjustment has been disapproved by a committee
24 within [two] years prior to the date the petition is received by the board.

25 If the petition is not dismissed, the board shall notify those governing bodies required to appoint
26 local representatives under section 6(a) and 6(b).

27 *Section 6. Boundary Adjustment Committee.* (a) *Members; Appointment of Local Representa-*
28 *tives for Municipal Boundary Adjustments.* If a petition is not dismissed by the board under section
29 5(c), a committee shall be established to rule on the boundary adjustment proposed in the petition.
30 The committees shall consist of the members of the board and two or more local representatives ap-
31 pointed as follows:

- 32 (1) if the petition is for an incorporation, annexation, detachment, or dissolution the
33 county [governing body] shall appoint two residents of the county;

¹It may be desirable to follow customary state practice for initiating petitions.

1 (2) if the petition concerns a territory located in two or more counties, the [governing
2 body] of each county concerned shall appoint one resident of that county;

3 (3) if the petition is for the consolidation of two or more municipalities, the legislative
4 body of each municipality concerned shall appoint one resident of that municipality;

5 (4) if two or more petitions, none of which is for consolidation, are combined under sec-
6 tion 5(b), appointment shall be in accordance with (1) or (2) as if there were but one petition;

7 (5) if two or more petitions, all of which are for consolidation, are combined under sec-
8 tion 5(b), the legislative body of each municipality proposed for consolidation shall appoint one resi-
9 dent of that municipality; and

10 (6) if a petition for consolidation is combined under section 5(b) with one or more other
11 petitions, at least one of which is for a boundary adjustment other than consolidation, the legislative
12 body of each municipality proposed for consolidation shall appoint one resident of that municipality
13 and the [governing body] of every county concerned shall also appoint local representatives as in (4).

14 (b) *Members; Appointment of Local Representatives for Special District Boundary Adjustments.*

15 If the petition is for the creation or boundary adjustment of a special district, the legislative body of
16 the municipality or county, or such other local authority as is empowered to establish the special dis-
17 trict, shall appoint two residents of the district.¹

18 (c) *Eligibility and Compensation.* A local representative shall be a resident of the county or
19 municipality from which he is appointed and a registered voter eligible to vote in local elections.

20 A local representative shall receive compensation of \$ [] per diem plus travel and other reason-
21 able expenses for meetings, hearings, and other official business.

22 (d) *Duties.* The committee shall hold hearings as required in section 7; approve or disapprove
23 petitions for boundary adjustment; and make financial allocations, pursuant to section 13.

24 (e) *Amendments to Petitions.* The committee may amend a petition, prior to the day of voting
25 under subsection 6(f), by altering the shape and size of the territory.

26 (f) *Voting.* Each board member and each local representative has one vote, except that if there
27 are more than two local representatives, each local representative has an equal fraction of a total of
28 two votes.

29 After a hearing is completed, pursuant to section 7, and after due deliberation, the committee
30 shall decide whether to approve the proposed boundary adjustment; and if the boundary adjustment
31 is approved, what, if any, financial allocations should be made.

32 (g) *Quorum.* A quorum of two board members and one local representative is required for the
33 committee to act on substantive matters.

¹ In the case of special districts established by statutory law, the appointments should be made by the governor.

1 (h) *Effective Date.* When a boundary adjustment is approved, the committee shall determine
2 the date on which the boundary adjustment and financial allocations take effect. That date shall be
3 not less than 90 days nor more than one year from the date on which the committee approves the
4 boundary adjustment.

5 (i) *Notification.* The committee shall notify the [secretary of state] and the [clerks] of the
6 counties, municipalities, and special districts affected, of its ruling. The ruling shall report the vote
7 of each member of the committee, an explanation of the decision on the boundary adjustment, an
8 accurate map of every municipality, special district and territory involved, and the effective date of
9 the boundary adjustment.

10 *Section 7. Hearings.* (a) The committee shall conduct a hearing within 90 days from the date
11 on which a petition is received by the board, but if two or more petitions are combined under section
12 5(b), the 90-day period begins on the day of the receipt of the last of the petitions. At least 30 days
13 before the commencement of the hearing, the board shall give notice of the time and place to each
14 governmental entity involved; to each planning body that has jurisdiction in a governmental entity in-
15 volved; and to the public.

16 (b) At the hearing the committee shall receive all information, written or oral, that any person
17 wishes to present and that is relevant to the resolution of the questions before the committee; and
18 shall seek all information, written or oral, that the committee believes will be useful to the resolution
19 of the questions before the committee. If the committee so requests, the Board may subpoena wit-
20 nesses and documents relevant to these questions.

21 (c) If the committee amends a petition, the board shall give notice of the amendment to each
22 of the parties. If the notice is given less than seven days before the commencement of the hearing, or
23 during the hearing, or after the termination of the hearing, and if any person informs the Board within
24 seven days from the date notice is given, of his desire to present information relevant to the amend-
25 ment, the committee shall continue the hearing for a reasonable time, or reopen it within a reasonable
26 time, to receive that information.

27 *Section 8. Standards for Boundary Adjustments.* (a) *Adjustment Must be Appropriate.* The
28 committee shall approve a proposed boundary adjustment only if the proposal is for the type of ad-
29 justment that is more beneficial to the community than are other available alternatives.

30 (b) *Annexation.* The committee shall approve a proposed annexation only if (1) the present
31 or probable future character of the territory is urban; (2) the municipality or special district is able
32 and willing to provide necessary services to the annexed territory within a reasonable time after an-
33 nexation; and (3) the territory is compact, and contiguous to the municipality or special district.

34 (c) *Detachment.* The committee shall approve a proposed detachment only if the territory, af-
35 ter detachment, is not surrounded by the municipality or the special district.

1 (d) *Municipal Incorporation and Creation of Special Districts.* The committee shall approve a
2 a proposed municipal incorporation or special district creation only if the territory is amenable to
3 separate municipal government or, in the case of a special district, is appropriate for the establishment
4 of special functions; and if the proposed municipality or special district will be able to provide neces-
5 sary services within a reasonable time.

6 (e) *Consolidation.* The committee shall approve a proposal consolidation only if the municipali-
7 ties or special districts to be consolidated are contiguous.

8 (f) *Dissolution.* The committee shall approve a proposed dissolution only if the county or
9 another municipality is able to provide necessary services to the municipality or special district being
10 dissolved; and if the municipality to be dissolved will not be surrounded by other municipalities.

11 *Section 9. Criteria for Applying Standards.* (a) *General.* In determining whether the standards
12 for a proposed boundary adjustment have been met, the committee shall consider, but is not limited
13 to the consideration of, the following criteria:

14 (1) The effect of the proposed adjustment on population growth and on the assessed valu-
15 ation of the real property in any affected unit of government or territory.

16 (2) Topography and other physical characteristics of the geographical area involved.

17 (3) The extent to which any affected territory, municipality, or special district, is inter-
18 dependent with others that are affected by the proposal.

19 (4) The effect of the proposed adjustment upon the governmental operations of a munici-
20 pality or special district.

21 (5) The need for governmental services.

22 (6) The extent to which municipal or special district services are, or will be, commensurate,
23 or incommensurate, with taxes and other charges.

24 (7) Whether the present and probable future character of the area or areas affected by the
25 proposal is urban, suburban, or rural.

26 (8) The likelihood that the residents of any affected area will receive proper sanitation,
27 safety, school, and other necessary services.

28 (9) Land-use plans that pertain to any governmental unit or area involved.

29 (b) *Special Criteria for Annexation.* If annexation is proposed, the committee shall consider
30 (1) the ability of a county receiving revenue from the territory to be annexed, to finance its govern-
31 mental operations, if revenue will be lost when the territory is annexed, and (2) the ability of the
32 municipal or special district to assume a share of the existing indebtedness of, and to purchase proper-
33 ty from counties, as provided for in section 11(a).

34 (c) *Special Criteria for Detachment.* If detachment is proposed, the committee shall consider
35 (1) the ability of a municipality, special district, or county to finance its governmental operations

1 without the revenues which will be lost when territory is detached, and (2) the ability of the receiving
2 county to assume shares of the existing indebtedness and to purchase property from the municipality
3 from which an area is detached.

4 (d) *Special Criteria for Municipal Incorporation or Special District Creation.* If municipal in-
5 corporation or special district creation is proposed, the committee shall consider (1) the effect upon
6 the ability of the part of a county that survives a municipal incorporation or special district creation
7 to finance its governmental operation without the revenues which will be lost if the territory is in-
8 corporated; (2) the adequacy of the county form of government to cope with the problems of the
9 territory; and (3) the ability of the territory to assume a share of the existing indebtedness of, and to
10 purchase property from, the county which survives the municipal incorporation or special district
11 creation.

12 If a petition proposes municipal incorporation or special district creation of a territory
13 any part of which is closer than [four] miles to an incorporated city, the board, before ruling on the
14 petition, shall consider whether it should initiate proceedings for the annexation of the territory to
15 that city.

16 (e) *Special Criteria for Dissolution.* If dissolution is proposed, the committee shall consider (1)
17 the deviation of the municipality or special district to be dissolved from the norm within the com-
18 munity in the per capita cost of providing public services; (2) the deviation from the norm within
19 the community in the ratio of assessed valuation to number of residents; and (3) the ability of the re-
20 ceiving county to assume shares of the existing indebtedness.

21 *Section 10. County Boundaries Not a Barrier.* County boundaries are not a barrier to any type
22 of boundary adjustment authorized by this Act.

23 *Section 11. Financial Allocations.* (a) *Annexation or Incorporation.* If an annexation or incor-
24 poration of a municipality or an annexation or creation of a special district is approved, the committee
25 shall determine what portion, if any, of the existing indebtedness of the counties receiving revenue
26 from the territory shall be assumed by the municipality or incorporated territory or special district.
27 No municipality or special district may be required to assume indebtedness of a county if that county
28 collects revenues at the same rate throughout the county regardless of municipal or special district
29 boundaries. If a county owns property located or used by the territory, and if the county requests,
30 the committee shall determine whether or not the municipality the incorporated territory, or the
31 special district must purchase that property. The committee shall also determine a fair price for the
32 property.

33 (b) *Detachment.* If a detachment is approved, the committee shall determine what portion, if
34 any, of the existing indebtedness of the municipality or special district shall be assumed by each
35 county of which the detached territory will become a part; and, upon request of a municipality or

1 special district that owns property located or used in the territory, determine whether that property
2 must be purchased by any county of which the detached territory will become a part. The committee
3 shall also determine a fair price for the property.

4 (c) *Consolidation.* If a consolidation is approved, the municipality formed by the consolidation
5 shall assume all indebtedness of, and receive title to all property owned by the pre-existing municipali-
6 ties or special districts.

7 (d) *Dissolution.* If a dissolution is approved, the county shall assume all indebtedness of, and
8 receive title to, all property owned by the pre-existing municipalities or special districts.

9 *Section 12. Judicial Review.* All final decisions of a committee and any dismissal of petitions
10 shall be reviewable [pursuant to the state administrative procedure act] (by a proceeding in the court
11 of appropriate jurisdiction]. No appeal may be brought after the effective date of the boundary ad-
12 justment.

13 *Section 13. Separability.* [Insert separability clause].

14 *Section 14. Effective Date.* [Insert effective date].

COUNTY CONSOLIDATION¹

In many areas, the county, as an existing unit of government with appropriate geographical jurisdiction, can provide the public facilities and services necessary to supplement urban growth. In some instances, the effective performance of functions by counties, particularly those involving large scale urban development, may require a wider area of jurisdiction than a single county.

Where the economic, social, and natural patterns of urban growth extend beyond a single county, consolidating counties may offer a feasible alternative to superimposing an additional areawide level of government. County consolidation might well provide the most workable areawide approach to providing urban services, since it builds on an existing governmental structure.

The following proposed legislation would facilitate the consolidation of counties in those states desiring to allow local initiative and determination on consolidation proposals.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act Authorizing the Consolidation of Counties."]

1 *Section 1. Consolidation Authorized.* Any two or more adjoining counties may consolidate into
2 a single county. The [governing bodies] of the counties to be consolidated may enter into an agree-
3 ment to consolidate their respective counties, setting forth such facts as: (1) the names of the counties;
4 (2) the name under which it is proposed to consolidate, which name must be distinguishable from the
5 name of any other county in the state, other than the consolidating counties; (3) the property, real and
6 personal, belonging to each county, and its fair value; (4) the indebtedness, bonded and otherwise of
7 each county; (5) the proposed name and location of the county seat; (6) the proposed form of organi-
8 zation and government; (7) the terms for apportioning tax rates to service the existing bonded indebted-
9 ness of the respective counties; and (8) other terms of the agreement.

10 (2) *Petition.* The qualified voters of any county may file a petition, signed by at least [10] per-
11 cent of the qualified voters, with the [governing body] requesting the [governing body] to effect a con-
12 solidation agreement with the county (or counties) name in the petition.

13 (3) *Referendum.* The question of consolidation shall be submitted to the voters in the counties
14 proposed to be consolidated. If approved by a majority of those voting on the question in each coun-
15 ty, the proposed consolidation shall become effective according to the terms of the consolidation agree-
16 ment.

¹This draft bill incorporates one of several approaches set forth in the Advisory Commission's report, *Urban and Rural America: Policies for Future Growth*, as measures for the States to consider in implementing policies for urban growth and new community development.

1 *Effects of Consolidation.* All the rights, privileges and franchises of each of the counties and all
2 property, real and personal, and all debts due on whatever amounts, belonging to and of the counties,
3 are transferred to and vested in the consolidated county: Provided, that all bonded debt of each county
4 remains in effect after consolidation as a debt of that portion of the consolidated county within the
5 limits of the former county that incurred the debt.

DISTRICTS FOR SPECIALIZED EDUCATIONAL FACILITIES

The quality of education often is directly related to specialization of teaching and associated personnel. Specialization of both personnel and curriculum in turn are directly related to the economies of scale attainable by the school system. A school district serving a small population may not have a sufficient number of pupils enrolled in any one vocational training or college preparatory program to justify the cost of providing specialized teachers or separate classes. When the unit costs of specialized education are prohibitive, the small district can offer only general common-denominator training that may not prepare its pupils adequately for either employment or college, and provides little or nothing for the physically and mentally handicapped.

By utilizing multidistrict facilities, or “educational parks,” some school districts provide specialized educational programs, equipment, and personnel at a reasonable cost. The establishment of these facilities and services may be very costly, entirely beyond the financial capacity of the poorer districts, and a substantial burden even for wealthy districts.

The following draft legislation and constitutional amendment authorize the creation of districts for specialized educational facilities to make available, on a multidistrict basis, facilities and services for special educational programs. The draft bill provides for the establishment of these districts after the State educational agency has determined the need for special educational programs (vocational training and college preparatory programs, or specialized programs and services for disadvantaged children). The act permits school districts to enter into contracts to form districts for specialized educational facilities. These contracts may be amended to include additional school systems.

A board of trustees, appointed by the contracting school districts, would be the governing body of a special facility district. Subject to review by the State educational agency, the board may establish, operate, and regulate the facilities, programs, and services provided by the district.

Finally, the act authorizes school districts to issue bonds to finance the construction and acquisition of physical facilities for use by districts for specialized educational facilities. The act also provides for State financial aid incentives for the creation of these districts.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: “An act concerning the establishment of districts for specialized educational facilities.”]

1 *Section 1. Purpose.* The purpose of this act is to provide special educational programs to the
2 children of [local] school districts through the establishment of districts for specialized educational
3 facilities.

4 *Section 2. Definitions.* (1) “Special educational programs” means vocational training and col-
5 lege preparatory programs or specialized programs or services designed to improve or accelerate the
6 education of children whose educational achievement has been or is being restricted by physical, eco-
7 nomic, or social disadvantages.

8 (2) “District for specialized educational facilities” means a school district established to provide
9 special educational programs to children of two or more [local] school districts.

1 *Section 3. Survey.* Upon its own initiative or at the request of two or more [local] school dis-
2 tricts, the state [department of education] shall survey the need for a district for specialized educational
3 facilities to serve the [local] school districts.

4 *Section 4. Establishment of District for Specialized Educational Facilities.* If the state [depart-
5 ment of education], on the basis of its survey, determines that there is a need for special educational
6 programs in the [local] school districts surveyed, the [local] school districts may enter into a contract
7 to establish a district for specialized educational facilities, whose boundaries shall be coterminous with
8 those of the contracting districts. The contract shall specify that the contracting districts will not con-
9 duct special educational programs that duplicate those conducted by the district for specialized educa-
10 tional facilities.

11 *Section 5. Board of Trustees.*¹ A district for specialized educational facilities shall be governed
12 by a board of trustees of [] members representing the contracting [local] school districts. Each
13 [local] school board shall appoint [] of its members to serve on the board of trustees, and a vacancy
14 in the office shall be filled in the same manner as provided for original selection. Trustees shall serve
15 for a [] year term of office, and shall not receive salary or compensation for their services. The
16 board shall select from its membership a chairman who shall preside at all meetings. The board shall
17 determine its own rules and order of procedure.

18 *Section 6. Powers and Duties.* Subject to the supervision of the state [department of education],
19 the board of trustees shall:

20 (1) operate and regulate curriculum, conditions of instruction, physical facilities and equipment,
21 class size and composition, transportation of pupils, and other requirements concerning necessary
22 services and instruction;

23 (2) define the criteria by which [local] school districts determine whether children are eligible
24 for special educational programs; and

25 (3) appoint or provide for the appointment of, and remove or provide for the removal of, all
26 employees of the district, and fix their salaries, wages, and other compensation.

27 *Section 7. Tuition.* Subject to approval by the state [department of education], the board of
28 trustees shall establish the amount of tuition per child which shall be paid by the contracting [local]
29 school districts. The tuition shall be sufficient, after taking into account state financial aid and other
30 revenues, to cover operating costs and reimburse amortization costs incurred pursuant to section 8.

31 *Section 8. Financing Physical Facilities.* Subject to the statutes governing [local] school district
32 borrowing, the contracting [local] school districts may issue bonds to finance the construction or ac-
33 quisition of physical facilities for use by the district for specialized educational facilities.

¹In view of recent state and federal court decisions extending the principle of one man—one vote to local governing bodies, careful consideration should be given to the representative character of the board, particularly if it is to exercise any legislative power.

1 *Section 9. State Financial Aid.* In any computation of state financial aid to [local] school dis-
2 tricts, children participating in special educational programs approved by the State [department of
3 education] shall be considered as part of the average daily membership count by both the district for
4 specialized educational facilities and the contracting [local] school districts, and the head of the state
5 [department of education] shall reflect this provision in all distributions of state education aid, whether
6 for operating expenses or for capital outlay.

7 *Section 10. Expansion.* Upon its own initiative or at the request of the contracting [local]
8 school districts, the state [department of education] may survey the desirability of including addi-
9 tional [local] school districts within the district for specialized educational facilities. If the state
10 [department of education] determines that expansion is desirable, the contracting [local] school
11 districts may amend the contract to [local] school districts, the amended contract to provide that
12 the several districts shall participate on the same basis in the management, obligations, and benefits
13 of the district for specialized educational facilities.

14 *Section 11. Separability.*

15 *Section 12. Effective date.*

Suggested Constitutional Amendment

[Title, format, and procedural practice for constitutional amendment should conform to state practice and requirements.]

1 The [legislature] may provide for the establishment of districts for specialized educational facili-
2 ties to make available to the children of [local] school districts specialized educational facilities, pro-
3 grams, and services including but not limited to vocational education, college preparation, and special
4 programs for the disadvantaged.

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- **Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs.* Report A-25, January 1965, 253 pages, offset.
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- **State-Local Taxation and Industrial Location.* Report A-30, April 1967. 114 pages, offset. (60¢)
- **Fiscal Balance in the American Federal System.* Report A-31, October 1967. Vol. 1, 385 pages offset; Vol. 2, *Metropolitan Fiscal Disparities*, 410 pages offset.
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- **Performance of Urban Functions: Local and Areawide.* Report M-21, September 1963. 281 pages, offset. (\$1.50)
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- New Proposals for 1969: ACIR State Legislative Program.* Report M-39, June 1968.

¹ Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D.C. 20575

* Multiple copies of items may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

