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New Proposals For 1970

ACIR STATE LEGISLATIVE PROGRAM

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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 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. The Strong Executive Budget statute in this volume was drafted to implement a recommendation in the Commission's report on *Fiscal Balance in the American Federal System*. The proposals on Official Maps, Planned Unit Development, and Mandatory Dedication of Parks and School Sites were suggested by the Commission in *Urban and Rural America: Policies for Future Growth*, as approaches States should consider in implementing policies for urban growth. The draft proposal on Prepaid Group Practice of Health Care was recommended in *Intergovernmental Problems in Medicaid*. The remaining proposals were drafted to implement Commission recommendations in its latest report, *State Aid to Local Government*.

Some of the proposals in this volume 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 M. Frasure
Dean, College of Arts and Sciences,
West Virginia University
and Chairman, Council of State Governments
Committee on Suggested State Legislation

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

Freeman Holmer
Director of Federal-State Relations
The Council of State Governments

Robert M. Rhodes
Special Assistant
Washington Office
The Council of State Governments

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. Previous State legislative proposals to implement recommendations contained in Commission reports are available in a cumulative volume entitled *1968 State Legislative Program of the Advisory Commission on Intergovernmental Relations* and in *New Proposals for 1969: ACIR State Legislative Program*. Copies of these volumes, or reprints of the individual proposals they contain, are available upon request. A *1970 Cumulative ACIR State Legislative Program* containing all current ACIR State legislative proposals will be published later this year.

The draft proposals in this volume are identified by code numbers which conform to an Analytical Index to *Suggested State Legislation (1941-1970)* prepared by the Council of State Governments.

Wm. G. Colman
Executive Director

July, 1969

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STRONG EXECUTIVE BUDGET

The principal device for guiding the activities of State government is the budget. All but two 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. Furthermore, the executive power of the governor often is diluted by constitutional or statutory provisions for legislative participation in the preparation of the budget.

The executive budget system contemplates that the governor be given primary authority and responsibility for preparing a budget that reveals the full scope of all administrative programs and operations, and that the legislature review and render final judgment on the budget that the governor presents. The governor and the legislature should be cognizant of all funds from every source available to State agencies. 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. In the model budget law which follows the governor presents to the legislature a comprehensive budget for all state programs. This draft legislation assumes that the State's higher education system is not constitutionally independent of the executive budget process, 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.

After the legislature has made an appropriation, the governor should have authority to transfer funds within an agency from one purpose to another, as provided in the draft bill. This is a necessary fiscal tool which permits the chief executive to make adjustments to meet changing circumstances.

The suggested legislation assigns to the governor the final responsibility for budget preparation. Although the model bill does not include provisions for specific administrative organization, it anticipates that the budget personnel would be an integral part of the governor's staff.

In view of the growing emphasis on the development of the so-called "Planning, Programming, and Budgeting System," the proposed bill calls for the governor to present to the legislature a budget and supporting information that is related to comprehensive state program and fiscal planning.¹

A constitutional amendment may be needed in some States to assure that the governor has full authority for budget preparation and execution. A suggested amendment, based on the Missouri Constitution, follows the draft legislation.

¹The Advisory Commission on Intergovernmental Relations has developed draft legislation on state planning which contains a provision designating the governor as the state planning authority. Considered jointly, the budget and planning bills provide the basis for gubernatorial coordination of administrative policy-making and execution.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to Provide for a Comprehensive System for State Program Budgeting and Financial Management."]

(Be it enacted, etc.)

1 **Section 1. Short Title.** This act may be cited as "The Executive Budget Act."

2 **Section 2. Statement of Policy.** It is the purpose of this act to establish a comprehensive system
3 for state program and financial management which furthers the capacity of the governor and legislature
4 to plan and finance the services which they determine the state will provide for its citizens. The system
5 shall include procedures for:

6 (1) The orderly establishment, continuing review and periodic revision of the program and
7 financial goals and policies of the state.

8 (2) The development, co-ordination and review of long-range program and financial plans that
9 will implement established state goals and policies.

10 (3) The preparation, co-ordination and analysis, and enactment of a budget organized to focus
11 on state services and their costs, that authorizes the implementation of policies and plans in the
12 succeeding budget period.

13 (4) The evaluation of alternatives to existing policies, plans and procedures that offer potential
14 for more efficient or effective state services.

15 (5) The regular appraisal and reporting of program performance.

16 **Section 3. Responsibilities of the Governor.** The Governor shall direct the preparation and
17 administration of the state budget. He shall evaluate the long-range program plans, requested budgets
18 and alternatives to state agency policies and programs; and formulate, and recommend for consideration
19 by the legislature, a proposed comprehensive program and financial plan which shall cover all estimated
20 receipts and expenditures of the state government, including all grants, loans, and moneys received
21 from the Federal government. Proposed expenditures shall not exceed estimated receipts and surpluses.

22 **Section 4. Responsibilities of the Legislature.** The legislature shall:

23 (1) Consider the program and financial plan recommended by the Governor, including proposed
24 goals and policies, recommended budget, revenue proposals, and proposed long-range program plans.

25 (2) Adopt programs and alternatives to the plan recommended by the Governor it deems
26 appropriate.

1 (3) Adopt legislation to authorize the implementation of a comprehensive program and
2 financial plan.

3 (4) Provide for a postaudit of financial transactions, program accomplishments and execution
4 of legislative policy direction.

5 *Section 5. Responsibilities of [state budget agency].* The [state budget agency] shall:

6 (1) Assist the Governor in the preparation and explanation of the proposed comprehensive
7 program and financial plan, including the co-ordination and analysis of state agency program goals
8 and objectives, program plans and program budget requests.

9 (2) Develop procedures to produce the information needed for effective policy decision-making.

10 (3) Assist state agencies in their statement of goals and objectives, preparation of program plans,
11 program budget requests and reporting of program performance.

12 (4) Administer its responsibilities under the program execution provisions of this act so that the
13 policy decisions and budget determinations of the Governor and the legislature are implemented to
14 the fullest extent possible within the concepts of proper management.

15 (5) Provide the legislature with any budget information it may request.

16 *Section 6. Agency Program and Financial Plans.* (a) Each state agency, [other than the legislature
17 and the courts], on the date and in the form and content prescribed by the [state budget agency], shall
18 prepare and forward to the [state budget agency] the following program and financial information:

19 (1) The goals and objectives of the agency programs, together with proposed supplements,
20 deletions and revisions.

21 (2) Its proposed plans to implement the goals and objectives including estimates of future
22 service needs, planned methods of administration, proposed modification of existing program services
23 and establishment of new program services, and the estimated resources needed to carry out the
24 proposed plan.

25 (3) The budget requested to carry out its proposed plans in the succeeding fiscal [year]. The
26 budget request information shall include the expenditures during the last fiscal [year], those estimated
27 for the current fiscal [year], those proposed for the succeeding fiscal [year], an explanation of the
28 services to be provided, the need for the services, the costs of the services, and any other information
29 requested by the [state budget agency].

30 (4) A report of the receipts during the last fiscal year, an estimate of the receipts during the
31 current fiscal [year], and an estimate for the succeeding fiscal [year].

32 (5) A statement of legislation required to implement the proposed programs and financial
33 plans.

1 (6) An evaluation of the advantages and disadvantages of specific alternatives to existing or
2 proposed program policies or administrative methods.

3 (b) The state agency proposals prepared under subsection (a) shall describe the relationships of
4 their program services to those of other state agencies, of other governments, and of nongovernmental
5 bodies.

6 (c) The [state budget agency] shall assist agencies in the preparation of their proposals under
7 subsection (a). This assistance may include technical assistance; organization of materials; centrally
8 collected accounting, budgeting and personnel information; standards and guidelines formulation;
9 population and other required data; and any other assistance that will help the state agencies produce
10 the information necessary for efficient agency management and effective decision-making by the
11 Governor and the legislature.

12 (d) If any state agency fails to transmit the program and financial information provided under
13 subsection (a) on the specified date, the [state budget agency] may prepare such information.

14 (e) The [state budget agency] shall compile and submit to the Governor-elect in any year when
15 a new Governor has been elected, not later than November 20, a summary of the program and financial
16 information prepared by state agencies.

17 *Section 7. Governor's Recommendation.* (a) The Governor shall formulate the program and
18 financial plan to be recommended to the legislature after considering the state agency proposed
19 program and financial plans, and other programs and alternatives that he deems appropriate. The
20 plan shall include his recommended goals and policies, recommended plans to implement the goals
21 and policies, recommended budget for the succeeding fiscal [year], and recommended revenue
22 measures to support the budget.

23 (b) The Governor shall present the proposed comprehensive program and financial plan in a
24 message to a joint session of the legislature on or before [February 15] prior to each fiscal [year]. The
25 message shall be accompanied by an explanatory report which summarizes recommended goals, plans,
26 and appropriations. The explanatory report shall be furnished each member of the legislature and each
27 state agency on or before [February 15]. The report shall contain the following information:

28 (1) The co-ordinated program goals and objectives that the Governor recommends to guide the
29 decisions on the proposed program plans and budget appropriations.

30 (2) The program and budget recommendations of the Governor for the succeeding fiscal [year].

31 (3) A summary of state receipts in the last fiscal [year], a revised estimate for the current fiscal
32 [year], and an estimate for the succeeding fiscal [year].

1 (4) A summary of expenditures during the last fiscal [year] , those estimated for the current
2 fiscal [year] , and those recommended by the Governor for the succeeding fiscal [year] ; and

3 (5) Any additional information which will facilitate understanding of the Governor's proposed
4 program and financial plan by the legislature and the public.

5 (c) After delivery of the Governor's message, the bills incorporating his recommendations may
6 be introduced in either [both] house[s].

7 *Section 8. Legislative Review.* The legislature shall consider the Governor's proposed compre-
8 hensive program and financial plan; evaluate alternatives to the Governor's recommendations; and
9 determine the comprehensive program and financial plan to support the services to be provided the
10 citizens of the state, provided, however, that in such determination authorized expenditures shall
11 not exceed estimated receipts and surpluses.

12 *Section 9. Program Execution.* (a) Except as limited by policy decisions of the Governor,
13 appropriations by the legislature, and other provisions of law, the several state agencies shall have full
14 authority for administering their program service assignments and shall be responsible for their proper
15 management.

16 (b) Each state agency, [other than the legislature and the courts] , shall prepare an annual plan
17 for the operation of each of its assigned programs except for programs that are exempted from this
18 requirement by the [state budget agency] . The operations plan shall be prepared in the form and
19 content and be transmitted on the date prescribed by the [state budget agency] .

20 (c) The [state budget agency] shall:

21 (1) Review each operations plan to determine that it is consistent with the policy decisions of
22 the Governor and appropriations by the legislature, that it reflects proper planning and efficient
23 management methods, that appropriations have been made for the planned purpose and will not be
24 exhausted before the end of the fiscal year.

25 (2) Approve the operations plan if satisfied that it meets the requirements under paragraph (1).
26 Otherwise the [state budget agency] shall require revision of the operations plan in whole or in part.

27 (3) Modify or withhold the planned expenditures at any time during the appropriation period
28 if the [state budget agency] finds that such expenditures are greater than those necessary to execute
29 the programs at the level authorized by the governor and the legislature, or that the receipts and
30 surpluses will be insufficient to meet the authorized expenditure levels.

31 (d) No state agency, [except the legislature and the courts] , may increase the salaries of its
32 employees, employ additional employees, or expend money or incur any obligations except in
33 accordance with law and with a properly approved operations plan.

1 (e) Appropriation transfers or changes as between objects of expenditures within a program
2 may be made by the [head of a state agency]. Appropriation transfers or changes between programs
3 within an agency may be made by the [Governor], and shall be reported to the legislature quarterly.
4 No transfers shall be made between agencies.

5 (f) The [state budget agency] shall report quarterly to the Governor and the legislature on the
6 operations of each state agency, relating actual accomplishments to those planned, and modifying, if
7 necessary, the operations plan of any agency for the balance of the fiscal [year].

8 *Section 10. Performance Reporting.* (a) Each state agency, [other than the legislature and the
9 courts], shall submit a performance report to the [state budget agency] on or before [September 1]
10 for the preceding fiscal [year]. These reports shall be in the form prescribed by the [state budget
11 agency] after consultation with the [appropriate legislative agencies], and shall include statements
12 concerning:

13 (1) The work accomplished and the services provided in the preceding fiscal year or other
14 meaningful work period, relating actual accomplishments to those planned under section 9(b).

15 (2) The relationship of accomplishments and services to the policy decisions and budget
16 determinations of the governor and the legislature.

17 (3) The costs of accomplishing the work and providing the services, and, to the extent feasible,
18 citing meaningful measures of program effectiveness and cost.

19 (4) The administrative improvements made in the preceding year, potential improvements in
20 future years, and suggested changes in legislation or administrative procedures to make further im-
21 provements.

22 (b) The [state budget agency] shall summarize the performance reports and forward copies to
23 each member of the legislature.

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

25 *Section 12. Effective Date.* [Insert effective date.]

STATE FINANCING OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

State assumption of primary responsibility for public elementary and secondary school financing stands out as one practical way to achieve substantial parity of resources behind each pupil. As long as local school districts have wide latitude in setting their own tax levels, great variations in both wealth and willingness to tax will produce significant differences in the amount of resources behind each student and consequent differences in the quality of education itself.

Increasingly, the cost and economic consequences of high quality and low quality education are felt well beyond the boundaries of the local school district. No student should be denied an adequate educational opportunity because of the accidents of local property tax geography.

Equality of educational opportunity is of critical importance in a democratic society dedicated to the proposition that all persons should have an equal chance to develop their potentialities to the fullest. This objective takes on a particular urgency as technological advancement causes employment opportunities to become increasingly restricted to persons with professional and technical skills.

Heavy reliance on the property tax for local school support can contribute to severe fiscal tensions in the intergovernmental financing system. Since 1942, local schools have increased their share of receipts from local property taxes from less than one-third to slightly more than one-half of all local property tax revenue. Local non-educational functions have become inferior claimants in the competition for the local property tax base. Counties and cities have been constrained from adequate use of the local property tax through heavy use of the tax by school boards. An increasingly skewed system of financing has developed, one in which costs for a major function of widespread benefit are largely localized.

This suggested legislation would relieve local property taxpayers of substantially all of the burden of underwriting the cost of education. Several States, including North Carolina and Delaware, have approached the goal of complete State assumption of financial responsibility. Hawaii has assumed complete financial and administrative responsibility for local public schools.

Budgetary considerations may dictate a somewhat gradual rather than an immediate substitution of State tax dollars for local property tax receipts. However, there is evidence to suggest that perhaps as many as 20 or more States could assume responsibility for substantially all public school financing if they made as intensive use of personal income and sales taxes as the "heavy-user States" now make on the average. When viewed alongside the potential decrease in the local property tax, State assumption of financial responsibility loses its idealistic cast and takes on the appearance of a realistic and equitable readjustment of the total tax burden.

This legislation restricts the amount of local supplementation to not more than 10% of the State outlay for local schools. Failure to do this would undermine the objectives of creating a fiscal environment more conducive to equal educational opportunity and of making more of the property tax base available to finance the general functions of local government.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to Provide for the Financial Support of Public Elementary and Secondary Schools."]

(Be it enacted, etc.)

1 *Section 1. Purpose.* The purposes of this act are: to achieve high quality elementary and
2 secondary educational programs for all children in this state; to assure substantial parity in the
3 financial support of public elementary and secondary schools, while taking due account of the
4 differences among pupils in their educational needs; and to relieve the local property tax base of
5 substantially all of the financial burden of elementary and secondary education, thereby releasing
6 local property tax resources for the support of other local public services. To accomplish these
7 purposes the legislature declares it to be a responsibility of the state to provide substantially all the
8 financial support for public elementary and secondary schools, with appropriate educational policy-
9 making authority to be exercised by local school [districts] as provided by law.

10 *Section 2. State School Support Plan.* (a) The [chief state school officer] shall prepare a
11 State School Support Plan for inclusion in the [annual] budget submitted by the Governor to the
12 Legislature. The State School Support Plan shall include:

13 (1) Information required to determine an adequate level of State financial support for public
14 elementary and secondary education for each local school [district]; and

15 (2) Amounts of State funds recommended to be allocated to each public school [district] to
16 implement an elementary and secondary educational program that meets all requirements of State
17 law.

18 (b) In developing the State School Support Plan, the [chief state school officer] shall identify
19 and estimate for each public school [district] (1) the cost of providing elementary and secondary
20 educational services and facilities, including special educational services and facilities and the number
21 and kinds of instructional and other personnel; and (2) the cost of acquiring and maintaining land,
22 buildings and equipment, including transportation equipment. In determining the cost of special
23 educational services, the [chief state school officer] shall take into consideration such factors as:

24 (1) The number of pupils falling below minimum educational competence as established by
25 standardized tests;

26 (2) The number of children under [19] not attending school who have not completed
27 twelve grades; and

1 (3) The number of children¹ counted in determining a grant from the Federal government
2 under Title I of Public Law 89-10, 20 U.S.C.A. 241c, as amended.

3 *Section 3. School [Districts] to Provide Information.* Upon request of the [chief state school
4 officer], the [superintendent] of each public elementary and secondary school [district] shall provide
5 any information, including financial records, which the [chief state school officer] requires for the
6 development of the State School Support Plan.

7 *Section 4. Payments to School [Districts].* The funds provided by the state for the support of
8 public elementary and secondary education shall be allocated by the [chief state school officer] to the
9 several public elementary and secondary school [districts] of the state in a manner that will carry out
10 as nearly as may be the State School Support Plan. The [chief state school officer] shall notify the
11 [state disbursing officer] of the amounts allocated to each local [district] and shall notify the [super-
12 intendent] of each local district of the amount allocated to it. The [state disbursing officer] shall
13 make [quarterly] payments to the [districts] of the amounts so allocated.

14 *Section 5. Local Levies for School Purposes.* In addition to the amount allocated pursuant to
15 section 4, any public elementary and secondary school [district] may spend for school purposes, from
16 the levy and collection of taxes and charges authorized by law to be imposed in the jurisdiction, an
17 amount not to exceed [10] percent of the amount so allocated.

18 *Section 6. Repeal of Conflicting Acts or Sections of Acts.* [Insert repealing clause.]

19 *Section 7. Separability.* [Insert separability provision.]

20 *Section 8. Effective date.* [Insert effective date.]

¹From low income families and from families receiving payments under the state program of aid to families with dependent children.

AN EQUALIZING STATE FOUNDATION PROGRAM FOR HEALTH AND HOSPITALS

The financial practices of State governments in providing public health and hospital services reveal that – with few exceptions – those States using intergovernmental transfers take no cognizance of the variations in local fiscal capacity. Equalization provisions would help to aim this State financial assistance predominantly at those jurisdictions where needs are greatest in relation to resources. At the same time, differences in local tax rates to finance comparable programs would be minimized.

Greater equalization would help the poorest areas of a State to provide more adequate personnel and facilities. Where public health and hospital facilities currently are financed from State as well as local resources, explicit recognition of variations in local fiscal capacity would provide more comparable facilities throughout the State without requiring disproportionate tax efforts in poorer jurisdictions.

The following suggested State legislation takes a minimum foundation approach to the support of public health and hospital facilities. It requires a minimum local contribution beyond which the State will “fill in” the sums necessary to maintain an adequate public health and hospital program. The bill bases the local contribution on a specified percentage of the property tax base, but leaves to the option of the local government whether to impose such a property tax levy or to obtain the funds from such other local revenue sources as may be legally available.

The draft bill (section 4) lists a number of services that may be included in a comprehensive local health program. Some states may wish to exclude services relating to mental illness, narcotic addiction and drug abuse, or alcoholism, where these are separate programs administered independently of the general health program.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: “An Act Providing for an Equalizing State Minimum Foundation Support Program for Comprehensive Community Health Services and Facilities.”]

(Be it enacted, etc.)

1 *Section 1. Purpose.* It is the purpose of this act to provide state financial support for a joint
2 state-local comprehensive community health program on an equalizing basis that takes into account
3 both the relative need and the fiscal capacity of each [appropriate local government]. The legislature
4 finds that equalized assessed valuation of property is a suitable basis for determining local fiscal capacity
5 and that needs for health services and facilities can best be determined by the state [health department]
6 on the basis of a continuing statewide survey and analysis of state and local health programs.

7 *Section 2. Local Public Health Support Plan.* On the basis of surveys and analyses of local
8 general public health and hospital needs, the state [health department] shall prepare a Local Public

1 Health Support Plan for inclusion in the budget submitted by the Governor to the legislature. The
2 plan shall set forth the requirements of an adequate public health and hospital program for each
3 [appropriate local government] and shall recommend the amount of state funds to be allocated to
4 each [appropriate local government] which, when added to [] percent of the equalized assessed
5 valuation of property subject to taxation in the local jurisdiction, will provide the amount required
6 for an adequate local public health program. The Local Public Health Support Plan shall include, but
7 shall not be limited to, the following services:

8 (1) Public health administration and research laboratories, education, statistics, nursing and
9 other general health activities;

10 (2) Categorical health programs such as control of cancer, tuberculosis, mental illness and
11 maternal and child health;

12 (3) Environmental health programs such as inspections of water supply, food handling estab-
13 lishments, health examinations of individuals, sanitary engineering, water pollution control, and
14 other activities for eliminating or abating health hazards;

15 (4) Immunization, treatment clinics, crippled children's services, and school health services;

16 (5) Medical vendor payments not identified with public assistance programs;

17 (6) Establishment and operation of hospital facilities and institutions for care and treatment
18 of the handicapped, provision of hospital care, and support of other public or private hospitals;

19 (7) Narcotic addict clinics and rehabilitation facilities;

20 (8) Alcoholism prevention, treatment and control; and

21 (9) [Other specified public health services].

22 *Section 3. Local Units to Provide Information.* Upon request of the [commissioner] of the
23 state [health department], the [chief executive officer] of each [appropriate local government]
24 shall provide any information, including financial records, which the [commissioner] requires for
25 the development of the Local Public Health Support Plan.

26 *Section 4. Local Budget to be Submitted.* [Sixty] days prior to the time budgets are finally
27 adopted, the [local governing body] in each local government shall submit a proposed public health
28 and hospital program budget to the state [health department]. The [commissioner] shall consider
29 the proposed budget and return it with his recommendations to the [local governing body] within
30 [thirty] days. If the [local governing body] fails to change its proposed budget to incorporate the
31 recommendations in the budget as finally adopted, the [commissioner], after affording the [local
32 governing body] an opportunity to be heard, may withhold from that local government all or any
33 part of the funds appropriated by the legislature to carry out the provisions of this act.

1 *Section 5. Local Appropriations.* Each [appropriate local government] shall budget and ap-
 2 propriate sufficient money to provide a comprehensive program of community health services as
 3 specified in the Local Public Health Support Plan; provided, however, that no [appropriate local
 4 government] shall be required by the provisions of this act to appropriate for this purpose more
 5 than the sum of the payments allocated from funds appropriated by the legislature for the purposes
 6 of this act plus [] percent of the equalized assessed valuation of taxable property.

7 *Section 6. Basis for Payments.* From funds provided by the legislature, the [commissioner]
 8 of the state [health department] shall authorize payments to be made to each [appropriate local
 9 government] to carry out as nearly as may be the Local Public Health Support Plan. The [com-
 10 missioner] shall notify the [state disbursing officer] of the amounts allocated to each [appropriate
 11 local government] and shall notify the [appropriate officer] of each local government of the amount
 12 allocated to it. The [state disbursing officer] shall make [quarterly] payments to the local govern-
 13 ments of the amounts so allocated.

14 *Section 7. Annual Evaluation of Costs; Reduction of State Aid.*

15 The [commissioner] of the state [health department] shall review annually each local health
 16 and hospital program in the state to determine if the costs are in excess of what is reasonably neces-
 17 sary to maintain in an efficient manner an adequate general public health program. If the [commis-
 18 sioner] finds that costs are excessive in any [appropriate local government] receiving funds pursuant
 19 to section 5 of this act, he shall notify the [local governing body] of his findings and recommenda-
 20 tions for reducing costs and, after [thirty] days' notice, shall conduct a public hearing in the locality
 21 on his findings and recommendations. Upon completion of the hearing, the [commissioner] may
 22 set a reasonable period of time, not to exceed [one year], for the [local governing body] to comply
 23 with his recommendations for reducing costs. If at the end of the designated period of time the
 24 [local governing body] has failed to comply, the [commissioner] from that time on shall allow to
 25 that local government only the amount of money from state funds that would have been the amount
 26 allowed if the recommendations had been effected. The [Commissioner] shall report to the Governor
 27 and the legislature his findings and recommendations, the results of public hearings, and the amount
 28 of state funds withheld from any [appropriate local government] pursuant to this section.

29 *Section 8. Local Supplements.* Any [appropriate local government], with the use of its own
 30 funds, may provide other local health services in addition to those supported by state funds, and
 31 may supplement the health services supported by state funds.

32 *Section 9. Separability.* [Insert separability clause].

33 *Section 10. Effective Date.* [Insert effective date].

DISTRIBUTION OF STATE HIGHWAY-USER REVENUES TO LOCAL GOVERNMENTS

Although transportation needs have changed drastically as population has concentrated in the urban areas, most state formulas for distributing highway-user revenues to local governments date from an earlier era and many of them favor the rural areas.

Urban communities are faced with an ever-growing traffic volume and with increasing construction and maintenance costs in order to keep this traffic flowing—costs which generally have not been taken into account in formulas under which state highway-user funds are now allocated. To correct the imbalance between rural and urban highway aid, the following draft legislation includes an allocation formula that reflects fiscal capacity and actual needs as measured by such factors as population, commuter patterns and expenditure requirements.

The draft legislation also recognizes the need to allow more flexibility in the use of highway-user funds—particularly in urban areas. To this end it authorizes localities to use such funds for mass transportation facilities, in addition to their traditional use for roads and streets.

Because of the interstate variation in the allocation of street and road responsibility between counties and municipalities (and in some states, townships), no attempt is made here to spell out the coverage of the terms “county roads” and “municipal streets.” Each state will, of course, need to tailor such specification to its own situation.

The allocation formula uses population as a general indicator of each county area’s need for transportation facilities. Where special needs exist in sparsely populated counties (for example, particularly rough terrain requiring tunnels and bridges, blasting, etc.), such needs should be met through specific highway aid programs rather than through a general formula.

The draft bill provides that the funds allocated to each county area will be distributed between the county government and municipal governments within the county by giving equal weight to road and street usage and to a need-index which combines fiscal capacity and expenditure requirements. The need-index formula (section 3(2)) uses equalized assessed value of real property per linear mile of roads and streets as a measure of relative local fiscal capacity. Extra weight is given in the formula to those municipalities (or the county government) with below-average fiscal capacity.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: “An Act Providing for Distribution of a Share of Highway-User Revenues to Counties and Municipalities and Specifying the Purposes for Which the Funds May be Used.”]

(Be it enacted, etc.)

1 *Section 1. Distribution to Counties and Municipalities.* []¹ percent of the proceeds from
2 taxes and fees imposed by sections [cite sections of the statutes imposing motor fuel taxes, motor
3 vehicle registration license fees and other highway-user revenues] shall be distributed to counties and
4 municipalities to be used exclusively for the construction, maintenance and repair of county and
5 municipal roads and streets and for the construction, maintenance, and operation of mass transpor-
6 tation facilities.²

7 *Section 2. Allocation Among Counties.* The funds authorized by section 1 shall be allocated
8 for distribution within the counties by the [director of finance] in the ratio that the population of
9 each county bears to the total population of the state, based on the last preceding Federal census or
10 on a population census authorized by state law.³ The allocation shall be determined annually for the
11 ensuing fiscal year.

12 *Section 3. Distribution to County and Municipal Governments.* The amount allocated for
13 distribution within each county under the provisions of section 2 shall be apportioned [quarterly] by
14 the state [director of finance] and paid to the county government and to the municipal governments
15 within the county in accordance with the following formula:

16 (1) One-half in the ratio of the number of vehicle miles driven on county roads and municipal
17 streets as determined from time to time by the state [highway commissioner];⁴

18 (2) One-half in the ratio of the need index of each government. The need index of the county
19 government and of each municipal government shall be computed by: (i) dividing the countywide
20 average [equalized assessed] value of real property per mile of all county roads and municipal streets
21 in the county by the average [equalized assessed] value of real property per mile of roads or streets
22 for which each government is responsible; (ii) multiplying the quotient for each government by its
23 average actual [and estimated] expenditure for all roads and street construction, maintenance and
24 repairs during the last preceding [12 quarterly] periods; and (iii) summing up the results of these
25 multiplications and computing the percentage of that sum for each government. The [equalized
26 assessed] value of real property shall be determined by the state [tax commissioner].

¹The percentage distributed should be related to the State-local allocation of responsibility for the construction, maintenance and repair of streets and roads.

²In some states, a constitutional amendment is necessary to allow the use of motor vehicle “user charges” and gasoline taxes for providing mass transportation services.

³States with large sparsely populated areas may wish to give consideration to factors other than population in determining an equitable formula.

⁴Some States may wish to channel a larger proportion to local units served by mass transportation facilities by weighting the formula with a mass transit passenger-mile factor. An accident rate factor might also be considered in order to give recognition to the need for improved safety design.

1 *Section 4. Annual Reports.* As the [appropriate state official] shall prescribe, each county and
2 each municipality shall report actual and estimated expenditures for road and street construction,
3 maintenance and repairs. The state [highway commissioner] shall conduct a continuing highway
4 survey to ascertain the linear mileage and vehicle miles driven in each county and in each municipality.

5 *Section 5. Repeal of Conflicting Acts or Sections of Acts.* [Insert repealing clause].

6 *Section 6. Separability.* [Insert separability clause].

7 *Section 7. Effective Date.* [Insert effective date].

STATE AID ADMINISTRATION

As States increasingly are involved in the financing of local government functions, the need for each State to systemize its State-local fiscal relations becomes more urgent. State aid to local governments doubled in the five year period 1962-1967 and it is now (fiscal 1969) approaching the \$25 billion mark.

An effective State-local fiscal partnership requires a State organizational framework within which all State aid programs can be codified, reviewed and evaluated periodically. To this end, the States should place responsibility in either an executive agency or a joint committee of the legislature for continuing oversight of State aid programs, and establish an information system to provide data on local fiscal needs and resources.

The suggested legislation provides for the establishment of both fiscal standards (accounting, auditing, reporting) and performance standards. Performance standards are needed by local program administrators as a basis for carrying out the programs in accordance with the intent of the State policymakers. By the same token, those charged at the State level with reviewing and evaluating grant programs need standards in order to measure results against intended goals.

When enacting new State aid programs or reviewing those already on the statute books, States should require that the aided functions and projects conform to State and areawide planning objectives as well as to local plans. Such a requirement will help assure that State financial assistance contributes to statewide and regional goals, produces programs that complement one another, furthers the State's urban development policies, and avoids overlap and duplication of programs.

The organization and structure of local government, its authority to provide public services and its power to levy and collect taxes to pay for those services in full or in part all are derived from the State. The State has a concurrent responsibility to make sure that the benefits and costs of local governmental services are distributed equitably throughout the State. Too often, State aid and shared revenue formulas are constructed in such a way that State aid serves to prop up and keep alive incorporated areas that are not economically, geographically, and politically viable. One way for States to halt the chaotic spread of special districts and nonviable units of local government is to establish a State boundary adjustment agency to determine whether proposed new incorporations or annexations would result in viable communities and to compel the consolidation or dissolution of nonviable local government units.¹

An equally objectionable side effect of many State aid formulas is that they perpetuate or even increase disparities in fiscal capacity among units of local government by subsidizing wealthy incorporated communities that do not need State aid to provide an adequate level of public services for their residents.

The draft legislation provides for the Governor annually to submit proposals to the legislature for improvement of State-local fiscal relations, including revisions of state-aid formulas in the light of data on local fiscal needs and resources and on the political and economic viability of local units of government. States should consider amending State-aid formulas so as to eliminate or reduce aid allotments to non-viable local units.

¹See previous ACIR suggested legislation on "State Authority Over Municipal and Special District Boundary Adjustments."

Suggested State Legislation

[Title should conform to State requirements.]

(Be it enacted, etc.)

1 *Section 1. Short Title.* (This act may be cited as the “State-Local Relations Act of (year)”.)

2 *Section 2. Findings and Declaration of Policy.* The [legislature] finds and declares that the
3 present system of State aid to local governments has developed piecemeal, and that a unified system
4 of state aid is urgently needed for the orderly development of a state-local partnership to assure that
5 essential public services are provided in the most effective manner. It is the purpose of this act to
6 establish an organizational and procedural framework governing the formulation, evaluation, and
7 continuing review of all state aid programs; and to establish general policy governing the adminis-
8 tration of state aid.

9 *Section 3. State-Local Fiscal System.* (a) In order to provide an effective system of state aid
10 to local governments, the [appropriate state agency]² shall:

11 (1) Compile and maintain in a unified, concise, and orderly form information about all state
12 programs which involve the distribution of funds to local government (hereinafter referred to as
13 “state aid”);

14 (2) Continuously review and evaluate all state aid programs to determine the extent to which
15 they meet fiscal, administrative, and program objectives;

16 (3) Develop, in conjunction with other state agencies, an information system to provide data on
17 comparative local fiscal needs and resources; and

18 (4) Evaluate federal aid programs, including direct federal-local aid programs, in terms of their
19 compatibility with state objectives and their fiscal and administrative impact on state and local
20 programs.

21 (b) In reviewing and evaluating state aid programs, the [agency] shall take account of ap-
22 propriate fiscal and performance standards and, where adequate standards are lacking, shall recom-
23 mend standards to the appropriate agencies of the state government. The standards shall include,
24 but shall not be limited to:

25 (1) Accounting, auditing, and reporting procedures;

26 (2) Minimum service levels;

27 (3) Eligibility of recipient governments and program beneficiaries; and

²Budget or Planning Agency or Department of Community Affairs or similar agency if such has been established. However, some State legislatures may wish to retain the responsibility by delegating it to a joint standing committee.

1 (4) Where appropriate, citizen participation and public hearings.

2 *Section 4. Conformance of State Aid Programs to Comprehensive and Functional Planning*

3 *Objectives.* (a) Every agency administering state aid to local governments shall require that the
4 aided activities conform to local, regional, and statewide comprehensive and functional plans in
5 accordance with [cite the appropriate statutes relating to state, regional and local planning].³

6 As a condition to receiving financial assistance a local government may be required to submit a
7 functional plan for approval of the agency head administering the program.

8 (b) The head of each grant-administering agency shall issue criteria and guidelines for the
9 preparation of local functional plans, which shall include, but shall not be limited to, provisions
10 for:

11 (1) Conformance to local, regional, and statewide comprehensive plans;

12 (2) Survey of needs in the functional area being aided;

13 (3) Economic, social, and demographic data to be incorporated in the functional plan and
14 in any applications for state aid, provided that such data requirements shall conform to the common
15 data base to be prepared under the provisions of paragraph (c).

16 (c) The [agency] shall compile economic, social and demographic data, applicable elements of
17 which shall be incorporated in the data requirements of all state aid programs subject to the pro-
18 visions of this section.

19 *Section 5. Governor's Report to the [Legislature].* The Governor shall annually submit pro-
20 posals to the [legislature] for improvement of state-local fiscal relations. The proposals shall include,
21 but shall not be limited to:

22 (1) Grant consolidation plans;

23 (2) Simplification and standardization of grant requirements;

24 (3) Revisions of equalization formulas in the light of data on local fiscal needs and resources
25 and the political and economic viability of local units of government;

26 (4) New state aid programs; and

27 (5) Improvements in the flow of information concerning state and federal grants-in-aid.

28 *Section 6. Separability Clause.* [Insert separability clause].

29 *Section 7. Effective Date.* [Insert effective date].

³See previous ACIR suggested legislation on "State and Regional Planning."

OFFICIAL MAP¹

The adoption of an official map specifically identifies and maps future locations for streets, public facilities, parks, playgrounds, and other public uses and officially reserves the sites for future public acquisition. It is a major tool to assist local governments in guiding urban development and providing adequate services at a reasonable cost. Used in concert with other measures as part of an overall urban development program, it provides for the identification of areas slated for development in the near future. By prohibiting or restricting development within the areas needed for public uses, it assures that where negotiated settlements are not possible, condemnation proceedings can be used to avoid costly acquisition.

Over 40 States have some type of official map legislation on their books, but in only 26 does it include power actually to reserve land for streets and in only 13 to reserve land for park and playground areas. In the other cases, an official map is merely a specific indication of where public uses are intended and serves no other legal purpose. Since such a limited purpose is already served by general physical development plans, it is vital that the official map legislation include the power actually to reserve land in accordance with the map.

To avoid adverse court decisions on due process grounds, it is important that the absolute reservation not extend for an indefinite period. In the draft legislation, this is accomplished by requiring the initiation of purchase proceedings by the local government within a specified period after the owner's announcement that he intends to build, subdivide or otherwise develop the land covered by the reservation. Unless the locality purchases the reserved property or begins condemnation proceedings within that time, the property would then be free of the official map reservation.

The legislation is drawn to allow for adoption of official maps by both counties and municipalities (cities, villages, boroughs, towns). Section 1 states the legislative purpose and Section 2 defines terms. Section 3 is the general grant of power for adoption or amendment of the official map. Section 4 sets forth the procedure for adoption and amendment by the governing body, including the holding of a public hearing.

Section 5 provides that approval of plats pursuant to subdivision regulation legislation constitutes an amendment to the official map. Section 6 makes clear that adoption of the official map in itself does not constitute the actual taking of property, the establishment of a street, or the commitment of the locality to improve or maintain the land affected; it is solely a reservation of the land for possible future acquisition or development. Some states may wish to provide that assessment of property for taxation shall reflect, at the earliest practicable time, any change in market value which results from the reservation of the property for future public use.

Section 7 is designed to protect the integrity of the map by denying a building permit for construction within areas reserved, but provides for appeal in hardship cases to the governing body, and then appeal to the courts from an adverse decision. Section 8 establishes the time limit for action on reservations for future taking.

Section 9 requires other State and local agencies to give the governing body advance notice of intention to commence construction within the reserved lines of the official map. The purpose is to provide time for negotiation on possible ways of minimizing the encroachment on the mapped areas.

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.

Section 10 enables the governing body to delegate its authority to negotiate for releases of claims for damages or compensation for reservations of land.

Section 11 sets forth the rules for coordinating official maps adopted by municipalities with those adopted by counties. County official maps shall be in effect in all parts of the county not subject to municipal official maps. In addition, within municipalities having official maps, county maps shall prevail with respect to county streets, watercourses, parks, open space, and school sites. Provision is made for counties and municipalities to notify each other as to adoption or amendment of official maps.

Section 12 authorizes municipalities to extend their official maps into unincorporated territory outside their boundaries which is not subject to a county official map. If a county subsequently adopts an official map for such extraterritorial areas, the municipal official map is superseded. This provision is consistent with other ACIR draft legislation authorizing municipalities to exercise extraterritorial planning, zoning, and subdivision regulation in unincorporated areas not already subject to similar regulation by the county government.

The draft statute is a modification of the official map article of the Pennsylvania municipalities planning code, Act 247, Laws 1968.

Suggested State Legislation

[Title should conform to State requirements. The following is a suggestion: "An Act to Authorize Municipalities to Adopt Official Maps"]

(Be it enacted, etc.)

1 *Section 1. Purpose.* It is the purpose of this act to promote the public health, safety, and general
2 welfare, by encouraging orderly growth and development within the counties, cities, towns and
3 villages of this state through the reservation of public street rights of way and control of access thereto,
4 drainage rights of way, public utility rights of way, public parks and playgrounds, and sites for public
5 buildings.

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

7 (1) "Municipality" means an incorporated city, town, or village, whether incorporated under
8 general or special act.

9 (2) "Governing body" means the chief legislative or governing body of any county, city, town,
10 or village.

11 (3) "Plat" means the map or plan of a subdivision or land development.

12 (4) "Public grounds" includes (i) parks, playgrounds, and other public areas for active or passive
13 recreation; and (ii) sites for schools, sewage treatment, refuse disposal, and other publicly owned or
14 operated facilities.

1 (5) "Street" includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley,
2 viaduct, and any other ways used or intended to be used by vehicular traffic or pedestrians.

3 (6) "Structure" means any man-made object having an ascertainable stationary location on or
4 in land or water, whether or not affixed to land.

5 (7) "Subdivision" has the meaning set forth in [cite subdivision regulation statute].

6 *Section 3. Grant of Power.* The governing body of each [municipality, county] may make or
7 cause to be made surveys of the exact location of the lines of existing and proposed public streets,
8 watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings
9 or closing of same, for the entire [municipality, county] and, by ordinance, adopt such surveys as the
10 official map, or part thereof, of the [municipality, county]. The governing body, by amending
11 ordinances, may make additions or modifications to the official map, or part thereof, by adopting
12 surveys of the exact location of the lines of the public streets, watercourses or public grounds to be so
13 added or modified and may also vacate all or part of any existing or proposed public street, water-
14 course or public ground contained in the official map.

15 *Section 4. Adoption of the Official Map; Amendments.* Prior to the adoption of any survey of
16 existing or proposed public streets, watercourses or public grounds as the official map, or part thereof,
17 or any amendments to the official map, the governing body, after giving public notice, shall hold a
18 public hearing thereon. Public notice shall be given not more than [30] days and not less than [14]
19 days in advance of the public hearing. The notice shall be published once each week for two successive
20 weeks in a newspaper of general circulation in the municipality. It shall state the time and place of
21 the hearing and the particular nature of the matter to be considered at the hearing.

22 *Section 5. Effect of Approved Plats on Official Map.* After adoption of the official map, or
23 part thereof, all streets, watercourses and public grounds on final, recorded plats which have been
24 approved as provided by [cite subdivision regulation statute] shall be deemed amendments to the
25 official map. Notwithstanding any of the other terms of this act, no public hearing need be held or
26 notice given if the amendment of the official map is the result of the addition of a plat which has been
27 approved as provided by [cite subdivision regulation statute].¹

28 *Section 6. Effect of Official Map on Mapped Streets, Watercourses and Public Grounds.* The
29 adoption of any street or street lines as part of the official map shall not, in and of itself, constitute or
30 be deemed to constitute the opening or establishment of any street nor the taking or acceptance of

¹ This assumes that the subdivision regulations require adequate public notice and hearing for approval of plats.

1 any land for street purposes, nor shall it obligate the [municipality, county] to improve or maintain
2 any such street. The adoption of proposed watercourses or public grounds as part of the official map
3 shall not, in and of itself, constitute or be deemed to constitute a taking or acceptance of any land by
4 the [municipality, county] .

5 *Section 7. Structures in Mapped Streets, Watercourses and Public Grounds.* No building permit
6 shall be issued for any structure within the lines of any street, watercourse or public ground shown or
7 laid out on the official map. No person shall recover any damages for the taking for public use of any
8 structure or improvements constructed within the lines of any street, watercourse or public ground
9 after the same shall have been included in the official map, and any such structure or improvement
10 shall be removed at the expense of the owner. However, when the property of which the reserved
11 location forms a part, cannot yield a reasonable return to the owner unless a permit is granted, the
12 owner may apply to the governing body for the grant of a permit to so build. Before granting any
13 permit authorized in this section, the governing body shall give public notice and hold a public
14 hearing at which all parties in interest shall have an opportunity to be heard. A refusal by the govern-
15 ing body to grant the permit applied for may be appealed by the applicant to the [appropriate court]
16 in the same manner, and within the same time limitation, as is provided for zoning appeals by [cite
17 appropriate statute] . Final decision of each appeal shall be made by the court, or a judge thereof,
18 considering the record and the findings of fact made by the governing body as supplemented or
19 replaced by findings of fact made by the court.

20 *Section 8. Time Limitations on Reservations for Future Taking.* The governing body may fix
21 the time for which streets, watercourses and public grounds on the official map shall be deemed
22 reserved for future taking or acquisition for public use. However, the reservation for public grounds
23 shall lapse and become void [one year] after an owner of such property submits a written notice to
24 the governing body announcing his intentions to build, subdivide or otherwise develop the land
25 covered by the reservation, or makes formal application for an official permit to build a structure
26 for private use, unless the governing body acquires the property, or begins condemnation proceedings
27 to acquire the property before the end of the [one year] period.

28 The governing body may withhold issuance of any permit to build a structure within any land
29 area so reserved for a period of up to [one year] following application therefor, and it may withhold
30 approval of any subdivision plan affecting any area reserved for a period of up to [one year] following
31 submission of the plan for approval. Any withholding period so established shall be valid, notwith-
32 standing any other provisions contained in ordinances or resolutions or in statutes of the state requiring
33 approval or disapproval of such applications within a lesser time period.

1 *Section 9. Construction by Other Governmental Units.* Any state agency or political subdivision
2 intending to construct a structure within the lines of any street, watercourse or public ground included
3 in the official map shall give the governing body written notice of such intention at least [one year]
4 in advance of the date the construction is planned to start.

5 *Section 10. Release of Damage Claims or Compensation.* The governing body may designate
6 any of its agencies to negotiate for or secure from the owner of land whereon reservations are made,
7 releases of claims for damages or compensation for such reservations, or agreements indemnifying the
8 governing body from such claims by others, which releases or agreements when properly recorded shall
9 be binding upon the successor in title.

10 *Section 11. Relationship of County and Municipal Maps.* When any county has adopted an
11 official map in accordance with the terms of this act, a certified copy of the map and the ordinances
12 adopting it shall be sent to every municipality within the county. All amendments shall be sent to
13 the aforementioned municipalities. The map or amendments shall not take effect until [30] days
14 after receipt of said notification and map or amendments by the municipalities. The powers of the
15 governing bodies of counties to adopt, amend and repeal official maps shall be limited to land and
16 watercourses in those municipalities wholly or partly within the county which have no official map
17 in effect at the time an official map is introduced before the governing body of the county, and until
18 the municipal official map is in effect. The adoption of an official map by any municipality whose
19 land or watercourses are subject to county official mapping shall act to repeal the county official map
20 within the municipality adopting such ordinance. Notwithstanding any of the other terms or condi-
21 tions of this section the county official map shall govern as to county streets, watercourses and public
22 grounds even though such streets, watercourses or public grounds are located in a municipality which
23 has adopted an official map. When a municipality within a county which has adopted an official map
24 also adopts an official map, a certified copy of the map, the ordinance adopting it and any later
25 amendments shall be forwarded to the county planning agency, if such an agency exists, and to the
26 governing body of the county. Additionally, if any municipality adopts an official map, or amend-
27 ment thereto, that shows any street intended to lead into any adjacent municipality, a certified copy
28 of said official map or amendment shall be forwarded to the adjacent municipality.

29 *Section 12. Extraterritoriality.* The power of a municipality to establish an official map may
30 attach, extend to, and include all territory within [] miles of its corporate limits and not within the
31 corporate limits of any other municipality, provided, however, that no municipality shall exercise
32 such power outside its municipal boundaries without first transmitting to the governing body or
33 bodies of the county or counties affected at least one copy of the official map proposed to be

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1 applied thereto, and the map shall not take legal effect until [30] days after the receipt of the
2 notification and map by the governing authority or authorities. At any time the governing body of
3 a county may supersede the jurisdiction and map in the area by the adoption of an official map.

4 *Section 13. Separability.* (Insert separability clause.)

5 *Section 14. Effective Date.* (Insert effective date.)

PLANNED UNIT DEVELOPMENT¹

State legislative authorization for local governments to adopt “planned unit development” regulations is one approach to implementing State and local urban growth policies. Such legislation is particularly useful for encouraging local land-use and development programs that emphasize large-scale development.

The major distinguishing characteristics of the planned unit development technique (PUD) are that it combines zoning, subdivision control and other land-use procedures to allow a developer more design flexibility while replacing the traditional, rigid, limited-use zoning districting standards with broad general standards and with detailed administrative review and approval of specific plans. PUD is particularly appropriate for application in developing areas. Lot-by-lot regulation under existing zoning procedures may be adequate for controlling development in built-up areas, since it is designed primarily to prevent the use of one lot from injuring the present or future use of an adjoining lot. Such regulation is probably inappropriate and unduly restrictive, however, for areas where development of all lots occurs at approximately the same time and is done by a single party. The PUD approach allows the use of innovative, efficient, and topographically-suited site and building patterns including mixed housing types and mixed uses where these can be accomplished in a healthy, wholesome, and attractive manner.

About half a dozen States specifically authorize the adoption of the PUD approach or one of its variants. In a number of other States existing zoning, subdivision control, and other land use and development regulations appear to permit the use of the PUD on the initiative of at least some of the local governments.

The following draft legislation is based in large part on Chapter 61, Laws 1967 of New Jersey, and a proposal in the 1968 Virginia General Assembly (Senate Bill No. 455.) These closely follow a model statute contained in a study prepared for the Urban Land Institute and the National Association of Home Builders in 1965.²

The draft legislation supplements municipal zoning and subdivision regulation ordinances. Once adopted, the legislation can be codified as part of the enabling legislation on planning, zoning, and subdivision regulation. In that form, the specific PUD provisions might well be covered in existing planning, zoning, and subdivision legislation.

While the statute gives municipalities authority to establish PUDs, it can be adapted to make the authority available to counties in those States where counties exercise zoning and subdivision regulation control.

Section 1 states the purposes, including the encouragement of new communities, innovation in design and layout, and more efficient use of land. Section 2 establishes the procedure whereby a municipality may use the power given it under the act. Section 3 deals with definitions.

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.

²Urban Land Institute, *Legal Aspects of Planned Unit Residential Development*, Technical Bulletin 52, A Land Use Study prepared for National Association of Home Builders and Urban Land Institute (1965).

Section 4 requires the municipal ordinance to set forth standards and conditions by which a proposed PUD shall be evaluated, and permits the municipal instrumentality to issue rules and regulations to supplement the standards and conditions. Both the standards and conditions and the rules and regulations must be consistent with prescribed requirements as to permitted uses, residential density, common open space, minimum number of dwelling units, public facilities, and criteria by which the design, bulk and location of buildings shall be evaluated. All standards and conditions must be set forth in the ordinance with sufficient certainty to protect the public and provide reasonable yardsticks by which specific proposals for a PUD can be measured. Permitted uses include various kinds of dwelling units, nonresidential uses, educational facilities, and industrial uses and buildings. Residential density requirements are permitted to vary over the various geographic sections of the PUD; in fact, they are expected to differ from density standards under the municipality's conventional zoning ordinance. The variation is subject, however, to an assurance that both the overall density and the quantity of open space is maintained. Thus, the flexibility desired must be balanced against protection of the public interest.

Subsection (c) on common open space deals in detail with public dedication, failure of a private organization to maintain the open space properly, and finally the cost of maintenance.

Subsection (d) requires the property to contain a minimum number of dwelling units or commercial or industrial uses. Some minimum must be established so that the municipality is not overburdened with proposed PUDs dealing with small pieces of property that really resemble the traditional "variance" and are better handled by a variance under the traditional provisions of the zoning ordinance.

Subsection (e) incorporates the municipality's authority to establish standards governing public facilities that appear under the conventional subdivision statute. Since these customary standards assume uniform residential type and density, however, this paragraph permits the standards for a PUD to vary from those standards, provided that limits are set on the degree of modification.

Section 5 emphasizes that the residents of the development and the public both have a mutual interest in preservation of the plan and in necessary modifications of the plan. It deals with the delicate balance between the respective rights of the municipality and of the residents to enforce and to modify provisions of the plan. The four paragraphs preserve the traditional relationship between public regulations and private agreements affecting land use.

Most of the remaining sections of the statute deal with procedural steps in the application for tentative and final approval of the PUD and judicial review. Some States may consider it desirable to leave these procedures – with the exception of judicial review – to be spelled out by ordinance rather than statute. In that case the applicable remaining sections could be used in drafting a local ordinance.

Section 6 vests decision-making on PUDs in one administrative agency. There is no reason why the same procedure should not be followed in traditional development, instead of the usual scattering of responsibility, but in the case of planned developments the need for consolidation is absolutely essential. The requirement in subsection (b) that a copy of the plan and application be filed with the State planning agency recognizes the State government's basic interest in urban development.

Subsection (d) is intended to forbid municipal requirements for information which is irrelevant and often costly at a stage when the developer does not have any official indication of attitude toward his proposal. The provision in subsection (e) that the developer indicate in writing the reasons a PUD would be in the public interest and consistent with municipal objectives should induce him to make a complete and

logical presentation of the plan at the required public hearing. In addition, the required findings (Section 8) by the municipality may thereby be more responsive to the developer's position.

Section 7 requires a public hearing on the application for a PUD, following the procedure required for amendments to a zoning ordinance, except that special notice must be given to adjoining municipalities where the proposed development is near to them; and to adjoining municipalities, the county planning agency and the State planning agency when the development exceeds a certain minimum size.

The main purpose of Section 8 is to require the municipality to state its reasons for approving or disapproving an application for tentative approval. If pre-regulation (i.e., precise controls) is incompatible with flexibility, then the best method for testing the quality of fairness and equal treatment at the local level is to compel the local authority to explain its decision. In addition, this section recognizes that approval with conditions is likely to be the most frequent result and the mechanics of such an equivocal posture have to be provided in the statute.

Section 9 delineates the rights and duties of the developer and the municipality for the period between tentative approval and final approval. The developer is assured that the municipality will not change its mind pending his request for final approval.

Section 10 attempts to deal with the critical problem of changes occurring in the plan between tentative and final approval. The developer is entitled to know what to expect if he does make a substantial change; neighboring property owners are entitled to know if a substantial change is contemplated at the time of final approval. The municipality needs a guide to proper action so that it cannot be charged with quibbling in order to avoid a decision on final approval. Although the definition of "substantial compliance" is designed to specify the limits of modification without further hearing, the developer must still show that his suggested variations are necessary.

Section 11 provides that any decision of the municipality on the granting or modification of a tentative approval of a plan is subject to the same judicial review as in the case of individual rezoning applications.

Suggested State Legislation

[Title should conform to State requirements. The following is a suggestion: "An Act authorizing municipalities to provide for planned unit developments."]

1 (Be it enacted, etc.)

2 *Section 1. Purposes.* The purposes of this act are to:

3 (1) Further the public health, safety, and general welfare in an era of increasing urbanization and
4 of growing demand for housing of all types and design;

5 (2) Provide for necessary commercial and educational facilities conveniently located to such
6 housing;

7 (3) Provide for well located, clean, safe, pleasant industrial sites involving a minimum of strain
8 on transportation facilities;

1 (4) Encourage the planning and building of new communities incorporating the best features of
2 modern design;

3 (5) Insure that the provisions of [cite appropriate statutes] , which direct the uniform treatment
4 of dwelling type, bulk, density and open space within each zoning district, shall not be applied to the
5 improvement of land by other than lot by lot development in a manner that would distort the objec-
6 tives of [that statute] ;

7 (6) Encourage innovations in residential, commercial and industrial development and renewal
8 so that the growing demands of the population may be met by greater variety in type, design and lay-
9 out of buildings and by the conservation and more efficient use of open space ancillary to said build-
10 ings, so that greater opportunities for better housing and recreation, shops and industrial plants con-
11 veniently located to each other may extend to all citizens and residents of this state;

12 (7) Encourage a more efficient use of land and of public services, or private services in lieu
13 thereof, and to reflect changes in the technology of land development so that resulting economies
14 may enure to the benefit of those who need homes;

15 (8) Lessen the burden of traffic on streets and highways;

16 (9) Provide a procedure which can relate the type, design and layout of residential, commercial
17 and industrial development to the particular site and the particular demand for housing and other fa-
18 cilities at the time of development in a manner consistent with the preservation of the property values
19 within established residential areas; and

20 (10) Insure that the increased flexibility of substantive regulations over land development
21 authorized herein is subject to such administrative standards and procedures as shall encourage the
22 disposition of proposals for land development without undue delay.

23 *Section 2. Application of Statute.* All municipalities are granted the powers set forth in this
24 act, but these powers shall be exercised only by a municipality which enacts an ordinance that:

25 (1) Refers to this act;

26 (2) Includes a statement of objectives for planned unit development, as herein defined;

27 (3) Designates the local agency which shall exercise the powers of the municipal authority, as
28 herein defined;

29 (4) Sets forth the standards for a planned unit development consistent with the provisions of
30 section 3 hereof; and

31 (5) Sets forth the procedures pertaining to the application for, hearing on and tentative and
32 final approval of a planned unit development, consistent with sections 5 through 9 of this act.

1 The enactment of an ordinance pursuant to the powers granted herein, and the enactment of
2 an amendment thereto, shall be in accordance with the procedures required for the adoption of an
3 amendment to a zoning ordinance as provided in [cite appropriate statute].

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

5 (1) "Common open space" means a parcel or parcels of land or an area of water, or a combi-
6 nation of land and water within the site designated for a planned unit development, and designed and
7 intended for the common use or enjoyment of residents and owners of the planned unit development.
8 Common open space may contain complementary structures and improvements necessary and appropri-
9 ate for the benefit and enjoyment of residents and owners of the planned unit development.

10 (2) "Landowner" means the legal or beneficial owner or owners of all of the land proposed to
11 be included in a planned unit development. The holder of an option or contract to purchase, or other
12 person having an enforceable proprietary interest in such land, shall be deemed to be a landowner for
13 the purposes of this act.

14 (3) "Municipal authority" means the municipality's legislative body or any officer, board or
15 other body designated by it to administer the ordinance adopted pursuant to this act.

16 (4) "Plan" comprises the provisions for development of a planned unit development, including a
17 plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures,
18 intensity of use or density of development, private streets, ways and parking facilities, common open
19 space and public facilities. The phrase "provisions of the plan" shall mean the written and graphic
20 materials referred to in this definition.

21 (5) "Planned unit development" means an area of land, controlled by a landowner, to be de-
22 veloped as a single entity for a number of dwelling units, and commercial and industrial uses, if any,
23 the plan for which does not correspond in lot size, bulk or type of dwelling or commercial or in-
24 dustrial use, density, lot coverage and required open space to the regulations established in any one or
25 more districts created, from time to time, under the provisions of a municipal zoning ordinance en-
26 acted pursuant to [cite appropriate statute].

27 (6) "Statement of objectives for planned unit development" means a written statement of the
28 goals of the municipality with respect to land use for various purposes, density of population, direction
29 of growth, location and function of streets and other public facilities, and common open space for
30 recreation or visual benefit, or both, and such other factors as the municipality may find relevant in
31 determining whether a planned unit development shall be authorized.

32 *Section 4. Standards and Conditions for Planned Unit Development.* Every ordinance adopted pur-
33 suant to the provisions of this act shall set forth the standards and conditions by which a proposed planned

1 unit development shall be evaluated. The municipal authority may prescribe, from time to time, rules
2 and regulations to supplement the standards and conditions set forth in the ordinance provided (1) the
3 rules and regulations are not inconsistent with the ordinances, (2) the rules and regulations are placed
4 of public record, and (3) any amendment or change of the rules and regulations shall not apply to any
5 plan for which an application for tentative approval has been made prior to the placing of public
6 record of the amendment or change. The standards and conditions and all supplementary rules and
7 regulations established for a particular planned development authorized pursuant to the ordinance
8 shall not be inconsistent with the following provisions:

9 (a) Permitted uses may include and shall be limited to (1) dwelling units in detached, semi-
10 detached, or multi-storied structures, or any combination thereof; (2) any nonresidential use, to the
11 extent such nonresidential use is designed and intended to serve the residents of the planned unit de-
12 velopment, and such other uses as exist or may reasonably be expected to exist in the future; (3)
13 public and private educational facilities; and (4) industrial uses and buildings. An ordinance may
14 establish regulations setting forth the timing of development among the various types of uses and sub-
15 groups thereunder, and may specify whether some nonresidential uses are to be built before, after or
16 at the same time as the residential uses.

17 (b) (1) Standards governing the density, or intensity of land use, shall take into account that the
18 density, or intensity of land use, otherwise allowable on the site under the provisions of a zoning
19 ordinance previously enacted pursuant to [cite zoning enabling act] may not be appropriate for a
20 planned unit development. The standards may vary the density, or intensity of land use, otherwise
21 applicable to the land within the planned unit development in consideration of (i) the amount, lo-
22 cation and proposed use of common open space, (ii) the location and physical characteristics of the
23 site of the proposed planned unit development, and (iii) the location, design and type of dwelling units
24 and other uses.

25 (2) In the case of a planned unit development proposed to be developed over a period of years,
26 such standards may, to encourage the flexibility of housing density, design and type, authorize a de-
27 viation in each section to be developed from the density, or intensity of use, established for the entire
28 planned unit development. The ordinance may authorize the municipal authority to allow for a
29 greater concentration of density, or intensity of land use, within some section or sections of the de-
30 velopment, whether it be earlier or later in the development, than upon others. The ordinance may
31 require that the approval by the municipal authority of a greater concentration of density or intensity
32 of land use for any section to be developed be offset by a smaller concentration in any completed
33 prior stage or by an appropriate reservation of common open space on the remaining land by a grant of

1 easement or by covenant in favor of the municipality, provided that such reservation shall, as far as
2 practicable, defer the precise location of the common open space until an application for final approval
3 is filed, so that flexibility of development which is a prime objective of this act can be maintained.

4 (c) The standards shall require that any common open space resulting from the application of
5 standards for density, or intensity of land use, be set aside for the use and benefit of the residents in
6 such development and shall include provisions by which the amount and location of any common
7 open space shall be determined and its improvement and maintenance for common open space use be
8 secured, subject, however, to the following:

9 (1) The ordinance may provide that the municipality may, at any time and from time to time,
10 accept the dedication of land or any interest therein for public use and maintenance, but the ordinance
11 shall not require, as a condition of the approval of a planned unit development, that land proposed to
12 be set aside for common open space be dedicated or made available to public use. The ordinance may
13 require that the landowner provide for and establish an organization for the ownership and mainte-
14 nance of any common open space for the benefit of residents of the development, and that for a period
15 of not less than 20 years, such organization shall not be dissolved nor shall it dispose of any common
16 open space, by sale or otherwise, except to an organization conceived and established to own and
17 maintain the common open space for the benefit of such development, and that thereafter such or-
18 ganization shall not be dissolved nor shall it dispose of any of its open space without first offering to
19 dedicate the same to the municipality or any other government agency.

20 (2) If the organization established to own and maintain common open space, or any successor
21 organization, at any time after establishment of the planned unit development fails to maintain the
22 common open space in reasonable order and condition in accordance with the plan, the municipality
23 may serve written notice upon such organization or upon the residents and owners of the planned unit
24 development setting forth the manner in which the organization has failed to maintain the common
25 open space in reasonable condition. The notice shall include a demand that such deficiencies of
26 maintenance be cured within [30] days thereof, and shall state the date and place of a hearing thereon
27 which shall be held within [14] days of the notice. At the hearing the municipality may modify the
28 terms of the original notice as to the deficiencies and may give an extension of time within which they
29 shall be cured. If the deficiencies set forth in the original notice or modifications are not corrected
30 within the [30] days or any extension thereof, the municipality may enter upon the common open
31 space and maintain it for a period of [1 year]. The entry and maintenance shall not vest in the public
32 any rights to use the common open space except when it is voluntarily dedicated to the public by the
33 owners. Before the expiration of the [year], the municipality shall, upon its initiative or upon the

1 request of the organization theretofore responsible for the maintenance of the common open space,
2 call a public hearing upon notice to the organization, or to the residents of the planned unit develop-
3 ment, to be held by the municipal authority, at which hearing the organization or the residents of the
4 planned unit development shall show cause why maintenance by the municipality shall not, at the
5 election of the municipality, continue for a succeeding [year] . If the municipal authority determines
6 that the organization is ready and able to maintain the common open space in reasonable condition,
7 the municipality shall cease to maintain the common open space at the end of the [year] . If the
8 municipal authority determines that the organization is not ready and able to maintain the common
9 open space in a reasonable condition, the municipality may continue to maintain the common open
10 space during the next succeeding [year] and subject to a similar hearing and determination, in each
11 [year] thereafter. The decision of the municipal authority in any such case shall constitute a final
12 administrative decision reviewable in accordance with the provisions applicable to appeals on in-
13 dividual rezoning applications.

14 (3) The cost of the maintenance by the municipality shall be assessed ratably against the prop-
15 erties within the planned unit development that have a right of enjoyment of the common open space,
16 and shall become a tax lien on the properties. The municipality, at the time of entering upon the
17 common open space for the purpose of maintenance, shall file a notice of such lien in the manner pro-
18 vided by law upon the properties affected by such lien within the planned unit development.

19 (d) No planned unit shall be authorized that contains less than [5] dwelling units, or less than
20 [5] commercial uses, or [3] industrial uses, singly or in combination.

21 (e) The authority granted to a municipality to establish standards for the location, width,
22 course and surfacing of public streets and highways, alleys, ways for public service facilities, curbs,
23 gutters, sidewalks, street lights, parks, playgrounds, school grounds, storm water drainage, water
24 supply and distribution, sanitary sewers and sewage collection and treatment, shall be vested in the
25 municipal authority for the purposes of this act. The standards applicable to a planned unit develop-
26 ment may be different than, or modifications of, the standards and conditions otherwise required of
27 subdivisions authorized under a subdivision control ordinance of the municipality; provided however,
28 that an ordinance adopted pursuant to this act shall set forth the limits and extent of any modifi-
29 cations or changes in such standards and conditions in order that a landowner may know the limits and
30 extent of permissible modifications from the standards otherwise applicable to subdivisions. The limits
31 of modification or change established in an ordinance adopted pursuant to this act as well as the de-
32 gree of modification or change within the limits authorized in a particular case by the municipal
33 authority shall take into account that the standards and conditions established in the subdivision control

1 ordinance of the municipality may not be appropriate or necessary for land development of the type
2 or design contemplated by this act or for the planning and creation of a planned community.

3 (f) An ordinance adopted pursuant to this act shall set forth the standards and criteria by which
4 the design, bulk and location of buildings shall be evaluated. All standards and criteria for any feature
5 of a planned unit development shall be set forth with sufficient certainty to protect the public interest
6 and provide reasonable criteria by which specific proposals for a planned unit development can be
7 evaluated. All standards in the ordinance shall not unreasonably restrict the ability of the landowner
8 to relate the plan to the particular site and to the particular demand for housing, commercial or in-
9 dustrial users existing at the time of development.

10 *Section 5. Enforcement and Modification of Provisions of the Plan.* (a) The provisions of the
11 plan relating to (1) the use of land and the use, bulk and location of buildings and structures, (2) the
12 quantity and location of common open space, except as provided in section 4 hereof, and (3) the in-
13 tensity of use of the density of residential units, shall run in favor of the municipality and shall be
14 enforceable in law or in equity by the municipality, without limitation on any powers or regulation
15 otherwise granted the municipality by law.

16 (b) All provisions of the plan shall run in favor of the residents and owners of the planned
17 community, but only to the extent expressly provided in the plan and in accordance with the terms
18 of the plan. To that extent the provisions, whether recorded by plat, covenant, easement or other-
19 wise, may be enforced at law or equity by the residents and owners, acting individually, jointly, or
20 through an organization designated in the plan to act on their behalf; provided, however, that no
21 provision of the plan shall be implied to exist in favor of residents and owners of the planned unit
22 development except as to those portions of the plan which have been finally approved and have
23 been recorded.

24 (c) All those provisions of the plan authorized to be enforced by the municipality under sub-
25 section (a) of this section may be modified, removed or released by the municipality (except grants or
26 easements relating to the service or equipment of a public utility unless expressly consented to by the
27 public utility), subject to the following conditions;

28 (1) No such modification, removal or release of the provisions of the plan by the municipality
29 shall affect the rights of the residents and owners of the planned unit development to maintain and en-
30 force those provisions, at law or equity, as provided in subsection (b) of this section;

31 (2) No modification, removal or release of the provisions of the plan by the municipality shall
32 be permitted except upon a finding by the municipal authority, following a public hearing called and
33 held in accordance with the provisions of section 7 of this act, that the same is consistent with the

1 efficient development and preservation of the entire planned unit development, does not adversely
 2 effect either the enjoyment of land abutting upon or across a street from the planned unit develop-
 3 ment or the public interest, and is not granted solely to confer a special benefit upon any person.

4 (d) Residents and owners of the planned unit development may, to the extent and in the
 5 manner expressly authorized by the provisions of the plan, modify, remove or release their rights to
 6 enforce the provisions of the plan but no such action shall affect the right of the municipality to en-
 7 force the provisions of the plan in accordance with the provisions of subsection (a) of this section.¹

8 *Section 6. Application for Tentative Approval of Planned Unit Development.* It is hereby de-
 9 clared to be in the public interest that all procedures with respect to the approval or disapproval of a
 10 plan for a planned unit development, and the continuing administration thereof shall be consistent
 11 with the following provisions:

12 (a) An application for tentative approval of the plan for a planned unit development shall be
 13 filed by or on behalf of the landowner;

14 (b) The application for tentative approval shall be filed by the landowner in such form, upon
 15 the payment of such a reasonable fee and with such official of the municipality as shall be designated
 16 in the ordinance adopted pursuant to this act, and a copy of the plan and application shall be for-
 17 warded to the [state planning agency];

18 (c) All planning, zoning and subdivision matters relating to the platting, use and development of
 19 the planned unit development and subsequent modifications of the regulations relating thereto, to the
 20 extent such modification is vested in the municipality, shall be determined and established by the
 21 municipal authority;

22 (d) The ordinance shall require only such information in the application as is reasonably
 23 necessary to disclose to the municipal authority: (1) the location and size of the site and the nature of
 24 the landowner's interest in the land proposed to be developed; (2) the density of land use to be allo-
 25 cated to parts of the site to be developed; (3) the location and size of any common open space and the
 26 form of organization proposed to own and maintain any common open space; (4) the use and the
 27 approximate height, bulk and location of buildings and other structures; (5) the feasibility of pro-
 28 posals for the disposition of sanitary waste and storm water; (6) the substance of covenants, grants of
 29 easements or other restrictions proposed to be imposed upon the use of the land, buildings and

¹Most of the remaining sections deal with procedural steps in applying for tentative and final approval of the PUD, and judicial review. Some States may wish to leave these procedures – with the exception of judicial review – to be spelled out by ordinance rather than statute. In that case the applicable remaining sections could be used in drafting a local ordinance.

1 structures, including proposed easements or grants for public utilities; (7) the provisions for parking of
 2 vehicles and the location and width of proposed streets and public ways; (8) the required modifi-
 3 cations in the municipal land use regulations otherwise applicable to the subject property; and (9) in
 4 the case of plans which call for development over a period of years, a schedule showing the proposed
 5 times within which applications for final approval of all sections of the planned unit development are
 6 intended to be filed;

7 (e) The application for tentative approval of a planned unit development shall include a written
 8 statement by the landowner setting forth the reasons why, in his opinion, a planned unit development
 9 would be in the public interest and would be consistent with the municipal statement of objectives on
 10 planned unit development; and

11 (f) The application for and tentative and final approval of a plan for a planned unit development
 12 prescribed in this act shall be in lieu of all other procedures or approvals otherwise required pursuant
 13 to zoning and subdivision control ordinances and regulations authorized to be adopted by the
 14 municipality.

15 *Section 7. Public Hearings.* (a) Within [45] days after the filing of an application pursuant to
 16 section 6, a public hearing on the application shall be held by the municipal authority, in accordance
 17 with procedures, including public notice, prescribed in [cite statute] for hearings on amendments to
 18 a zoning ordinance, except as provided in subsections (b) and (c).

19 (b) For an application involving property situated within [200] feet of an adjoining municipi-
 20 pality, notice shall be given to the municipal clerk of the municipality at least [20] days and not more
 21 than [30] days prior to the hearing.

22 (c) For an application involving over [300] acres, notice shall be given to the municipal clerk of
 23 each adjoining municipality, the [county planning agency] and the [state planning agency] at least
 24 [20] days and not more than [30] days prior to the hearing, for review and recommendations.

25 *Section 8. The Findings.* (a) The municipal authority shall, within [60] days following the
 26 conclusion of the public hearing, by written resolution either (1) grant tentative approval of the plan
 27 as submitted, (2) grant tentative approval subject to specified conditions not included in the plan as
 28 submitted, or (3) deny tentative approval to the plan. Failure of the municipal authority to so act
 29 within the period shall be deemed to be a grant of tentative approval of the plan as submitted. If
 30 tentative approval is granted, other than by lapse of time, either of the plan as submitted or of the
 31 plan with conditions, the municipal authority shall, as part of its resolution, specify the drawings,
 32 specifications and surety device that shall accompany an application for final approval. If tentative
 33 approval is granted subject to conditions, the landowner shall, within [45] days after receiving a copy

1 of the written resolution of the municipal authority, notify the municipal authority of his acceptance
2 of or his refusal to accept all the conditions. If the landowner refuses to accept all the conditions the
3 municipal authority shall be deemed to have denied tentative approval of the plan. If the landowner
4 does not, within the period, notify the municipal authority of his acceptance or refusal to accept all
5 the conditions, tentative approval of the plan, with all the conditions, shall stand as granted. Nothing
6 contained herein shall prevent the municipal authority and the landowner from mutually agreeing to a
7 change in the conditions, and the municipal authority may, at the request of the landowner extend the
8 time during which the landowner shall notify the authority of his acceptance or refusal to accept the
9 conditions.

10 (b) The grant or denial of tentative approval by written resolution shall include not only con-
11 clusions but also findings of fact related to the specific proposal and shall set forth the reasons for the
12 grant, with or without conditions, or for the denial, and the resolution shall set forth with particularity
13 in what respects the plan would or would not be in the public interest including but not limited to
14 findings of fact and conclusions on the following:

15 (1) In what respects the plan is or is not consistent with the statement of objectives of a planned
16 unit development;

17 (2) The extent to which the plan departs from zoning and subdivision regulations otherwise
18 applicable to the subject property, including but not limited to density, bulk and use, and the reasons
19 why such departures are or are not deemed to be in the public interest;

20 (3) The purpose, location and amount of the common open space in the planned unit develop-
21 ment, the reliability of the proposals for maintenance and conservation of the common open space,
22 and the adequacy or inadequacy of the amount and purpose of the common open space as related to
23 the proposed density and type of development;

24 (4) The physical design of the plan and the manner in which the design does or does not make
25 adequate provision for public services, provide adequate control over vehicular traffic, and further the
26 amenities of light and air, recreation and visual enjoyment;

27 (5) The relationship, beneficial or adverse, of the proposed planned unit development to the
28 neighborhood in which it is proposed to be established; and

29 (6) In the case of a plan which proposes development over a period of years, the sufficiency of
30 the terms and conditions intended to protect the interests of the public and of the residents and
31 owners of the planned unit development in the integrity of the plan.

32 (c) If a plan is granted tentative approval, with or without conditions, the municipal authority
33 shall set forth in the written resolution the time within which an application for final approval of the

1 plan shall be filed or, in the case of a plan which provides for development over a period of years, the
2 periods of time within which applications for final approval of each part thereof shall be filed. The
3 time so established between grant of tentative approval and an application for final approval shall not
4 be less than [3] months and, in the case of developments over a period of years, the time between
5 applications for final approval of each part of a plan shall be not less than [6] months; provided
6 nothing herein contained shall be construed to limit a landowner from the presentation of any appli-
7 cation for final approval earlier than the time period hereinabove set forth.

8 *Section 9. Status of Plan after Tentative Approval.* (a) Within [5] working days after the
9 adoption of the written resolution provided for in section 8, it shall be certified by the clerk of the
10 municipality and shall be filed in his office, and a certified copy shall be mailed to the landowner.
11 Where tentative approval has been granted, it shall be noted on the zoning map maintained in the
12 office of the clerk of the municipality.

13 (b) Tentative approval of a plan shall not qualify a plat of the planned unit development for
14 recording nor authorize development or the issuance of any building permits. A plan which has been
15 given tentative approval as submitted, or which has been given tentative approval with conditions
16 which have been accepted by the landowner (and provided that the landowner has not defaulted nor
17 violated any of the conditions of the tentative approval), shall not be modified, revoked or otherwise
18 impaired by action of the municipality pending an application or applications for final approval, with-
19 out the consent of the landowner, provided an application for final approval is filed or, in the case
20 of development over a period of years, provided applications are filed, within the periods of time
21 specified in the resolution granting tentative approval.

22 (c) If a plan is given tentative approval and thereafter, but prior to final approval, the land-
23 owner elects to abandon part or all of the plan and so notifies the municipal authority in writing, or
24 if the landowner fails to file application or applications for final approval within the required period of
25 time or times, as the case may be, the tentative approval shall be revoked and all that portion of the
26 area included in the plan for which final approval has not been given shall be subject to those local
27 ordinances applicable thereto, as they may be amended from time to time, and the same shall be
28 noted on the zoning map in the office of the clerk of the municipality and in the records of the clerk
29 of the municipality.

30 *Section 10. Application for Final Approval.* (a) An application for final approval may be for all
31 the land included in a plan or, to the extent set forth in the tentative approval, for a section thereof.
32 The application shall be made to the official of the municipality designated by the ordinance and
33 within the time or times specified by the resolution granting tentative approval. The application shall

1 include such drawings, specifications, covenants, easements, conditions and form of surety device
2 as were set forth by written resolution of the municipal authority at the time of tentative approval. A
3 public hearing on an application for final approval of the plan, or part thereof, shall not be required,
4 provided the plan, or the part thereof, submitted for final approval, is in substantial compliance with
5 the plan theretofore given tentative approval.

6 (b) A plan submitted for final approval shall be deemed to be in substantial compliance with
7 the plan previously given tentative approval provided any modification by the landowner of the plan
8 as tentatively approved does not: (1) vary the proposed gross residential density or intensity of use by
9 more than [5] % nor (2) involve a reduction of the area set aside for common open space nor the
10 substantial relocation of such area; nor (3) increase by more than [10] % the floor area proposed for
11 nonresidential use; nor (4) increase by more than [5] % the total ground areas covered by buildings
12 nor involve a substantial change in the height of buildings. A public hearing shall not be held to
13 consider modifications in the location and design of streets or facilities for water and for disposal of
14 storm water and sanitary sewerage.

15 (c) A public hearing shall not be held on an application for final approval of a plan when the
16 plan as submitted for final approval is in substantial compliance with the plan as tentatively approved.
17 The burden shall be upon the landowner to show the municipal authority good cause for any
18 variation between the plan as tentatively approved and the plan as submitted for final approval. If a
19 public hearing is not required for final approval, and the application for final approval has been filed,
20 together with all drawings, specifications and other documents in support thereof, and as required by
21 the resolution of tentative approval, the municipality shall, within [45] days of the filing, grant the
22 plan final approval; provided, however, that, if the plan as submitted contains variations from the
23 plan given tentative approval but remains in substantial compliance with the plan as submitted for
24 tentative approval, the municipal authority may after a meeting with the landowner, refuse to grant
25 final approval and shall, within [45] days from the filing of the application for final approval, so
26 advise the landowner in writing of the refusal, setting forth in the notice the reasons why one or more
27 of said variations are not in the public interest. If the authority refuses approval, the landowner may
28 (1) file his application for final approval without the variations objected to by the municipal authority
29 on or before the last day of the time within which he was authorized by the resolution granting
30 tentative approval to file for final approval, or within [30] days from the date he received notice of the
31 refusal, whichever date shall last occur; or (2) treat the refusal as a denial of final approval and so
32 notify the municipal authority.

33 (d) If the plan as submitted for final approval is not in substantial compliance with the plan as

1 given tentative approval, the municipal authority shall, within [45] days of the date the application
2 for final approval is filed, so notify the landowner in writing setting forth the particular ways in which
3 the plan is not in substantial compliance. The landowner may: (1) treat the notification as a denial of
4 final approval; or (2) refile his plan in a form which is in sub-substantial compliance with the plan as
5 tentatively approved; or (3) file a written request with the municipal authority that it hold a public
6 hearing on his application for final approval. If the landowner shall elect either alternative (2) or (3)
7 above he may refile his plan or file a request for a public hearing, as the case may be, on or before the
8 last day of the time within which he was authorized by the resolution granting tentative approval to
9 file for final approval, or [30] days from the date he receives notice of the refusal, whichever date
10 shall last occur. Any such public hearing shall be held within [30] days after request for the hearing
11 is made by the landowner, and notice thereof shall be given and the hearings shall be conducted in the
12 manner prescribed in section 7 of this act. Within [45] days after the conclusion of the hearing, the
13 municipal authority shall by resolution either grant final approval to the plan or deny final approval
14 to the plan. The grant or denial of final approval of the plan shall, in cases arising under this sub-
15 section (d) be in the form and contain the findings required for a resolution on an application for
16 tentative approval set forth in section 8 of this act.

17 (e) If the municipal authority fails to act, either by grant or denial of final approval of the plan
18 within the time prescribed the landowner may, after [20] days' written notice to the municipal
19 authority, file a complaint in the [appropriate court], and upon showing that the municipal authority
20 has failed to act either within the time prescribed, or subsequent to the receipt of the written notice
21 provided for in this subsection (e) and that the landowner has complied with the procedures set forth
22 in this section, the plan shall be deemed to have been finally approved and the court shall, upon a
23 summary proceeding, enter an order directing the county clerk to record the plan as submitted for
24 final approval without the approval of the municipal authority. A plan so recorded shall have the
25 same force and effect as though it had been given final approval by the municipal authority.

26 (f) A plan, or any part thereof, which has been given final approval by the municipal authority
27 shall be so certified without delay by the clerk of the municipality and shall be filed of record forth-
28 with in the office of the county clerk before any development shall take place in accordance therewith.
29 Upon the filing of record of the plan all other ordinances and subdivision regulations otherwise
30 applicable to the land included in the plan shall cease to apply thereto. Pending completion within [5]
31 years of said planned unit development or of that part thereof, as the case may be, that has been
32 finally approved, no modification of the provisions of the plan, or part thereof, as finally approved,
33 shall be made nor shall it be impaired by act of the municipality, except with the consent of the landowner.

1 (g) If a plan, or a section thereof, is given final approval and thereafter the landowner shall
2 abandon the plan or the section thereof that has been finally approved, and shall so notify the
3 municipal authority in writing; or, if the landowner shall fail to commence the planned unit develop-
4 ment within [18] months after final approval has been granted, then such final approval shall termi-
5 nate and be deemed null and void unless such time period is extended by the municipal authority upon
6 written application of the landowner.

7 *Section 11. Judicial Review.* Any decision of the municipal authority under this act granting or
8 denying tentative approval of a plan or authorizing or refusing to authorize a modification in a plan
9 shall be deemed to be a final administrative decision and shall be subject to judicial review in the
10 manner provided by law for individual rezoning applications.

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

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

MANDATORY DEDICATION OF PARK AND SCHOOL SITES¹

In most States enabling legislation governing the creation of subdivision development authorizes local governments to adopt reasonable regulations requiring developers to provide adequate streets, curbs, gutters, sidewalks, sewer lines, water lines, and storm drainage facilities to service their own subdivisions. To some extent this is a method – analogous to a special assessment – of recouping the cost of local facilities whose benefits can be directly attributed to the immediate area.

Mandatory dedication provisions have been much less frequently applied to land or open space, park and recreation areas, and school sites. It is now generally recognized, however, that these types of land are a vital feature of sound subdivision design and are as necessary for guiding future urban growth as the provision of physical facilities, such as streets and sewers, and that in the case of large subdivisions, these amenities are primarily attributable to the residents of the subdivision rather than the community as a whole. For their part, some developers have found that provision of such “extras” as parks and school sites results in larger returns on their investment. A number of States have therefore amended subdivision control enabling legislation to include authorization for local governments to make reasonable provisions for open space, recreation, and school site land and to require dedication by the developers.

One difficulty in administering such a provision is that small developments frequently will not include enough total land to warrant dedication of a parcel of useable size, or will not include enough desirably located land. In the interest of equity, provision must therefore be made for payment-in-lieu of dedication at the local jurisdiction’s option.

Requiring dedication or an in-lieu payment will relieve local governments of pressure to bargain with developers for dedication of land for open space, parks, and school sites. Such bargaining can lead localities to permit higher density land uses, without the safeguards embodied in some of the modern flexible zoning techniques, such as cluster zoning and planned unit developments.

The following suggested legislation is based on a bill introduced in the Virginia General Assembly to revise the planning, subdivision and zoning law for urbanizing counties. It is framed as an amendment to existing legislation authorizing local subdivision regulation. It should be noted that the mandatory dedication provisions of this proposed ordinance are not intended to apply to subdivisions meeting required standards of planned unit development ordinances.

The first section authorizes mandatory dedication of a “reasonable” amount of land, with provision for an upper limit on the amount that may be required. Dedication is limited to areas subject to approved park and school site plans. Regulations must set standards for determining the amount of land required, and certain bases for these standards are specified, including the number and type of dwellings in the development. The locality is authorized to select the location of the land to be dedicated, but must take into account differences in market value of property that may be included in any dedication.

The second section provides for payment-in-lieu of dedication, and requires that the implementing regulations enumerate standards to be applied in deciding when it is not in the public interest to accept

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.

payment-in-lieu. Since the purpose is to acquire appropriately located land for neighborhood public purposes, a developer should not be able to “buy out” of his obligation at will. The payment-in-lieu approach should be used only when a development is not large enough or when there is no satisfactory site within the development.

The draft legislation contemplates that the school and park functions are performed within the same geographical jurisdiction as the municipality or county exercising the mandatory dedication authority. In those cases where the boundaries are not coextensive, it will be necessary to assure that the same standards apply throughout the jurisdiction of the school or park district. Otherwise there will be inequitable variations among property owners of the school or park district as to the degree they share in the total school and park site acquisition costs. They will share equitably in such costs financed out of general taxes but inequitably in “tax equivalents” – the cost of the dedications that the developer passes on to the buyer in the selling price. The problem might be met by requiring all counties or municipalities having jurisdiction within the district to adopt a single set of standards by interlocal agreement. Appropriate language to establish this requirement is included in brackets as the last section of the proposed statute.

A problem of equity also arises between property owners who were in the school or park district before initiation of the mandatory dedication requirement and those who came in afterwards. The latter will in effect be assessed a special assessment for a local improvement of the kind that formerly was financed on a general revenue basis. This kind of inequity occurs in the introduction of any new policy that shifts the basis of financing in this way, however, and it is probably not feasible to avoid or overcome it.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: “Amendment to state legislation authorizing counties and municipalities to exercise subdivision regulation powers.”]

(Be it enacted, etc.)

1 **Section 1.** [Appropriate citation to existing subdivision regulation law] is hereby amended by
2 adding the following new sections at the end thereof:

3 **Section [].** *Dedication of School, Park and Playground Sites.* For those portions of [mu-
4 nicipalities, counties] for which plans for future sites for schools and parks and playgrounds have
5 been adopted and published pursuant to [cite local planning enabling statute], the [governing body]
6 may by resolution or ordinance include, as a part of the [municipality’s, county’s] subdivision control
7 regulations, requirements that a subdivider of land dedicate such land areas, sites and locations for
8 school, park and playground purposes as are reasonably necessary to service the proposed subdivision
9 and the future residents thereof, but in no case more than [] percent of the gross area of the pro-
10 posed subdivision. The regulations may provide that the dedication shall be a condition precedent to
11 the approval of any subdivision plat. They shall set forth the standards to be applied in determining
12

1 the amount of land that is required to be dedicated. These standards shall be based upon the number
2 and type of dwelling units or structures to be included in each subdivision. The standards shall also
3 be based upon studies and surveys conducted by the [municipality, county] in order to determine the
4 need, if any, for school, park and playground sites generated by existing subdivisions within the
5 [municipality, county] containing various types of dwelling units or structures.

6 The regulations may also provide that the [municipality, county], or a designated department
7 or agency thereof, shall have the authority to select the location of land areas to be dedicated for
8 school, park and playground purposes. If such authority is exercised, the dedication provision shall
9 take into consideration variations in the relative desirability and market value of the land that may
10 be included within the area of any particular, proposed subdivision.¹

11 *Section []. Payment in Lieu of Dedication.* When the [governing body] adopts regulations
12 requiring a subdivider to dedicate school, park and playground sites, as authorized by section [the
13 preceding section], it may also adopt, as a part of the [municipality's, county's] subdivision control
14 regulations, provisions requiring a subdivider, in lieu of dedicating the sites, to pay to the [municipality, county]
15 a sum of money equal to the value of land that would otherwise be required to be
16 dedicated for school, park and playground purposes, whenever the department or agency charged
17 with administering the dedication provisions determines that it would not be in the public interest

¹The legislature may wish to spell out the procedure for adjusting the area of land dedicated to the varying value of property throughout the subdivision. Following is one suggestion:

Such consideration shall be in the form of provisions that adjust the total amount of land that may be required to be dedicated in accordance with the value of the particular land area or areas selected for dedication as opposed to the average per acre or other unit value of all land within the proposed subdivision, in accordance with the following formula:

$$\frac{\text{Average value (per acre or other unit) of all land within the subdivision}}{\text{Average value (per acre or other unit) of the land selected for dedication}} = \frac{\text{"x"}}{\text{Number of acres (or other units of land) required to be dedicated under standards relating to number and type of dwelling units or structures}}$$

where "x" equals the total amount of land that may be required to be dedicated.

1 to accept the dedication in connection with a particular proposed subdivision.¹ The provisions shall
 2 enumerate the standards to be applied in determining when it is not in the public interest to accept
 3 the dedication and shall provide for the manner of making payment. All funds so received shall be
 4 held by the [municipality, county], or a designated department or agency thereof, in a special ac-
 5 count, and shall be applied and used by the [municipality, county] to acquire school, park and play-
 6 ground sites for the benefit of the residents of the subdivision for which the payment was made.
 7 Provisions may be adopted establishing standards for the application and use of the funds in accord-
 8 ance with the foregoing limitation. The provisions may also provide that the payment in lieu of
 9 dedication shall be a condition precedent to the approval of any subdivision plat, or may provide
 10 that the payment be deferred or made in installments following approval of a subdivision plat, or
 11 may provide that the payment be deferred or made in installments following approval of a subdivision
 12 plat upon the subdivider's posting of a good and sufficient surety bond guaranteeing the payment.

13 *[Section []]. Certification of Standards by School and Park Districts.* When the boundaries
 14 of the [municipality, county] do not coincide with those of the [school district] [park district] re-
 15 sponsible for administering the school and park programs, the governing body of the [municipality]
 16 [county] shall refer the standards required by [the preceding two sections] to the [school district]
 17 [park district] in which the proposed subdivision is located. The standards shall not be effective
 18 until the [school district [] park district] certifies, pursuant to procedures set forth in an interlocal
 19 agreement, that they are the same as those prevailing throughout the jurisdiction of the [school
 20 district] [park district].]

21 *Section 2. Separability.* [Insert separability clause.]

22 *Section 3. Effective Date.* [Insert effective date.]

¹The legislature may consider it desirable to specify the procedure for determining the amount of the in-lieu payment. Following is a possible approach:

Where a fee is required to be paid in lieu of land dedication, the amount of such fee shall be based on the average price per acre which the [school board] and the [park authority] would be required to pay for an amount of land equivalent to that which the subdivider or developer would otherwise be required to dedicate, pursuant to section [] hereof. The average price per acre used to calculate the fee shall be established annually by the [school board] and the [park authority], subject to [governing body's] approval, based on their best knowledge of trends in site costs, and such price shall be applied [municipal-, county-] wide. The average price per acre used to establish the fee for the current calendar year shall be that for land to be purchased in the following calendar year. An appropriate schedule of fees shall be published in the [planning agency], subject to the approval by the [governing body], and shall become effective January 1. This schedule of fees shall be reviewed annually and revised as necessary.

STATE AID FOR MASS TRANSPORTATION¹

The public cost of acquiring, modernizing, and expanding mass transportation facilities can be counted in the billions of dollars. Among the largest metropolitan areas, only five have rail mass transit facilities (Boston, Chicago, Cleveland, Philadelphia and New York). The San Francisco metropolitan area in 1969 is now constructing a rapid transit system that will cost well over \$1 billion when it is completed, and the cost of the proposed rapid transit system for the Washington, D.C. metropolitan area is projected at \$2½ billion. Other large cities, including Atlanta, Baltimore, Los Angeles and Seattle are currently considering or going ahead with the construction of rail transit systems.

Although a substantial portion of the funds that will be needed for mass transportation facilities will necessarily come from local sources—mainly bond issues of municipalities, urban counties, and local area-wide transit districts and authorities—and some funds are now available from the U.S. Department of Transportation, financial aid will also have to come from the States. Several States are now recognizing the need to provide substantial assistance to urban mass transportation facilities. The other urban States will have to devote some of their bonding capacity and tax resources to the solution of the urban transportation crisis, in partnership with their localities and the Federal Government.

The States have a traditional responsibility for assuring that adequate arrangements exist for the provision of basic local governmental services, and can play a key role in meeting existing and emerging metropolitan mass transportation needs. State policies with respect to taxation of transportation properties and the regulation of transportation rates and service have an important bearing upon the ability of private and public enterprise to provide adequate mass transportation service to metropolitan area residents. State government is in a strong position to help resolve problems among conflicting local jurisdictions in providing coordinated mass transportation facilities and supporting adequate transportation planning on an areawide basis. Finally, the stability of many urban areas, and the effective use of State funds for public works, housing, education and health may be jeopardized by the deterioration or inadequate provision of urban transportation facilities and services.

For these reasons, States should take legislative and administrative action to extend technical and financial assistance to their metropolitan areas for the planning and administration of mass transportation facilities and services and for the acquisition and construction of such facilities.

To provide legislative authority for the provision of such services, the following draft legislation would authorize the establishment or designation of an agency of the State government (1) to advise and assist the Governor and the legislature in the formulation of over-all mass transportation policies and plans, (2) make necessary studies and render technical assistance to local governments, (3) consult with the appropriate State, local and private officials carrying out programs affecting mass transportation, (4) participate in regulatory proceedings affecting mass transportation, (5) develop proposals for retaining urban and commuter transportation facilities, and (6) administer a program of financial assistance to local governments for the acquisition and construction of mass transportation facilities.

¹ Replaces previous suggested legislation, "Mass Transportation in Metropolitan Areas" contained in earlier editions of ACIR's *State Legislative Program*.

The draft bill establishes a program of State aid for mass transportation capital projects and authorizes urban localities to acquire, construct and operate such projects and to participate in State and Federal mass transit grant programs. It also authorizes localities to subsidize privately-owned and operated mass transportation facilities.

The text of the suggested legislation is based in part on the provisions of Chapter 16, Laws of 1959 and Chapter 717, Laws of 1967, State of New York.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to extend state technical and financial assistance to metropolitan areas for planning, development and administration of mass transportation facilities and services, and to provide financial assistance for the acquisition and construction of mass transportation facilities."]

(Be it enacted, etc.)

- 1 **Section 1. Purpose.** The legislature finds that:
- 2 (1) adequate and efficient mass transportation services are essential to the economic growth
- 3 of the urban communities of the state and the well-being of its people;
- 4 (2) the state should have a general mass transportation policy growing from consultation
- 5 among the various departments and agencies of the state, and with the communities of the state,
- 6 neighboring states and the federal government;
- 7 (3) financial and technical assistance should be provided to the urban communities of the
- 8 state with respect to organizing and financing adequate mass transportation facilities and services;
- 9 (4) financial assistance should be provided for the acquisition and construction of mass transit
- 10 facilities; and
- 11 (5) responsibility for leadership and direction should be vested in an agency of the state to
- 12 assist and advise the Governor and the legislature in the development of such programs and policies.

TECHNICAL AND FINANCIAL ASSISTANCE FOR PLANNING AND ADMINISTRATION

- 13 **Section 2. Definitions.** As used in this act:
- 14 (1) "Urban community" means a city, [town], or village with a population of [5,000] or more;
- 15 a county containing one or more such cities, [towns], or villages; two or more of the foregoing acting

1 jointly; or an authority or district established by law to provide mass transportation in an area
2 containing two or more such cities, [towns], villages, or counties.

3 (2) "Mass transportation capital project" means the acquisition, construction, reconstruction
4 or improvement of any rapid transit, railroad, omnibus, marine transportation or other mass trans-
5 portation capital equipment used in connection therewith.

6 (3) "Urban project" means any mass transportation capital project undertaken by an urban
7 community.

8 (4) "Federal assistance" means funds available, other than by loan, from the federal govern-
9 ment to any urban community, either directly or through allocation by the state, for any mass
10 transportation capital project.

11 (5) "Project cost" means the actual or estimated cost of any urban project, including re-
12 location assistance payments, or the estimated reasonable cost thereof as approved by the Director,
13 whichever is lower, less any federal assistance received or to be received for such project.

14 *Section 3. General Functions and Powers.* The Director of the Department of [Community
15 Affairs],¹ (hereinafter referred to as the Director), shall:

16 (1) Advise and assist the Governor in formulating (i) a mass transportation policy for the state,
17 including coordination of policies and activities among the state departments and agencies; (ii) pro-
18 posals designed to help meet and resolve special problems of mass transportation within the state; and
19 (iii) programs of financial and technical assistance for the comprehensive planning, development, and
20 administration of mass transportation facilities and services;

21 (2) Study mass transportation problems and provide technical assistance to units of local
22 government;

23 (3) Consult and cooperate with officials and representatives of the state and its political sub-
24 divisions, neighboring states, the Federal government, and interstate agencies on problems affecting
25 mass transportation in the state, and with officials and representatives of carriers and transportation
26 facilities in the state and other persons, organizations and groups concerned with mass transportation
27 facilities and services;

28 (4) Appear and participate, with the approval of the Governor, in proceedings before any
29 federal, state, or local regulatory agency involving or affecting mass transportation in the state;

30 (5) Encourage experimentation in developing new mass transportation facilities and services;

¹Some states may wish to designate the Department of Transportation where such an agency exists.

1 (6) Recommend policies, programs and actions designed to improve utilization of urban and
2 commuter mass transportation facilities;

3 (7) Administer the program of mass transportation capital grants provided in this Act; and

4 (8) Exercise such other functions, powers and duties in connection with mass transportation
5 problems as the Governor may direct.

6 *Section 4. Assistance from Other Agencies.* All departments, divisions, boards, bureaus, com-
7 missions, public authorities, or other agencies of the state or its political subdivisions shall provide
8 assistance and data to the Director to enable him to carry out his functions, powers and duties.

9 *Section 5. Inspections; Investigations and Hearings; Witnesses; Books and Documents.* The
10 Director at reasonable times may inspect the property and examine the books and papers dealing
11 with the type and adequacy of services of any person, firm or corporation engaged in operating a
12 public mass transportation facility or system in whole or in part within the state. He may hold
13 investigations and hearings within or without the state. This section shall not affect the regulatory
14 power of the state with respect to transportation rates and services.

15 *Section 6. Studies; Surveys.* The Director may undertake relevant studies, inquiries, surveys or
16 analyses. He may cooperate with any public or private agency, including educational, civic and
17 research organizations.

18 *Section 7. Reports.* The Director shall make an annual report to the Governor and the legis-
19 lature, including recommendations for executive and legislative action to further the purposes of this
20 act.

STATE AID FOR MASS TRANSPORTATION CAPITAL PROJECTS

21 *Section 8. Urban projects.* (a) State financial assistance authorized by this act may be used to
22 pay [seventy-five] percent of the project cost of any approved urban project.

23 (b) *Conformity to Plan.* No Urban project shall be eligible for assistance under this act until
24 the project has been approved by the Director as consistent with the statewide comprehensive master
25 plan for transportation approved by the Governor and the legislature.

26 (c) State moneys appropriated for any urban project shall be allotted pursuant to a contract
27 entered into by the Director, in the name of the state, and the urban community undertaking such
28 project. The contract may include any provision agreed upon by the parties thereto, and shall include,
29 in substance, the following provisions:

1 (1) An estimate of the reasonable cost of the project as determined by the Director.

2 (2) An agreement by the Director to pay to the urban community, following completion of
3 the project, or during the undertaking thereof in the form of progress payments, [seventy-five]
4 percent of the project costs.

5 (3) An agreement by the urban community to (i) proceed expeditiously with, and complete,
6 the project in accordance with plans approved by the Director; (ii) commence and continue operation
7 of the project on completion of the project, and not to discontinue operation or dispose of all or part
8 of the project without the approval of the Director; (iii) apply for, and make reasonable efforts to
9 secure, federal assistance for the project, subject to any conditions that the Director may require in
10 order to maximize the amounts of such assistance received or to be received for all projects in the state;
11 and (iv) provide for the payment of the urban community's share of the cost of the project.

12 (4) A provision that, if federal assistance which was not included in the calculation of the state
13 payment pursuant to paragraph (2) of this subsection becomes available to the urban community, the
14 amount of the state payment shall be recalculated with the inclusion of such additional federal as-
15 sistance, and the urban community shall either (i) pay to the state the amount by which the state
16 payment actually made exceeds the state payment determined by the recalculation or, (ii) if such
17 additional federal assistance has not been received by the urban community, authorize the state to
18 receive such amount from the federal government and to retain an appropriate amount thereof.

19 (d) The Director shall prepare and file with the Governor and the legislature an annual report
20 on the scope and results of construction undertaken pursuant to this act.

21 (e) For each contract concerning an urban project, the Director shall keep adequate records of
22 the amount of the payment by the state pursuant to paragraph (2) of subsection (c) of this section,
23 and of the amount of federal assistance received by the urban community. These records shall be
24 retained by the Director and shall establish the basis for application for federal reimbursement of
25 payments made by the state. The Director may make such applications.

26 (f) The Director may prescribe rules and regulations to carry out the provisions of this section.

27 *Section 9. Provision of Mass Transportation by Urban Communities.* (a) Any urban com-
28 munity may adopt local ordinances to authorize:

29 (1) The acquisition, construction, reconstruction, improvement, equipment, maintenance or
30 operation of one or more mass transportation projects, and the use of streets, roads, highways,
31 avenues, parks or public places for these purposes.

1 (2) The making of a contract or contracts for the acquisition by purchase of all or any part of
2 the property, plant and equipment of an existing mass transportation facility actually used and useful
3 for the convenience of the public.

4 (3) The making of a contract or contracts with any person, firm or corporation [including a
5 public authority] for the equipment, maintenance or operation of a mass transportation facility
6 owned, acquired, constructed, reconstructed or improved by the urban community.

7 (4) The making of a contract or contracts for a fair and reasonable consideration for mass
8 transportation services to be rendered to the public by a privately-owned or operated mass trans-
9 portation facility. Such power shall include but not be limited to the power to appropriate funds for
10 payment of such consideration, and to provide that all or part of such consideration shall be in the
11 form of capital equipment to be furnished to and used and maintained by such privately-owned or
12 operated mass transportation facility.

13 [(5) The making of unconditional grants of money or property to a public authority providing
14 mass transportation services to all or part of an urban community in order to assist a public
15 authority in meeting its capital or operating expenses, provided the money does not consist of
16 borrowed funds and the property has not been acquired by the use of borrowed funds. The ac-
17 ceptance of a grant by a public authority shall not operate to make the authority an agency of the
18 urban community making the grant.¹]

19 (b) The powers granted by this section shall be in addition to and not in substitution for any
20 other power to acquire, construct, reconstruct, improve, equip, maintain or operate any mass trans-
21 portation capital project.

22 *Section 10. Participation in Federal and State Assistance Programs for Mass Transportation.*

23 (a) Any urban community, either individually or jointly with one or more other urban com-
24 munities, may apply for, accept, and expend financial assistance from:

25 (1) The state, for one or more mass transportation capital projects provided pursuant to this
26 title, whether by way of direct financial assistance or by way of pre-financing of any financial
27 assistance from the Federal government.

28 (2) The Federal government, or any agency or instrumentality thereof, for the construction,
29 operation, or maintenance of one or more mass transportation capital projects provided pursuant to
30 to any act of the Congress of the United States or any rule, regulation or order promulgated pursuant
31 thereto.

¹This paragraph should be included where public mass transportation authorities are authorized.

1 (b) No urban community whether acting individually or jointly with one or more other urban
2 communities, shall submit to the United States, or any agency or instrumentality thereof, any project
3 application for one or more mass transportation capital projects, unless the application or applications
4 therefor shall have been first approved by the Director as being a part of or consistent with a statewide
5 comprehensive master plan for transportation approved by the Governor and the legislature.

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

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

PREPAID GROUP PRACTICE OF HEALTH CARE

The Federal-State program of medical assistance to the needy and medically needy (Medicaid), enacted by Congress in 1965 as Title 19 of the Social Security Act, has had an explosive effect on many State and local budgets. State-local expenditures for medical vendor payments rose from \$602 million in 1965 to an estimated \$2,145 million in fiscal 1968-1969. These increases can be expected to continue as medical care costs continue to rise at a faster rate than consumer expenses generally; as all States initiate Medicaid programs (12 had not done so by the Fall of 1968 but must by January 1970); and as they move to meet the Title 19 requirement of comprehensive care for "substantially all" the needy and medically needy by 1975.

With the prospect of mounting budgetary demands from Medicaid, as well as their interest in high quality care, States need to achieve greater efficiency and economy in the provision of medical services under Medicaid. A further incentive is the continuing possibility that Congress may cut back Federal financial participation if it believes that States are not striving to hold down costs in their individual Medicaid programs. Congressional action in 1967 placing limits on Federal sharing in the cost of the care of the medically needy is traceable in part to the conviction of many members of Congress that States were not showing enough zeal in this direction.

In its 1968 report on *Intergovernmental Problems in Medicaid*, the Advisory Commission on Intergovernmental Relations addressed itself to ways in which the States could broaden health services available to Medicaid beneficiaries and possibly reduce the cost of the program. One such possibility it considered was prepaid group practice of health care.

Prepaid group practice plans have certain common features: (1) comprehensive medical services are provided directly to a group of people who make regular premium payments; (2) the services are provided through the coordinated practice of a group of physicians; (3) payments for medical services are made periodically on a fixed capitation basis regulating the payments for needed medical care; and (4) subscribers' premium payments provide compensation for doctors and cover operating expenses so that no member of the physician group has a financial interest in any specific direct service to any individual.

There are, of course, both pros and cons on prepaid group practice. Proponents claim that it facilitates the provision of better quality medical care; significantly lowers the rates of hospital utilization; reaps the advantages of specialization in medicine; permits development of a predictable annual cost; and can therefore serve as a mechanism for quality control. Critics, on the other hand, allege that prepaid group practice does not always assure patient satisfaction; often must rely on the services of nonplan physicians; is relevant only in certain types of urban areas; restricts freedom of choice; and above all undermines the traditional patient-practitioner relationship.

The ACIR took no position with reference to the pros and cons of group practice as such. It found, however, that many States have constitutional and legislative barriers to the establishment and operation of group practice. It was convinced that these barriers arbitrarily narrow the range of alternatives open to Medicaid beneficiaries, and unnecessarily hamper States in their search for more effective, flexible, and diverse approaches for implementing their respective Medicaid programs. The Commission therefore recommended that "States eliminate constitutional and legislative barriers to the establishment of prepaid group practice health care."

According to Group Health Association of America, Inc., some 20 States have such legal restrictions applicable to physicians' services: Alabama, Colorado, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Mexico, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. The limitations generally stem from constitutional and statutory provisions that regulate the practice of the health arts, public powers, insurance, protection of public health, and taxation. They exist in differing degrees among the States cited, and may be classified broadly under the following categories:

- restrictions on the right to organize group practices to provide comprehensive medical care which includes, in addition to physician services, the talents of others in health professions;
- restrictions on the right to establish insurance or other prepayment corporations offering comprehensive health benefits;
- restrictions on the right to establish organizations that combine group practice with prepayment to provide comprehensive health services;
- restrictions on the right of consumers or their agents to run such organizations;
- restrictions on the size of areas that might be served by group practice organizations; and
- restrictions on the functioning of group health plans that arise out of the application of insurance principles to the regulation of direct service health plans.

Congress recognized group practice as an acceptable method of providing health service under Title 19 in the 1967 Social Security Act amendments. In the "free choice of vendor" provision, it provided that: "A State plan for medical assistance must provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arrangements for their availability, on a prepayment basis), who undertakes to provide him such services."

The draft legislation which follows is adapted from the Ohio statute authorizing health care corporations (Chapter 1738, Ohio Revised Code). It is suggested as a positive approach to authorizing prepaid group health plans.

Section 2 defines comprehensive health care to include a broad spectrum of professions and institutions involved in the provision of health services. Section 3 authorizes nonprofit corporations to establish and operate voluntary health care plans. Section 4 makes it clear that health care corporations are not authorized to conduct an indemnity insurance business. Section 5 requires that the board of trustees of the corporation be elected by the subscribers and not include physicians and dentists. Section 6 states that subscribers are members of the health corporation. Section 7 requires physicians, dentists and other health service professionals, as specified in the act, to name representatives to attend board of trustees meetings.

Sections 8 and 9 prescribe the requirements and procedures for applying for and receiving a certificate or license to operate a group practice plan. States may wish to assign licensing and supervisory

responsibility to an official other than the State insurance agency, such as the attorney general or the secretary of state.

Under Section 10, the question of service area is left for determination under the group's articles of incorporation. Section 11 through 13 deal with fees, annual reports, and money advances. Section 14 mandates the State supervisory official to examine the affairs of the health care corporation at least once each three years, and gives him authority to supervise any change in the corporation. Section 15 specifies reasons for revocation of the corporation's certificate or license and Section 16 describes the procedure after finding for or against the corporation.

Section 17 authorizes State and local governments to make payroll deductions for premiums due from their employees for group plans. Section 18 authorizes health care corporations to accept payments from various sources on behalf of subscribers. Section 19 deals with cancellation or transfer of subscriptions. Section 20 forbids the health care corporation to use terminology that would identify it as an insurance or surety corporation. Section 21 limits the possibilities of investing idle funds; Section 22 specifies penalties for violations of the Act; and the remaining two sections provide for separability and the effective date.

Suggested State Legislation

[Title should conform to state requirements. The following is a suggestion: "An act to authorize and regulate nonprofit corporations providing prepaid comprehensive health care."]

(Be it enacted, etc.)

1 **Section 1. Purpose.** The purpose of this act is to authorize nonprofit corporations to establish,
2 maintain, and operate prepaid comprehensive health care plans.

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

4 (1) "Comprehensive health care" includes, but is not limited to, medical, surgical and dental
5 care provided through licensed physicians or dentists, including any supporting and ancillary person-
6 nel, services, and supplies; physical therapy service provided through licensed physical therapists
7 upon the prescription of a physician; psychological examinations provided by registered psychologists;
8 optometric service provided by licensed optometrists; hospital service, both in-patient and out-patient;
9 extended care; convalescent institution care; nursing home care; nursing service provided by a reg-
10 istered nurse or by a licensed practical nurse; home care service of all types required for the health
11 of a person; rehabilitation service required or desirable for the health of a person; preventive medical
12 services of all types; furnishing necessary applicances, drugs, medicines and supplies; health educa-
13 tional services; ambulance service; and any other care, service or treatment related to the prevention
14 or treatment of disease, the correction of defects or the maintenance of the physical and mental
15 well-being of human beings.

1 (2) "Health care plan" means a plan by which comprehensive health care is provided, at the
 2 expense of a nonprofit corporation, to persons who become subscribers to the plan under contracts
 3 which entitle the subscribers to certain professional and institutional services, and to certain appliances
 4 incidental to the care.

5 (3) "Health care corporation" means a nonprofit corporation which establishes, maintains, and
 6 operates a voluntary nonprofit health care plan.

7 *Section 3. Establishment of Health Care Plan.* Nonprofit corporations organized under the laws
 8 of this state, upon compliance with [the state nonprofit corporation act], may establish, maintain, and
 9 operate a voluntary nonprofit health care plan. Professional personnel and institutions providing care
 10 under the plan shall, as may be required by law, be duly licensed in this state. Contracts with pro-
 11 fessional personnel and institutions for services may be upon mutually agreeable terms.

12 *Section 4. Benefit Payment Prohibited.* No contract described in Section 3 shall provide for
 13 the payment of any cash or other material benefit to a subscriber of a health care plan, except as
 14 provided in Section 10.

15 *Section 5. Board of Trustees.* The board of trustees of any corporation holding a certificate
 16 of authority or license from the [commissioner of insurance] under this act shall be elected by the
 17 subscribers and shall serve without compensation, but may be reimbursed for expenses incurred in
 18 carrying out their duties. Licensed physicians and dentists are not eligible for election.

19 *Section 6. Subscribers are Members.* Subscribers to a health care plan maintained by a corpo-
 20 ration pursuant to this act shall be members. They shall receive from the corporation, at least
 21 annually, a complete description of services available for which the member has paid, and informa-
 22 tion as to where and how such services may be secured.

23 *Section 7. Representatives of Physicians and Dentists.* Physicians, dentists [specify other
 24 health service personnel] participating in programs pursuant to this act shall name representatives
 25 who may attend meetings of the trustees.

26 *Section 8. Application for Certificate or License.* Before it may issue any contract or certificate
 27 to a subscriber, a nonprofit corporation desiring to establish, maintain, and operate a health care plan
 28 shall obtain from the [commissioner of insurance] a certificate of authority or license. Each application
 29 to the [commissioner] for a certificate or license shall be verified by an officer of the corporation,
 30 and shall set forth, or shall be accompanied by the following:

31 (1) A copy of the corporation's articles of incorporation, and of any amendments thereto,
 32 certified by the secretary of state, which shall define with reasonable certainty the territorial boundaries

1 within which the corporation proposes to operate a health care plan, and which shall state the
2 location of the principal office for the transaction of its business;

3 (2) A list of names and residence addresses of all officers and the trustees of the corporation;

4 (3) A description of the health care plan which the corporation proposes to operate, together
5 with the forms of all contracts or certificates which it proposes to issue under the plan; and

6 (4) A statement of the assets and liabilities of the corporation.

7 *Section 9. Issuance of Certificate or License.* The [commissioner of insurance] shall issue a
8 certificate of authority or license to any health care corporation filing an application in conformity
9 with Section 8, upon payment of the fees prescribed in Section 11 and upon being satisfied, that:

10 (1) The corporation proposes to establish and operate a bona fide nonprofit health care plan
11 imparting quality medical care under such conditions as the [commissioner] deems to be in the
12 public interest;

13 (2) The proposed contracts and the proposed rates therefor between the corporation and the
14 subscribers to the plan are fair and reasonable and provide comprehensive health coverage without
15 regard to health or age, except in accordance with regulations prescribed by the [commissioner of
16 insurance] to coordinate coverage for a subscriber with Federal programs.

17 (3) The proposed plan is established upon a sound financial and actuarial basis, including
18 provision of an adequate working capital reserve, in view of the experience of nonprofit health care
19 plans already in existence. If the corporation desires to amend any contract with its subscribers or
20 desires to change any rate charged therefor, a copy of the form of the amendment or change shall be
21 filed with the [commissioner of insurance] and shall not be effective until the expiration of [90] days
22 after the filing thereof unless he shall sooner give to the corporation his written approval thereto. If
23 the [commissioner] is not satisfied within the [90] day period, that a change or amendment of either
24 the contract or the rate is lawful, fair and reasonable, he shall so notify the corporation and it shall
25 thereafter be unlawful for the corporation to make effective the change or amendment.

26 *Section 10. Territorial Limits of Service.* No health care corporation shall operate a health care
27 plan outside the territorial boundaries defined in its articles of incorporation or any amendments
28 thereto, or shall accept as a subscriber to its health care plan a person residing outside the territorial
29 boundaries; but the employment by a subscriber in case of emergency, of a physician, dentist,
30 surgeon, hospital or other medical personnel or institution outside the territorial boundaries and the
31 cash reimbursement of the subscriber by the corporation is not an operation of the plan outside such
32 territorial boundaries.

1 **Section 11. Fees.** Every corporation subject to this act shall pay to the [commissioner of
2 insurance] the following fees:

3 (1) For filing a copy of its articles of incorporation, [\$];

4 (2) For filing each annual report, [\$];

5 (3) For each certificate of authority or license, or any certified copy thereof, [\$].

6 **Section 12. Annual Report.** Every corporation subject to this act shall annually, on or before
7 the first day of March, file a report, verified by an officer of the corporation, with the [commissioner
8 of insurance], showing its condition on the last day of the preceding calendar year, on forms pre-
9 scribed by the [commissioner]. The report shall include:

10 (1) The financial statement of the corporation, including its balance sheet and receipts and
11 disbursements for the preceding year;

12 (2) A list of the names and residence addresses of all its officers and trustees; and the total
13 amount of expense reimbursement to all officers and trustees;

14 (3) The number of subscribers' contracts or certificates issued by the corporation and out-
15 standing;

16 (4) A list of physicians and dentists with which the corporation has agreements, setting forth
17 their professional qualifications.

18 (5) The number and type of services covered under the contract or certificate provided during
19 the year.

20 **Section 13. Money Advances to the Corporation.** Any trustee, officer, or member of any
21 corporation subject to this act, or any other person, may advance to the corporation any sums of
22 money necessary for its business or to enable it to comply with any requirement of law. These
23 moneys, and the interest thereon not exceeding [] per cent per annum, as may have been agreed
24 upon, shall not be a liability of or a claim against the corporation or any of its assets, except as
25 provided in this section, and shall be repaid only out of the surplus earnings of the corporation.
26 This section does not affect the power to borrow money which any corporation possesses under
27 other laws. No commission or promotion expenses shall be paid by the corporation in connection
28 with the advance of any money to the corporation. The amount of any advance that has not been
29 repaid shall be reported in each annual statement of the corporation.

30 **Section 14. Examination by [Commissioner of Insurance].** The [commissioner of insurance],
31 or a person appointed by him for that purpose, may make an examination of the affairs of any health
32 care corporation subject to this act, as often as he deems it expedient for the protection of the in-
33 terests of the people of this state but not less frequently than once each three years. Every health

1 care corporation, its officers, and its agents shall submit their books and business to the examination
2 and in every way facilitate it.

3 For the purpose of the examination, the [commissioner] or other appointed person may ad-
4 minister oaths to and examine the officers and agents of health care corporation concerning its
5 business and affairs. If the [commissioner] deems it to the interest of the public, he may publish
6 the result of the investigation in a newspaper printed at the seat of government and of general
7 circulation in the state, and also in a newspaper printed in the county in which the principal office
8 of the corporation is located. The expenses of examination of each health care corporation shall
9 be paid by the corporation.

10 Any rehabilitation, liquidation, conservation, or dissolution of a health care corporation shall
11 be conducted under the supervision of the [commissioner], who shall have all power with respect
12 thereto granted to him under the law governing the rehabilitation, liquidation, conservation, or
13 dissolution of insurance companies generally.

14 *Section 15. Causes for Revocation of Certificate or License.* The [commissioner of insurance]
15 shall revoke any certificate or license, if he finds that any of the following situations exist:

16 (1) The corporation is operating in contravention of its articles of incorporation or any amend-
17 ments thereto, of its code of regulations and bylaws, or of its health care plan;

18 (2) The corporation is unable to fulfill its obligations under outstanding contracts or certificates
19 which it has issued to subscribers;

20 (3) The corporation has failed to comply with this act;

21 (4) The corporation is not operating a bona fide health care plan imparting quality medical
22 care under such conditions as the [commissioner] deems to be in the public interest;

23 (5) The existing contracts and the rates therefor between the corporation and the subscribers
24 are not fair and reasonable and do not provide comprehensive health coverage without regard to
25 health or age, except in accordance with regulations prescribed by [commissioner of insurance] to
26 coordinate coverage for a subscriber with Federal programs.

27 (6) The plan is not being operated upon a sound financial and actuarial basis, in view of the
28 experience of nonprofit health care plans already in existence.

29 *Section 16. Finding on Grant or Revocation of Certificate or License; Review.* The finding of
30 the [superintendent of insurance] in granting or revoking a certificate of authority or license under
31 this act shall be in writing, and shall state the facts upon which his action is based. The [superin-
32 tendent] shall immediately mail a copy of the findings to the applicant for or holder of such
33 certification of authority or license at the addresses on file in the office of the [superintendent].

1 The action of the [superintendent] in granting or revoking the certificate of authority or license shall
2 be subject to review in accordance with [the state administrative procedure act].

3 *Section 17. Payroll Deductions for Public Employee Subscribers.* An employee of the state, of
4 any political subdivision or district of the state, or of any institution supported in whole or in part by
5 the state may authorize the deduction from his salary or wages of the amount of his subscription
6 payments to any corporation provided for in this act. The authorization shall be evidenced by ap-
7 proval of the head of the department, division, office, or institution in which the employee is
8 employed.

9 In the case of employees of the state, the authorization shall be directed to and filed with the
10 [auditor] of the state. In the case of employees of a county, municipal corporation, township, or
11 other political subdivision or district of the state, the authorization shall be directed to and filed with
12 the [auditor] or other fiscal officer of the county, municipal corporation, township, or other polit-
13 ical subdivision or district. In the case of employees of any institution supported in whole or in part
14 by the state, the authorization shall be directed to and filed with the [auditor] or other fiscal officer
15 of the institution.

16 Upon the filing with him of the authorization, the [auditor] or fiscal officer shall draw a
17 warrant, in favor of the health care corporation referred to in the authorization, for the amount
18 covering the sum of the deductions thereby authorized.

19 *Section 18. Acceptable Payments.* Each corporation subject to this act may accept from
20 governmental agencies, or from private agencies, corporations, associations, groups, or individuals,
21 payments covering all or part of the cost of contracts entered into between the corporation and its
22 subscribers.

23 *Section 19. Cancellation or Transfer of Subscription.* Corporations subject to this act shall not
24 cancel or refuse to transfer subscribers from a group to an individual basis except for non-payment of
25 subscription contracts, and notice of moneys due shall be in writing.

26 *Section 20. Limitation on Use of Terminology.* No corporation holding a certificate of authority
27 or license or its plan shall use in its name, contracts, or literature any of the words "insurance,"
28 "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety
29 business or deceptively similar to the name or description of any insurance or surety corporation
30 doing business in the state.

31 *Section 21. Investment of Idle Funds.* The funds of a health care corporation shall be invested
32 only in securities permitted by the laws of this state for the investment of capital surplus and accumu-
33 lations of life insurance companies.

1 *Section 22. Penalty for Violations.* Whoever violates any section of this act, or makes any
2 false statements with respect to any report or statement required by it, shall be fined not less than
3 [] nor more than [] dollars for a first offense; for each subsequent offense such person
4 shall be fined not less than [] nor more than [] dollars or imprisoned not less than []
5 days nor more than [] years, or both.

6 *Section 23. Separability.* [Insert separability clause.]

7 *Section 24. Effective Date.* [Insert effective date.]

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- Coordination of State and Federal Inheritance, Estate and Gift Taxes.* Report A-1, January 1961. 134 pages, printed.
- Investment of Idle Cash Balances by State and Local Governments.* Report A-3, January 1961. 61 pages (out of print; summary available).
- Governmental Structure, Organization, and Planning in Metropolitan Areas.* Report A-5, July 1961, 83 pages; U. S. House of Representatives, Committee on Government Operations. Committee Print, 87th Cong. 1st Sess.
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