

ACIR State Legislative Program

5.

**Environment,
Land Use
and Growth
Policy**

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Advisory Commission on Intergovernmental Relations
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FOREWORD

ACIR's Legislative Program

The Advisory Commission on Intergovernmental Relations is a permanent, national 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 does not function as a typical Federal agency, because a majority of Commission members come from state and local government. The Commission functions as an intergovernmental body responsible and responsive to all three levels of government.

It should not be inferred, however, that the Commission is a direct spokesman for any single level or branch of government — whether the Congress, the Federal Executive Branch, or state and local government. Nevertheless, many of the Commission's policy recommendations are paralleled by policies of the organizations of state and local government — including the National League of Cities, U.S. Conference of Mayors, and National Association of Counties — and a substantial number of the Commission's draft legislative proposals are disseminated by the Council of State Governments in its annual volume entitled *Suggested State Legislation*. The National Governors' Conference in its report of the 67th Annual Meeting carries 38 of ACIR's legislative proposals as an appendix entitled *State Responsibilities to Local Governments: Model Legislation from the Advisory Commission on Intergovernmental Relations*.

The Commission recognizes that its contribution to strengthening 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, with considerable emphasis upon the strengthening of state and local governments.

ACIR's *State Legislative Program* represents those recommendations of the Commission for state action which have been translated into legislative language for consideration by the state legislatures. Though ACIR has drafted individual bills from time-to-time following the adoption of various policy reports, its suggested state legislation was brought together into a cumulative *State Legislative Program* initially in 1970. This 1975 edition is the first complete updating of the original cumulative program. It contains a number of new bills as well as major rewrites and minor updatings of previously suggested legislation.

Scope of the Legislative Program. ACIR's reports, over the years, have dealt with state and local government modernization and finances, as well as a variety of functional activities. Commission recommendations to the states, contained in these reports, have addressed all of these subjects. The suggested legislation contained in the Commission's *State Legislative Program* has been organized into ten booklets (parts) in which the draft bills are grouped logically by subject matter. The groupings for all ten booklets are listed in the summary contents of the full legislative program which follows this foreword. Then, the detailed contents of this booklet, including the title of all bills, are listed with the page numbers where they can be found.

Process for Developing Suggested Legislation. Most of the proposals in the *State Legislative Program* are based on existing state statutes and constitutional provisions. Initial drafts were prepared by the ACIR staff or consultants. Individual proposals were reviewed by state officials and others with special knowledge in the subject matter fields involved. The staff, however, takes full responsibility for the final form of these proposals.

How to Use the Suggested Legislation

The Commission presents its proposals for state legislation in the hope that they will serve as useful references for state legislators, state legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Additional copies of this booklet and the other booklets in the full *Program* are available upon request. Any of the materials in the *Program* may be reproduced without limitation.

The Commission emphasizes that legislation which fits one state may not fit another. Therefore, the following advice is offered to users of the Commission's suggested state legislation.

Fit Proposals to Each State. Many states have standard definitions, administrative procedures acts, standard practices in legislative draftsmanship, and established legislation and constitutional provisions related to new proposals. These differ widely from one state to another, yet they vitally affect the drafting of new proposals for state legislation. No model legislation can possibly reflect the variations which apply in all 50 states. Thus, ACIR strongly recommends that any user of its suggested state legislation seek the advice of legislative draftsmen familiar with the state or states in which such proposals are to be introduced.

Alternative Provisions and Optional Policies. Likewise, the Commission recognizes that uniform policies are frequently not appropriate for application nationwide. Accordingly, its adopted recommendations frequently include alternative procedures and optional policies among which the states should make conscious choices as they legislate. Consequently, the suggested legislation which follows includes bracketed language which alerts the users of these materials to the choices which are to be made. In many cases, the bracketed language is also labeled as an alternative or an option. In the case of alternatives, one (or in some cases more than one) should be chosen and the others rejected. In the case of options, the suggested language may be included or deleted without reference to other provisions unless otherwise noted.

Three types of bracketed information | | are provided in the suggested legislation. Brackets containing *italicized* information indicate wording that is essential to the legislation, but must be rewritten to conform to each particular state's terminology and legal references. Information in regular type within brackets presents alternative or optional language. The third type of brackets contains blank space and requires the insertion of a date, amount, time span, quantity, or the like, as required by each state to comply with its individual circumstances or recommendations.

Caution About Excerpting. Frequently one provision in the suggested legislation may be related to another in the same bill. Thus, any state wishing to en-

act only certain portions of the suggested legislation should check carefully to make sure that essential definitions and related provisions are taken into account in the process of excerpting those portions desired for enactment.

ACIR Assistance

Each item of suggested state legislation in this *Program* is referenced to the ACIR policy report upon which it is based. These reports may be obtained free of charge in most cases, by writing to ACIR, and usually may also be purchased from the U.S. Government Printing Office (especially if multiple copies are required). In those cases where a policy report is out of print, copies may be found in ACIR's numerous depository libraries throughout the nation as well as in many other libraries. In addition, where copies are otherwise unavailable, the ACIR library will arrange to loan a copy.

The ACIR staff, though limited in size, is available upon request to answer questions about the suggested legislation, to help explain it to legislators and others in states where it is under active consideration, and to assist the legislative process in other appropriate ways.

September 1975

**Robert E. Merriam
Chairman**

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ACKNOWLEDGMENTS

The suggested state legislation in this part of ACIR's *State Legislative Program* is based largely upon existing state statutes. William G. Colman, John M. DeGrove, and Robert Rhodes acted as consultants to the Commission in tailoring these enactments to ACIR policy.

The following persons served diligently on a panel which reviewed each proposal: Richard Carlson, director of research, Council of State Governments; Honorable Charles A. Docter, Maryland House of Delegates; Marcus Halbrook, director, Arkansas Legislative Council; David Johnston, director, Ohio Legislative Service Commission; William J. Pierce, executive director, National Conference of Commissioners for Uniform State Laws; Bonnie Reese, executive secretary, Wisconsin Joint Legislative Council; Honorable Karl Snow, Utah state senator; and Troy R. Westmeyer, director, New York Legislative Commission on Expenditure Review.

The suggested legislation was also circulated in draft form to the following national organizations for their review and comment:

Council of State Governments
International City Management Association
National Association of Counties
National Conference of State Legislatures
National Governors' Conference
National League of Cities
U.S. Conference of Mayors

The Commission acknowledges the financial assistance of the U.S. Department of Housing and Urban Development in updating and publishing this new edition of the *State Legislative Program*.

The Commission is grateful to all who helped to produce this volume, but the Commission alone takes responsibility for the policies expressed herein and any errors of commission or omission in the draftsmanship.

Wayne F. Anderson
Executive Director

PART V

ENVIRONMENT, LAND USE, AND GROWTH POLICY

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INTRODUCTION

Frontier psychology has long prevailed in America: land is viewed as an inexhaustible resource and the process of governmental planning for urbanization and governmental controls over land use is seen as an unwarranted and unconstitutional infringement on property rights. Indeed, until quite recently, courts have been cautious toward land use control actions that may decrease property values such as when the permitted use of a given tract of land is changed to a lower density — *i.e.*, fewer housing units per acre. On occasion, the courts have construed such actions as the “taking” of private property subject to governmental compensation of the property owner through condemnation procedures. But the current energy squeeze on the one hand and the growing political clout and judicial victories of environmentalists on the other, have transformed the issue of growth policy from one of “whether or not” to the immediate questions of “when,” “how,” and “by whom.”

State Growth Policy. The competing demands of industrial development, environmental protection, energy supply, and stable employment have placed a major responsibility for reconciling these often conflicting objectives upon each state government. This is the substance and process of state growth policy. Recommendations of the ACIR and of the National Commission on Urban Problems (Douglas Commission) and other groups have identified major components of state growth policy where growth is regulated or discouraged in some areas while strongly encouraged in others. These policy components have included: establishing state and local land agencies to acquire, hold, and dispose of tracts of land considered strategic in the development and urbanization process; making credit more readily available in certain areas through loans and loan guarantees; using geographical preferences in state procurement; and using incentives to encourage private employment in labor surplus areas.

The legislative measures suggested by ACIR to implement state growth policy objectives are: (1) state planning and growth policy act; (2) draft legislative

resolution charging a joint committee or separate standing committees of the legislature with jurisdiction and responsibility over state planning and growth policy and activities; (3) establishment of state and local land development agencies; (4) authorization of loans to industry to promote state growth policy; (5) authorization and regulation of the issuance of local industrial development bonds; (6) authorization to the state procurement agency to grant preferences and longer term contracts to suppliers in areas of the state identified for accelerated growth under adopted state growth policies; and (7) authorization for urban employment tax incentives.

Land Use and Environmental Planning and Regulation. No area of state-local relations saw more changes in the decade 1965-75 than that of land use and growth policy. This is especially true of land use regulation. At times, the changes have involved new state roles that largely supplanted actions of local governments. Other proposals have involved new partnership roles for states and their local governments, with varying degrees of state versus local authority and responsibility in the partnership. Whatever the exact mix between local and state initiative and control, the general thrust has been to place a greater responsibility on state governments to exert authority directly or indirectly over land use policy decisions having more than a local impact.

Some of these new assertions of state authority have been in the area of public health, such as in the regulation of wells and septic tanks. Others have had to do with the protection of environmentally fragile areas. Still others have been enacted to enable or guide local government actions designed to discourage haphazard development or to properly sequence growth and development.

Legislative proposals suggested here comprise the following draft bills: (1) control of urban water supply and sewerage systems; (2) local planning, zoning, and subdivision regulation (including county zoning powers in unincorporated areas, county review of certain types of municipal zoning decisions, and authorization for extraterritorial municipal zoning and subdivision regulation in the absence of county action); (3) state highway interchange zoning; (4) official map; (5) planned unit development; (6) mandatory dedication of parks and school sites and levy of impact charges; (7) assertion of legislative jurisdiction over Federal lands within the state under certain conditions.

5.1 State Growth Policy

5.101 STATE PLANNING AND GROWTH MANAGEMENT ACT¹

For states to fulfill their key role in the development of urbanization policy, they must have a planning process that will develop the policies needed to channel their growth. The states, through constitutional and statutory provisions, determine the general outline and many of the details for the specific structure, form, and direction of growth. They must supply the guidance for specific local government and multi-county planning and development programs. They must establish the link between land use and development oriented local planning efforts and broader regional and state objectives. Where this linkage is missing, participation in regional efforts is limited and the realization of state policies becomes much more difficult.

Recognizing that states must act to formulate policies and plans designed to assure balanced and orderly growth, the Commission, in its report on *Urban and Rural America: Policies for Future Growth*, recommended development of state policy incorporating social, economic, environmental, and other considerations to guide urban and rural growth.² Additional Commission recommendations urged (1) coordination by an appropriate state agency of state, multicounty, metropolitan, and local planning, and relating such planning to regional and national considerations; (2) conformity of programs and projects of state agencies to the state urbanization plan; and (3) formal review by an appropriate state agency of plans for metropolitan and multicounty plans for conformance with the state plan, and similar review of those local comprehensive plans, implementing ordinances, and projects having an impact outside the jurisdiction's borders.

Perhaps the most dramatic development in state policy in recent years has been in the growth policy-land use area. Beginning with Hawaii in 1961, 11 states, by 1974, had taken comprehensive action in this area.³ Some 15 states have comprehensive growth-land use action on their policy agenda. State assertion of authority in the growth management-land use area ranges from a virtually complete takeover by the state (Hawaii, Vermont) to a very limited state role that leaves implementation to local governments (Colorado, Maryland). A middle ground is found in states where a state growth policy-land use framework is established, and implementation left largely to local governments. However, where local decisions have a more than local impact, the state reserves an override authority over local government (Florida). In a number of states, environmentally sensitive areas such as wetlands and coastal areas have been given special protection by state action, with implementation sometimes directly by them, and sometimes through local governments (Massachusetts, North Carolina, Maine, Minnesota, Wisconsin, California).

The following legislation, based largely on the *Florida State Comprehensive Planning Act of 1972*,⁴ the proposed American Law Institute's *Model Land Development Code*,⁵ and Oregon's comprehensive planning legislation,⁶ establishes a strong, yet flexible, state planning process, consistent with the Commission's policy guidelines.

In order to accomplish the broad coordinative and policy planning functions described in *Section 1*, the draft creates a state planning agency within the governor's office, outlined in *Section 3*. The agency director is appointed by the governor (with legislative confirmation) and serves at the chief executive's pleasure.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (October 1967); *Urban and Rural America: Policies for Future Growth*, Report A-32 (April, 1968); and *Toward More Balanced Transportation: New Intergovernmental Proposals*, Report A-49 (Washington, D.C.: U.S. Government Printing Office, August, 1975).

²See also, Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, Volume I of *Substate Regionalism and the Federal System*, Report A-43 (October, 1973); and *Toward More Balanced Transportation: New Intergovernmental Proposals*, Report A-49 (Washington, D.C.: U.S. Government Printing Office, August, 1975).

³For a current assessment of state action in the growth policy-land use area see John M. DeGrove, "Coping with Growth Policy and Land Use Management," *State Responsibilities to Local Government* (Center for Policy Research and Analysis, National Governor's Conference, (June 1975), pp. 62-63. See also John B. Coffin, ed., *A Summary of State Land Use Controls*, Land Use Planning Reports No. 2 (published at 2814 Penn. Ave., Washington, D.C., July, 1974).

⁴Part 1, Chapter 23, *Florida Statutes*.

⁵Art. 8, *State Land Development Planning*, April 22, 1971.

⁶Chapter 80, Rev., *Oregon Laws of 1973*.

Definitions of terms used in the draft are provided in *Section 2*. The director coordinates his responsibilities with planning officers designated by each state department as required by *Section 4*. An optional provision (*Section 5*) enables states to establish regional planning districts or substate district organizations to assist the state agency if they have not previously done so through legislation. *Section 6* authorizes the governor to designate a state planning advisory commission to advise the director of the state planning office. An alternate provides for a regional cabinet made up of the heads of the state's regional planning councils.

In addition to preparing the state development plan, the state agency is required to assist the governor in preparing the executive budget, state capital improvement program, and legislative program. *Section 7* also grants the agency authority to review state and local applications for Federal assistance pursuant to *OMB Circular A-95*, and to administer the Federal 701 planning assistance program, among its enumerated powers and duties.

Section 8 provides for preparation and publication of the state development plan. Rather than encourage static, insulated plans, the draft establishes a continuous policy planning process, with plans oriented to carrying out legislative policies, objectives, and standards. A broad spectrum of substantive areas are coordinated through the comprehensive plan, including capital facilities, low and moderate income housing, environmental and agricultural resources, and health, education, and employment services. Significantly, the bill requires the plan to include recommended programs to implement state legislative policies. In developing the state plan, the agency must incorporate the plans of other government agencies, particularly regional or substate districts, to the extent such plans are consistent with state policy.

Implementation and effectuation of the plan's policies must be of vital concern. *Section 9* provides two options. The governor may submit the plan to the legislature for adoption, modification, or rejection by concurrent resolution. If the legislature fails to act on the plan, it becomes effective as if adopted. An alternative provision requires the legislature to formally adopt the plan in concurrent resolution. Upon adoption, the plan provides the policy basis for all state programming and budgeting.

As an element of the development plan, the land management plan will guide decisions relating to public and private development within the state. Among the substantive guidelines contained in the land management plan is the designation of areas appropriate for urban growth and new communities.

Section 10 also requires that, to the maximum possible extent, local and regional plans and programs must be consistent with, and further the policies contained in, the state land plan. Hence, the agency, pursuant to administrative rules, will establish procedures for reviewing local and regional plans and programs prior to adoption. However, state review will be performed at the request of the local government and regional agencies. Such a provision recognizes there will be numerous local and regional plans and programs that will not require state review and obviates the establishment of a large state bureaucracy to perform such reviews. State review will concentrate on inconsistencies with the state plan and must clearly identify state objections based on such inconsistencies. To further implementation of the state land plan, the agency is required to perform a continuous study of land resource management and regulation, including an analysis of several suggested innovative techniques. The agency will also develop appropriate land management and planning legislative recommendations and draft model ordinances for local governments.

Section 11 recognizes that certain development projects, due to their character, magnitude, or location, have an impact on areas and citizens beyond the boundaries of a particular local government. In the case of transportation projects with wide ranging impacts on developments, and development projects having wide ranging impacts on transportation projects, ACIR has recommended that general purpose regional policy bodies be involved in the decisionmaking.¹ These intergovernmental impacts could be of regional or statewide magnitude, yet only a few states presently provide for representation of the interests of the entire affected citizenry in permitting such projects. A suggested legislative approach to this problem requires a state agency with the governor's approval, to recommend to the legislature the designation of specific types of projects as developments of regional impact. Such projects should substantially affect the health, safety, or welfare of the citizens of at least more than one local jurisdiction. Several statutory

¹*Toward More Balanced Transportation: New Intergovernmental Proposals*, Report A-49 (August, 1975), especially *Recommendation No. 1*.

criteria are provided the agency in developing the specific types of developments of regional impact. Additionally, the agency must provide, for legislative considerations, specific reasons for the proposed designation of each type of development, dangers that would result from such development being uncontrolled, and suggested state planning guidelines to be applied to the development. Upon adoption by the legislature, a public or private developer proposing a development of regional impact must first obtain a permit from the local government(s) within which the development occurs. A regional agency designated by the governor must assess the regional impact of the project in a report to the local government(s) concerned. Local government(s) decisions may be appealed by the applicant affected, the regional agency, and the state agency to a land and water adjudicatory commission detailed in *Section 12*. With the concurrence of other state or local agencies, the application for a development of regional impact permit may also serve as a joint application to satisfy additional state or local permitting requirements.

Section 13 grants the state agency power to initiate appropriate judicial action to insure compliance with state plans and any rules, orders, or determinations issued pursuant to the legislation. Additionally, the agency may institute declaratory actions to invalidate portions of local plans and programs, or development orders that are inconsistent with, or do not further, state policies.

Section 14 deals with uniform data collection and utilization by state agencies.

Section 15 requires the agency to prepare and submit to the governor and legislature, subsequent to public hearings in the major regions of the state, an annual report on the progress made in achieving the purposes of the act, as well as any additional reports the governor or legislature may require. It may also prepare an economic report on the current and projected economic situation of the state in light of the state's policies.

Section 16 authorizes the agency to use public or private funds to contract for assistance if research facilities or capabilities are not adequate when preparing and revising the state development plan, and *Section 17* authorizes state financial assistance to regional agencies and local governments in performing the responsibilities mandated by the legislation.

Sections 18 and 19 provide for separability and effective date clauses, respectively.

The general approach taken in the bill that follows is to provide a state growth policy framework, provide for full regional inputs into decisions that have a more than local impact, but leave the implementation of the provisions of the act to local government. Provision is made for a state override authority if the local government(s) fail to reflect in their decisions important regional or state impacts of the development.

Suggested Legislation

[AN ACT RELATING TO STATE PLANNING AND GROWTH MANAGEMENT POLICIES]¹

(Be it enacted)

1 SECTION 1. *Purpose and Findings.* It is the legislative intent that, in order to protect the natu-
2 ral resources and environment of this state [as provided in article [] of the constitution of the state of
3 []], facilitate orderly and well planned development, and protect the health, welfare, safety, and
4 quality of life of the urban and rural residents of this state, it is necessary to adequately plan
5 and guide the state's growth and development. To accomplish this purpose, it is necessary that a
6 process be created to achieve better coordination of planning among Federal, state, regional, and local
7 planning entities, and that the state establish land, water, and other resource management policies
8 to guide and coordinate decisions relating to growth and development. It is the further intent of the
9 legislature that, to the maximum possible extent, state policies should be implemented by regional and
10 local government agencies.

11 SECTION 2. *Definitions.*

12 (a) "Agency" means the state planning agency created by this act.

13 (b) "Development order" means any order granting or denying an application for a permit to de-
14 velop land, including, without limitation, applications for zoning, plat approval, or building permits.

15 (c) "Director" means the director of the [state planning agency].

16 (d) "Land" includes water, both surface and subsurface.

17 (e) "Rule" means an administrative rule adopted pursuant to the state administrative practices act.

18 (f) "State development plan" includes any portions or elements of the state development plan.

19 SECTION 3. *State Planning Agency.*

20 (a) There is created a state planning agency within the office of the governor.

21 (b) The governor shall appoint the director of the agency [subject to legislative confirmation].

22 The director shall serve at the pleasure of the governor and shall be exempt from the provisions of
23 [civil service or merit system citation]. The director shall be experienced in urban and regional plan-
24 ning, law, public administration, environmental regulation, or related areas.

25 (c) The director may employ personnel necessary to exercise the powers granted under this act,
26 within the limits of appropriated funds and in accordance with [citation of state personnel act].

27 SECTION 4. *Department Planning Officers.*

28 (a) Within [90] days after the effective date of this act, the head of each executive department

¹Suggested short title: *State Planning and Growth Management Act.*

1 shall designate from within the department a person to serve as the department's planning officer.
2 The planning officer shall coordinate all activities and responsibilities relating to planning within his
3 department and shall serve as a point of contact with the agency and other department planning
4 officers.

5 (b) Each department head shall notify the director in writing of the person initially designated
6 as the planning officer for the department and of any subsequent designations.

7 [Optional Section.]

8 [SECTION 5. *Substate Districts or Regional Agencies.*¹]

9 [Alternative 1.]

10 [SECTION 6. *State Planning Advisory Committee.*

11 (a) The governor [may] [shall] designate a state planning advisory commission consisting of no
12 more than [] members to be appointed by him to serve at his pleasure.

13 (b) [The state planning advisory commission shall convene at the call of the director and shall
14 advise him concerning any matters upon which he may seek advice.] Before submitting to the governor
15 any proposed state plan or report specifically relating to a region, the director shall submit the plan
16 or report for recommendation and comment to [*the state planning advisory commission*] and the [*sub-*
17 *state district organization or regional agency*] designated for the region.² [*The commission and*] the
18 [*organization or agency*] shall submit recommendations and comments to the director within [60] days
19 from receiving a report or plan. Each plan or report submitted to the governor shall be accompanied
20 by such recommendations and comments.

21 [(c) Members of the state planning advisory commission shall receive reimbursement for actual
22 expenses and compensation as provided by law.]]

23 [OR]

24 [Alternative 2.]

25 [SECTION 6. *State Planning Advisory Committee.*

26 (a) The governor shall designate a regional cabinet planning advisory commission consisting of
27 the heads of the regional planning agencies in the state.

28 (b) The regional cabinet shall meet at the call of the director. Before submitting any proposed
29 state plan or report to the governor, the director shall consider the advice of the regional cabinet with
30 regard to such plan or report.

31 (c) Members of the regional cabinet shall receive reimbursement for actual expenses.]

¹States should, if they have not already done so, establish through this legislation a substate district or regional planning system to assist the state planning agency in performing its functions. The preferred approach is contained in the Commission's draft, *Statewide Substate Districting Act*, particularly Section 3.

²See the Commission's draft, *Statewide Substate Districting Act*, particularly Section 5, for a suggested approach to establishing these organizations.

1 SECTION 7. *Powers and Duties.* The agency shall:

2 (a) prepare or cause to be prepared and revise, as necessary, the state development plan and also
3 any studies, reports, or plans as necessary or useful in the preparation and revision of the plan;

4 (b) assist the governor in preparing the annual executive budget, a state capital improvement
5 program, and the legislative program;

6 (c) coordinate all state agency planning and program evaluation activities;

7 (d) coordinate planning among Federal, state, regional, and local levels of government and between
8 the state and other states;

9 (e) pursuant to rules adopted by the governor, review state and local applications for Federal and
10 state assistance; serve as the state planning clearinghouse pursuant to *OMB Circular A-95* or succes-
11 sor Federal requirements, and designate regional and areawide clearinghouses for the purpose of re-
12 viewing and coordinating proposed local plans, projects, and other actions of agencies or individuals
13 having a potential for affecting interests of the state, and areas and regions within the state;

14 (f) administer the Federally assisted programs of statewide and local planning assistance authoriz-
15 ed under Section 701 of the *Federal Housing Act of 1954*, or its successor;

16 (g) provide appropriate planning assistance to regional and local agencies;

17 (h) make available basic demographic, geographic, and economic data and projections to all public
18 and private agencies concerned with development within the state; and

19 (i) adopt rules and regulations necessary to implement fully its responsibilities under this act.

20 SECTION 8. *State Development Plan.*

21 (a) The agency shall prepare or cause to be prepared and, subject to the adoption procedures pro-
22 vided in Section 9, shall publish the state development plan. Preparation and revision of the plan shall
23 be a continuing process. Such process, to the extent feasible, shall consider studies, reports, and plans
24 of the various departments of state and local government, regional planning agencies, and the Federal
25 government, and shall consider existing and prospective resources, capabilities, and needs of state,
26 regional, and local levels of government. The most current version of each state substantive, regional,
27 and local plan shall be submitted to the agency not later than [date] of each year, and shall be incor-
28 porated into the state development plan without change, except in those cases where a change is neces-
29 sary to resolve explicitly identified conflicts and those necessary to assure conformance with state-
30 wide, regional, or areawide policies established within the framework of legislative action.

31 (b) The initial state development plan shall be submitted to the governor not later than [date].
32 Thereafter the plan shall be updated annually.

33 (c) The state development plan shall be based on the best available data and shall provide guid-
34 ance to state, local, and regional agencies for the coordinated and orderly social, economic, and
35 physical development of the state in accordance with the policies, objectives, and standards, estab-

1 lished and approved by the [legislature] relating to the:

2 (1) management and prudent use of the state's resources, including land, water, air, and energy;

3 (2) efficient and productive utilization of water resources, including watershed management,
4 maintenance of water quality, and flood damage protection;

5 (3) preservation of areas, structures, and sites of historical, archeological, architectural, recre-
6 ational, scenic, or environmental significance;

7 (4) location and utilization of parks and recreation and wilderness areas;

8 (5) location and balanced utilization of airport, highway, and public transportation facilities;

9 (6) location and operation of refineries and sewage, waste water treatment, solid waste dis-
10 posal, and electric generating facilities;

11 (7) development and location of commerce and industry;

12 (8) location of public office buildings, colleges and universities, and health, welfare, and
13 correctional institutions;

14 (9) development and location of housing, including low and moderate income housing, urban
15 and community development, and open spaces related thereto;

16 (10) provision of health services, manpower development, employment opportunity, educa-
17 tional services, elimination of poverty, crime control, and social and rehabilitative services; and

18 (11) preservation and efficient utilization of prime agricultural lands.

19 (d) The state development plan shall describe programs whereby the objectives and policies set
20 forth therein may be implemented. Alternative programs with appropriate analyses may be provided.

21 (e) The agency shall to the extent possible and appropriate consider Federal agency plans.

22 (f) All state departments, local governments, substate district organizations, and regional planning
23 districts shall assist the agency to the maximum possible extent in carrying out the purposes of this act.

24 (g) Prior to submitting the plan to the governor, the agency shall hold a public hearing on the
25 proposed plan in each of the [substate or regional planning districts. [Notice and procedures for these
26 hearings shall comply with the *[state administrative practices act]*].

27 SECTION 9. *Adoption and Availability of State Development Plan.*

28 (a) The agency shall transmit the proposed state development plan to the governor for considera-
29 tion and action. The plan, when approved by the governor, shall be transmitted to the [secretary of the
30 senate and the clerk of the house of representatives] for presentation to the next regular session of
31 the [legislature].¹ [[Alternative 1.] Unless the plan is amended or specific provisions repealed by [concur-
32 rent] resolution of the [legislature], the provisions of the plan or revisions shall become effective as state
33 policy upon adjournment of the regular session of the [legislature].] [or] [[Alternative 2.] The provisions

¹States may wish to require that the plan be submitted directly to a joint legislative committee on state planning. See the Commission's suggested legislation titled *Joint legislative Committee on State Planning*.

1 of the plan shall become effective as state policy upon adoption by the [legislature] of a [concurrent] re-
2 solution approving the plan.] Thereafter, no state department plan may be adopted, nor may any state
3 department program be undertaken unless consistent with law and the state plan. State department
4 budgets shall be prepared and executed based upon, and consistent with, the policies contained in
5 substantive law and the state plan.

6 (b) Upon the effective date of the state development plan, the governor shall file copies with the
7 [secretary of state] and shall transmit copies to the head of each department and to each regional plan-
8 ning district. In addition, copies shall be transmitted to all local governments, regional agencies, and
9 any other governmental agency affected by, or having an interest in, the plan. The plan shall also be
10 available to the general public.

11 SECTION 10. *State Land Management Plan.*

12 (a) As an element of the state development plan, the agency shall prepare or cause to be prepared
13 the state land management plan. This plan, which may consist of policy objectives and guidelines,
14 maps or other appropriate material, shall guide decisions relating to public and private development
15 within the state. The plan shall include, without limitation, principles for designating various types
16 of public and private land use within particular areas; a comprehensive analysis of existing and pro-
17 posed facilities, including transportation, parks, schools, public building and institutions, electrical
18 generation facilities, refineries, and waste disposal areas; proposals for protecting the state's natural
19 resources and agricultural lands; designation of areas appropriate for urban growth and new com-
20 munity sites, and procedures for identifying and protecting critical areas.

21 (b) To the maximum possible extent, local and regional land management plans and implementa-
22 tion of such plans shall be consistent with, and further the policies contained in, the state land man-
23 agement plan. The agency shall furnish to local governments and regional agencies, upon request,
24 assistance in developing plans and regulatory programs and by rule shall establish specific procedures
25 for agency review of proposed local and regional land management plans and programs prior to adop-
26 tion; however, such review shall be accomplished by the agency at the request of a local or regional
27 government agency.¹ The agency review shall identify specific inconsistencies between the state land
28 management plan and a proposed local or regional plan or program and shall clearly set forth agency
29 objections based on such inconsistencies. The agency, pursuant to Section 13, may institute appropri-
30 ate judicial proceedings to insure maximum compliance with the state land management plan and
31 policies contained therein, including declaratory actions to invalidate provisions of local or regional
32 plans, programs, or development orders that conflict with state policies.

¹States may also wish to consider the Commission's draft, *Local Planning, Zoning, and Subdivision Regulation*. See also, Ch. 80, *Oregon Laws of 1973*, for an approach that transfers planning and regulatory responsibilities to the state if local governments do not perform within a specified time.

1 (c) To further implementation of this section, the agency shall continuously consider and analyze
2 land resource management and regulation and shall recommend appropriate new legislation, draft
3 model ordinances to assist local governments, and examine techniques for encouraging well planned
4 development and growth, including, without limitation, [new communities, land banks, urban de-
5 velopment authorities, and development rights transfer].

6 SECTION 11. *Developments of Regional Impact.*¹

7 (a) "Development of regional impact" means a development or development activity which,
8 because of its character, magnitude, or location, would substantially affect the health, safety, or
9 welfare of citizens of more than one [local government, county, or region] and which is specifically
10 designated as such by the [legislature] through legislative act.

11 (b) Prior to [date], the agency after consultation with the state planning advisory commission,
12 and with the approval of the governor, shall recommend to the [legislature] specific types of develop-
13 ments of regional impact.² Prior to making final recommendations to the [legislature], the agency shall
14 hold public hearings on proposed recommendations in [substate or regional planning]
15 districts. Such hearings shall be held pursuant to the [state administrative practices act]. In developing
16 proposals for specific types of developments of regional impact, the agency shall consider:

- 17 (1) the extent to which the development or activity would create environmental degradation;
- 18 (2) the amount of pedestrian or vehicular traffic likely to be generated;
- 19 (3) the number of persons likely to be residents, employees, or otherwise present;
- 20 (4) the size of the site to be occupied;
- 21 (5) the likelihood that additional or subsidiary development will be generated; and
- 22 (6) the unique qualities of particular areas of the state.

23 The final recommendations shall specify the reasons for the proposed designation of each de-
24 velopment of regional impact, dangers that would result from such development being uncontrolled,
25 and suggested state planning guidelines to be applied to the development. The guidelines shall be
26 consistent with the state land management plan.

27 (c) The final recommendations shall be incorporated in a legislative bill and submitted to the [legis-
28 lature]. Modifications to the initial recommendations shall be proposed by the agency and considered
29 by the [legislature] in the same manner as the initial recommendations. Adopted standards shall not
30 become effective prior to [].

31 (d) In developing recommendations, the agency shall solicit suggestions from each [substate dis-
32 trict or regional agency] and local government.

¹States wishing to include this section should consider *The Florida Environmental Land and Water Management Act of 1972*, Ch. 380, *Florida Statutes*. Note that this approach provides a limited state role in land use decisions having greater than local impact.

²In developing specific types of developments of regional impact, states may wish to consider the Commission's draft, *State Highway Interchange Planning Districts*.

1 (e) After the effective date of the legislation adopting the specific types of developments of re-
2 gional impact, no proposed project constituting such a development may be initiated by any person
3 or public agency without first obtaining a permit from the local government or governments in which
4 the development is located. [Such permit shall be obtained prior to the receipt by the applicant of any
5 other state or regional government permit, authorizations, or approvals for the project.]

6 (f) (1) A person or public agency desiring to initiate a development of regional impact shall first
7 apply to the local government(s) involved for a permit. The application shall contain information and
8 data as determined by the regional [and state] agency to be necessary, and as prescribed by rule.

9 (2) The local government(s) shall transmit copies of the application¹ to the state agency and
10 to the regional agency designated by the governor to review and recommend action on the permit. The
11 regional agency shall review the application and, within [75] days after receipt, submit recommenda-
12 tions to the local government(s) involved. Such recommendations shall be incorporated into the hear-
13 ing record for the development.

14 (3) If the local government(s) determines, after a hearing held pursuant to the [*state adminis-*
15 *trative practices act*], that the proposed development complies with and would further applicable state,
16 regional, and local government plans, [and that the probable net benefit from the proposed develop-
17 ment will exceed the probable net detriment], it [they] shall approve the application in writing and
18 issue a permit. The local government(s) shall act on the application within [30] days after receipt of
19 the regional government recommendations. The written decision shall include findings on which the
20 decision is based.

21 [Alternative 1.]

22 [(4) The local government(s) may include in the permit any conditions or restrictions neces-
23 sary to assure the project complies with and furthers applicable state, regional, and local government
24 plans.]

25 [OR]

26 [Alternative 2.]

27 [(4) In determining net benefit and detriment, pursuant to subsection (3), the local govern-
28 ment(s) shall consider, without limitation, the regional agency recommendations as to whether, and the
29 extent to which:

30 (i) the development will have a favorable or unfavorable impact on the environment and
31 natural resources of the region;

32 (ii) the development will have a favorable or unfavorable impact on the economy of the
33 region;

¹States may wish to require the governor to designate existing regional planning agencies or substate district organizations. See the Commission's suggested legislation, *Statewide Substate Districting Act*.

1 (iii) the development will efficiently use or unduly burden water, sewer, solid waste
2 disposal, or other necessary public facilities;

3 (iv) the development will efficiently use or unduly burden public transportation facilities;
4 and

5 (v) the development will favorably or adversely affect the ability of people to find ade-
6 quate housing reasonably accessible to their places of employment.]

7 [End of three alternatives.]

8 (5) The state agency shall print each week, and mail to any person upon payment of a rea-
9 sonable charge to cover costs of preparation and mailing, a list of all notices of applications for de-
10 velopments of regional impact that have been filed in the state.

11 (6) If the proposed development requires any other state or regional government agency
12 permit, authorization, or approval, the [state agency], with the cooperation and concurrence of other
13 state or regional agencies, may provide a joint application form and permit to satisfy both require-
14 ments of this act and other statutes or ordinances.

15 (7) If any person or public agency is in doubt whether a proposed project constitutes a de-
16 velopment of regional impact, the person or public agency may request a determination from the state
17 agency. Within [60] days after the date of the receipt of such a request, the regional agency, with the
18 advice of the governing body for the local government in which such development is proposed, shall
19 issue a binding letter of interpretation with respect to the proposed development. Binding letters shall
20 bind all state, regional, and local agencies and the applicant. Requests for determinations under this
21 section shall be made to the regional agency in writing and in such form and contain such information
22 as may be prescribed by rule.

23 (8) No project constituting a development of regional impact shall be undertaken without a
24 permit issued under this section. Any person or public agency violating this section may be enjoined
25 in civil proceedings brought in the name of a local government, the regional agency, or the state, or
26 may be fined a maximum of [\$], or both.

27 SECTION 12. *State land and Water Adjudicatory Commission.*

28 (a) There is created a state land and water adjudicatory commission to consist of [five] members
29 to be appointed by the governor. One member shall be designated by the governor as chairman. Each
30 member shall serve a term of [four] years and until his successor is appointed and qualified, except
31 that various terms may be designated for the members first appointed. A member appointed to fill a
32 vacancy shall serve only for the unexpired term of the member he succeeded. A member may be re-
33 appointed.

34 (b) The members of the commission shall be paid a *per diem* of [\$] for each day spent on the
35 work of the commission. In addition, each member shall be reimbursed for travel expenses as provided

1 in [appropriate citation]. The department of [name] shall provide necessary staff to the commission.

2 (c) Whenever a local government(s) rejects or approves an application for a development of re-
3 gional impact permit, it [they] shall by mail notify the agency, the applicant, and the regional agency.
4 Within [30] days after the notification of the decision is received, either the agency, applicant, or
5 regional agency may appeal the decision to the land and water adjudicatory commission, pursuant to
6 [the state administrative practices act]. Upon motion and good cause shown, the commission may
7 permit materially affected parties to initiate or intervene in an appeal.

8 (d) The land and water adjudicatory commission may designate a hearing officer to conduct hear-
9 ings. The hearing officer may issue notices of hearings and subpoenas requiring the attendance of
10 witnesses and the production of evidence, administer oaths, and take testimony as may be necessary.
11 The hearing officer shall certify and file with the commission recommendations, findings of fact,
12 and a proposed order.

13 (e) Prior to issuing an order, the land and water adjudicatory commission shall hold a hearing
14 pursuant to [the state administrative practices act].

15 (f) Within [120] days, the land and water adjudicatory commission shall issue a decision granting
16 or denying permission to develop, pursuant to the standards of this chapter, and may attach condi-
17 tions and restrictions to its decisions. Decisions of the commission shall contain a statement of the
18 reasons therefor. Decisions of the commission are subject to judicial review under [the state adminis-
19 trative practices act].

20 SECTION 13. *Enforcement.*

21 (a) The agency may initiate appropriate judicial proceedings to insure compliance with the pro-
22 visions of this act and any plans, rules, orders, or determinations issued pursuant to this act.

23 (b) The agency may intervene in a judicial or administrative proceeding in which a controversy
24 has arisen regarding the meaning or validity of any provision of this act or any agency rule, order,
25 determination, plan, or report.

26 (c) Upon intervention, the agency shall have all the rights of a party, including the right to appel-
27 late review, to the extent necessary, for a proper presentation of the facts and law relating to any
28 matter for which intervention is warranted.

29 SECTION 14. *Specification of Data and Projections.*

30 (a) The agency, by rule, may specify particular data, projections, or forecasts that departments
31 shall use in preparing studies, reports, and plans for the purpose of establishing consistency and uni-
32 formity in the planning process.

33 (b) If a department chooses to use data, projections, or forecasts contrary to those specified by the
34 agency, it shall include in, or append to, the plan or report a statement of any difference in conclusions
35 or recommendations that would result if the agency's data, projections, or forecasts had been used,

1 and of its reasons for not following the rule.

2 SECTION 15. *Special Reports and Studies.*

3 (a) The agency shall prepare annually a report on the progress made in achieving the purposes
4 of this act. Such report shall be submitted by the governor to the [*legislature*] not later than [December
5 31] of each year.

6 (b) The agency may prepare an annual economic report concerning the current and projected
7 economic situation of the state in light of existing state policies.

8 (c) The agency shall prepare such additional reports as the governor or the [*legislature*] may re-
9 quest.

10 SECTION 16. *Authorization to Contract.* Whenever the preparation and revision of the state
11 development plan requires research facilities or capabilities not available to the agency, the director
12 may use public or private funds to contract with public agencies, private firms, or consultants to as-
13 sist the agency in accomplishing its responsibilities.

14 SECTION 17. *State Planning Assistance.* The sum of [\$], is hereby appropriated to [substate
15 districts or regional planning agencies] and local governments in order to implement the provisions of
16 this act. The agency shall allocate these funds according to a formula provided by [*rule*] [*law*].

17 SECTION 18. *Separability.* [*Insert separability clause.*]

18 SECTION 19. *Effective Date.* [*Insert effective date.*]

5.102 JOINT LEGISLATIVE COMMITTEE ON STATE PLANNING¹

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

In its 1967 and 1968 reports, the Advisory Commission on Intergovernmental Relations stressed the importance of a strong, well staffed planning program directly under the governor, and recommended that each state develop such a planning capability in its executive branch. The planning process called for in this recommendation should include, for the consideration of both the governor and the legislature: (1) formulation of comprehensive policies and long range plans for the orderly development of human and material resources; (2) provision of a framework for functional, departmental, and regional plans; and (3) assistance to the governor in his budget making and program evaluation roles. However, it also should be recognized that one of the principal reasons underlying the failure of many states to develop an effective planning capability has been the neglect of the proper role of the legislature as an integral part of the planning process. While the governor should have direct control of the state planning function, the legislature's involvement should not be limited to formal ratification of completed plans, but should include participation in their formulation and revision.

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

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

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Report A-31, Volume 1, Recommendation 21 (October, 1967); and *Urban and Rural America: Policies for Future Growth*, Report A-32, Recommendation 3 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

Suggested Concurrent Resolution

**[PROVIDING FOR THE ESTABLISHMENT OF A JOINT LEGISLATIVE
COMMITTEE ON STATE PLANNING]**

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

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

7 WHEREAS, there is a need for continuing overall review by the {*legislature*} of the state compre-
8 hensive plan, and related functional plans; and

9 WHEREAS, a joint legislative committee made up of members of that standing committee or sub-
10 committee in each house that maintains jurisdiction over the comprehensive planning function or
11 agency is a means of assuring continuing, systematic review and study of the progress toward a state
12 comprehensive plan and of providing a framework within which relevant policies and programs may
13 be evaluated;

14 NOW, THEREFORE, BE IT RESOLVED, by the [*legislature*] of the state of [*name*] that a joint leg-
15 islative committee on state planning is created to:¹

16 (1) receive from the [*state planning agency*] the state comprehensive plan and functional plans
17 from the [*planning agency*] and other state agencies for review and recommendation for action thereon
18 by the {*legislature*};

19 (2) review all relevant proposed state legislation for conformance with the comprehensive plan
20 and related functional plans, including, but not limited to, such areas as highway construction,
21 housing, mass transit facilities, airport development, open space, urban planning assistance, water
22 and sewer facilities, public works planning, outdoor recreation, water and air pollution abatement,
23 hospital and health facilities, and solid and liquid waste disposal systems; and

¹In addition to these general charges, states will want to include planning issues of current concern. For example, the cognizant leg-
islative committee in Oregon, under Sec. 24 of S. 100, *Laws of 1973*, has been mandated, among other duties, to:

(1) review and make recommendations to the Legislative Assembly on proposals for additions to or modifications of des-
ignations of activities of statewide significance, and for designations of areas of critical state concern;

(2) review and make recommendations to the Legislative Assembly on statewide planning goals and guidelines . . . ; and

(3) study and make recommendations to the Legislative Assembly on the implementation of a program for compensa-
tion by the public to owners of lands within this state for the value of any loss of use of such lands resulting directly from
the imposition of any zoning, subdivision or other ordinance or regulation regulating or restricting the use of such lands.
Such recommendations shall include, but not be limited to, proposed methods for the valuation of such loss of land and
proposed limits, if any, to be imposed upon the amount of compensation to be paid by the public for any such loss of use.

1 (3) develop and introduce legislation affecting the plan.

2 AND BE IT FURTHER RESOLVED that the joint legislative committee on state planning shall
3 consist of [] members, [] of whom shall be the members of the [*senate committee or subcommittee*
4 *having jurisdiction over planning*], and [] of whom shall be the members of the [*house committee or*
5 *subcommittee having jurisdiction over planning*].

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

8 AND FURTHER, that the committee shall choose a chairman, a vice chairman, and a secretary
9 from its membership. Members of the committee shall serve without compensation in addition to
10 that normally received for performance of their legislative duties, but shall be reimbursed for any
11 expenses incurred by them in the performance of their committee duties.

12 AND FURTHER, the committee may:

13 (1) request from any department, division, board, commission, or other agency of the state or
14 any political subdivision of the state, such information and assistance as may be necessary for the
15 committee's review of proposed legislation for conformance with the state comprehensive plan;

16 (2) subpoena witnesses, take testimony, compel the production of books, records, documents,
17 papers, and other sources of information deemed by the committee to be relevant to its investigation;

18 (3) have access to all books, records, documents, and papers of any political subdivision of the
19 state;

20 (4) exercise all the powers and authority of other standing committees of the [*legislature*]; and

21 (5) sit anywhere within or outside of the state to conduct the review herein described.

22 AND FURTHER, that the committee may employ professional, clerical, stenographic, and other
23 assistants on the basis of education, competence, and experience and in compliance with standards
24 fixed for all [*legislative and committee*] employees by the [*central personnel authority*] without regard
25 to political party affiliation.¹ These committee employees shall retain their positions so long as they
26 render satisfactory performance of their duties. Staff members shall receive salary and other com-
27 pensation as determined by the [*central personnel authority*] of the [*legislature*].

¹See draft legislation *Year Round Professional Staffing of Major Standing Committees*.

5.103 STATE AND LOCAL LAND DEVELOPMENT CORPORATIONS¹

Land development corporations created by the states and empowered to undertake large scale urban and new community land purchase, assembly, and improvement offer a promising means of implementing state and local urban growth policies. Specifically, such corporations could: (1) acquire land by negotiation and through the exercise of eminent domain; (2) arrange for site development and construct or contract for the construction of utilities, streets, and other related improvements; (3) hold land for later use; (4) sell, lease, or otherwise dispose of land or rights thereto to private developers or public agencies; (5) acquire less than fee interests in land; and (6) establish local or regional land development agencies. The following draft legislation grants such powers and requires that they be exercised in accordance with, and in furtherance of, the state's development plan.

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

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

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

Section 2 deals with definitions.

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

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

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

Section 6 provides for the disposition of land by the state corporation to public agencies or private developers, and *Section 7* provides for letting construction contracts. *Section 8* authorizes the establishment of local land development corporations. *Section 9* sets forth the requirements for acquisition of real property by the state land development corporations.

¹Derived from: Advisory Commission on Intergovernmental Relations: *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April 1968).

Section 10 authorizes the corporation to acquire title and less than fee interests in open space land, and to require that such land be retained in open use. Property tax assessments are required to reflect the use of the property for open space.

Section 11 provides that the state corporation's rules and regulations for project development shall prevail over local regulations where there is a conflict. Existing local controls usually are designed basically to deal with problems in built up areas or those experiencing gradual growth and accretion, and often do not produce satisfactory results under the extreme pressures of rapid urbanization.

Section 12 authorizes the state land development corporation to issue bonds on the full faith and credit of the state within limits set by the legislature, the bonds to be retired out of revenues and receipts derived from the lease or sale of land by the corporation. *Section 13* provides for the creation of a special revolving account to be known as the land development financing fund to which the legislature may appropriate funds and in which are deposited proceeds from the sale of bonds and land as well as any other moneys made available to the state land development corporation for the purposes of this act.

To prevent undue loss of revenues to local governments while land is being held by the corporation for future project development, *Section 14* provides for annual state reimbursement of a portion of the local property taxes on the land.

Section 15 requires the corporation to submit an annual report to the governor and the legislature at the end of each fiscal year. *Section 16* provides for a separability clause and *Section 17* specifies the effective date of the bill.

Suggested Legislation

[AN ACT ESTABLISHING A STATE LAND DEVELOPMENT CORPORATION
AND AUTHORIZING LOCAL LAND DEVELOPMENT CORPORATIONS]

(Be it enacted, etc.)

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

2 (a) local planning and development controls in this state are inadequate to cope with the pres-
3 sures placed on land and its development in rapidly growing urban areas;

4 (b) efficiency and economy in the provision of public services, both in capital outlay and operat-
5 ing cost, depends upon a sound method of acquiring land and for the planning of its use for future
6 public and urban development uses;

7 (c) public acquisition of land, the planning of its use, and the establishment of sound develop-
8 ment standards would help to preserve one of the state's primary resources;

9 (d) private enterprise has encountered difficulty in providing new industrial, commercial, and
10 residential facilities in new large scale urban development because of problems in assembling land
11 suitable for building sites, the difficulty of attracting private capital at reasonable cost to finance
12 development, and the difficulty of private enterprise alone to plan, finance, and coordinate industrial
13 and commercial development with residential developments for persons and families of low income
14 and with adequate public services to serve the development;

15 (e) the provision and preservation of permanent open space land are necessary to help curb
16 urban sprawl, prevent urban blight and deterioration, and encourage more desirable urban develop-
17 ment; and

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

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

24 SECTION 2. *Definitions.* As used in this act:

25 (a) "Corporation" means the state [*Land Development Corporation*] created by Section 3 of this
26 act.

27 (b) "Bonds" means bonds issued by the corporation pursuant to this act.

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

29 (d) "Improvements" means provision of public improvements, such as street sewer and water

1 lines and other utilities, recreational facilities, and other community amenities.

2 (e) "Local [*Land Development Corporation*]" means any agency created by Section 8 of this act.

3 (f) "Municipality" means any county, city, town, or village.

4 (g) "Open-space land" means any land which is used or preserved for:

5 (1) park or recreational purposes;

6 (2) conservation of land or other natural resources;

7 (3) historic or scenic purposes; or

8 (4) assisting in the direction and timing of community development.

9 (h) "Project" means an undertaking or improvement including lands, buildings, and improve-
10 ments for community use, real properties, or any interest therein, that are acquired, owned, con-
11 structed, or improved by the corporation in accordance with, and in furtherance of, the state's urban-
12 ization plan. A project shall consist of at least [1,000] acres, or a smaller area only if it is found by
13 the agency to be an integral part of a large scale development or new community established in accord-
14 ance with the state's urbanization plan.

15 (i) "State Urbanization Plan" means [*cite appropriate statutes, official documents, and other*
16 *instruments which set forth the state's policies and official guidelines for promoting and encouraging*
17 *urban growth*].¹

18 SECTION 3. State [*Land Development Corporation*].

19 (a) There is created a state [*Land Development Corporation*] in [*appropriate state agency or de-*
20 *partment in charge of local affairs*]. The [*appropriate state agency or department in charge of local*
21 *affairs*] shall administer this act through the corporation, which shall be headed by a director
22 appointed by the [*head*] of the [*appropriate state agency or department in charge of local affairs*] [subject
23 to the approval of the governor].

24 (b) The governor may appoint a [*land development advisory council*] to advise and make recom-
25 mendations to the corporation with respect to the development policies and programs in order to en-
26 courage maximum participation by the private sector of the economy. The council may consist of
27 not more than [25] members who shall serve at the pleasure of the governor. Members shall serve
28 without salary but shall be entitled to reimbursement for their actual and necessary expenses incurred
29 in the performance of their duties.

30 (c) The corporation may establish one or more local advisory committees to consider and advise
31 the corporation upon matters submitted to it concerning the development of any area or any project.
32 The members of such committees shall serve at the pleasure of the [*head*] of the [*appropriate state*
33 *agency or department in charge of local affairs*], but shall be entitled to reimbursement for their
34 actual and necessary expenses incurred in the performance of their duties.

¹See Advisory Commission on Intergovernmental Relations' draft legislation *State Planning and Growth Management Act*.

1 SECTION 4. *Powers and Duties.* The corporation may:

2 (a) make and execute contracts and all other instruments necessary or convenient for the exercise
3 of its powers and functions under this act;

4 (b) acquire or contract to acquire from any person, firm, corporation, municipality, Federal, or
5 state agency by grant, gift, purchase, condemnation, or otherwise, leaseholds, real, personal, or
6 mixed property or any interest therein; and to own, hold, clear, improve, and rehabilitate, and to sell,
7 assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same;

8 (c) carry out its responsibilities and perform its functions through one or more local [*land de-*
9 *velopment corporations*]. To carry out the purpose of this act, the state corporation may transfer to
10 any local [*development corporation*] any moneys, real or personal property, mixed property, or any
11 project;

12 (d) acquire, construct, reconstruct, improve, alter, or repair, or provide for the construction,
13 reconstruction, improvement, alteration, or repair of any project for site development and construc-
14 tion of utilities, streets, and related improvements;

15 (e) arrange or contract with a local government for the planning, replanning, opening, grad-
16 ing, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facili-
17 ties, or for the acquisition by a municipality of property, or property rights, or for the furnishing
18 of property, or services in connection with a project;

19 (f) sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber
20 any project, and in the case of the sale of any project, to accept a purchase money mortgage in
21 connection therewith and to lease, repurchase, or otherwise acquire and hold any project which the
22 corporation has theretofore sold, leased, or otherwise conveyed, transferred, or disposed of;

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

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

29 (i) manage any project, whether then owned or leased by the corporation, and to enter into
30 agreements with any state agency, municipality, county, or any agency or instrumentality thereof, or
31 with any person, firm, partnership or corporation, either public or private, for the purpose of causing
32 any project to be managed;

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

1 (k) lend funds, secured or unsecured, or grant funds, to any local [*land development corpora-*
2 *tion*], and to purchase, sell, or pledge the shares, bonds, or other obligations or securities thereof,
3 on such terms and conditions as the corporation may deem advisable;

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

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

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

21 (o) borrow money, and to issue its negotiable bonds and notes, and to provide for the rights
22 of the holders thereof;

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

28 (q) invest any funds held in reserve or sinking funds or any moneys not required for immediate
29 use or disbursement, at the discretion of the corporation [and with the approval of the [*state treasur-*
30 *er*]], in obligations of the state or of the United States government or obligations the principal and
31 interest of which are guaranteed by the state or the government of the United States;

32 (r) procure insurance against any loss in connection with its property and other assets and oper-
33 ations in such amounts and from such insurers as it deems desirable;

34 (s) engage the services of consultants on a contract basis for rendering professional and tech-

¹States may wish to make general foreclosure laws applicable.

1 nical assistance and advice;

2 (t) contract for and to accept any moneys, gifts, grants, or loans of funds, or property, or finan-
3 cial, or other aid in any form from the Federal government or any agency or instrumentality thereof,
4 or from the state or any agency or instrumentality thereof, or from any other source and to comply,
5 subject to the provisions of this act, with the terms and conditions thereof; and

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

8 SECTION 5. *Findings for Land Acquisition.* Notwithstanding any other provision of this act,
9 the corporation shall not be empowered to undertake the acquisition and improvement of a project
10 unless:

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

13 (b) project plans have been filed with local officials of the municipalities involved, including
14 the local and areawide planning agency;

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

18 (d) there exists, in the area in which the project is to be located, a need for safe and sanitary
19 housing accommodations for persons or families of low income, which the operations of private
20 enterprise cannot provide;

21 (e) the acquisition and construction, proposed leasing, operation, and use of such project will
22 aid in the development, growth, and prosperity of the state and the area in which such project is
23 located;

24 (f) the plan or undertaking affords maximum opportunity for participation by private enterprise,
25 consistent with public needs; and

26 (g) there is a feasible method for the prompt relocation of families and individuals displaced
27 from the project area, where such displacement occurs, into decent, safe, and sanitary dwellings,
28 which are or will be provided in the project area or in other areas not generally less desirable in
29 regard to public utilities and public commercial facilities, at rents or prices within the financial means
30 of such families or individuals, and reasonably accessible to their places of employment. The corpora-
31 tion shall render to business and commercial tenants displaced from the project area such assistance
32 as it may deem necessary to enable them to relocate.²

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

²Such relocation assistance shall be consistent with and subject to existing state legislation which is similar to the Advisory Commission on Intergovernmental Relations' draft legislation *Uniform Relocation Assistance Act*.

1 SECTION 6. *Sale or Lease of Land.*

2 (a) The corporation may sell or lease for a term not exceeding 99 years all or any portion of the
3 real property constituting a project to any public agency, person, firm, partnership, or corporation,
4 either public or private, upon such terms and conditions as may be approved by the corporation
5 whenever the corporation shall find that such sale or lease is in conformity with a plan or undertak-
6 ing for large scale or new community development in the municipality in which the project is located.
7 Such sale or lease may be made:

- 8 (1) to any local [*land development corporation*] subject to public notice and hearing; and
9 (2) to any person, firm, partnership, or corporation, [without public bidding subject to public
10 notice and hearing].

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

18 (c) The corporation may sell or lease for a term not exceeding 99 years any project, or part there-
19 of, to the state or to any agency or instrumentality thereof, to any municipality or agency or instru-
20 mentality thereof, or to any non-profit corporation established for a public purpose, for use not in-
21 consistent with the purposes of this act. Any such sale or lease may be made without public bidding,
22 upon such terms and conditions as the corporation, within its discretion, may determine to be neces-
23 sary or desirable. The corporation may enter into a contract for a sale or lease at the date of, or sub-
24 sequent to the completion of the project by the corporation. Where such contract for sale or lease is
25 entered into after the commencement of construction and prior to the physical completion of the im-
26 provement to be sold or leased, the corporation may complete the construction and development of
27 such improvement prior to the actual conveyance or lease.

28 SECTION 7. *Improvement Construction Contracts.*

29 (a) Construction contracts let by the corporation shall be in conformity with [*cite appropriate*
30 *state law*].

31 (b) The corporation may, in its discretion, assign contracts for supervision and coordination to
32 the successful bidder for any subdivision or work for which the corporation receives bids. Any con-
33 struction contract awarded by the corporation shall contain such other terms and conditions as the
34 corporation may deem desirable. The corporation shall not award any construction contract except
35 to the lowest bidder who, in its opinion, is qualified to perform the work required and who is

1 responsible and reliable.

2 SECTION 8. *Local [Land Development Corporations] Authorized.* Subject to the approval of the
3 governor, [and any other appropriate law], the corporation may authorize any city or county, [or
4 other designated unit of local general government], or combination thereof, to establish a local
5 [land development corporation]. Such authorization shall prescribe the structure of the [local land
6 development corporation], the purpose for which it is to be formed, and the powers which it shall
7 be authorized to exercise on behalf of the state [land development corporation] consistent with this
8 act.

9 SECTION 9. *Acquisition of Real Property.*

10 (a) The corporation, upon making a finding that it is necessary or convenient to acquire any real
11 property for its immediate or future use, may acquire such property in any lawful manner, including
12 condemnation pursuant to the provisions of the condemnation law where not inconsistent with
13 this act, notwithstanding that such property may already be devoted to a public use, nor shall such
14 property thereafter be taken for any other public use without the consent of the governor.

15 (b) Every reasonable effort shall be made to acquire the real property by negotiated purchase.
16 It shall be the policy of the [head] of the corporation, before initiating negotiations for real property,
17 to establish a price which he believes to be a fair and reasonable consideration therefor, and to
18 make a prompt offer to acquire the property for the full amount so established.

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

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

27 (e) All condemnation proceedings hereunder shall be brought in the [cite court of appropriate jur-
28 isdiction] and the compensation to be paid shall be determined by the court.¹

29 (f) The court may in its discretion decree that title to any real property acquired hereunder by
30 condemnation shall vest in the corporation upon the entry and filing of an order of immediate pos-
31 session.

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

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

1 (h) No owner will be required to surrender possession of real property before the [head] of the
2 state corporation:

3 (1) pays the agreed purchase price;

4 (2) makes available to the owner, by court deposit or otherwise, an amount not less than
5 [75] *per centum* of the appraised fair value of such property, as approved by such state corporation
6 [head], without prejudice to the right of the owner to contest the amount of compensation due for
7 the property; or

8 (3) deposits or pays the final award of compensation in the condemnation proceeding for
9 such property; and

10 (4) provides relocation benefits as required by this act.

11 (i) Any decrease in the value of real property prior to the date of valuation caused by the public
12 improvement for which such property is acquired, or by the likelihood that the property would be
13 acquired for the proposed public improvement, other than that due to physical deterioration within
14 the reasonable control of the owner, will be disregarded in determining the compensation for the
15 property.

16 (j) For the purposes of determining the extent of the acquisition of real property and the value
17 thereof, no building, structure, or other improvement will be deemed to be other than a part of the
18 real property solely because of the right or obligation of a tenant, as against the owner of any other
19 interest in the real property, to remove such building, structure, or improvement, and then an amount
20 not less than the value which such building, structure, or improvement, contributes to the value of
21 the real property acquired, or the value of such building, structure, or improvement for removal from
22 the real property, whichever is the greater, will be paid to the tenant therefor.

23 (k) All persons in possession of such property at the time of such vesting of title shall at the
24 option of the corporation become tenants at will thereof, and pay a rent to be agreed upon, unless
25 within ten days after vesting such persons actually remove from the premises.

26 (l) In no event shall the interest upon any claim arising from condemnation hereunder exceed []
27 *per centum per annum*.

28 SECTION 10. *Acquisition and Preservation of Real Property for Use as Open Space.*

29 (a) To carry out the purposes of this act and to implement fully its duties and responsibilities,
30 the corporation may:

31 (1) acquire by purchase, gift, devise, bequest, condemnation, grant, or otherwise, title to or
32 any interest or rights in real property that will provide a means for the preservation and provision
33 of open-space land; and

34 (2) require any real property in which it has an interest to be retained and used for the
35 preservation and provision of open-space land. The use of the real property for open-space land

1 shall conform to the comprehensive plans adopted by the state and for the area in which the prop-
2 erty is located. It is hereby declared by the legislation that powers authorized in this subsection
3 constitute a public purpose which will promote and enhance the health, safety, and welfare of the
4 state's citizens.

5 (b) No open-space land, the title to, or interest or right in which is acquired under this act, or
6 which is designated open-space land under this act shall be converted or diverted from open-space land
7 use unless the conversion or diversion is determined by the corporation to be:

8 (1) essential to the orderly development and growth of the area; and

9 (2) in accordance with the comprehensive plan for the area. [Other real property of at least
10 equal fair market value and of, as nearly as feasible, equivalent usefulness and location for use as
11 open-space land shall be substituted within a reasonable period not exceeding one year for any real
12 property converted or diverted from open-space land use.]

13 (c) The corporation may convey or lease any real property it acquires or which is designated for
14 open-space purposes, consistent with the purposes of this act. The conveyance or lease shall be
15 subject to contractual arrangements that will preserve the property as open-space land, coexistent
16 with the provisions of subsection (b) of this section.

17 SECTION 11. *Regulations.* All projects acquired, constructed, improved, maintained, or operated
18 by the corporation, or by any local [*land development corporation*], shall comply with the rules and
19 regulations of the corporation. If the requirements of any local law, code, charter, ordinance, zoning
20 ordinance, rule, or regulation is in conflict with the rules and regulations of the corporation, the
21 corporation's rules and regulations shall prevail.

22 SECTION 12. *Bonds.* The corporation may from time-to-time issue bonds on the full faith and
23 credit of the state not to exceed an aggregate principal amount of [\$], and may issue revenue bonds
24 payable out of revenues and receipts derived from the lease or sale by the agency of its projects and
25 properties.

26 SECTION 13. [*Land Development Financing Fund*]. There is hereby created a special account in
27 the state [*treasury*] to be known as the [*Land Development Financing Fund*] to which shall be credited
28 the amount appropriated pursuant to this act, subsequent appropriations made by the [*legislature*]
29 for this purpose, any proceeds of sale of bonds to the extent provided by the corporation author-
30 izing issuance thereof, and any other moneys which may be made available to the corporation for
31 the purposes of this act from its own operations and from any other source or sources. The sum of
32 [\$], is hereby authorized for establishing the fund. The corporation may expend whatever amounts
33 are needed for the payments authorized by this act. If at any time the governor determines that
34 the amount of the [*land development financing fund*] is greater than the amount needed to carry out
35 the provisions of this act, he may transfer to the general fund of the state [*treasury*] whatever amount

1 he finds to be in excess.

2 SECTION 14. *Payments to Local Governments.* In order to prevent undue loss of revenues to
3 political subdivisions during the period when land is being held by the corporation for project
4 development, there shall be annually apportioned and paid by the state to any political subdivision
5 in which a project is located, a sum equal to [] per cent of the annual real property taxes on such
6 land, paid or due to the political subdivision.

7 SECTION 15. *Annual Report.* The corporation shall submit to the governor and the [*legisla-*
8 *ture*] at the end of each fiscal year a report setting forth its operations and accomplishments, its
9 receipts and expenditures, its assets and liabilities, and a schedule of its outstanding bonds.

10 SECTION 16. *Separability.* [*Insert separability clause.*]

11 SECTION 17. *Effective Date.* [*Insert effective date.*]

5.104 STATE LOANS TO PROMOTE URBAN GROWTH POLICIES¹

In order to attract business and industrial firms, many states have established industrial finance authorities. Usually, these authorities operate everywhere in the state without regard to whether economic development in some areas is necessary or desirable. This proposal intends to focus the effort of state financing authorities on areas designated by the state's urbanization plans and policies as places where urban growth should be encouraged. In addition, the proposal provides for loans to small businesses in low income areas.

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

Similarly, financing is a particularly serious handicap for small businesses seeking to operate in urban poverty areas. Conventional loans are difficult for the established businessman to obtain in these areas, and for the person seeking to establish a business, financing may be impossible. Moreover, small businesses are often considered unacceptable risks because of their size, lack of experience, or location in riot affected areas.

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

To assist in establishing and expanding business in low income urban areas, special loans would be made available to businesses meeting criteria relating to (1) number of employees, (2) amount of assets, (3) location, and (4) necessity for the guarantee to obtain the loan. Preference would be given to businesses which are principally owned by residents of low income areas. This particular provision is intended to supplement the Federal Small Business Administration's special loan program under Title IV of the *Economic Opportunity Act of 1964*.² New York State has instituted a program of urban development guarantee fund loans which are available to small businesses for equipment, stock in trade, or working capital. This program may be found in Chapter 175 of the *Laws of 1968*. Over 30 states now sponsor industrial development authorities.

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

The fact should be noted that some states may encounter constitutional prohibitions against lending the state's credit to private undertakings. Language for a constitutional amendment to permit a state to use its resources to encourage private enterprise involvement in urban growth has been treated elsewhere by the Advisory Commission on Intergovernmental Relations.³ Alternatively, the legislation can include a comprehensive statement of findings to establish the public purpose of such an activity.

Section 1 gives the short title of the proposed act, while *Section 2* states the purpose of the legislation, and *Section 3* deals with definitions.

Section 4 is concerned with organization of the state urban development financing corporation, that is, membership, officers, allowing members to hold other public office unless specifically prohibited from doing so, removal of directors, continuation of corporate existence, and quorum setting. *Section 5* enu-

¹Derived from: Advisory Commission on Intergovernmental Relations, *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

²42 *United States Code*, Sections 2901, *et seq.* This Federal program provides loans and guarantees of up to \$25,000 to assist low income persons in poverty areas in establishing or expanding small businesses.

³Advisory Commission on Intergovernmental Relations suggested legislation entitled *Private Enterprise Involvement in Urban Affairs*.

merates the powers granted to the corporation.

Section 6 spells out policy regarding loans to responsible buyers.

Section 7 creates a special account, the urban development financing fund, to which appropriations made by the legislature shall be credited. *Section 8* provides that income derived from the issuance of bonds or notes by the corporation shall be exempt from taxation by the state and its political subdivisions.

Section 9 requires the preparation and submission by the corporation, of an annual report to the governor and legislature.

Section 10 allows the corporation to do business with any corporation, trust, or other entity in which any director of the corporation has a financial interest, so long as such interest is disclosed and the affected director takes no part in the decision affecting the transaction.

Section 11 provides that this act shall preempt any other general, special, or local laws that may be in conflict. *Section 12* provides that this act, to make it effective, shall be liberally construed.

Sections 13 and 14 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT TO CREATE THE STATE URBAN DEVELOPMENT FINANCING CORPORATION TO MAKE AND GUARANTEE LOANS TO ELIGIBLE RECIPIENTS IN URBAN AREAS]

(Be it enacted, etc.)

1 SECTION 1. *Short Title.* This act shall be known as the *Urban Development Financing Act*.

2 SECTION 2. *Declaration of Policy.*¹ In order to promote the health, safety, right to gainful
3 employment, business opportunity, and general welfare of the inhabitants of this state, there is cre-
4 ated the [name of state] [Urban Development Financing Corporation], which shall exist and operate for
5 the public purpose of encouraging urban growth by the promotion and development of industrial,
6 manufacturing, and commercial enterprises in those areas of the state in which conditions for urban
7 growth are most desirable and necessary, including eligible low income urban areas. Such purposes
8 are hereby declared to be public purposes for which public money may be spent.

9 SECTION 3. *Definitions.* The following terms, shall have the following meaning:

10 (a) "Corporation" means the [name of state] [Urban Development Financing Corporation]
11 created by this act.

12 (b) "Cost of establishing an industrial development project" includes the following costs or ap-
13 propriate portions thereof: the cost of construction; the cost of all lands, property rights, easements,
14 and franchises acquired which are deemed necessary for construction; interest prior to and during
15 construction; cost of engineering and legal expense; plans; specifications; surveys; estimates of
16 costs; and other expenses necessary or incident to determining the feasibility or practicability of any
17 industrial development project, together with such other expenses as may be necessary or incident
18 to the financing and construction of an industrial development project and placing it in operation.
19 The cost of all machinery and equipment and installation and maintenance, except for building
20 service equipment, shall not be included in the cost of establishing an industrial development project,
21 and shall be provided by the responsible tenant buyer.

22 (c) "Eligible low income area" means an area in a municipality or county which meets the fol-
23 lowing requirements:

24 (1) the area consists of a census tract or tracts or an enumeration district or districts in
25 which the median family income, as reported in the latest Federal census, falls in the lowest quartile

¹States may find it necessary to set forth a statement of findings and declaration of public purposes in order to maintain the constitutionality of this legislation unless they have a constitutional provision such as that provided elsewhere in the *ACIR State Legislative Program*, allowing public financial support for private enterprise involvement in urban development.

1 of all such areas in all municipalities and counties in the state, however, an eligible area may include
2 a census area in which the median family income does not fall in the lowest quartile, but which are
3 contiguous to a census area in which the median family income falls in such lowest quartile; and

4 (2) the corporation finds that substantial unemployment or underemployment exists in the area.

5 (d) "Eligible small business" is a business which meets the following requirements:

6 (1) the business employs not more than [] employees and has gross assets [as defined by reg-
7 ulations of the corporation] of not more than [\$];

8 (2) the place of business is located in an eligible area; and

9 (3) the business concern meets additional standards as the corporation may prescribe by
10 regulation. In rendering assistance under this act, the corporation shall give priority to business
11 concerns which are managed by, and at least 75 percent of the capital of which is beneficially owned
12 by, individuals actually residing in an eligible area.

13 (e) "Financial institution" means any bank, trust company, national banking association, sav-
14 ings bank, savings and loan association, credit union, or Federal credit union, any insurance com-
15 pany, or any other individual, partnership, trust, association, or corporation engaged in the busi-
16 ness of making loans to business concerns.

17 (f) "Industrial development agency" means any incorporated organization, foundation, associa-
18 tion, or agency, to whose members or shareholders profit shall inure and which shall have as its
19 primary function the promotion, encouragement, and development of industrial, commercial, and
20 manufacturing enterprises in an urban growth area.

21 (g) "Industrial development project" means any site, structure, facility, or undertaking com-
22 prising or connected with an industrial commercial or manufacturing enterprise proposed in an urban
23 area.

24 (h) "Responsible buyer" means any person, partnership, firm, company, or corporation organ-
25 ized for profit, deemed by the corporation, after proper investigation, to be financially responsible
26 to assume all obligations prescribed by the corporation in the acquisition and operation of an industrial
27 development project.

28 (i) "Responsible tenant" means any person, partnership, firm, company, or corporation organ-
29 ized for profit, deemed by the corporation, after proper investigation, to be financially responsible
30 to assume all rental and other obligations prescribed by the corporation in leasing and operating an
31 industrial development project.

32 (j) "Urban growth area" means an area encompassing any municipality or group of municipal-
33 ities, county, group of counties, or region of the state defined by the corporation as suited for
34 urban growth in accordance with state urbanization plans and policies.

35 (k) "[Urban Development Financing Fund]" means the account created by this act.

1 SECTION 4. *State [Urban Development Financing Corporation].*

2 (a) *Corporation Created; Membership.* The [name of state] [Urban Development Financing Cor-
3 poration] is hereby created. The corporation shall be a corporate governmental agency of the state.
4 Its membership shall consist of [nine] directors as follows.¹
5 [Insert titles of state officials to serve ex officio], and [five] directors to be appointed by the governor
6 with the advice and consent of the [senate]. [Provide for length of term and succession].

7 (b) *Officers.* From among the directors appointed by him, the governor shall appoint the chair-
8 man of the corporation, who shall be its chief executive officer. The directors, except for the chair-
9 man, shall serve without salary, but each director shall be entitled to reimbursement for his actual
10 and necessary expenses incurred in the performance of his official duties, and except in the case
11 of [state officials serving ex officio] a *per diem* allowance of [\$100] when rendering services as director.
12 The aggregate of *per diem* allowance to any one director in any fiscal year shall not exceed the sum
13 of [\$5,000]. The chairman of the corporation shall receive for his services a salary recommended by
14 the directors and provided by law.

15 (c) *Other Public Office or Employment Not Prohibited.* No officer or employee of the state shall
16 be deemed to have forfeited office or employment by reason of service of the corporation.² A director
17 who holds other public office or employment shall receive no additional compensation or allowance
18 for services rendered pursuant to this act, but shall be entitled to reimbursement for actual and neces-
19 sary expenses incurred in the performance of such services.

20 (d) *Removal of Directors.* The governor may remove any director appointed by him for inef-
21 ficiency, neglect of duty, or misconduct in office after giving the director a copy of the charges, and
22 an opportunity to be heard, in person or by counsel, upon not less than 20 days' notice. If the
23 director is removed, the governor shall file in the office of the [secretary of state] a complete statement
24 of charges made, and findings, together with a complete record of the proceeding.

25 (e) *Continuation of Corporate Existence.* The corporation shall continue until terminated by
26 law, but no such law shall take effect so long as the corporation has bonds, notes, and other obliga-
27 tions outstanding, unless adequate provision is made for payment thereof.

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

30 SECTION 5. *Powers of The Corporation.* The corporation may:

31 (a) sue and be sued;

32 (b) have a seal and alter it at pleasure;

33 (c) make and execute all contracts necessary or convenient for the exercise of the powers granted

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

²Dual office holding is prohibited by some state constitutions.

1 it under this act;

2 (d) make and alter bylaws for its organization and internal management;

3 (e) appoint officers, agents, and employees, prescribe their duties and fix their compensation;

4 (f) cooperate with industrial development agencies to promote the expansion of industrial, manu-
5 facturing, and commercial activity in urban growth areas;

6 (g) loan money held in the [*Urban Development Fund*] to responsible buyers in urban growth
7 areas and provide for the repayment and redeposit of such loans;

8 (h) guarantee loan repayments to a financial institution that has provided funding for a develop-
9 ment project, not to exceed [80] percent of the amount of the loan, including loans to eligible small
10 businesses in eligible low income areas;

11 (i) prescribe standards by which applications for loans or loan guarantees for industrial
12 development projects will be judged, consistent with the purposes of this act. One such standard
13 shall be that an application shall show evidence that the establishment of the project will not cause
14 the removal of an industrial, commercial, or manufacturing facility or business from one area of the
15 state to another area of the state;

16 (j) purchase, acquire, and accept assignment of notes, mortgages, and other forms of security
17 and evidences of indebtedness; attach, seize, accept, or take title by conveyance, foreclose, sell, lease,
18 or rent; and otherwise deal with property in a manner that protects the interests of the corporation
19 therein;

20 (k) subject to specific authorizations provided by law, borrow money, issue negotiable bonds
21 and notes, and provide for the rights of the holders thereof;

22 (l) invest any funds held in reserve or in sinking funds and any moneys not required for im-
23 mediate use or disbursement in obligations of the state or of the United States government, or
24 obligations the principal and interest of which are guaranteed by the state or by the United States
25 government;

26 (m) procure insurance against any loss in connection with its property and other assets and op-
27 erations in such amounts and from such insurers as deemed desirable;

28 (n) contract for and accept any gifts, grants, or loans of funds or property, or financial or other
29 aid in any form from any other source, if the terms and conditions thereof are not in conflict with
30 this act; and

31 (o) prescribe appropriate forms and do all things necessary to carry out its purposes and exercise
32 the powers granted in this act.

33 SECTION 6. *Loans to Responsible Buyers.* When it is determined by the corporation, that the
34 establishment of a particular industrial development project of responsible buyers in an urban
35 growth area, or granting a loan to eligible businesses in an eligible low income urban area, will pro-

1 mote the public purposes of this act, the corporation may contract to lend the responsible buyer or
2 the eligible business an amount not in excess of [80] percent of the cost or estimated cost of the
3 industrial development project. Where more than one eligible business or responsible buyer applies
4 and has equal merit, preference shall be given to the eligible small business. Loans shall be subject
5 to the following conditions:

6 (a) Where industrial development projects are to be established:

7 (1) the corporation shall first determine that the buyer or owner holds funds in an amount
8 equal to, or property of a value equal to, not less than [20] percent of the estimated cost of establishing
9 the project, which shall be applied to the establishment of the project, and

10 (2) the corporation determines that the responsible buyer has obtained from other responsi-
11 ble sources, such as financial institutions or insurance companies, other funds necessary for payment
12 of the cost of establishing the industrial development project, and that these funds, together with
13 machinery and equipment provided by the responsible buyer, adequate to insure completion and
14 operation of the plant or facility. The proceeds of any loan made by the corporation pursuant to this
15 subsection shall be used only for the expansion of development projects in furtherance of the public
16 purposes of this act.

17 (b) A corporation loan shall be for a specific period of time, shall bear interest at a rate deter-
18 mined by the corporation, and shall be secured by bond of the responsible tenant and by mortgage
19 on the industrial development project for which the loan was made. A mortgage shall be second and
20 subordinate only to the mortgage securing the first lien obligation issued to secure the commitment
21 of funds from other responsible sources for use in financing the industrial development project.

22 (c) Moneys lent by the corporation to responsible buyers shall be withdrawn from the [*Urban In-*
23 *dustrial Development Fund*] and paid to the responsible buyer in such manner as the corporation
24 prescribes.

25 (d) All payments of principal and interest on loans and the principal thereof shall be deposited
26 by the corporation in the [*Urban Industrial Development Fund*].

27 (e) Loans by the corporation to a responsible buyer for an industrial development project shall
28 be made only as provided in this act, except in those instances where an agency of the Federal gov-
29 ernment participates in financing an industrial development project by loan, grant, or otherwise of
30 Federal funds. When any Federal agency participates, the corporation may adjust the required ratios
31 of financial participation by the responsible buyer, the source of the independent funds, and the
32 agency in a manner to insure the maximum benefit available by participation of the Federal agency,
33 but no adjustment of ratios shall cause the corporation to make a loan to the industrial development
34 agency in excess of [90] percent of the cost or the estimated cost of the industrial development project.

35 (f) If a Federal agency participating in financing an industrial development project is not per-

1 mitted to take as security for such participation a mortgage, the lien of which is junior to the
2 mortgage of the corporation, the corporation may take as security for its loan a mortgage junior
3 in lien to that of the Federal agency.

4 SECTION 7. *Appropriations: [Urban Development Financing Fund]*. The sum of [\$] is [auth-
5 orized to be] appropriated to the corporation for the purposes set forth in this act. There is created
6 a special account in the [*treasury*] of the state to be known as the]*Urban Development Financing*
7 *Fund*], to which shall be credited any appropriations made by the [*legislature*] to the corporation, as
8 well as other deposits provided in this act. The fund shall operate as a revolving fund whereby all
9 appropriations and payments made may be applied and reapplied to the purposes of this act. The
10 governor may transfer to the general fund of the state [*treasury*], funds held for the credit of the
11 urban development financing which exceed the amount needed to carry out the purposes of this
12 act.

13 SECTION 8. *Exemption From Taxation*. The exercise of the powers granted by this act are for
14 the benefit of the people of this state, and will enhance their commerce, welfare, and prosperity,
15 improve their health and living conditions, and therefore constitute the performance of essential
16 governmental functions. Except for estate and gift taxes and taxes on transfers, any bonds or notes
17 issued under the provisions of this act and the income therefrom shall be exempt from taxation of
18 any kind by the state and its political subdivisions.

19 SECTION 9. *Annual Report*. The corporation shall submit to the governor [and to the [*legis-*
20 *lature*]], within six months after the end of each fiscal year, a complete and detailed report of its
21 activities for the preceding year.

22 SECTION 10. *Conflicts of Interest*. The corporation may purchase, sell, borrow, lend, contract
23 with, or otherwise deal with any corporation, trust, association, partnership, or other entity in which
24 any director of the corporation has a financial interest, direct or indirect, if such interest is disclosed
25 in the minutes of the corporation, and if no director having such a financial interest participated in
26 any decision affecting such transaction.

27 SECTION 11. *Inconsistent Provisions of Other Laws Superseded*. If the provisions of this act
28 are inconsistent with the provisions of any other general, special, or local law, the provisions of
29 this act shall be controlling.

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

32 SECTION 13. *Separability*. [*Insert separability clause.*]

33 SECTION 14. *Effective date*. [*Insert effective date.*]

5.105 LOCAL INDUSTRIAL DEVELOPMENT BONDS¹

At least 42 states authorize local governments to issue bonds to finance industrial plants for lease to private enterprise. Fifteen of these states authorize such financing through issuance of general obligation bonds. This method of attracting industry is rapidly increasing, as is the size of individual local bond issues for this purpose.

If allowed to expand without proper safeguards, the use of industrial development bond financing by local governments may impair tax equities, competitive business relationships, and conventional financing institutions out of proportion to its contribution to economic development and employment.

In recent years, a number of abuses have been identified with industrial development bond financing, often attracting unfavorable public notice to the detriment of the public's regard for local government administration, particularly for the financial administration of the localities which participate in the practice. Some communities have used development bonds to finance enterprises in excess of their employment needs and which impose demands for public services the community cannot supply without overburdening its taxpayers and saddling itself with excessive contingent liabilities in the form of debt service on the bonds. The practice has been subject to other abuses: financing plants for national corporations with adequate credit resources; pirating established firms by one community from another; enabling specially incorporated areas with relatively few residents to develop tax havens at the expense of neighboring communities. Abuse of the practice for private advantage tends to reflect on the tax exemption of municipal securities generally, and led Congress, in 1968, to limit the tax exemption privilege on industrial development bonds to issues of \$5-million or less, or to certain other issues used for limited purposes. Subsequently, these limitations were relaxed somewhat to permit certain industrial air pollution abatement measures required of individual companies under Federal or state environmental standards to proceed under tax exempt financing of this type.

The accompanying suggested act would establish safeguards against the kinds of abuse enumerated above by: (1) subjecting all industrial development bond issues to approval by a state supervising agency; (2) requiring conformity of the project with state, regional, and local growth policies and development plans; (3) restricting authority to issue such bonds to local units of general government (counties, municipalities, and organized townships); (4) giving priority to communities with chronic surplus labor, and inadequate conventional credit for business expansion; (5) limiting the total amount of such bonds which may be outstanding at any one time in the state; (6) prohibiting such financing for the pirating of industrial plants by one community from another; and (7) providing machinery for informing the public as to proposed industrial development bond projects, and to enable citizens to initiate referenda on such projects.

The draft reflects policies incorporated in a 1963 report on *Industrial Development Bond Financing* by the Advisory Commission on Intergovernmental Relations. The subject to which it is addressed is but one of a number of devices and procedures designed to stimulate economic development. However, the potential benefits of industrial development bonds to a local economy must not be diluted by potential abuses. As the Advisory Commission on Intergovernmental Relations warned in its report:

We conclude that the industrial development bond tends to impair tax equities, competitive business relationships, and conventional financing institutions out of proportion to its contribution to economic development and employment. It is therefore a device which the Commission does not endorse or recommend. However, the Commission recognizes the widespread and growing nature of this practice and the unlikelihood of its early cessation. Therefore, we conclude that if the practice is to continue, a number of safeguards are absolutely essential. These safeguards are required to minimize intergovernmental friction, to insure that the governmental re-

¹Derived from: Advisory Commission on Intergovernmental Relations, *Industrial Development Bond Financing*, Report A-18 (Washington, D.C.: U.S. Government Printing Office, June, 1963).

sources deployed for this purpose bear a reasonable relationship to the public purpose served, and that the governmental powers employed are not diverted for private advantage.

States wishing to consider this legislation are urged to consider carefully the statutory safeguards suggested in the draft.

Section 1 sets forth legislative findings and purpose.

Section 2 defines terms used in the act.

Section 3 authorizes certain kinds of local governments to issue industrial development bonds.

Section 4 imposes general limitations on total bonds outstanding.

Section 5 authorizes the state supervisory agency to employ staff and issue rules.

Section 6 enlists the cooperation of other state agencies in carrying out the act.

Sections 7 through 12 are designed to assure public control of industrial development bond activities.

Section 7 predicates the issuance of industrial development bonds upon a finding of convenience and necessity, based in turn on several findings and conditions.

Section 8 provides for hearings and appeals.

Section 9 prescribes procedures for the actual incurring of indebtedness.

Section 10 provides for a referendum on the bond issue upon petition.

Section 11 provides for an annual report.

Section 12 provides for repeal of conflicting laws.

Sections 13 and 14 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT BONDS]

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.*

2 (a) The [legislature] hereby finds and declares that the issuance of industrial development bonds
3 must be placed under proper safeguards in order that the fiscal integrity of the state and its political
4 subdivisions be preserved, that the conventional credit facilities of private enterprise not be displaced,
5 and that local government financing not be abused.

6 (b) It is the intent of this act, therefore:

7 (1) to insure that the issuance of local government industrial development bonds is con-
8 ducted in such a manner as to make a maximum contribution to the orderly industrial development of
9 the state;

10 (2) to avoid overextension of local government industrial development credit;

11 (3) to prevent abuse of the tax exempt status of state and local government debt instruments;

12 and

13 (4) to provide technical assistance to local units of general government choosing to utilize
14 industrial development bond financing.

15 SECTION 2. *Definitions.*

16 (a) "Agency" means [insert name of the appropriate agency of state government, normally the
17 agency, if any, that is charged generally with concern or oversight regarding local government debt,
18 that provides technical assistance to local governments in the sale of their bonds, or that provides gen-
19 eral services or assistance to local governments].

20 (b) "Industrial development bond" means an obligation¹ issued by any local unit of government
21 of the state for the purpose of financing the acquisition of land; the acquisition or construction, in-
22 cluding reconstruction, improvement, expansion, extension, and enlargement of buildings and ap-
23 purtenances; and the acquisition and installation of machinery, equipment, or fixtures; the primary
24 purpose of which is to sell or lease the property to a private individual, partnership, or corporation
25 for the conduct of manufacturing, warehousing, distribution, or research and development operations.

26 (c) "Local unit of general government" means a county, municipality [, township, borough].

¹Some states may feel it expedient to exclude general obligation (full faith and credit) bonds from the purview of this legislation on the grounds that a number of state controls normally operate with regard to the issues of general obligation bonds by local governments that do not pertain in the issuance of revenue bonds.

1 SECTION 3. *Authorization.* Industrial development bonds may be issued [only] by local units of
2 general government located in such areas designated by the agency as having substantial and continu-
3 ing unemployment or underemployment and as being outside the area of regular and effective opera-
4 tion of existing conventional credit facilities able to provide credit in adequate amounts.¹ Such local
5 units of general government are hereby authorized to issue industrial development bonds subject to
6 the conditions of this act. Bonds shall not be issued to finance totally or partially the following:
7 [docks, wharves, and marine warehouses; airport terminal and hanger facilities; other transporta-
8 tion facilities; municipal stadiums; theaters; and other appropriate exceptions].

9 SECTION 4. *General Limitations.* Statutory limitations imposed upon the borrowing powers of
10 local units of general government shall not apply to the issuance of industrial development bonds. In
11 addition to the limitations on local units of general government provided in this act, the agency shall
12 limit the aggregate volume of industrial development bonds outstanding at any time on behalf of all
13 local units of general government in the state to an amount not to exceed [insert one of the following
14 alternatives]

15 [[] percent of the personal income of the population in the state as determined by the United
16 States Department of Commerce.]

17 [[] percent of total state and local tax collections in the state during the preceding fiscal year.]

18 [[\$].]

19 The agency shall determine from time-to-time the aggregate volume of industrial development
20 bonds which may be issued pursuant to this limitation and, considering employment needs and in-
21 dustrial development prospects, shall allot among all eligible local units of general government the
22 amount of industrial development bonds each may issue.

23 SECTION 5. *Personnel and Regulations.* The agency may employ personnel necessary to carry
24 out the provisions of this act. The agency may promulgate rules and regulations and require infor-
25 mation necessary for the administration of this act, pursuant to [the state administrative practices
26 act].

27 SECTION 6. *Cooperation by Other Agencies.* All departments, divisions, boards, bureaus, com-
28 missions, or other agencies of the state government shall provide assistance and information as the
29 agency may require to enable it to carry out its duties under this act. In administering this act, the
30 agency shall consider any recommendations made by [state planning and development agencies
31 and] local planning agencies regarding resource utilization and development plans for the various

¹Some states may wish to designate as eligible under this provision all local units of general government having surplus labor that are outside any Standard Metropolitan Statistical Area, as defined by the United States Bureau of the Census, on the ground that conventional credit facilities may be presumed adequate in the large urban areas. States may also wish the agency to take into consideration projects that are being constructed or proposed under Federal programs administered by the Economic Development Administration and the Small Business Administration.

1 areas of the state.

2 SECTION 7. *Certificate of Convenience and Necessity.* No local unit of general government may
3 issue industrial development bonds without first having been issued a certificate of convenience and
4 necessity therefor. A certificate shall be issued by the agency upon petition of a local unit of general
5 government proposing to issue industrial development bonds if the agency finds:

6 (a) that the local unit of general government has a contract with an individual, partnership, or cor-
7 poration to lease the property to be acquired with the proceeds of the industrial development bonds for
8 occupancy and use in connection with the conduct of an industrial enterprise for a period of years,
9 and for the lessee to pay an annual rental adequate to meet interest and principal payments falling due
10 during the term of the lease;

11 (b) that the lessee of the property is a responsible party;

12 (c) that the contract for lease of the property provides for:

13 (1) the reasonable maintenance, less normal use, of the property by the lessee;

14 (2) insurance to be carried on the property and the use and disposition of insurance moneys;

15 and

16 (3) the rights of the local unit of general government and the lessee respecting the disposition
17 of the property financed by the proposed industrial development bonds upon retirement of the bonds
18 or termination of the contract by expiration or by failure to comply with any of the provisions thereof;

19 [(d) that the property is to be taxable or, if exempt, a payment in lieu of taxes equivalent to full
20 taxes;]

21 (e) that, in addition to the above, the contract protects the rights of bondholders, provides for
22 the care and disposition of rental receipts, and includes such other safeguards as are deemed to be
23 necessary by the agency;

24 (f) that opportunities for employment are inadequate in the area from which the proposed indus-
25 trial plant would reasonably draw its labor force and there exists in the area substantial and continuing
26 unemployment or underemployment;

27 (g) that the proposed project will provide employment having a reasonable relationship to the
28 volume of the bonds issued as compared to investment per employee of comparable industrial facili-
29 ties;

30 (h) that financing by banks, other financial institutions, or other parties of the property required
31 by the lessee is not readily available to the lessee on ordinary commercial terms in adequate amounts
32 either on the local market or on the national market;

33 (i) that no portion of the proposed industrial development bond issue will be purchased by the
34 lessee or any affiliate or subsidiary of the lessee at the time of the initial marketing;

35 (j) that the facility offered the lessee will accommodate expansion of an enterprise located else-

1 where or a new enterprise and not primarily the relocation of an existing facility;

2 (k) that adequate provision is made to meet any increased demand upon community public facili-
3 ties that might result from the proposed project; and

4 (l) that the issuance of the proposed bonds and the operation of the enterprise of the lessee will
5 not disrupt the fiscal stability of the issuing local unit of general government if it becomes necessary
6 for it to assume responsibility for the payment of the interest and principal of the proposed industrial
7 development bonds.

8 SECTION 8. *Hearing and Appeals.*

9 (a) Within [] days after a local unit of general government files a petition, completed in accord-
10 ance with the rules and regulations authorized in Section 5, the agency, upon due notice, shall hold a
11 hearing upon the petition consistent with [*the state administrative practices act*]. The agency shall ad-
12 vise the petitioning local unit of general government in writing of its decision within [] days of the
13 adjournment of a hearing. If the agency approves the petition, a certificate of convenience and necessi-
14 ty shall be issued. Failure of the agency to advise the petitioning local unit of general government of its
15 decision within [] days of the conclusion of the hearing constitutes approval of the petition, and the
16 local unit of general government shall be entitled to receive the certificate. Decisions of the agency shall
17 be [reviewable as provided in the state administrative procedures act] [final as to findings of fact].

18 (b) A certificate of convenience and necessity shall expire in [12] months from the date of its is-
19 suance; however, upon written application by a local unit of general government, the agency may ex-
20 tend the expiration date of such certificate for a period not to exceed [] months. If, during the effec-
21 tive period of a certificate, the authority of a local unit of general government to proceed thereunder is
22 contested in any judicial proceeding, the agency, at the court's request or upon proper application,
23 may issue an order extending a certificate for a period not to exceed the time from the initiation of such
24 proceeding to final judgment or other appropriate termination.

25 SECTION 9. *Power to Incur Indebtedness.*

26 (a) A local unit of general government which holds an effective certificate of convenience and ne-
27 cessity may incur bonded indebtedness, subject to the limitations and procedures of this act and
28 other applicable laws.

29 (b) Prior to authorizing the incurring of bonded indebtedness pursuant to this act,¹ public notice
30 as provided in [*the state administrative practices act*] shall be given. In addition to any other items which
31 the notice is required to or may contain, such notice shall include:

- 32 (1) the nature of the project;
33 (2) the amounts of bonds to be issued;

¹States including Section 9 (b) in their acts may wish to consider a longer period of initial life for a certificate in order to accommodate the time intervals necessary for the referendum procedure.

- 1 (3) the security behind the bond issues;
- 2 (4) the right, as provided herein, of petition for a referendum; and
- 3 (5) the place at which a true copy of the contract is available for examination.

4 If, within [60] days, a petition for a referendum is not received, the local general government may
5 proceed with the issuance of the bonds.

6 (c) Except as they conflict with this act, the [*city statutes empowering local governments to issue*
7 *bonds and prescribing applicable procedures*] shall apply to the authorization, issuance, and sale of
8 industrial development bonds by the local units of general government.

9 SECTION 10. *Referendum*. If, within the time limits prescribed in Section 9 (b), [] percent of
10 the eligible voters resident within the unit of government proposing to issue industrial development
11 bonds, by petition to the governing body, request that the proposal to issue the bonds be subjected
12 to referendum, an election shall be ordered in accordance with [*cite those sections of the law appli-*
13 *cable to bond elections*]. A majority of the qualified voters voting on the question shall determine the
14 referendum. If a majority of those voting on the question vote “no,” the certificate of convenience and
15 necessity shall be void.

16 SECTION 11. *Annual Report*. The agency shall provide an annual report to the governor and
17 [*legislature*], including recommendations to further the purposes of this act.

18 SECTION 12. *Repeal of Conflicting Laws*. Sections [*insert any legal citations authorizing other*
19 *issuance of industrial development bonds*] are hereby repealed.

20 SECTION 13. *Separability*. [*Insert separability clause.*]

21 SECTION 14. *Effective Date*. [*Insert effective date.*]

5.106 PREFERENTIAL PROCUREMENT PRACTICES TO FURTHER STATE DEVELOPMENT POLICIES¹

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

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

The following draft legislation, therefore, should not be enacted by a state that does not have an official state development plan which designates rural growth areas and labor surplus areas in which public contractors are to receive preferential treatment.²

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

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

Section 1 of the draft bill declares that the purpose of the legislation is to encourage a better geographic distribution of economic and population growth consistent with state growth policies.

Section 2 directs the director of the appropriate state agency to survey those companies located in rural growth centers or labor surplus city neighborhoods as possible sources of supply for materials, products, or equipment purchased by the state on a continuing basis under term contracts, and to provide the results of such survey to the appropriate state officials in order that bids may be invited from those companies determined to be interested in supplying the state, subject to the governor's approval, and contracts entered into by the state and such companies. This section also requires that, on or before three years after enactment, a report on the activities carried on under authority of this act be submitted to the governor and legislature in order that a determination can be made on continuance of such activities once the five years originally authorized by the legislation has expired.

Section 3 provides that, in awarding state contracts for goods and services, the state purchasing officer must give a credit to bids or offers for whatever amount of goods or services are provided by those rural growth areas or labor surplus city neighborhoods designated by the state development plan. This practice would not discriminate among businesses, since a large firm located in another city can get a credit if the goods are produced or the service performed in a designated rural growth center or labor surplus city neighborhood. Added cost to the state will not equal the credit offered as such credit is given only in the evaluation of bids or offers, and not in a dollar addition to the offer or price. The administering agency is required to publish annually a report citing all contracts let pursuant to this act.

Sections 4 and 5 provide for separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

²See the Commission's draft legislation, *State Planning and Growth Management Act*.

Suggested Legislation

[AN ACT ALLOWING PREFERENTIAL PROCUREMENT FOR GOODS AND SERVICES PRODUCED OR PROVIDED IN CERTAIN AREAS DESIGNATED IN THE STATE DEVELOPMENT PLAN]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The [legislature] finds that:

2 (a) a better geographic distribution of economic and population growth is essential to carry out
3 the state's policies for growth;

4 (b) deliberate and selective measures should be adopted to channel private investment to locations
5 where economic growth will have its maximum impact on state development policy goals; and

6 (c) in order to generate new employment in those rural community growth centers and city labor
7 surplus areas designated by the [appropriate state official] pursuant to the official state development
8 plan, preferential state procurement practices based on state development growth policies can provide
9 a significant stimulus to the growth and development of these areas and have a multiplier effect as
10 supporting business and industrial activities are developed.

11 SECTION 2. *Term Contracts.*

12 (a) The [director] of [state economic development agency, state planning agency, or other ap-
13 propriate state agency,] in consultation with the [state purchasing officer], is hereby directed to ex-
14 amine and ascertain the extent to which industries or companies located in rural growth centers or
15 labor surplus city neighborhoods constitute dependable sources of supply for materials, products, or
16 equipment purchased by the state on a continuing basis under term contracts. The results of such sur-
17 vey shall be provided to the [state purchasing officer] and to other agencies and officials of the state
18 concerned with economic development growth policy and development planning. The [director] of
19 [the state economic development or other appropriate agency] shall submit to the governor con-
20 clusions as to the extent to which state supply contracts placed with firms identified in the survey
21 would constitute a substantial stimulus to employment and to economic growth.

22 (b) The [state purchasing officer] is directed to ascertain the interest of potential suppliers
23 identified pursuant to subsection (a) above in meeting state needs and standards with respect to
24 specified products and services.

25 (c) Upon approval by the governor, [the state purchasing officer] shall invite bids from inter-
26 ested potential suppliers identified above. Supply contracts may be entered into for periods of not
27 less than [18] nor more than [48] months. The [state purchasing officer] shall make public promptly
28 after awards the names, amounts, and terms of contracts entered into pursuant to this section.

1 (d) The authority conferred under this section shall expire [five years from date of enactment].
2 On or before [three years after enactment] the [state purchasing officer] shall report to the [governor
3 and the [legislature] as to the activities carried out under this section. On or before [three years after
4 enactment] the [director] of the [economic development or other appropriate state agency] shall sub-
5 mit a report to the governor as to the extent to which contracts entered into under this section have
6 produced positive economic results. The governor on or before [date] shall submit to the [legislature]
7 a report of activities under this section along with:

8 (1) an estimate of additional costs incurred through preferences extended pursuant to the
9 authority granted herein;

10 (2) conclusions as to economic development and other effects of said activities; and

11 (3) recommendations as to continuance, modification, or termination of such activities.

12 SECTION 3. *Preferential Deduction.*

13 (a) Notwithstanding any other provisions of law, for the purpose of determining to whom a state
14 contract¹ shall be awarded, the [state purchasing officer]² shall declare the final price bid, offered,
15 quoted, or proposed, to be such price less a deduction of [five] percent for goods or services to be
16 rendered or delivered in a rural growth area or labor surplus city neighborhood designated pursuant to
17 the state development plan. Deductions shall be approved only upon a request by the bidder accom-
18 panied by proof of eligibility.

19 (b) The final price, as determined by subsection (a) of this section for awarding a contract, shall
20 not affect the price the state pays the contractor and shall be recognized only in the decision to award
21 a contract.

22 (c) All contracts awarded pursuant to this act shall be compiled annually and the list published in
23 an annual report to the [legislature], the [auditor general], and the governor. Copies of this report
24 shall be made available to the public. This report shall specifically include the amount of the deduction
25 recognized pursuant to this act and the final contract price.

26 SECTION 4. *Separability.* [Insert separability clause.]

27 SECTION 5. *Effective Date.* [Insert effective date.]

¹States may wish to define specifically the type of contracts subject to this act.

²Where there is no centralized purchasing agency or where significant purchasing is done by a number of different agencies, specific agencies at this point should be listed.

5.107 URBAN EMPLOYMENT TAX INCENTIVES¹

Urban poverty areas are plagued by chronic unemployment, underemployment, and a scarcity of private investment. The States' Urban Action Center initiated this legislation in 1968 to help states alleviate these problems by encouraging businesses to locate, expand, and improve their facilities in urban and rural poverty areas and to provide employment opportunities and training for persons living in such areas.

This proposal establishes a program of tax incentives for business enterprises which establish or expand industrial and commercial facilities in poverty areas. The incentives consist of credits against state taxes on business income and, subject to local approval, partial exemptions from real estate taxes. The program is administered by a specially created board. The board issues certificates of eligibility for tax incentives to business facilities meeting the following requirements:

- (1) locate or expand a business facility in an eligible low income area, as defined by law;
- (2) create a specified number of full-time jobs at the facility;
- (3) operate a job training program approved under state or Federal programs; and
- (4) give priority in employment and job training to residents of the area where the facility is located.

The amount of the tax credit against business income is based on the proportion which a company's capital investment and payroll costs for an eligible facility bears to the company's total investment and payroll costs throughout the state. A tax credit carryover is given to companies which do not exhaust available credit in a single year.

An extensive discussion of this proposal is contained in the States' Urban Action Center's, *Action For Our Cities, Part Three: Employment and Economic Development* (1968), pp. 22-26. This proposal also appears in the Council of State Governments, *Suggested State Legislation*, Vol. XXIX (1970), p. 135.

Section 1 sets forth the definitions in the proposed legislation.

Section 2 establishes an urban employment tax incentives board, and *Section 3* spells out its general powers and duties.

Section 4 deals with the requirements for eligibility for business facilities, and *Section 5* provides for the granting of a certificate of eligibility to qualifying businesses.

Section 6 allows the granting of a credit against state taxes to a business concern operating an eligible business facility in the taxable year in which an eligible investment is made in the facility, and sets out the manner in which the amount of such credits shall be determined.

Section 7 provides that cities and counties may adopt and amend local laws of general application providing for an exemption from taxation of eligible business facilities.

Sections 8 and 9 provide for separability and effective date clauses, respectively.

¹Derived from Advisory Commission on Intergovernmental Relations, *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

Suggested Legislation

[AN ACT AUTHORIZING URBAN EMPLOYMENT TAX INCENTIVES]

(Be it enacted, etc.)

1 SECTION 1. *Definitions.* As used in this act, the term:

2 (a) "Board" means the [*employment tax incentives board*] of this state.

3 (b) "Business concern" means any individual, trust, partnership, association, or private corpor-
4 ation engaged in a manufacturing, industrial, wholesale, retail, warehousing, or research and
5 development business.

6 (b) "Municipality" means any city having a population of [50,000 or more] according to the
7 latest Federal census, however, for purposes of Section 7 of this act, this term also includes a county
8 of special district levying taxes on real property within a city c. on behalf of a city.

9 (d) "Eligible area" means an area in which the median family income, as reported in the latest
10 Federal census, falls in the lowest quartile of all census tracts or enumeration districts in all munici-
11 palities in the state; however, if authorized by the board, an eligible area may include a census tract
12 or district in which the median family income does not fall in the lowest quartile, but which is con-
13 tiguous to another such area within which the median family income falls in the lowest quartile.

14 (e) "Eligible business facility" means a place of business located in an eligible area, which meets
15 the requirements set forth in Section 4 of this act, and for which a certificate has been issued by the
16 board as provided in Section 5.

17 (f) "Eligible investment" means a part of the value of real and tangible personal property in-
18 cluded in an eligible business facility during a given taxable year commencing on or after the effective
19 date of this act, which represents:

20 (1) expenditures paid or incurred by a business concern for the acquisition, construction,
21 reconstruction, or improvement of real property¹ included in an eligible business facility; and

22 (2) in the case of real property leased by a business concern from another party and included
23 in an eligible business facility, [] times the net annual rental for the property; and

24 (3) expenditures paid or incurred by a business concern for the purchase of tangible per-
25 sonal property included in an eligible business facility; and

26 (4) in the case of tangible personal property, leased by a business concern from another
27 party and included in an eligible business facility, [] times the net annual rental for the property.

28 Investments shall only be eligible investments in the taxable year to which the investment relates,

¹Alternatively, the term "eligible investment" could be defined to include only depreciable real property if it is not desired to allow a credit for the cost of the land.

1 and shall not be included in the computation of eligible investment for any other year.

2 SECTION 2. *Urban Employment Tax Incentives Board.*

3 (a) There is created within the department of [] of this state, a board to be known as
4 the [*employment tax incentives board*]. Its members shall be the [*commissioner of commerce, the com-*
5 *missioner of labor, the commissioner of taxation, the director of the budget, and the commissioner*
6 *of housing and community development, all serving ex officio.*] The [*commissioner of []*]
7 shall serve as chairman of the board. The members of the board shall serve without salary, but shall
8 be reimbursed for their actual and necessary expenses.

9 (b) The term of office of each member shall run concurrently with his respective term of office
10 as the [*commissioner or director*].

11 (c) A majority of the members shall constitute a quorum for the transaction of all business.

12 (d) Notwithstanding any inconsistent provisions of law, no officer or employee of the state
13 shall forfeit his office or employment by reason of his serving on the board created by this section.

14 SECTION 3. *General Powers and Duties of the Board.* The board shall:

15 (a) adopt rules and regulations, not inconsistent with law, governing any matters relating to
16 the activities of the board; and

17 (b) determine if any business facility is an eligible business facility for purposes of the tax
18 credits and exemptions provided or authorized by this act, and to issue, amend, or revoke certificates
19 of eligibility as provided in this act; and

20 (c) from time-to-time determine and designate eligible areas as defined herein.

21 SECTION 4. *Requirements for Eligibility.* A business facility shall be an eligible business facility
22 for purposes of this act if the board finds that it meets the following requirements:

23 (a) the facility is located in an eligible area; and

24 (b) the facility creates not less than [] full-time employment positions in the area; however,
25 the board may waive this requirement if it determines that the facility permits the retention in the
26 area of not less than [] full-time employment positions which otherwise would have been elimi-
27 nated; and

28 (c) the business concern operating the facility provides a manpower training program approved
29 or approvable under the laws of this state or under Federal laws; however, if the board consents,
30 the termination of the training program shall not terminate the eligibility of the facility; and

31 (d) the business concern operating the facility, in providing employment and training pursuant
32 to subsections (b) and (c) of this section, gives priority to residents of the eligible area in which
33 it is located in accordance with regulations prescribed by the board.

34 SECTION 5. *Certificate of Eligibility.*

35 (a) Any business concern, owning or operating a business facility which meets the requirements

1 of Section 4 of this act, may file with the board an application for a certificate to establish the
2 facility as an eligible business facility. This application shall be in a form and shall contain informa-
3 tion, exhibits, and supporting data as the board, by rule, prescribes. The applicant when filing the
4 application shall pay to the board any fees and charges, which the board prescribes, to defray the cost
5 of investigating and processing the application.

6 (b) If the board determines that a business facility described in an application for a certificate
7 of eligibility meets the requirements of Section 4, it shall issue the certificate.

8 (c) A certificate of eligibility shall specify:

9 (1) the amount of the eligible investment (as defined in Section 1) included in the eligible
10 business facility described in the certificate;

11 (2) the taxable year to which the eligible investment relates;

12 (3) the number and designation of full-time employment positions created (or permitted to
13 be retained) by the facility; and

14 (4) the number of residents of the eligible area to be employed or trained in the facility.

15 (d) A certificate of eligibility shall remain in effect with respect to the taxable year to which it
16 relates until revoked or amended by the board pursuant to subsection (c) of this section.

17 (e) The board may revoke a certificate of eligibility, after due notice and hearing, if it determines
18 that the facility described therein fails to meet the requirements of Section 4. The board, after due
19 notice and hearing, may amend any certificate of eligibility if it determines there is a material change
20 in the facts described in the certificate since the date of issuance. The board shall notify the [state
21 department of taxation] and the assessors of any municipality which the board knows is allowing an
22 exemption under Section 7 in the event of any revocation or amendment.

23 (f) [*Add a provision requiring administrative or judicial review of the board's decision, or stating*
24 *that its decisions are not subject to such review.*]

25 SECTION 6. *Credit Against State Taxes.*

26 (a) A credit against the tax imposed by [state statutes imposing income taxes on incorporated or
27 unincorporated businesses] shall be allowed to a business concern operating an eligible business
28 facility in the taxable year in which an eligible investment is made in the facility.

29 (b) The amount of the credit allowable in a taxable year shall be [(] percent of]¹ the amount
30 determined by multiplying the tax otherwise due for such year by a percentage determined by:

31 (1) ascertaining the percentage which the eligible investment as certified by the board for any
32 taxable year bears to the average value of all the business concern's real and tangible personal
33 property within the state during the year. For purposes of this paragraph, a business concern's real
34 and tangible personal property shall include property owned by the business concern and property

¹Optional clause, if partial tax credit is desired.

1 rented to it. The value of rented property shall be [] times the net annual rental paid by the business
2 concern for the rented property; and

3 (2) ascertaining the percentage which the total wages, salaries, and other personal service
4 compensation paid during a taxable year by the business concern to persons employed in full-time
5 employment positions, except executive positions, created (or retained) by the eligible business
6 facility, as certified by the board, bears to the total wages, salaries, and other personal service compen-
7 sation paid during the year by the business concern to all its employees employed within the state,
8 except those in executive positions; and

9 (3) adding together the percentage in paragraphs (1) and (2) and dividing the sum by two.

10 (c) If the amounts of eligible investment certified by the board for any taxable year exceeds the
11 amount of tax credit allowable for the year, the excess eligible investment may be carried forward as
12 a credit against the tax otherwise due for the succeeding taxable year or years in accordance with
13 regulations prescribed by the board. No portion of the excess shall be carried forward as a credit
14 against the tax otherwise due for more than [nine] taxable years. This tax credit carry forward shall
15 not be allowed a business concern which operates an eligible business facility, after the facility's
16 certificate of eligibility is revoked by the board.

17 (d) The total credits allowed in the taxable year in which an eligible investment is made and in
18 any succeeding year in which a tax credit carry forward is allowed shall not exceed [[] percent of]¹
19 the amount of the eligible investment to which such credits relate.

20 (e) If a credit is allowed for any taxable year on the basis of a certificate of eligibility and if the
21 certificate is revoked or amended, the business concern shall report the revocation or amendment
22 in its report for the taxable year in which it occurs, and the [department of taxation] shall recompute
23 the credit and may assess any additional tax resulting from the computation within [] years of the
24 revocation or amendment in accordance with regulations prescribed by the board.

25 (f) If a business facility owned or operated by a business concern is an eligible business facility
26 for only part of a taxable year, the credit allowed by this section shall be prered according to the
27 period the facility is an eligible business facility. If the eligible investment, as certified by the board,
28 changes during any taxable year, a *pro rata* adjustment shall be made in computing the credit, in
29 accordance with regulations prescribed by the board.

30 SECTION 7. *Exemption from Real Estate Taxes.*

31 (a) The provisions of this section shall apply only to [municipalities and counties] which have
32 adopted a local law as provided herein.

33 (b) [Municipalities and counties] may adopt and amend local laws of general application provid-
34 ing for an exemption from taxation of eligible business facilities as provided by this section.

¹Optional clause, if partial tax exemption is desired.

1 (c) If a local law authorized by this section is adopted, an eligible business facility shall be
2 exempt from property taxes, other than assessments for local improvements, imposed to the extent
3 of [[] percent of]¹ any increase in the value of the facility attributable to the eligible investment
4 in the facility as certified by the board. This exemption shall continue for a period not to exceed
5 [ten] years, unless the certificate of eligibility relating to the business facility is revoked by the board
6 pursuant to Section 5.

7 (d) The exemption shall be granted only upon application by the business concern on a form
8 prescribed by the board, to which there shall be attached a copy of a certificate of eligibility
9 issued by the board. The application shall be filed with the [assessors] of the municipality, on or
10 before the appropriate taxable status date. Copies of the application shall be filed simultaneously
11 with the board.

12 (e) The [assessors] shall consider the application for an exemption, and if it is in order shall
13 determine the assessed value of the exemption and enter this value on the exempt portion of the
14 assessment role. The eligible business facility shall then be exempt commencing with the assessment
15 roll prepared on the next taxable status date.

16 (f) If an exemption is once granted a business facility under this section and the assessors receive
17 notice that a certificate of eligibility of the facility has been revoked or amended, they shall redeter-
18 mine the assessed value of the exemption in accordance with the revocation or amendment. If upon
19 redetermination it appears during a year for which an exemption has been granted that the facility
20 is ineligible for the exemption or the assessed value of the exemption as redetermined is less than
21 the value of the exemption shown on the assessment roles for the year, a tax shall be levied on the
22 ineligible or excessive portion. Any redetermination shall be made no later than [three] years after
23 the applicant for exemption last received the benefit of any exemption under this section.

24 SECTION 8. *Sparability.* [Insert separability clause.]

25 SECTION 9. *Effective Date.* [Insert effective date.]

¹ Optional clause, if partial tax exemption is desired.

5.2 Land Use and Environmental Planning and Regulations

5.201 CONTROL OF URBAN WATER SUPPLY AND SEWERAGE SYSTEMS¹

With increasing concentrations of population in urban areas, there is a growing need for planning and provision of reliable domestic water supply and waste disposal systems. Water problems are especially critical on the fringes of urban areas where improper or indiscriminate reliance on individual wells or waste disposal systems can create future problems. Sound planning and development of water supply and sewerage facilities is essential to assure the availability of an adequate supply of safe water, prevent pollution, eliminate health nuisances and hazards, and conserve ground water. It is also important for encouragement of economical and orderly development of land for residential, industrial, and other purposes, since the type and location of water and sewerage facilities is a critical determinant of land use.

From the standpoint of adequate planning and provision of water supply and sanitation, the various parts of an urban or metropolitan area are likely to require different kinds of water supply and sewerage facilities. Variations depend on such conditions as population density, lot size, land contour, soil porosity, and ground water conditions. Thus, in some portions of urban communities, community water supply and sewerage systems are essential. In others, individual water supply and sewage disposal systems (private wells and septic tanks) may be permissible temporarily if provision is made for later connection to a community system. In such cases, it is important that these individual facilities be adequate and safe, and that they be discontinued once the community system becomes available. In still other parts of the urban area, conditions are amenable to installation of individual water supply and sewage disposal systems for an indefinite period, provided there is proper assurance as to their safety and adequacy by the state health department. The proper selection of, or balance among, public systems and individual water wells and septic tanks can best be achieved if an appropriate state statutory framework for making the decision exists.

In view of the need for adequate water supply and sewerage system planning and control and the varying requirements of different parts of urban areas, the Advisory Commission on Intergovernmental Relations in its report, *Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas*, has recommended that "legislation be enacted endowing the appropriate state and local agencies with regulatory authority over individual wells and septic tank installations, with a view to minimizing and limiting their use to exceptional situations consistent with comprehensive land use goals." Three model state statutes to meet these needs have been developed by the United States Public Health Service with the assistance of a special advisory committee that included representatives from the Public Health Service, the Advisory Commission on Intergovernmental Relations, the Housing and Home Finance Agency, the National League of Cities, American Society of Planning Officials, National Association of Counties, National Association of Home Builders, Water Systems Council, Conference of State Sanitary Engineers, and the septic tank industry.²

All the acts are presented here. The first statute, *The Urban Water Supply and Sewerage Systems Act*, concerns overall planning, while the second concerns water well construction and pump installation, and the third, septic tank construction and installation. They have been endorsed by a number of groups including the State and Territorial Health Officers, the Conference of State Sanitary Engineers, and the Interstate Conference on Water Problems.

The first act, *The Urban Water Supply and Sewerage Systems Act* now enacted in Maryland and at least one other state, provides for the development of an official community plan for water and sewerage systems consistent with needs of the area. Such plans for each community would delineate the areas within which community systems must be provided, the areas where individual systems may be used on an interim basis, and the areas where individual systems would be generally permissible.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas*, Report A-13 (Washington, D.C.: U.S. Government Printing Office, October, 1962).

²United States Public Health Service, *Recommended State Legislation and Regulations: Urban Water Supply and Sewerage Systems, Water Well Construction and Pump Installation, and Individual Sewage Disposal Systems* (Washington, D.C.: U.S. Government Printing Office, July, 1965).

Under the statute, designated municipalities and counties are required to submit to the state department of health, usually within one year, a "community plan" for water supply and sewerage systems. The plan must assign each portion of the area covered to one of three categories of water and sewerage service:

(1) Portions where community water supply and sewerage systems must be provided to protect public health. The systems must be designed to permit connection to a larger system when the latter becomes available.

(2) Portions where individual water supply and sewage disposal systems may be installed during an interim period pending availability of programmed community water supply and sewerage systems. The interim individual systems must be adequate and safe, and provision must be made for discontinuing them when the community systems become available.

(3) Portions where individual water supply and sewage disposal systems may be installed and used for an indefinite period, if the state health department judges their use to be adequate and safe.

Criteria for determining under which category each of the portions of the urban area shall be classified include: present and future density of population, lot size, land contour, porosity and absorbcency of soil, ground water conditions, type of construction of water supply and sewerage systems, and size of the proposed development.

The community plan must also:(1) provide for orderly extension and expansion of community water supply and sewerage systems; (2) assure adequate sewage treatment facilities for safe and sanitary treatment of sewage and other liquid waste; (3) delineate portions of the urban areas which community systems may be expected to serve within five years, ten years, after ten years, and any portions in which provision of such services is not reasonably foreseeable; (4) establish procedures for delineating and acquiring necessary right-of-way or easements for community systems; and (5) set forth a time schedule and propose methods of financing construction and operation of each programmed community system and the estimated cost.

The community plan must be submitted for review to official planning agencies having jurisdiction, including any areawide planning bodies, for consistency with programs of planning for the urban area, and the reviews must be transmitted to the state health department with the proposed plan.

The statute authorizes the state health department to adopt regulations to: (1) control, limit, or prohibit installation and use of individual and community water supply systems and sewerage systems; (2) establish procedures for preparation, submission, revision, review, and approval or disapproval of community plans; (3) prescribe the minimum contents of the plan; and (4) describe the criteria on which approval of the plans shall be based.

The state health department has authority to approve or disapprove community plans, and all its actions (including disapprovals) are subject to judicial review.

The health department is also empowered by the act to provide technical assistance to municipalities for preparing and coordinating community plans; to administer state grants to municipalities for preparing community plans; and to accept and administer Federal grants.

The act makes installation of water supply and sewerage systems dependent on existence of a community plan. It provides that within a specified time after submission of the community plan, no individual or community water supply or sewerage system may be installed in the areas covered by the community plan unless a community plan has been approved for such areas, and the systems and installations are consistent with the plan. Further, no state or local agencies may grant building permits or approve subdivision plans, maps, or plats unless individual or community water supply and sewerage systems covered by such permits, plans, maps, or plats are found to conform with the community plan.

The second statute, *Water Well Construction and Pump Installation Act*, regulates the development of ground water systems and the location, construction, repair, and abandonment of water wells, and the installation and repair of pumps and pumping equipment to assure protection against possible contamination and to maintain a safe and potable water supply.

The third statute, *Individual Sewage Disposal Systems Act*, regulates the planning, design, construction, installation, operation, and maintenance of individual disposal systems.

The department administering the *Water Well Act* is authorized to designate areas within which prior permission for the construction or abandonment of wells or the installation of pumping equipment will be required. In all other areas the department must be notified of such work. There is provision for licensing water well and pump installation contractors. Similarly, under the provisions of the *Sewage Disposal Systems Act*, permits issued by municipalities and counties are required for the installation, alteration, or repair of individual sewage disposal systems, and there is an optional provision for the licensing of installers. Both acts include inspection and enforcement procedures and hearing and judicial review provisions. The department is authorized to delegate any of its authority under the act to any municipality or county and it is provided that local law establishing standards affording greater protection than those established pursuant to the act shall prevail within the locality.

Such state legislation would go a long way toward properly meeting the critical water needs of urban areas, assure sound and orderly urban development, protect public health, and provide a reasonably economical and long term solution to the problems of obtaining and disposing of water.

All three pieces of suggested legislation are presented below in the following order: (a) *Urban Water Supply and Sewerage Systems*, (b) *Water Well Construction and Pump Installation*, and (c) *Individual Sewage Disposal Systems*.

In the *Urban Water Supply and Sewerage Systems* legislation, *Section 1* states the findings of the legislature relative to properly planned and installed individual and community water supply and sewerage systems in and near urban areas; and sets forth the policy to support such systems. *Section 2* is concerned with definitions.

Section 3 requires that each designated municipality shall devise a community plan. *Section 4* sets forth the powers and functions of the department charged with regulating sanitary practices within the state, and *Section 5* sets out requirements by which municipalities and counties shall conform to their community plans.

Section 6 provides that this act shall not exclude the installation or operation of water supply systems used solely for purposes not requiring potable water. *Section 7* requires adequate funding to cover necessary expenses of the department administering this act. *Section 8* allows municipal and county laws and regulations providing greater protection to the community to preempt this act.

Sections 9 and 10 provide for separability and effective date clauses, respectively.

In the second piece of suggested legislation *Water Well Construction and Pump Installation*, *Section 1* sets out legislative findings and policy regarding the necessity for the installation and repair of pumps and pumping equipment to conform to such requirements as may be necessary to protect the public health.

Section 2 deals with definitions.

Section 3 outlines the scope of the act's authority, and *Section 4* sets forth the authority of the regulating department to adopt rules, regulations, and procedures for enforcing the provisions of this act.

Section 5 requires that the department give (a) permission, or (b) be notified, prior to the construction, or abandonment of any water well and the first installation of any pump or pumping equipment in any well. *Section 6* provides that equipment existing prior to this act does not need to meet the requirements of *Section 5(a)* of this act. *Section 7* gives the department the authority to make inspections of any water well, abandoned water well, or pump installation. *Section 8* requires the licensing of water well contractors or pump installation contractors.

Section 9 allows for exemptions from provisions of the act, *Section 10* deals with fees, and *Section 11* concerns the manner in which violations of the act shall be handled.

Sections 12 and 13 make provisions for administrative hearings, and judicial review, respectively. *Section 14* provides for penalties for violations of the act. *Section 15* provides that municipal laws and regulations that afford greater protection to the public shall prevail over this act.

Sections 16 and 17, respectively, provide for separability and effective date clauses.

In the final piece of suggested legislation, *Individual Sewage Disposal Systems*, *Section 1* is concerned with findings and policy of the legislature regarding properly planned, constructed, and installed individual sewage disposal systems. *Section 2* deals with definitions.

Section 3 outlines the scope of the act's authority, and *Section 4* sets forth the authority of the regulating department to adopt rules, regulations, and procedures for enforcing the provisions of this act.

Section 5 provides that installations existing prior to the passage of this act need not conform to the design, construction, and installation provisions of this act. *Section 6* gives the municipality or county authority to inspect individual sewage disposal systems; *Section 7* deals with the granting of permits for the construction, alteration, repair, or extension of individual sewage disposal systems; and *Section 8* deals with the licensing of installers. *Section 9* requires that persons engaged in the business of cleaning sewerage systems and disposing of the wastes be registered with the regulating department.

Section 10 deals with fees, and *Section 11* sets forth the manner in which violation of this act shall be handled.

Sections 12 and 13, respectively, make provisions for administrative hearings and judicial review. *Section 14* provides for penalties for violation of the act. *Section 15* provides that municipal laws and regulations that provide greater protection to the public shall prevail over this act.

Sections 16 and 17, respectively, provide for separability and effective date clauses.

Suggested Legislation

[a.] [URBAN WATER SUPPLY AND SEWERAGE SYSTEMS]¹

(Be it enacted, etc.)

1 SECTION 1. *Findings and Policy.*

2 (a) The [legislature] finds that properly planned and installed individual and community water
3 supply systems and sewerage systems in and near urban areas:

4 (1) assure the availability of adequate and safe water for various purposes, including drink-
5 ing and culinary use;

6 (2) promote the health and welfare of citizens of this state by preventing the pollution of
7 ground and surface water;

8 (3) eliminate nuisances and hazards to the public health;

9 (4) contribute to proper conservation and use of ground water;

10 (5) encourage economical and orderly development of land for residential, industrial, and
11 other purposes, and are essential to the orderly processes of urban growth.

12 (b) It is, therefore, declared to be the public policy of this state to eliminate and prevent health
13 and safety hazards and to promote the economical and orderly development and utilization of water
14 and land resources of this state by encouraging planning and provision for adequate individual and
15 community water supply systems and sewerage systems and by providing for the standards and
16 regulations necessary to accomplish these purposes.

17 SECTION 2. *Definitions. As used in this act:*

18 (a) "Community plan" means a comprehensive plan and all amendments and revisions thereof
19 for the provision to a municipality, or municipalities, of both adequate water supply systems and
20 sewerage systems, adopted by a municipality, or municipalities, having authority to provide, or
21 having jurisdiction over, the provision of such systems.

22 (b) "Community sewerage system" means any system, whether publicly or privately owned,
23 serving two or more individual lots, for the collection and disposal of sewage or industrial wastes
24 of a liquid nature, including various devices for the treatment of such sewage or industrial wastes.

25 (c) "Community water supply system" means a source of water and a distribution system includ-
26 ing treatment facilities, whether publicly or privately owned, serving two or more individual lots.

27 (d) "[Department]" means the [designated agency presently having authority to regulate sanitary
28 practices within the state, usually the state department of health].

¹Suggested short title: [State] Urban Water Supply and Sewerage Systems Act.

1 (e) "Individual sewage disposal system" means a single system of sewers and piping, treatment
2 tanks, or other facilities serving only a single lot and disposing of sewage or industrial wastes of a
3 liquid nature, in whole or in part, on or in the soil of the property, into any waters of this state, or by
4 other methods.

5 (f) "Individual water supply system" means a single system of piping, pumps, tanks, or other
6 facilities utilizing a source of ground or surface water to supply only a single lot.

7 (g) "Lot"¹ means a part of a subdivision or a parcel of land used as a building site or intended
8 to be used for building purposes whether immediate or future, which would not be further sub-
9 divided.

10 (h) "Municipality" means a city, town, borough, county, parish, district, or other public body
11 created by or pursuant to state law, or any combination thereof acting cooperatively or jointly.

12 (i) "Potable water" means water free from impurities in amounts sufficient to cause disease or
13 harmful physiological effects with the bacteriological and chemical quality conforming to applicable
14 standards of the [department].²

15 (j) "Subdivision"³ means the division of a single tract or other parcel of land, or a part thereof,
16 into two or more lots, for the purpose, whether immediate or future, of sale or of building develop-
17 ment, and shall also include changes in street lines or lot lines, but division of land for agriculture
18 purposes into parcels of more than [] acres not involving any new street or easement of access, shall
19 not be included within the meaning of "subdivision."

20 SECTION 3. *Community Plans.*

21 (a) Each municipality and county designated under Section 4(e) of this act shall, after reasonable
22 opportunity for public hearing thereon, submit to the [department] a community plan within the time
23 prescribed by the [department] pursuant to Section 5(a) of this act, and shall from time-to-time submit
24 amendments or revisions of such plan as it deems necessary or as may be required by the [depart-
25 ment].

26 (b) Within an appropriate area for development of a single plan for water and sewerage systems,
27 the required community plan, any amendment or revision thereof, may be submitted jointly by the
28 municipalities and/or counties concerned.

29 (c) Every community plan shall delineate, in accordance with applicable regulations adopted by
30 the [department] pursuant to Section 4 of this act, those areas where:

¹The definitions should be consistent with any definitions of the same terms established in the state's planning, subdivision control, and zoning enabling acts. There should be included necessary additional provisions to accommodate the definitions to condominium and cooperative developments where there are individual interests in land occupied by multiple dwellings and multiple occupancy developments on a single lot.

²In the absence of available state standards, *Public Health Service Drinking Water Standards* (Public Health Service Publication 956) are recommended.

³See footnote 1.

- 1 (1) (i) community water supply systems must be provided;
2 (ii) individual water supply systems may be installed and used during an interim period
3 pending the availability of a programmed community water supply system;
4 (iii) individual water supply systems may be installed and used for an indefinite period;
5 and
- 6 (2) (i) community sewerage systems must be provided;
7 (ii) individual sewage disposal systems may be installed and used during an interim
8 period pending availability of a programmed community sewerage system; and
9 (iii) individual sewage disposal systems may be installed and used for an indefinite
10 period.
- 11 (d) In addition, every required community plan shall:
- 12 (1) provide for the orderly expansion and extension of community water supply systems and
13 community sewerage systems in a manner consistent with the needs and plans of the area;
- 14 (2) provide for adequate sewage treatment facilities which will prevent the discharge of
15 untreated or inadequately treated sewage or other waste of a liquid nature into any waters, or other-
16 wise provide for the safe and sanitary treatment of sewage and other liquid waste;
- 17 (3) delineate with all practicable precision those portions of the municipality or county in
18 which community systems may reasonably be expected to serve within five years, within ten years,
19 and any portions in which the provision of such services is not reasonably foreseeable, taking into
20 consideration all related aspects of planning, zoning, population estimates, engineering, and eco-
21 nomics, and any existing state or regional plan¹ affecting the development, use, and protection of
22 water resources;
- 23 (4) establish procedures for delineating and acquiring on a time schedule, pursuant to sub-
24 section (d)(3) of this section, necessary rights-of-way or easements for community systems;
- 25 (5) set forth a time schedule and proposed methods of financing the construction and
26 operation of each programmed community system together with the estimated cost thereof;
- 27 (6) be submitted for review to official planning agencies having jurisdiction, including a
28 comprehensive planning agency with areawide jurisdiction if one exists, for consistency with pro-
29 grams of planning for the area, and such reviews shall be transmitted to the [department] with the
30 proposed plans, and
- 31 (7) include provision for periodic amendment or revision of the plan.

32 SECTION 4. *Administration — [Department] Powers and Functions.*

- 33 (a) The [department] shall adopt and from time-to-time amend rules and regulations which provide for:

¹See the Commission's draft legislation entitled *State Planning and Growth Management Act* and *Statewide Substate Districting Act*.

1 (1) the control, limitation, or prohibition or installing, and the use of individual and com-
2 munity water supply systems and sewerage or sewage disposal systems in accordance with the pro-
3 visions of this act;

4 (2) the procedures in connection with the preparation, submission, revision, review, and
5 approval or disapproval of community plans;

6 (3) the minimum contents of such plans;

7 (4) the criteria upon which approval of such plans shall be based;

8 (5) such other matters as may be necessary or appropriate to the administration of this act.

9 (b) Such regulations in providing criteria for the delineation in community plans of areas
10 pursuant to Section 3(c) of this act, and for the approval of community plans, shall be formulated
11 so as to implement the policies of this act as stated in Section 1, and shall require consideration of
12 the present and future density of population, size of the lots, contour of the land, porosity and ab-
13 sorbency of the soil, ground water conditions and variations therein, from time-to-time and place-
14 to-place, including availability of water from unpolluted aquifers or portions thereof, type of con-
15 struction of water supply systems and sewerage systems, size of the proposed development, and
16 other pertinent factors.

17 (c) Such regulations shall:

18 (1) require the installation of community water supply systems and community sewerage
19 systems and the connection of all premises thereto, if such systems are reasonably necessary to pro-
20 tect the public health, giving due consideration to such factors as are set out in Section 4(b) of this
21 act. Such systems shall be designed so as to permit connection to a larger system at such time as the
22 larger system becomes available;

23 (2) permit, in areas where community water supply systems or community sewerage sys-
24 tems are not available nor required to be installed under Section 4(c) (1) of this act, but are pro-
25 grammed to become available within a reasonable period of time not to exceed [] years,¹ individual
26 water supply systems or individual sewage disposal systems, or both, if:

27 (i) such individual water supply systems or individual sewage disposal systems, are
28 adjudged by the [department] to be adequate and safe for use during the period before a community
29 water supply system or a community sewerage system, as the case may be, are scheduled to become
30 available; and

31 (ii) adequate provisions are made prior to, or at the time of, the installation of such in-
32 dividual systems to permit the discontinuance of their use and the connection of the premises served
33 thereby to the community water supply system and the community sewerage system, respectively, in

¹Five years is suggested as a reasonable period of time. The time period should be determined on the basis of experience in the state where this legislation is enacted.

1 as economical and convenient a way as can be foreseen. Such provision for any subdivision shall
2 include either the posting of a bond, with satisfactory surety, to secure to the municipality or county
3 the actual construction and installation of such systems at a time fixed by the municipality or
4 county not in excess of [] years¹ and in accordance with the regulations issued hereunder and with
5 all other state and municipal requirements, or such other arrangements as may be deemed necessary
6 and adequate to accomplish the purposes of this section; and

7 (3) permit in areas where community water supply systems or community sewerage systems
8 are not available nor required to be installed under Section 4(c)(1) of this act, nor programmed to
9 become available within a reasonable period of time not in excess of [] years,¹ individual water
10 supply systems or individual sewage disposal systems, or both as the case may be, if such individual
11 systems are adjudged by the [department] to be adequate and safe.

12 (d) The [department] is authorized to issue such additional regulations as may be necessary to
13 carry out the provisions of this act.

14 (e) The [department] shall designate municipalities and counties which are required to submit
15 community plans, amendments, and revisions thereof, in which applicable regulations shall apply
16 as may be necessary to accomplish the purposes of this act. The designation shall take into considera-
17 tion such factors as present and future population trends and densities, patterns of urban growth,
18 geographic features and political boundaries, the location and plans for location of utility systems,
19 the distribution of industrial, commercial, residential, governmental, institutional, and other activities,
20 and the existence of any area for which comprehensive planning is being undertaken.

21 (f) After public hearing upon not less than 60 days' prior notice published in one or more news-
22 papers as may be necessary to assure general circulation throughout the state,² such regulations
23 shall be adopted, amended, or revised.

24 (g) The [department] is hereby authorized to approve or disapprove community plans sub-
25 mitted in accordance with Section 3. The [department] may approve a community plan in part pro-
26 vided that the part approved includes all the required elements for such plan and applies to at least
27 90 percent of that geographic area of the municipality or county for which a plan is required.
28 When the plan is disapproved, in whole or in part, the [department] shall notify the municipality or
29 county in writing setting forth the reasons for such disapproval. Any such disapprovals and any
30 other actions of the [department] under this law are subject to judicial review as to whether they are
31 arbitrary, capricious, or unreasonable, and otherwise as provided for under the laws of this state.³

¹This period should be the same as that fixed in Section 4(c)(2). See previous footnote.

²This requirement should be consistent with the general practice for publication requirements in the state and with any state administrative procedure act which may apply.

³If administrative hearings on appeals from actions of the department are not provided for under other state laws, a section on appeals and judicial review should be added.

1 (h) The [department], upon request, shall provide technical assistance and consultation to muni-
2 cipalities and counties in preparing and coordinating community plans required in Section 3 of this
3 act, including revisions of such plans.

4 (i) The [department] may conduct studies, surveys, investigations, research, and analyses to
5 accomplish the purposes of this act.

6 (j) [Use this subsection to establish a program of state aid to municipalities and counties for
7 preparing and keeping current community plans required by Section 3 of this act.]

8 (k) For purposes of this act, the [department] is authorized to accept and administer Federal
9 grants.

10 (l) For purposes of this act, the [department] shall cooperate with all appropriate Federal, state,
11 and local units of government, and with appropriate private organizations.

12 SECTION 5. *Conformance to Approved Community Plan.*

13 (a) The [department] shall prescribe the time within which each municipality and county within
14 areas designated under Section 4 of this act shall submit a community plan, amendment, or revision
15 thereof. Such time for the initial submission of a community plan shall not be greater than one year
16 from the date of designation of such area, except that the [department] may extend such time for good
17 cause shown.

18 (b) Within six months after the submission of a community plan, amendment, or revision there-
19 of, or six months after the time prescribed in subsection (a) of this section for the submission of a
20 community plan, amendment, or revision thereof, whichever is earlier, the [department] shall approve
21 or disapprove the community plan, amendment, or revision thereof. Any community plan, amend-
22 ment, or revision thereof which has been submitted in accordance with this section and which has
23 not been disapproved by the department within the time required by this section shall be deemed
24 to be approved.

25 (c) After nine months following the submission of a community plan, amendment, or revision
26 thereof, or nine months following the time within which a community plan, amendment, or revision
27 thereof is required to be submitted under subsection (a) of this section, whichever is earlier, or after
28 such later date as may be established by the [department] for good cause shown, no community water
29 supply system or community sewerage system, or individual water supply system or individual
30 sewage disposal system may be installed in those geographic areas to which such community plan,
31 amendment, or revision thereof relates unless a community plan and any required amendments or
32 revisions have been approved for such areas, and such system and installation are consistent with
33 such community plan including any required amendment and revision thereof and with applicable
34 rules and regulations.

35 (d) No state or local authority empowered to grant building permits or to approve subdivision

1 plans, maps, or plats shall grant any such permit or approve any such plan, map, or plat which
2 provides for individual or community water supply systems or sewerage systems unless such
3 systems are found to be in conformance with the community plan, amendments, and revisions
4 thereof approved by the [department] and applicable rules and regulations.¹ As a condition of such
5 approval, the transfer of community systems to a municipality or county may be required by
6 [appropriate state, municipal, or county authority] in accordance with applicable provisions of state
7 law as to compensation.

8 (e) Applicants for building permits and subdivision approvals, and water supply systems and
9 sewerage or sewage disposal systems construction approval, shall submit to the approving authority
10 such information in such form as may be reasonably necessary and required to show compliance with
11 subsection (c) of this section.

12 (f) Any violation of subsection (c) of this section shall be punishable by a fine not to exceed
13 [\$].² The imposition of any such fine shall not bar any other relief or penalty otherwise applicable.

14 SECTION 6. *Exclusion.* Nothing in this act shall be construed to prohibit the installation or
15 operation of water supply systems used solely for purposes not requiring potable water.

16 SECTION 7. *Appropriation.* There is appropriated [\$] to cover necessary expenses of the
17 [department] in administering this act.

18 SECTION 8. *Conflict With Other Laws.* The provisions of any zoning ordinance, subdivision
19 regulation, building code, or other law or regulation of any municipality or county of the state
20 establishing standards designed to afford greater protection to the public health, safety, and welfare
21 of the community shall not be limited or superceded by regulations adopted pursuant to this act
22 within the area over which the municipality or county has jurisdiction.

23 SECTION 9. *Separability.* [Insert separability clause.]

24 SECTION 10. *Effective Date.* [Insert effective date.]

¹See previous footnote.

²Penalty under this act should be consistent with penalties under subdivision regulations and building codes within the state. A commonly used penalty is \$100 with any persistent condition constituting a new violation each day it continues.

[b.] [WATER WELL CONSTRUCTION AND PUMP INSTALLATION]¹

(Be it enacted, etc.)

SECTION 1. *Findings and Policy.* The [legislature] finds that improperly constructed, operated,
1 maintained, or abandoned water wells and improperly installed pumps and pumping equipment can
2 adversely affect the public health. Consistent with the duty to safeguard the public health of this
3 state, it is declared to be the policy of this state to require that the location, construction, repair, and
4 abandonment of water wells, and the installation and repair of pumps and pumping equipment con-
5 form to such reasonable requirements as may be necessary to protect the public health.

SECTION 2. *Definitions.* As used in this act:

7 (a) "Abandoned water well" means a well whose use has been permanently discontinued. Any
8 well shall be deemed abandoned which is in such a state of disrepair that continued use for the
9 purpose of obtaining ground water is impracticable.

10 (b) "Construction of water wells" means all acts necessary to obtain ground water by wells, in-
11 cluding the location and excavation of the well, but excluding the installation of pumps and pump-
12 ing equipment.

13 (c) "[Department]" means the [designated agency presently having authority to regulate sanitary
14 practices within the state, usually the state department of health].

15 (d) "Installation of pumps and pumping equipment" means the procedure employed in the
16 placement and preparation for operation of pumps and pumping equipment, including all construc-
17 tion involved in making entrance to the well and establishing seals, but not including repairs, as
18 defined in this section, to existing installations.

19 (e) "Municipality" means a city, town, borough, county, parish, district, or other public body
20 created by or pursuant to state law, or any combination thereof acting cooperatively or jointly.

21 (f) "Pumps" and "pumping equipment" means any equipment or materials utilized or intended
22 for use in withdrawing or obtaining ground water, including, without limitation, seals and tanks,
23 together with fittings and controls.

24 (g) "Pump installation contractor" means any person, firm, or corporation engaged in the bus-
25 iness of installing or repairing pumps and pumping equipment.

26 (h) "Repair" means any action which results in a breaking or opening of the well seal or re-
27 placement of a pump.

28 (i) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
29 otherwise constructed when the intended use of such excavation is for the location, acquisition, or
30 artificial recharge of ground water, but such term does not include an excavation made for the

¹Suggested short title: [State] Water Well Construction and Pump Installation Act.

1 purpose of obtaining or for prospecting for oil, natural gas, minerals, or products of mining or
2 quarrying, or for inserting media or repressure oil or natural gas bearing formation or for storing
3 petroleum, natural gas, or other products.¹

4 (j) "Water well contractor" means any person, firm, or corporation engaged in the business of
5 constructing water wells.

6 (k) "Well seal" means an approved arrangement or device used to cap a well or to establish
7 and maintain a junction between the casing or curbing of a well and the piping or equipment in-
8 stalled therein, the purpose or function of which is to prevent pollutants from entering the well at
9 the upper terminal.

10 SECTION 3. *Scope.* No person shall construct, repair, or abandon, or cause to be constructed,
11 repaired, or abandoned, any water well, nor shall any person install, repair, or cause to be installed
12 or repaired, any pump or pumping equipment contrary to the provisions of this act and applicable
13 rules and regulations, provided that this act shall not apply to any distribution of water beyond the
14 point of discharge from the storage or pressure tank, or beyond the point of discharge from the pump
15 if no tank is employed, nor to wells used or intended to be used as a source of water supply for muni-
16 cipal water supply systems, nor to any well, pump, or other equipment used temporarily for dewater-
17 ing purposes.

18 SECTION 4. *Authority to Adopt Rules, Regulations, and Procedures.* The [department] shall
19 adopt, and from time-to-time amend, rules and regulations governing the location, construction, repair,
20 and abandonment of water wells, and the installation and repair of pumps and pumping equipment,
21 and shall be responsible for the administration of this act. With respect thereto it shall:

22 (a) hold public hearings, upon not less than 60 days' prior notice published in one or more
23 newspapers, as may be necessary to assure general circulation throughout the state, in connection
24 with proposed rules and regulations and amendments thereto;²

25 (b) enforce the provisions of this act and any rules and regulations adopted pursuant thereto;

26 (c) delegate, at its discretion, to any municipality or county any of its authority under this act in
27 the administration of the rules and regulations adopted hereunder;

28 (d) establish procedures and forms for the submission, review, approval, and rejection of applica-
29 tions, notifications, and reports required under this act; and

30 (e) issue such additional regulations, and take such other actions as may be necessary to carry
31 out the provisions of this act.

32 SECTION 5. *Prior Permission and Notification.*

¹Some states may wish to include within the coverage of this exclusion seismological, geophysical, prospecting, observation, or test wells.

²This requirement should be consistent with the general practice for publication requirements in the state and with any state administrative procedure act which may apply.

1 (a) Prior permission shall be obtained from the [department] for each of the following:

2 (1) the construction of any water well;

3 (2) the abandonment of any water well; and

4 (3) the first installation of any pump or pumping equipment in any well; and

5 (4) any repair, as defined in this act, to any water well or pump.

6 SECTION 6. *Existing Installations.* No well or pump installation in existence on the effective
7 date of this act shall be required to conform to the provisions of subsection (a) of Section 5, of this
8 act, or any rules or regulations adopted pursuant thereto; but any well now or hereafter abandoned,
9 including any well deemed to have been abandoned, as defined in this act, shall be brought into com-
10 pliance with the requirements of this act and any applicable rules or regulations with respect to aban-
11 donment of wells; and any well or pump installation supplying water which is determined by the
12 [department] to be a health hazard must comply with the provisions of this act and applicable rules
13 and regulations within a reasonable time after notification of such determination has been given.

14 SECTION 7. *Inspection.*

15 (a) The [department] is authorized to inspect any water well, abandoned water well, or pump in-
16 stallation for any well. Duly authorized representatives of the [department] may at reasonable times
17 enter upon, and shall be given access to, any premises for the purpose of such inspection.

18 (b) Upon the basis of such inspections, if the [department] finds applicable laws, rules, or regula-
19 tions have not been complied with, or that a health hazard exists, the [department] shall disapprove
20 the well and/or pump installation. If disapproved, no well or pump installation shall thereafter be
21 used until brought into compliance and any health hazard is eliminated.

22 (c) Any person aggrieved by the disapproval of a well or pump installation shall be afforded the
23 opportunity of a hearing as provided in Section 12 of this act.

24 Section 8. *Licenses.*

25 (a) Every person who wishes to engage in such business as a water well contractor or pump
26 installation contractor, or both, shall obtain from the [department] a license to conduct such business

27 (b) The [department] may adopt, and from time-to-time amend, rules and regulations governing
28 applications for water well contractor licenses or pump installation contractor licenses; but the
29 department shall license, as a water well contractor or pump installation contractor, any person
30 properly making application therefor, who is not less than 21 years of age, is of good moral character,
31 has knowledge of rules and regulations adopted under this act, and has had not less than two years'
32 experience in the work for which he is applying for a license; and the [department] shall prepare
33 an examination which each such applicant must pass in order to qualify for such license.

34 (c) This section shall not apply to any person who performs labor or services at the direction
35 and under the personal supervision of a licensed water well contractor or pump installation con-

1 tractor.

2 (d) A county, municipality, or other political subdivision of the state engaged in well drilling or
3 pump installing shall be licensed under this act, but shall be exempt from paying the license fees
4 for the drilling or installing done by regular employees of, and with equipment owned by, the govern-
5 mental entity.

6 (e) Any person who was engaged in the business of a water well contractor or pump installation
7 contractor, or both, for a period of two years immediately prior to *[date of enactment]* shall, upon
8 application made within 12 months of *[date of enactment]*, accompanied by satisfactory proof that
9 he was so engaged, and accompanied by payment of the required fees, be licensed as a water well
10 contractor, pump installation contractor, or both, as provided in subsection (b) of this section, with-
11 out fulfilling the requirement that he pass any examination prescribed pursuant thereto.

12 (f) Any person whose application for a license to engage in business as a water well contractor
13 or pump installation contractor has been denied, may request, and shall be granted, a hearing in the
14 county where such complainant has his place of business before an appropriate official of *[insert*
15 *the name of the hearing body designated in Section 12 of this act]*.

16 (g) Licenses issued pursuant to this section are not transferable and shall expire on [] of
17 each year. A license may be renewed without examination for an ensuing year by making application
18 not later than 30 days after the expiration date and paying the applicable fee. Such application shall
19 have the effect of extending the validity of the current license until a new license is received or
20 the applicant is notified by the *[department]* that it has refused to renew his license. After [] of
21 each year, a license will be renewed only upon application and payment of the applicable fee plus
22 a penalty of [\$].

23 (h) Whenever the *[department]* determines that the holder of any license issued pursuant to this
24 section has violated any provision of this act, or any rule or regulation adopted pursuant thereto, the
25 *[department]* is authorized to suspend or revoke any such license. Any order issued pursuant to this
26 subsection shall be served upon the license holder pursuant to the provisions of subsection (a) of
27 Section 11 of this act. Any such order shall become effective [] days after service thereof, unless a
28 written petition requesting hearing, under the procedure provided in Section 12, is filed sooner. Any
29 person aggrieved by any order issued after such hearing may appeal therefrom in *[any court of*
30 *competent jurisdiction]* as provided by the laws of this state.

31 (i) No application for a license issued pursuant to this section may be made within one year after
32 revocation thereof.

33 SECTION 9. Exemptions.

34 (a) Where the *[department]* finds that compliance with all requirements of this act would result
35 in undue hardship, an exemption from any one or more such requirements may be granted by the

1 [department] to the extent necessary to ameliorate such undue hardship and to the extent such exemp-
2 tion can be granted without impairing the intent and purpose of this act.

3 (b) Nothing in this act shall prevent a person who has not obtained a license pursuant to Section
4 8 of this act from constructing a well or installing a pump on his own or leased property intended for
5 use only in a single family house which is his permanent residence, or intended for use only for
6 farming purposes on his farm, and where the waters to be produced are not intended for use by the
7 public or in any residence other than his own. Such person shall comply with all rules and regula-
8 tions as to construction of wells and installation of pumps and pumping equipment adopted under
9 this act.

10 SECTION 10. *Fees.* The following fees are required:

11 (a) A fee of [\$] shall accompany each application for permission required under Section 5 of
12 this act.

13 (b) A fee of [\$] shall accompany each application for a license required under Section 8 of
14 this act.

15 SECTION 11. *Enforcement.*

16 (a) Whenever the [department] has reasonable grounds for believing that there has been a viola-
17 tion of this act, or any rule or regulation adopted pursuant thereto, the [department] shall give
18 written notice to the person or persons alleged to be in violation. Such notice shall identify the
19 provision of this act, or regulation issued hereunder, alleged to be violated and the facts alleged to
20 constitute such violation.

21 (b) Such notice shall be served in the manner required by law for the service of process upon
22 persons in a civil action, and may be accompanied by an order of the [department] requiring described
23 remedial action, which if taken within the time specified in such order will effect compliance with
24 the requirements of this act and regulations issued hereunder. Such order shall become final unless
25 a request for hearing as provided in Section 12 of this act is made within [] days from the date of
26 service of such order. In lieu of such order, the [department] may require the person or persons
27 named in such notice to appear at a hearing, at a time and place specified in the notice.

28 SECTION 12. *Hearing.* [Unless already prescribed in state law, this section should be used to
29 specify procedures for administrative hearing.]

30 SECTION 13. *Judicial Review.* [Unless already prescribed in state law, this section should be
31 used to specify procedures for judicial review.]

32 SECTION 14. *Penalties.* Any person who violates any provision of this act, or regulations
33 issued hereunder, or order pursuant hereto, shall be subject to a penalty of [\$]. Every day, or any
34 part thereof, in which such violation occurs shall constitute a separate violation.

35 SECTION 15. *Conflict with Other Laws.* The provisions of any law, or regulation of any

1 municipality or county establishing standards affording greater protection to the public health or
2 safety, shall prevail within the jurisdiction of such municipality or county over the provisions of
3 this act and regulations adopted hereunder.

4 SECTION 16. *Separability.* [Insert separability clause.]

5 SECTION 17. *Effective Date.* [Insert effective date.]

[c.] [INDIVIDUAL SEWAGE DISPOSAL SYSTEMS]¹

(Be it enacted, etc.)

1 SECTION 1. *Findings and Policy.*

2 (a) The [legislature] finds that properly planned, constructed, and installed individual sewage
3 disposal systems:

4 (1) promote the health and welfare of citizens of this state by preventing the pollution of
5 ground and surface water;

6 (2) prevent nuisances;

7 (3) eliminate hazards to the public health by minimizing pollution of water supplies and
8 hazards to recreational areas; and

9 (4) minimize disease transmission potential.

10 (b) It is, therefore, declared to be the public policy of this state to eliminate and prevent health
11 and safety hazards by regulating the design, construction, installation, operation, and maintenance
12 of individual sewage disposal systems and the proper planning thereof; authorizing the issuance of
13 permits for the construction, alteration, repair or extension of individual sewage disposal systems;
14 licensing of installers of individual sewage disposal systems; requiring registration of those who
15 clean systems and dispose of wastes therefrom; and, providing penalties for violations.

16 SECTION 2. *Definitions.* As used in this act:

17 (a) "Community sewerage system" means any system, whether publicly or privately owned,
18 serving two or more individual lots, for the collection and disposal of sewage or industrial wastes
19 of a liquid nature, including various devices for the treatment of such sewage or industrial wastes.

20 (b) "[Department]" means the [designated agency presently having authority to regulate sanitary
21 practices within the state, usually the state department of health].

22 (c) "Industrial wastes" means liquid wastes resulting from the processes employed in industrial
23 and commercial establishments.

24 (d) "Individual sewage disposal system" means a single system of sewage treatment tanks and
25 disposal facilities serving only a single lot.

26 (e) "Municipality" means a city, town, borough, county, parish, district, or other public body
27 created by or pursuant to state law, or any combination thereof, acting cooperatively or jointly.

28 (f) "Person" means any institution, public or private corporation, individual, partnership, or
29 other entity.

30 (g) "Potable water" means water free from impurities in amounts sufficient to cause disease

¹Suggested short title: [State] Individual Sewage Disposal Systems Act.

1 or harmful physiological effects with the bacteriological and chemical quality conforming to
2 applicable standards of the [department].¹

3 (h) "Seepage pit" means a covered pit with open jointed lining through which septic tank
4 effluent may seep or leach into surrounding ground.

5 (i) "Septic tank" means a watertight receptacle which receives the discharge of a building
6 sanitary drainage system or part thereof, exclusive of industrial wastes, and is designed and con-
7 structed so as to separate solids from the liquid, digest organic matter through a period of detention,
8 and allow the liquids to discharge into the soil outside of the tank through a system of open joint
9 or perforated piping, or a seepage pit.

10 SECTION 3. *Scope.* No person shall construct, alter, repair, or extend, or cause to be construct-
11 ed, altered, repaired, or extended any individual sewage disposal system contrary to the provisions
12 of this act and applicable rules and regulations.

13 SECTION 4. *Authority to Adopt Rules, Regulations, and Procedures.* The [department] shall
14 have general supervision and authority over the design, construction, installation, and operation
15 of individual sewage disposal systems, and shall be responsible for the administration of this act.
16 With respect thereto, it shall:

17 (a) adopt, and from time-to-time amend, rules and regulations governing the design, construction,
18 installation, and operation of individual sewage disposal systems in order that the wastes from
19 such systems;

20 (1) will not pollute any potable water supply, or the waters of any bathing beach, shellfish
21 growing areas,² or stream used for public or domestic water supply purposes, or for recreational
22 purposes;

23 (2) will not give rise to a public health hazard by being accessible to insects, rodents, or
24 other possible carriers which may come into contact with food or potable water, or by being accessible
25 to human beings; and

26 (3) will not give rise to a nuisance due to odor or unsightly appearance;

27 (b) hold public hearings, upon not less than 60 days' prior notice published in one or more
28 newspapers, as may be necessary to assure general circulation throughout the state, in connection
29 with proposed rules and regulations and amendments thereto;³

30 (c) enforce the provisions of this act and any rules and regulations adopted pursuant thereto;

31 (d) delegate, at its discretion, to any municipality or county any of its authority under this act

¹In the absence of available state standards, *Public Health Service Drinking Water Standards* (Public Health Service Publication Number 956) should apply.

²Optional with locality.

³This requirement should be consistent with the general practice for publication requirements in the state administrative procedure act which may apply.

1 in the administration of the rules and regulations adopted hereunder;

2 (e) issue permits, license, registration, and other documents, including the establishment of
3 procedures and forms for the submission, review, approval, and rejection of applications required
4 under this act; and

5 (f) issue such additional regulations, and take such other actions as may be necessary to carry
6 out the provisions of this act.

7 SECTION 5. *Existing Installations.* No individual sewage disposal system in existence on the
8 effective date of this act shall be required to conform to the design, construction, and installation
9 provisions of this act, or any rules or regulations adopted pursuant thereto; but any individual
10 sewage disposal system being used which is determined by the [department] to be a health hazard must
11 conform with the provisions of this act and applicable rules and regulations within a reasonable
12 time after notification of such determination has been given.

13 SECTION 6. *Inspections.*

14 (a) The municipality or county is hereby authorized and directed to make inspections of indi-
15 vidual sewage disposal systems as may be necessary to determine substantial compliance with this
16 act and regulations adopted hereunder, and such systems shall not be used unless approved by the
17 municipality or county. Upon the basis of such inspections, the [department] shall either approve
18 or disapprove the individual sewage disposal system, and if disapproved the system shall not be
19 used.

20 (b) It shall be the duty of the holder of a permit issued pursuant to Section 7 of this act to
21 notify the municipality or county when the installation is ready for inspection and it shall be the duty
22 of the owner and occupant of the property to give the municipality or county free access to the
23 property at reasonable times for the purpose of making such inspections as are necessary.

24 (c) In the event an inspection is not made upon notification of the municipality or county
25 that the installation is completed and ready for inspection, the system shall be deemed approved
26 after [] days¹ from date of official notification.

27 (d) Any person aggrieved by the disapproval of an individual sewage disposal system installa-
28 tion shall be afforded the opportunity of a hearing as provided in Section 12 of this act.

29 SECTION 7. *Permits.*

30 (a) It shall be unlawful for any person to construct, alter, repair, or extend individual sewage
31 disposal systems unless he holds a valid permit² issued by the municipality or county in the name
32 of such person for the specific construction, alteration, repair, or extension proposed, except that

¹Three days are suggested to prevent damage to an open system.

²The permit issued by the municipality or county is in addition to the building permit usually required and would be obtained prior to construction, alteration, repair, and extension of the residence or facility to be served.

1 emergency repairs may be undertaken without prior issuance of a permit, provided a permit is sub-
2 sequently obtained within [] days after the repairs are made.

3 [Optional Subsection.]

4 [(b) Permits shall be issued only to licensed installers as provided in Section 8 of this act, or to
5 an owner or lessee of a lot on the condition that the said owner or lessee performs all labor in con-
6 nection with the installation of the individual sewage disposal system on such lot.]¹

7 (c) All applications for permits shall be made on a form which includes such information as
8 may be required by the municipality or county to establish conformance with the provisions of this
9 act and any regulations adopted hereunder.

10 (d) Following determination of conformance with the requirements of this act and regulations
11 issued pursuant thereto, the municipality or county to which application has been made shall issue
12 a permit to the applicant.

13 (e) A permit for the construction, alteration, repair, or extension of an individual sewage dis-
14 posal system shall be refused where community sewerage systems are reasonably available or in
15 instances where the issuance of such permit is in conflict with other applicable laws and regulations.

16 (f) Any person whose application for a permit under this act has been denied shall be notified in
17 writing as to the reasons for denial, and such person may request and shall be granted a hearing on
18 the matter in accordance with Section 12 of this act.

19 [Optional Section.]

20 SECTION 8. *Licensing of Installers.*

21 (a) Every person engaged in the business of installing individual sewage disposal systems within
22 the state shall obtain from the [department] a license to conduct such business.

23 (b) The [department] may adopt, and from time-to-time amend, rules and regulations establishing
24 qualifications and minimum standards of experience and knowledge for installers. The [depart-
25 ment] shall license as an installer any person properly making application therefore, who is not less
26 than 21 years of age, has knowledge of rules and regulations adopted under this act, and has had
27 not less than two years' experience in installing individual sewage disposal systems.

28 (c) An application for a license as an installer shall be made in writing in a form prescribed by
29 the [department], and shall include such information as the [department] deems necessary to determine
30 the qualifications of the applicant.

31 (d) Any person whose application for a license under this section has been denied shall be
32 notified in writing as to the reasons for denial, and such person may request, and shall be
33 granted, a hearing on the matter in accordance with Section 12 of this act.

34 (e) Whenever the [department] determines that the holder of any license issued pursuant to this

¹Optional subsection, see Section 8.

1 section has violated any provision of this act, or any rule or regulation adopted pursuant thereto,
2 the [department] is authorized to suspend or revoke any such license. Any order issued pursuant to
3 this subsection shall be served upon the license holder pursuant to the provisions of Section 11 of
4 this act. Any such order shall become effective [] days after service thereof, unless a written petition
5 requesting hearing, under the procedure provided in Section 12, is filed sooner. Any person aggrieved
6 by any order issued after such hearing may appeal therefrom in [any court of competent jurisdiction]
7 as provided by the laws of this state.

8 (f) No application for a license issued pursuant to this section may be made within one year
9 after revocation thereof.]

10 SECTION 9. *Required Registration for Cleaning Systems and Disposal of Wastes.*

11 (a) The provisions of this section shall not apply to any municipality, county, sanitation dis-
12 trict, or sewer maintenance district, or to any agency or institution of the state or Federal government.

13 (b) It shall be unlawful for any person to carry on, or engage in the business of cleaning indi-
14 vidual sewage disposal systems, or to dispose of the wastes therefrom, unless duly registered by
15 the [department] for the carrying on of said business.

16 (c) All applications for registration under this section shall be made in writing in a form pre-
17 scribed by the [department], and shall include such information as the [department] deems necessary
18 to determine the qualification of the applicant, including a knowledge of the regulations.

19 (d) Any person whose application for registration under this section has been denied shall be
20 notified in writing as to the reasons for denial, and such person may request, and shall be granted,
21 a hearing on the matter in accordance with Section 12 of this act.

22 (e) Whenever the [department] determines that the holder of any registration issued pursuant to
23 this section has violated any provision of this act, or any rule or regulation adopted pursuant
24 thereto, the [department] is authorized to suspend or revoke any such registration. Any order
25 issued pursuant to this subsection shall be served upon the registration holder pursuant to the pro-
26 visions of Section 11 of this act. Any such order shall become effective [] days after service thereof,
27 unless a written petition requesting hearing, under the procedure provided in Section 12, is filed
28 sooner. Any person aggrieved by any order issued after such hearing may appeal therefrom in [any
29 court of competent jurisdiction] as provided by the laws of this state.

30 (f) No application for a registration issued pursuant to this section may be made within one
31 year after revocation thereof.

32 SECTION 10. *Schedule of Fees.* The following fees for permits, licenses, and registration are
33 required:

34 Individual Sewage Disposal System	Fee
35 Construction (permit)	[]

1	Alteration (permit)	[]
2	Repair (permit)	[]
3	Extension (permit)	[]
4	Installers (license)	[]
5	Cleaners (registration)	[]

6 SECTION 11. *Enforcement.*

7 (a) Whenever the [department] has reasonable grounds for believing that there has been a viola-
8 tion of this act, or any rule or regulation adopted pursuant thereto, the [department] shall give written
9 notice to the person or persons alleged to be in violation. Such notice shall identify the provision
10 of this act, or regulation issued hereunder, alleged to be violated and the facts alleged to constitute
11 such violation.

12 (b) Such notice shall be served in the manner required by law for the service of process upon
13 persons in a civil action, and may be accompanied by an order of the [department] requiring remedial
14 action, which if taken within the time specified in such order will effect compliance with the re-
15 quirements of this act and regulations issued hereunder. Such order shall become final unless a re-
16 quest for hearing as provided in Section 12 of this act is made within [] days from the date of
17 service of such order. In lieu of such order, the [department] may require the person or persons
18 named in such notice to appear at a hearing, at a time and place specified in this notice.

19 SECTION 12. *Hearing.* [Unless already prescribed in state law, this section should be used to
20 specify procedures for administrative hearing.]

21 SECTION 13. *Judicial Review.* [Unless already prescribed in state law, this section should be
22 used to specify procedures for judicial review.]

23 SECTION 14. *Penalties.*

24 (a) Any person who fails to comply with any provision of this act, or regulations issued here-
25 under, or order pursuant hereto, shall be subject to a penalty of [\$]. Every day, or any part
26 thereof, in which such violation occurs shall constitute a separate violation.

27 (b) The [department] is authorized to require the property owner to take necessary action to
28 correct a malfunctioning individual sewage disposal system within [] days of being notified¹ after
29 which each day's failure to take corrective action shall be punishable by a fine of not less than
30 [\$] nor more than [\$].

31 SECTION 15. *Conflict with Other Laws.* The provisions of any law or regulation of any
32 municipality or county establishing standards affording greater protection to the public health or
33 safety shall prevail within the jurisdiction of such municipality or county over the provisions of

¹In accordance with applicable state procedural requirements.

- 1 this act and regulations adopted hereunder.
- 2 SECTION 16. *Separability.* [Insert separability clause.]
- 3 SECTION 17. *Effective Date.* [Insert effective date.]

5.202 LOCAL PLANNING, ZONING, AND SUBDIVISION REGULATION¹

Planning, zoning and subdivision controls are tools which can be used by local governments to guide their physical, economic, and social development. In the past, these devices have been employed mainly by incorporated municipalities. But metropolitan areas and the unincorporated territory lying outside municipalities experience problems which demand governmental action — including urban sprawl, unregulated development, and the loss of irreplaceable scenic and recreation areas. Counties, with their broader geographic scope and jurisdictional authority, should exercise their primary responsibility to control the development of unincorporated areas.

Only two states (outside of New England) do not allow counties basic developmental controls, but many counties have failed to make use of them — only 40 percent of the jurisdictions surveyed in a 1971 county survey had done so. The legislation suggested below authorizes counties to adopt planning, zoning, and subdivision controls for their unincorporated areas and provides for state exercise of such controls when a county does not adopt them within a specified time period.

Such state action is not unprecedented. Presently, about 14 states confer land use control powers on certain state agencies. Most of these exercise general supervisory controls over local land use policies. While state involvement in zoning chiefly centers on the protection of environmentally valuable lands or the regulation of large scale development a few states have assumed local zoning powers when they are not exercised by the pertinent local governments. For example, Wisconsin permits state zoning of floodplain areas, and Oregon and Vermont authorize state assumption of local zoning controls when localities do no act. A recently enacted Florida law mandates state assumption of local planning functions if cities and counties do not adopt local comprehensive plans.

This suggested legislation attempts to provide basic tools for regulating development in unincorporated areas, particularly in developing metropolitan areas. The bill requires each county to establish a county planning department, a planning and zoning commission, and a board of adjustment, with the county governing body having the final responsibility for adopting a county master plan and zoning and subdivision regulations. The county must adopt a master plan, including an official map, and zoning and subdivision regulations. To facilitate interjurisdictional coordination of development, a county and municipality are authorized to jointly enact controls for unincorporated areas adjacent to the municipality, and counties and municipalities may plan and zone in concert for their entire jurisdictions.

The suggested legislation also provides a threefold approach to county-municipal planning and regulatory relationships in metropolitan areas. Under the act, the county: (a) reviews and approves certain planning and regulatory actions of existing municipalities between 5,000 and 30,000 populations; (b) exercises its planning and regulatory authority in all existing municipalities of less than 5,000 population; and (c) exercises its planning and regulatory authority in municipalities incorporated within the county after the passage of the act until the population of said municipalities exceeds 30,000 persons.

The draft establishes a procedure for metropolitan areas of the state requiring county review and approval of certain municipal planning and regulatory actions that have an effect beyond local boundaries or that affect development essential to countywide needs. The county may make recommendations to the municipality on a referred proposal. The municipality may not act contrary to the county recommendations unless it adopts a resolution setting forth its reasons for such action and files the resolution with the county planning agency. The county may then review the local resolution and reverse the municipality if, in its judgement, the proposal still does not meet countywide objectives as set forth in the county plan.

The suggested legislation also contains provisions to maximize intermunicipal coordination of planning and zoning activities. Notice of certain municipal planning and regulatory actions on real property within 500 feet of any abutting municipality must be sent to the affected municipality. The abutting municipality

¹The legislation implements recommendations in *Substate Regionalism and the Federal System*, Volume III, and portions of the model act were drawn from a Florida Statute (F.S.A. 163.160), *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, and *Alternative Approaches to Governmental Reorganization in Metropolitan Areas*, Report A-11 (Washington, D.C.: U.S. Government Printing Office.)

may recommend changes or modifications of the proposal. The municipal agency having jurisdiction may override changes suggested by the abutting municipality by a majority vote or by adoption of a resolution setting forth its reasons for contrary action. The resolution must be filed with the clerk of the abutting municipality and with the county planning agency.

Section 1 sets forth the findings and purpose of the proposed legislation. *Section 2* deals with definitions.

Section 3 requires counties to establish planning departments and enact zoning and subdivision controls in the unincorporated areas of the county. *Section 4* provides for joint county and municipal actions and extraterritorial powers in exercising the powers and duties of this act.

Section 5 provides for the establishment of a county planning department and outlines its duties. *Section 6* authorizes the establishment of a county planning and zoning commission and enumerates its authority and responsibility.

Section 7 requires the county to prepare a master plan, *Section 8* requires the preparation of an official map, and *Section 9* mandates the preparation of zoning regulations for the unincorporated area.

Section 10 requires the appointment of a board of adjustment to hear zoning appeals and certain other complaints, and specifies its authority in such matters.

Section 11 authorizes the county to exercise planning, zoning, and subdivision regulation in small municipalities. *Section 12* requires municipalities of a specified population size to submit its planning and zoning actions to the county, and requires the county to respond to such actions. *Section 13* requires contiguous municipalities to submit to each other their respective planning and zoning actions, and requires the receiving municipality to respond.

Sections 14 and 15, respectively, provide for separability and effective date clauses.

Suggested Legislation

[AN ACT RELATING TO LOCAL GOVERNMENT PLANNING, ZONING, AND
SUBDIVISION REGULATION]

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.*

2 (a) The [legislature] finds and declares that:

3 (1) continued unregulated growth and development of the state will result in harm to the
4 public safety, health, comfort, convenience, resources, and general welfare;

5 (2) counties as units of local government have the responsibility for guiding the develop-
6 ment of their unincorporated areas for the common good;

7 (3) county planning must be done in harmony with municipal, regional, and state planning
8 to insure the orderly growth and preservation of the state;

9 (4) within metropolitan areas, certain classes of proposed municipal planning and regula-
10 tory actions should be subject to review and approval by the county planning agency;

11 (5) the planning and zoning authority of certain small municipalities and newly incorporat-
12 ed municipalities should be exercised by the county due to lack of adequate technical and adminis-
13 trative resources in such municipalities; and

14 (b) municipal planning and zoning actions should complement and be consistent with an adopted
15 county comprehensive development plan.

16 SECTION 2. *Definitions. As used in this act:*

17 (a) "[Board of zoning adjustment]" or "board" means any county board established pursuant to
18 Section 10 to hear appeals concerning the application of zoning ordinances.

19 [Optional Subsection.]

20 [(b) "[Chief administrative officer]" means the county manager or elected county executive.]¹

21 (c) "[County council]"² or "council" means the governing body of the county.

22 (d) "Master plan" means a comprehensive plan to guide the future development of the county
23 formulated and adopted pursuant to Section 7.

24 (e) "Metropolitan area"³ means an area designated as a "standard metropolitan statistical

¹This definition and all subsequent bracketed references to the chief administrative officer should be removed in states which do not authorize either the council-manager or council-elected executive form of county government. (For such authorization, see Advisory Commission on Intergovernmental Relations' suggested legislation entitled *County Modernization*.)

²The term "county council" is used throughout this bill to refer to the governing body of the county. Different terms may be used in various states, such as "board of chosen freeholders," "board of county legislators," "commissioners' court," "board of supervisors," and "board of county commissioners."

³Particular states may find it necessary for constitutional reasons or otherwise desirable to apply a somewhat different definition, tailored to their circumstances, as some Bureau of Census designated "Metropolitan Areas" include counties primarily oriented to

1 area" by the United States Bureau of the Census.

2 (f) "Municipality" means any incorporated city, town, or village.

3 (g) "Official map" means maps and surveys of the exact location of the lines of existing and
4 proposed public streets, watercourses, and public grounds.

5 (h) "Planning and zoning commission" or "commission" means a county commission estab-
6 lished pursuant to Section 6 to advise [*the county planning department*] [*county council*]¹ on the mas-
7 ter plan and zoning and subdivision regulations.

8 (i) "Planned unit development" means an area of land to be developed as a single entity for
9 a number of dwelling units, and commercial and industrial uses, if any, the plan for which does not
10 correspond in lot size, bulk, or type of dwelling or commercial or industrial use, density, lot coverage,
11 and required open space to the regulations established in any one or more districts created, from
12 time-to-time, under the provisions of a zoning ordinance enacted pursuant to this act.

13 (j) "public grounds" means parks, playgrounds, and other public recreation areas, and sites
14 for schools, sewage treatment, refuse disposal, and other publicly owned or operated facilities.

15 (k) "Street" means any street, avenue, boulevard, road, highway, freeway, parkway, lane,
16 alley, viaduct, and any other ways used or intended to be used by vehicular traffic or pedestrians.

17 (l) "Subdivisions of land" means the division of land into two or more contiguous parcels of
18 land for building purposes.²

19 (m) "Substate district organization" means a regional body officially designated by the governor
20 to perform areawide comprehensive and functional planning, research, technical assistance, grant-
21 in-aid review, [*special district oversight, interlocal contracting, environmental and developmental acti-*
22 *vities, and service delivery*] [*and related*] responsibilities.³

23 (n) "Special exception" means a use that would not be appropriate throughout a particular
24 zoning district but which, if controlled as to number, area, location, or relation to the neighborhood,
25 would not adversely affect the general health, welfare, convenience, and prosperity of the county,
26 and which has been specifically provided for in the zoning ordinance.

27 (o) "Variance" means a modification of a zoning ordinance in relation to the height, area, and
28 size of a structure and the size of yards and open spaces when, due to conditions particular to the
29 property and not as a result of the actions of the applicant, a literal enforcement of the zoning or-

rural rather than urban problems. For example, other quantitative factors may be used in a metropolitan area definition, such as population density expressed in a number of persons per square mile, or percentage of county residents employed in the central city. Also, some states may prefer to use their substate districts instead (see draft legislation entitled *Statewide Substate Districting Act*).

¹This bill presents two alternative ways to structure the county planning process. The first makes the planning and zoning commission an advisory body to the county planning department, with the department responsible for presenting all plans and zoning and subdivision regulations to the county council. The second allows the commission prior approval of the plans or regulations developed by the department for submission to the council. The alternative language is bracketed throughout the bill.

²This definition should conform to the one used in municipal planning laws of the state.

³See Advisory Commission on Intergovernmental Relations suggested legislation, *Statewide Substate Districting Act*.

1 dinance would create unnecessary and undue hardship.

2 SECTION 3. *County Planning Required.*

3 (a) No later than [], each county in the state shall establish a [county planning department]
4 in accordance with Section 5 and enact zoning, official map, and subdivision controls for the unin-
5 corporated areas of the county and certain municipalities in accordance with Sections 7, 8, 9, 10,
6 and 11.

7 (b) If any county fails to comply with subsection (a), the [insert governor, state planning de-
8 partment, or other appropriate state official or agency] shall exercise within that county all the powers
9 and duties at any time by establishing a [county planning department] and enacting the requisite
10 zoning and subdivision controls.

11 (c) If, subsequent to [state agency or official] assumption of jurisdiction pursuant to subsection
12 (b), a county complies with subsection (a), the powers and duties authorized by this act shall be
13 exercised by the county.

14 SECTION 4. *Joint County and Municipal Actions; Extraterritorial Powers.*

15 (a) Any municipality may join with the county in exercising the powers and duties authorized
16 by this act in areas adjacent to the municipality when the [municipal governing body] and the county
17 agree to the boundaries of the areas, procedures for joint action, procedures for administration of
18 ordinances and regulations applying to the areas and the manner of obtaining equitable representa-
19 tion on the commissions and boards provided for in this act.

20 (b) Counties and municipalities may establish joint planning departments, joint planning and
21 zoning commissions, and joint boards of adjustments to exercise all planning and zoning duties
22 and responsibilities assigned to counties and municipalities.

23 (c)(1) Until a county complies with Section 3 of this act or the [state agency or official] assumes
24 jurisdiction under Section 3, a municipality whose population at the time of the latest decennial
25 census of the United States was at least [] may exercise the comprehensive planning, zoning, and
26 subdivision regulation powers granted herein within [] mile[s] in all directions of its corporate
27 limits, if such area is not located in any other municipality.

28 (2) In the case of land lying outside a municipality and within a distance of [] mile[s] of
29 more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary
30 line equidistant from the respective corporate limits of such municipalities, or at such line as is
31 agreed to by the governing bodies of the respective municipalities.

32 (3) Prior to the exercise of such powers, the membership of the [planning board] [zoning
33 commission] charged with the preparation of proposed comprehensive planning, zoning, official
34 map, and subdivision regulations for the [] mile area outside the corporate limits shall be increased
35 to include additional members who shall represent such outside area. The number of additional

1 members representing such outside area shall be [equal in number to the members of the [planning
2 board] [zoning commission] appointed by the [governing body of the municipality]]. If the extra-
3 territorial area includes parts of two or more counties, the area included from each county shall
4 have additional members [equal in number to the members of the [planning board] [zoning commis-
5 sion] appointed by the [governing body of the municipality]]. Members shall be residents of the [] mile
6 area outside the corporate limits and shall be appointed by the [board of county commissioners] of
7 the county wherein the unincorporated area is situated. Members shall have the same rights, privileges,
8 and duties as the other members of the [planning board] [zoning commission] in all matter pertaining
9 to the plans and regulations of the area in which they reside, both in preparation of the original
10 plans and regulations and in consideration of any proposed amendments to such plans and regula-
11 tions.¹

12 (4) If a [municipal governing body] adopts zoning regulations for the area outside its
13 corporate limits, it shall increase the membership of the [board of zoning adjustment] by adding
14 additional members [equal in number to the members of the [board of zoning adjustment] appointed
15 by the governing body of the municipality]. If the extraterritorial area includes parts of two or
16 more counties, the area included from each county shall have additional members [equal in number
17 to the members of the [board of zoning adjustment] appointed by the [governing body of the
18 municipality]]. Members shall be residents of the [] mile area outside the corporate limits and
19 shall be appointed by the [board of county commissioners] of the county wherein the unincorporated
20 area is situated. Members shall have the same rights, privileges, and duties as other members of
21 the [board of zoning adjustment] in all matters pertaining to the regulation of such area. The con-
22 curring vote of a majority of the members of such enlarged board shall be necessary to reverse any
23 order, requirement, decision, or determination of any administrative official charged with the en-
24 forcement of an ordinance.

25 (5) Regulations for the unincorporated area shall be enforced by the municipality in the
26 same manner as regulations within the municipality.

27 SECTION 5. *County Planning Department.*

28 (a) The [county council] shall establish a [county planning department] to be headed by a [direc-
29 tor of planning]. The [director of planning] shall be appointed for an indefinite period [[by the chief
30 administrative officer]; or if the county does not have a [chief administrative officer], the [director]
31 shall be appointed by the [county council]]. The [director] shall be responsible for the proper function-
32 ing of the [department], including the hiring and removal of [department] personnel.

¹The Standard City Planning Enabling Act, published by the United States Department of Commerce in 1928, extended municipal jurisdiction over subdivisions proposed in unincorporated areas up to five miles beyond municipal boundaries. See sections 6 and 12 (rev. ed. 1928).

1 (b) It shall be the duty of the [county planning department] to:

2 (1) acquire and maintain any information and materials necessary for effective county plan-
3 ning including maps and photographs of manmade and natural physical features of the county; and
4 statistics on past trends and present conditions with respect to population, property values, eco-
5 nomic base, land use, and other factors important in determining the probable amount, direction,
6 and type of social, economic, and physical development in the county;

7 (2) prepare for submission to the [county council] [planning and zoning commission] a master
8 plan for the future development of the county, and, from time-to-time, suggest revisions of and
9 additions to the plan;

10 (3) conduct any public hearings necessary to gather information required to carry out its
11 duties;

12 (4) make, or cause to be made, any necessary special studies on the location, condition,
13 and adequacy of specific facilities in the county, including, but not limited to, housing, commercial
14 and industrial conditions and facilities, public and private utilities, and transportation facilities;

15 (5) prepare for submission to the [county council] [planning and zoning commission] any
16 zoning regulations necessary for the enforcement of the county master plan;

17 (6) consult with municipal, county, regional, and state planning agencies, both during
18 the preparation of the master plan and on a continuing basis, in order to coordinate the various
19 planning activities; and

20 (7) perform any other related duties assigned to it.

21 SECTION 6. *County Planning and Zoning Commission.*

22 (a) A county planning and zoning commission shall be appointed [by the [chief administrative
23 officer] with the approval of the [county council]; if the county does not have a [chief administra-
24 tive officer], the commission shall be appointed] by the [county council]. No elected official or em-
25 ployee of local government shall be appointed to the commission. Members of the commission shall
26 represent a broad cross section of the citizens of the county. Members shall be appointed for fixed
27 terms and shall serve without pay, but may be reimbursed for travel and other reasonable expenses
28 for meetings, hearings, and other official business. Any vacancies in the commission membership
29 shall be filled for the unexpired term in the same manner as the original appointment. All commis-
30 sion meetings shall be open to the public.

31 [Alternative 1.]

32 [(b) The [county planning department] shall submit to the planning and zoning commission the
33 county master plan, any subsequent revisions of the plan, and any zoning and subdivision regula-
34 tions for review within [30] days of the date of submission. Any changes suggested by the commission
35 may be incorporated by the [chief administrative officer]; if the county does not have a [chief adminis-

1 trative officer], any changes may be made by the [planning director].]

2 [Alternative 2.]

3 [(b) The [county planning department] shall submit to the planning and zoning commission
4 the county master plan, any subsequent revisions of the plan, and any zoning and subdivision
5 regulations for review within [30] days of submission. The commission may make any changes it
6 deems necessary before submitting the proposal to the [county council] for approval.]

7 (c) The commission may conduct any public hearings necessary for the performance of its
8 duties.

9 SECTION 7. *County Master Plan.*

10 (a) The [county planning department] shall prepare the master plan as authorized in Section
11 5(b)(2), based on studies of governmental, social, economic, environmental, and physical
12 conditions and trends, and seeking to promote the general health, welfare, convenience, and
13 prosperity of the county's population. The master plan shall include, but not be limited to:

14 (1) goals, objectives, standards, and principles to guide economic, social, environmental,
15 and human resource development;

16 (2) alternative strategies for economic growth and population settlement;

17 (3) the long range development and operation of county human resource programs;

18 (4) an official map adopted pursuant to Section 8;

19 (5) land, water, and air transportation networks, and communication facilities;

20 (6) proposed general location of public and private works and facilities; and

21 (7) the long range development, operation, and financing of capital projects and facilities.

22 (b) [After review by the planning and zoning commission, the [county planning department]]
23 [the planning and zoning commission] shall submit the master plan to the [county council]. The
24 [council] shall hold a public hearing on the master plan, may make any modifications or revisions
25 and shall adopt the master plan by majority vote of the entire [council]. Prior to adoption, the
26 [council] shall submit the master plan to all municipalities within the county, any other munici-
27 pality which it determines to be substantially affected by the plan, adjacent counties, its substate
28 district organization, and the [state planning department] for review and comment, and shall take
29 into consideration any ensuing comments.

30 (c) Nothing in this act shall be construed as preventing the [county council] from adopting at
31 intervals portions of the plan, which taken together shall form the complete master plan.

32 (d) Upon adoption of the master plan, or any portion thereof, all zoning ordinances adopted
33 by the [county council] shall conform to the master plan.

34 (e) No publicly owned and operated building or facility shall be constructed in unincorporated
35 portions of the county until such project has been approved by the [county council] as conforming

1 with the contents of the master plan.

2 SECTION 8. *Official Map.*

3 (a) The [county planning department] shall make surveys of the exact location of the lines of
4 existing and proposed public streets, waterways, and public grounds, including widenings, narrow-
5 ings, extensions, diminutions, openings or closings of same, for the unincorporated areas of the
6 county. Upon adoption by the [county council] as provided in Section 7(b), the official map shall
7 be a portion of the master plan.

8 (b) The adoption of the official map shall not, in and of itself, constitute or be deemed to con-
9 stitute the opening or establishment of any such street. The adoption of proposed waterways or
10 public grounds as part of the official map shall not, in and of itself, constitute or be deemed to
11 constitute a taking or acceptance of any land by the county.

12 (c) No building permit shall be issued for any structure within the lines of any street, waterway,
13 or public ground shown or laid out on the official map. No person shall recover any damages for
14 the taking for public use of any structure or improvements constructed within the lines of any street,
15 waterway, or public ground after the same shall have been included in the official map, and any such
16 structure or improvement shall be removed at the expense of the owner.

17 (d) The county may fix the time for which streets, waterways, and public grounds on the official
18 map shall be deemed reserved for future taking or acquisition for public use. However, the reserva-
19 tion for public grounds shall lapse and become void [three years] after an owner of such property
20 submits a written notice to the [county council] announcing his intentions to build, subdivide, or
21 otherwise develop the land covered by the reservation, or makes formal application for an official
22 permit to build a structure for private use, unless the [council] acquires the property, or begins
23 condemnation proceedings to acquire the property before the end of the [three year] period. During
24 the [three year] period the land shall be removed from the county tax rolls.

25 The [council] may withhold issuance of any permit to build a structure within any land area
26 so reserved for a period of up to [three years] following application therefor, and it may withhold
27 approval of any subdivision plan affecting any area reserved for a period of up to [three years] fol-
28 lowing submission of the plan for approval. Any withholding period so established shall be valid,
29 notwithstanding any other provisions contained in ordinances or resolutions or in statutes of the
30 state requiring approval or disapproval of such applications within a lesser time period.

31 (e) Any state agency or political subdivision intending to construct a structure within the lines
32 of any street, waterway, or public ground included in the official map shall give the [county council]
33 written notice of such intention at least [one year] in advance of the date that construction is planned
34 to start.

35 (f) The [county council] may designate any of its agencies to negotiate for or secure from the

1 owner of land whereon reservations are made, releases of claims for damages or compensation for
2 such reservations, or agreements indemnifying the [council] from such claims by others, which re-
3 leases or agreements when properly recorded shall be binding upon the successor in title.

4 SECTION 9. *Zoning and Subdivision Regulation.*

5 (a) The [planning department] shall divide the unincorporated areas of the county into zoning
6 districts for the purpose of insuring conformance with the master plan. The [planning department]
7 shall formulate zoning regulations dealing with:

8 (1) the height, number of stories, size, bulk, location, erection, construction, repair, re-
9 construction, alteration, and use of building and other structures for trade, industry, residence,
10 and other purposes;

11 (2) the use of land and water for trade, industry, profession, residence, and other purposes;

12 (3) the size of yards, courts, and other open spaces;

13 (4) the percentage of lot that may be occupied and minimum setback lines;

14 (5) the density of population;

15 (6) the conditions under which various classes of non-conformities may continue, including
16 authority to set fair and reasonable schedules for the elimination on non-conforming uses;

17 (7) the use, types, and sizes of structures in those areas subject to flooding or other natural
18 disasters; and

19 (8) standards for the use of property and location of structures thereon.

20 (b) All such regulations shall be uniform throughout each district, but the regulations in one
21 district may differ from those in other districts. For each district designates for the location of
22 trades, callings, industries, commercial enterprises, residences, or buildings designed for specific
23 uses, regulations may specify those uses that shall be excluded or subjected to reasonable require-
24 ments of a special nature. Uses permitted in one district may be prohibited in other districts, to the
25 end that incompatibility of uses is minimized or eliminated.

26 (c) The [county planning department] shall formulate regulations concerning the subdivision of
27 land to:

28 (1) aid in the coordination of land development in accordance with orderly physical patterns;

29 (2) discourage haphazard, premature, uneconomic, or scattered land development;

30 (3) ensure safe and convenient access to land and traffic control;

31 (4) encourage development of economically stable and healthful communities;

32 (5) ensure adequate utilities;

33 (6) prevent periodic and seasonal flooding by providing protective flood control and drain-
34 age facilities;

35 (7) provide public open spaces for recreation;

1 (8) ensure land subdivision with installation of adequate and necessary physical improve-
2 ments;

3 (9) ensure, through the posting of bonds and other appropriate safeguards, that taxpayers
4 will not bear the costs resulting from the haphazard subdivision of land and the failure by developers
5 to make adequate and necessary physical improvements; and

6 (10) ensure to the purchaser of land in a subdivision that necessary improvements of last-
7 in; quality have been installed.

8 (d) The [planning department] shall submit all proposed zoning and subdivision regulations,
9 including the boundaries of the zoning districts, to the planning and zoning commission for review.
10 [The [planning director] may modify any regulation prior to submission to the [county council].] [The com-
11 mission may make any modifications it deems necessary prior to submission to the [county council].]

12 (e) Upon receipt of any proposed zoning or subdivision regulations, the [county council] shall hold
13 a public hearing on the regulations. The [council] may make any modification prior to enactment of
14 the zoning or subdivision ordinance.

15 (f) Nothing in this statute shall be construed as preventing the [county council] from providing
16 for planned unit development as authorized in [insert state statute authorizing action]¹

17 (g) No zoning or subdivision regulations shall become effective until filed with the [county clerk].
18 The [county council] shall provide for the enforcement of duly enacted zoning and subdivision
19 ordinances. Any violation of such ordinance shall be a misdemeanor and the [county council] may also
20 provide civil penalties for such violations.

21 SECTION 10. [Board of Zoning Adjustment].

22 (a) The [county council] shall appoint a [board of zoning adjustment]. No elected official or employee
23 of local government shall be appointed to the board. Members of the board shall represent a broad
24 cross section of the citizens of the county. Members shall be appointed for fixed terms and shall
25 serve without pay, but may be reimbursed for travel and other reasonable expenses for meetings, hear-
26 ings, and other official business. Any vacancies in the board membership shall be filled by the [council]
27 for the unexpired term.

28 (b) The [board of adjustment] shall have the following powers and duties:

29 (1) to hear and decide appeals when it is alleged that there is error in any order, requirement,
30 decision, or determination made by an administrative official in the enforcement of any zoning
31 ordinance or regulation;

32 (2) to hear and decide such special exceptions as the board is specifically authorized to pass
33 on under the terms of the zoning ordinance. In granting any special exception, the board shall find

¹See Advisory Commission on Intergovernmental Relations' suggested legislation, *Planned Unit Development*. The bill is limited to municipalities but may be adapted to counties.

1 that such grant will not adversely affect the public interest and shall confer with the [county planning
2 department] and the planning and zoning commission;

3 (3) to authorize upon appeal such variance from the terms of the ordinance as will not be
4 contrary to the public interest when, owing to special conditions, a literal enforcement of the pro-
5 visions of the ordinance would result in unnecessary and undue hardship. In order to authorize any
6 variance for the terms of the ordinance, the [board of adjustment] must find that:

7 (i) special conditions and circumstances exist which are peculiar to the land, structure,
8 or building involved and which are not applicable to other lands, structures, or buildings in the same
9 zoning districts;

10 (ii) the special conditions and circumstances do not result from the actions of the appli-
11 cant;

12 (iii) granting the variance requested will not confer on the applicant any special privilege
13 that is denied by ordinance to other lands, buildings, or structures in the same zoning district;

14 (iv) literal interpretation of the provisions of the ordinance would deprive the applicant
15 of rights commonly enjoyed by other properties in the same zoning district under the terms of the
16 ordinance and would work unnecessary and undue hardship on the applicant;

17 (v) the variance granted is the minimum variance that will make possible the reasonable
18 use of the land, building, or structure; and

19 (vi) the grant of the variance will be in harmony with the general intent and purpose of
20 the ordinance and that such variance will not be injurious to the area involved or otherwise detri-
21 mental to the public welfare.

22 (4) In granting any special exception or variance, the [board of adjustment] may prescribe
23 appropriate conditions and safeguards in conformity with this act and any ordinance enacted under
24 its authority. Violation of such conditions and safeguards, when made a part of the terms under which
25 the special exception of variance is granted, shall be deemed a violation of the ordinance.

26 (c) Under no circumstances except as permitted above shall the [board of adjustment] grant a
27 variance to permit a use not generally or by special exception permitted in the zoning district involved
28 or any use expressly or by implication prohibited by the terms of the ordinance in the zoning dis-
29 trict. No non-conforming use of neighboring lands, structures, or buildings in the same zoning dis-
30 tricts shall be considered grounds for the authorization of a variance.

31 (d) Appeals to the [board of zoning adjustment] may be taken by any person, officer, or unit of
32 government affected by any decision of any administrative official under the zoning ordinance. The
33 board shall observe the following procedures:

34 (1) all meetings shall be open to the public;

35 (2) rules governing the conduct of the meeting shall be established and filed with [county

1 clerk};

2 (3) notice of the meeting shall be published in a newspaper of general circulation within the
3 county;

4 (4) any report of the [county planning department] concerning the proposed special exception
5 or variance shall be filed with the [county clerk] prior to the meeting;

6 (5) the member presiding at the hearing shall have the power to administer oaths and issue
7 subpoenas to compel the attendance of witnesses and the production of relevant documents and papers;

8 (6) all parties shall be afforded the opportunity to present evidence and argument on all
9 relevant issues, but the presiding officer may impose reasonable limitations as to time and number of
10 persons heard;

11 (7) the proceedings shall not be limited by legal rules of evidence;

12 (8) the board shall keep a verbatim record of the proceedings. A transcript of any record kept
13 by the board together with copies of all exhibits received in evidence shall be made available to any
14 party at reasonable cost;

15 (9) the decision and order of the board shall be in writing and shall include written findings
16 of fact and conclusions, provided that all findings shall be based only on evidence introduced at the
17 meeting or upon official governmental records available to the public; and

18 (10) a copy of the decision and order shall be given or mailed to the appellant and all parties
19 who have filed a written request for such decision and order at the time of their appearance.

20 The county may establish additional rules for appeals to the [board of adjustment].

21 SECTION 11. *County Planning, Zoning, and Subdivision Regulation in Small Municipalities.*

22 (a) Each county located in a metropolitan area shall exercise planning, zoning, and subdivision
23 regulation authority for:

24 (1) all municipalities within the county having a population of less than [5,000] as determined
25 by the latest official census, but existing plans and ordinances shall remain in effect until altered by
26 the county; and

27 (2) all municipalities incorporated within the county until the population of a municipality
28 exceeds [30,000] persons as determined by the latest official census within its territory. County authority
29 shall continue until the municipality adopts a [resolution] [ordinance] in conformance with [cite appro-
30 priated planning and zoning enabling legislation].

31 (b) If any municipalities referred to in subsection (a) are located in more than one county, the coun-
32 ty having the larger population shall exercise planning and zoning authority within those municipali-
33 ties.¹

¹When using this provision, states will want to review other statutory requirements applicable to municipalities in more than one county to assure that no statutory conflicts exist.

1 SECTION 12. *Municipal Planning and Zoning Action to be Submitted to the County; Action by*
2 *the County.*

3 (a) Any municipality of less than [30,000] and more than [5,000] population, as determined by the
4 latest official census, located within a metropolitan area and in a county that has an adopted county
5 master plan pursuant to Section 7 of this act, shall give notice to the county of any development pro-
6 posal which, if adopted, would result in:

7 (1) changing the types of uses permitted on property abutting any Federally aided or state
8 highway, parkway, or throughway, or any county road or parkway or Federal, state, or county park
9 within the municipality;

10 (3) connecting any new street directly into any Federal, state, or county highway, parkway,
11 throughway, or road;

12 (4) connecting any new drainage lines directly into any channel lines as established by the
13 county; or

14 (5) reducing permitted residential density to less than [three] families per acre. The notice shall
15 be mailed by the municipality to the county at least [15] days prior to any hearing or other action sched-
16 uled in the municipality to consider the proposal.

17 (b) If the county [or authorized agent of the county] to which referral is made determines that the
18 granting or denial of any proposal referred to in subsection (a) would affect any county policy pursuant
19 to Section 7 of this act, it shall report its recommendations thereon to the referring municipal agency,
20 accompanied by a full statement of the reasons for the recommendation. If the county fails to report
21 within [15] days after receiving notice of the hearing, the municipal body having jurisdiction to act may
22 do so without such report.

23 (c) The municipality having jurisdiction shall act in accordance with the recommendations of the
24 county unless the municipality adopts a resolution fully setting forth the reasons for contrary action.
25 The resolution shall be filed with the county within [seven] days from the adoption of the resolution.
26 The municipal action shall not become effective until [30] days following the date the resolution is filed.

27 (d) Notwithstanding any resolution or action taken pursuant to subsections (b) and (c), the county,
28 within the [30] day period, may review the municipal action and reverse its action by resolution of the
29 [county governing body] upon specific findings of fact that the municipal action is not in accordance
30 with the provision of the adopted county master plan.

31 (e) If a proposed municipal project would not further the policies set forth in the county master
32 plan, the county shall recommend to the municipality that the project be denied, unless the project is:

33 (1) necessary to public health or safety;

34 (2) necessary to the preservation of the established physical character of the area affected; or

35 (3) specifically authorized in the county comprehensive plan or other official development

1 policy document.

2 SECTION 13. *Municipal Planning and Zoning Actions to be Submitted to Contiguous Municipal-*
3 *ities; Action by Contiguous Municipalities.*

4 (a) Each municipality in the county shall give notice to a contiguous municipality of any action
5 proposed in the municipality in connection with;

6 (1) changing the use permitted for any property located within 500 feet of the contiguous
7 municipality;

8 (2) a subdivision plat for land within 500 feet of the contiguous municipality; or

9 (3) the proposed adoption or amendment of any official map, relating to land within 500 feet
10 of the contiguous municipality. The notice shall be given at least [15] days prior to a hearing held on
11 the proposal and shall be sent to the [clerk] of the contiguous municipality affected.

12 (b) The municipality [or an authorized agent of the municipality] to which referral is made may
13 file a memorandum of its position. If the municipality fails to report within the period of [15] days
14 after receiving notice of the hearing, the municipality having jurisdiction to act may do so without the
15 report. If the contiguous municipality disapproves the proposal, or recommends changes or modifica-
16 tions, the municipal agency having jurisdiction shall not act contrary to the disapproval or recom-
17 mendation except by a majority vote of all the members and after the adoption of a resolution fully
18 setting forth the reasons for its contrary action. Copies of the resolution shall be filed with the [clerk]
19 of the contiguous municipality and with the county.

20 SECTION 14. *Separability.* [Insert separability clause.]

21 SECTION 15. *Effective Date.* [Insert effective date.]

5.203 STATE HIGHWAY INTERCHANGE PLANNING DISTRICTS¹

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

Local control of land use around highway interchanges should be relied upon to the greatest possible extent. In some instances, however, state action may be necessary, especially in rural areas where special problems are created by the extension of major limited access highways. In such areas, counties and smaller municipalities often do not have adequate zoning, subdivision, and other development controls to regulate increased commercial, industrial, and homebuilding activities generated by the highways. Although the rights-of-way of Federal interstate highways are rigidly regulated, the areas immediately beyond, and particularly along the access roads, in numerous instances, often become dreary, unsightly, honky-tonk strip developments. The very rigidity of some highway access restrictions generates a clustering of motel, restaurant, drive-in, and other type of activities along the rights-of-way at access points and at interchanges. Highway development has also generated isolated, small industrial, warehouse, and similar installations and subdivisions. Once established without zoning, many of the uses are protected as "non-conforming uses" even when land use controls finally are inaugurated.

The draft bill below seeks to control development at highway interchanges in those cases where municipalities or counties are not exercising effective land use and development controls. This is done by charging a state agency with exercising land use controls according to prescribed standards. The agency, located within the department of community affairs or state planning, has authority, subject to the governor's approval, to decide whether local controls are effective or not. A county or municipality may appeal to the courts any decision declaring its controls inadequate. Finally, provision is made for establishing or reestablishing local controls when the county or municipality shows readiness to exercise such controls. The point should be emphasized that any control over land use and development at highway interchanges, whether state or locally administered, should be consistent with the state urbanization plan or policies where such exists. Where a state has adopted a *State Planning and Growth Management Act* (see 5.101) this highway interchange act might well be unnecessary.

In maintaining control over land use, a wider range of techniques may be utilized. Many of these techniques are already available to larger municipalities and urban counties. These techniques can be grouped under four major headings: eminent domain, police powers, contractual agreements, and doctrine of nuisance laws. Of these four, eminent domain and police powers have been the most widely used to date. The methods generally used under eminent domain include: (1) the acquisition in fee simple of land surrounding interchanges and its retention or long term lease; (2) acquisition of development rights or easements; (3) temporary acquisition of land and its resale according to a development plan (urban renewal approach); and (4) acquisition of access rights. The major police power controls are: (1) zoning; (2) setback requirements; (3) subdivision controls; (4) the official map; and (5) transfer of development rights.

Every effort should be made to retain effective land use controls at the local level, but, where this is impossible, state control may be necessary. In planning a state program for land use control, it is important to know which protective devices are institutionally feasible as well as effective. The selection of appropriate controls and the granting of rights to use these controls will vary from state-to-state. The draft legislation below provides a combination of eminent domain and police powers such as: (1) acquisition of development rights by states; (2) acquisition of access rights by states; (3) the urban renewal approach (temporary acquisition); (4) state land use controls to implement an interchange plan; and (5) zoning at the local level.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

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

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

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

Section 6 authorizes the commission to enact land use controls, and appropriate administrative machinery for the district. The draft provides flexible power for the commission to tailor administration of a district to particular state and local needs and capabilities; in addition, a district shall be dissolved if adequate local plans are developed.

Section 7 prevents construction or relocation of buildings around an existing or proposed highway interchange until the commission accepts a local plan for land use control or establishes a state highway interchange planning district. *Section 8* provides judicial review for any individual or local jurisdiction aggrieved by any regulation or order of the commission.

Section 9 provides a penalty for any person violating any rule or order of the commission. The remaining two sections contain separability and effective date clauses.

The draft bill generally reflects the process employed in the *Florida Environmental Land and Water Management Act of 1972* for recognizing areas of critical state concern pursuant to Chapter 380, *Florida Statutes* (1973). The Florida legislation in turn, follows closely the approach outlined in The American Law Institute's *Model Land Development Code*.

Suggested Legislation

[AN ACT PROVIDING FOR THE CONTROL AND DEVELOPMENT OF LAND SURROUNDING HIGHWAY INTERCHANGES]

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.*

2 (a) The [legislature] finds that:

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

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

7 (3) counties and smaller municipalities normally do not have adequate land use regulations,
8 subdivision, and other development controls to regulate the increased commercial, industrial, and
9 home building activities generated by the highways; and

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

13 (b) The purpose of this act is to insure the greatest possible benefits from the limited access
14 portion of the state highway system and from the public investment therein. To this end, it is neces-
15 sary to:

16 (1) promote the safety, convenience, and enjoyment of public travel on or about state high-
17 way interchanges and connecting streets;

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

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

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

21 (5) control the subdivision, division, and use of land abutting on or lying near state high-
22 ways, limited access highways, and connecting street interchanges.

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

24 (a) "Commission" means the [highway interchange planning and development commission]¹
25 created by this act.

26 (b) "District" means an [interchange planning district] created by the [highway interchange
27 planning and development commission] as authorized by this act.

28 (c) "Division" means the division of a lot, parcel, or tract of land by the owner or his agent for

¹Some states may wish to use an existing planning body rather than creating a new commission.

1 the purpose of sale, contract, or building development, but does not include:

2 (1) transfer of interest in land by will or pursuant to court order;

3 (2) mortgages or easements;

4 (3) the sale or exchange of parcels of land between owners of adjoining property if addi-
5 tional lots are not created.

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

7 (e) "Interchange" means an intersection which provides for the interchange of traffic between
8 a limited access facility or highway as defined herein and one or more highways which may be either
9 of the conventional type or limited access type. Such highways may intersect at the same grade or
10 level or at different grades or levels. If two interchanges are 500 feet or less apart, measured along
11 the center line of a limited access highway, they may be considered as a single interchange for the pur-
12 poses of this act.

13 (f) "Interchange centerpoint" means the point at which the center lines of the intersecting high-
14 ways meet or cross if at the same grade or level, or the point at which the center lines of highways
15 which cross or meet at different grades or levels would meet or cross if they intersected at the same
16 grade level. Two interchanges whose centerpoints are 500 feet or less apart measured along the
17 center line of a limited access highway may be considered for the purposes of this act as a single inter-
18 change the centerpoint of which lies halfway between the centerpoints of the two intersections.

19 (g) "Subdivision" is a division of a lot, parcel, or tract of land by the owner or his agent for
20 the purpose of sale or building development where the act of division creates two or more parcels
21 or building sites] of ten acres each or less in area] of where two or more parcels or building sites
22 [of ten acres each or less in area] are created by successive divisions within a period of [five] years.

23 SECTION 3. *Creation of [Highway Interchange Planning and Development Commission].*¹ There
24 is hereby created in [*the state planning agency*] or [*department in charge of local affairs*] the [*highway*
25 *interchange planning and development commission*]. The commission shall consist of [five] members
26 to be appointed by the governor, and shall include the [*director of the state planning office*], or
27 other official of the executive branch, two local government officials, and two persons who are
28 not public officials.² The [[*director of the state planning office*] or the executive official designated
29 by the governor] shall be the chairman of the commission. The local officials shall consist of [one
30 municipal official and one county official]³ to be appointed by the governor from a panel sub-
31 mitted by the [*state municipal league*] and the [*state association of county officials*] respectively.

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

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

³Those states who do not operate on a bounty basis may wish to adjust this section to their own needs.

1 Members of the commission shall be appointed for [four] years, and serve until their successors take
2 office, with the exception of the chairman, who shall serve at the pleasure of the governor.

3 Members of the commission may be removed by the governor for inefficiency, neglect of duty,
4 or malfeasance in office upon the filing of written statements of charges and reasons for removal.

5 Any member so charged may request a public hearing and can then be removed only if such hearings
6 result in substantiation of the charges filed against him.

7 SECTION 4. *Powers and Duties of the Commission.*

8 (a) In carrying out the purpose of this act, the [*highway interchange planning and development*
9 *commission*] shall:

10 (1) conduct studies involving the development of highway interchanges and the evaluation
11 of the effectiveness of local land use controls;

12 (2) publish and distribute copies of its plans and reports and employ such other means of
13 public education necessary to carry out the purposes of this act;

14 (3) propose establishment of [*highway interchange planning districts*], when local land use
15 controls are found, on the basis of its studies to be ineffective;

16 (4) review proposed local plans and ordinances that are received from affected local govern-
17 ing bodies, and hold public hearings on such plans and ordinances;

18 (5) establish, subject to approval of the governor, [*highway interchange planning districts*],
19 when the public hearing record indicates inadequate local land use controls in the highway inter-
20 change area;

21 (6) divide [*highway interchange planning districts*] into zones of such number, shape, and
22 size as are best suited to carry out the purposes of this act;

23 (7) create land use regulations to control the division, subdivision, or other use of land and
24 the erection, construction, alteration, or use of buildings and other structures in such districts;

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

28 (9) dissolve, by resolution, any state [*highway planning district*] on a finding by the com-
29 mission that effective land use controls can be administered by the affected local jurisdiction or
30 jurisdictions; and

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

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

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

1 SECTION 5. *Procedures of the Commission.*

2 (a) *Planning Districts.* The commission, subject to the approval of the governor, may establish,
3 by rule, planning districts for state highway interchanges. The commission shall define the bound-
4 aries for each district. A district shall not encompass an area of a radius greater than [1.5 miles] in
5 any direction from the centerpoint of any interchange, however, a district may include additional
6 contiguous areas located greater than [1.5 miles] from the centerpoint of the interchange, if the
7 commission finds that such additional area bears substantial relation to the planning and develop-
8 ment of the interchange area, or to the traffic movement or control functions associated with the
9 interchange. Such districts shall be dissolved on a finding by the commission that local land use
10 controls are adequate.

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

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

20 (2) *Commission Proposals.* Based on findings from such studies and policies contained in
21 a state or regional land development plan, the commission may propose to the governor formation
22 of a [*highway interchange planning district*], and shall so notify the municipalities and counties
23 within whose jurisdiction the interchange is located.

24 (3) *Local Plans.* Upon notification by the commission of plans to establish a state [*highway*
25 *interchange planning district*], an affected local jurisdiction shall have a period of [four] months to
26 submit to the commission a plan and proposed regulations to control development of the area covered
27 by the proposed [*interchange planning district*]. Such plan and regulations shall be consistent with
28 the state land development plan, and shall specifically describe the methods that will be used to
29 control land use in the interchange area. In deciding whether a local plan is adequate, the commission
30 shall determine if the plan contains the following components:

- 31 (i) a land use plan for the most desirable utilization of land in the interchange area;
32 (ii) a street and highway plan;
33 (iii) a mass transit plan;
34 (iv) plans for public services and facilities;
35 (v) a public buildings and community design plan;

- 1 (vi) recreation plans for parks, playgrounds, and other recreational areas;
- 2 (vii) a conservation plan, including plans for water and all natural resources, flood control, and watershed protection;
- 3
- 4 (viii) any other component that is applicable or deemed necessary by the commission;
- 5 (ix) descriptions of the available land use controls, and combination of controls, to
- 6 be used to implement the interchange development plan; and
- 7 (x) methods by which the controls are to be utilized and the goals of the plans are to be
- 8 achieved.

9 (4) *Commission Hearings.* The commission, within [five] months of the date of notification,
10 as provided in subsection (b)(2) of this section, shall hold public hearings pursuant to [authority].
11 The commission's initial study, local plans submitted, and the hearings record shall form the basis
12 for any decisions as to whether a state [highway interchange planning district] should be established.
13 If, based on such studies and any submitted local plans, the commission determines that proposed
14 plans and regulations are inadequate to control development within the interchange area, it shall
15 recommend to the governor that a state [highway interchange district] be established.

16 (5) *Gubernatorial Approval.* Within [30] days after the completion of the hearings, the com-
17 mission shall report its findings and recommendations to the governor. If establishment of an
18 [interchange planning district] is recommended, the recommendation shall be implemented adminis-
19 tratively unless vetoed by the governor within [ten] days after submission.

20 (6) The commission shall conduct at reasonable times a review of:

21 (i) local land use controls in those studied highway interchange areas governed by local
22 governing bodies; and

23 (ii) the capability of local governing bodies within established [highway interchange
24 planning districts] to provide effective land use controls for the interchange area.

25 If the commission finds that adequate local land use controls no longer exist in a highway inter-
26 change area, it may propose the formation of a [highway interchange planning district], pursuant to
27 subsection (a) of this section. If the commission finds that the local governing bodies within an exist-
28 ing [highway interchange planning district] possess the capabilities to provide effective land use con-
29 trols, it shall dissolve the district, subject to approval by the governor and consistent with the pro-
30 visions of this section.

31 SECTION 6. *Land Use Controls.* The commission, following a public hearing within the dis-
32 tricts, shall by rule adopt appropriate land use regulations for a district, including, without limita-
33 tion, zoning, subdivision, and PUD regulations. The Commission shall also adopt administrative
34 rules necessary to implement such regulations. Regulations may be administered by the commission,
35 by the local government, or by both, as determined by the commission.

1 SECTION 7. *Control of Interim Development.* No person shall construct, reconstruct, or re-
2 locate any building or other structure within [1.5 miles] of the centerpoint of an existing, or officially
3 designated future, limited access highway interchange, until the commission, pursuant to Section 5 of
4 this act, has either:

5 (a) made a finding that local land use controls are adequate; or

6 (b) established a planning district for the interchange area.

7 SECTION 8. *Judicial Review.* Any person or local unit of government aggrieved by any regula-
8 tion, decision, or order of the commission may appeal to the [*specify appropriate court and cite*
9 *state law pertaining to judicial review of administrative decisions*].

10 SECTION 9. *Enforcement; Penalties.*

11 (a) The commission may institute appropriate judicial action or proceedings to enforce the
12 provisions of this act or regulations adopted hereunder.

13 (b) Any person violating this act or the regulations adopted pursuant thereto shall be subject
14 to a fine of not more than [\$500]. Each day a violation continues shall be deemed a separate offense.

15 SECTION 10. *Separability.* [*Insert separability clause.*]

16 SECTION 11. *Effective Date.* [*Insert effective date.*]

5.204 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.

Most states have some type of official map legislation on their books, but in only about half does it include power actually to reserve land for streets, and in only a few does it include power 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 plan, 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 reservations 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.

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Urban and Rural Growth: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

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 Advisory Commission on Intergovernmental Relations' 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 Legislation

[AN ACT TO AUTHORIZE LOCAL GOVERNMENTS 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 gen-
2 eral 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
4 thereto, drainage rights-of-way, public utility rights-of-way, public parks and playgrounds, and sites
5 for public buildings.

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

7 (a) "Municipality" means an incorporated city, town, or village, whether incorporated under gen-
8 eral or special act.

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

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

12 (d) "Public ground" includes:

13 (1) parks, playgrounds, and other public areas for active or passive recreation; and

14 (2) sites for schools, sewage treatment, refuse disposal, and other publicly owned or operated
15 facilities.¹

16 (3) "Street" includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, via-
17 duct, and any other ways used or intended to be used by vehicular traffic or pedestrians.

18 (f) "Structure" means any man made object having an ascertainable stationary location on or in
19 land or water, whether or not affixed to land.

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

21 SECTION 3. *Grant of Power.* The governing body of each [municipality, county] may make, or
22 cause to be made, surveys of the exact location of the lines of existing and proposed public streets, wa-
23 tercourses, and public grounds; including widenings, narrowings, extensions, diminutions, openings
24 or closing of same, for the entire [municipality, county] and, by ordinance, adopt such surveys as the
25 official map, or part thereof, of the [municipality, county]. The governing body may amend the official
26 map in the same manner as original adoption, and may vacate all or part of any existing or proposed
27 public street, watercourse, or public ground contained in the official map.

¹Note that some state courts have distinguished between street and other reservations. *Miller v. Beaver Falls*, 368 Pennsylvania 189.82 A2d 34 (1951). Other states authorize the reservation of park sites for a limited period, provided compensation is paid. See *New Hampshire Statutes Annotated*, §40:5501.32 (1967), and *Lomarch v. Mayor of Englewood*, 51 New Jersey 108, 237 A2d 881 (1968).

1 SECTION 4. *Adoption of the Official Map; Amendments.* Prior to the adoption of the official
2 map, or part thereof, or any amendments to the official map, the governing body, after public notice,
3 shall hold a public hearing. Public notice shall be given not more than [30] days and not less than [14]
4 days in advance of the public hearing. The notice shall be published once each week for two succes-
5 sive weeks in a newspaper of general circulation in the municipality. It shall state the time and place
6 of the hearing and provide a brief explanation of the matter to be considered at the hearing.

7 SECTION 5. *Effect of Approved Plats on Official Map.* After adoption of the official map, or
8 part thereof, all streets, watercourses, and public grounds depicted on final, recorded plats approved
9 as provided by [cite subdivision regulation statute] shall be deemed amendments to the official map. If
10 such approval is granted, no public hearing need be held or notice given for such amendment to the
11 official map to become effective.¹

12 SECTION 6. *Effect of Official Map on Mapped Streets, Watercourses, and Public Grounds.* The
13 adoption of any street or street lines as part of the official map shall not constitute the opening or es-
14 tablishment of any street, nor the taking or acceptance of any land for street purposes, nor shall it ob-
15 ligate the [municipality, county] to improve or maintain any such street. The adoption of proposed wa-
16 tercourses or public grounds as part of the official map shall not constitute or be deemed to constitute
17 a taking or acceptance of any land by the [municipality, county].

18 SECTION 7. *Structures in Mapped Streets, Watercourses, and Public Grounds.* No building
19 permit shall be issued for any structure within the lines of any street, watercourse, or public ground
20 shown or laid out on the official map. No person shall recover any damages for the taking for public
21 use of any structure or improvements constructed subsequent to the designation of and within the lines
22 of any street, watercourse, or public ground included in the official map, and any such structure or im-
23 provement shall be removed at the expense of the owner. When the property of which the reserved locatic
24 forms a part cannot yield a reasonable return to the owner unless a permit is granted, the owner may
25 apply to the governing body for the grant of a permit to so build.² Before granting any permit au-
26 thorized in this section, the governing body shall give public notice and hold a public hearing pur-
27 suant to the requirements of Section 4, at which all parties in interest shall have an opportunity to be
28 heard. A refusal by the governing body to grant the permit applied for may be appealed by the appli-
29 cant to the [appropriate court] in the same manner, and within the same time limitation, as is provided
30 for zoning appeals by [cite appropriate statute]. Final decision of each appeal shall be made by the
31 court, or a judge thereof, considering the record and the findings of fact made by the governing body
32 as supplemented or replaced by findings of fact made by the court.

¹This assumes that the subdivision regulations require adequate public notice and hearing for approval of plats. States may wish to consider a policy whereby subdivision plats must be consistent with an official map.

²Alternatively, states may wish to authorize a variance procedure based on unique hardship to the property caused by the official map.

1 SECTION 8. *Time Limitations on Reservations for Future Taking.* The governing body may fix
2 the time for which streets, watercourses, and public grounds on the official map shall be deemed re-
3 served for future taking or acquisition for public use. However, the reservation for public grounds
4 shall lapse and become void [one year] after an owner of such property submits a written notice to the
5 governing body stating an intention to build, subdivide, or otherwise develop the land covered by the
6 reservation, or makes formal application for a development permit to build a structure for private use,
7 unless the governing body acquires the property, or begins condemnation proceedings to acquire the
8 property before the end of the [one year] period.¹

9 The governing body may withhold issuance of any permit to build a structure within any land
10 area so reserved for a period up to [one year] following submission of the plan for approval. Such a
11 withholding period shall be valid, notwithstanding any other provisions contained in ordinances or
12 resolutions or in statutes of the state requiring approval or disapproval of such applications within a
13 lesser time period.

14 SECTION 9. *Construction by Governmental Units.* A state agency or political subdivision in-
15 tending to construct a structure within the lines of any street, watercourse, or public ground included
16 in the official map shall give the governing body written notice of such intention at least [one year] in
17 advance of the date the construction is planned to start.

18 SECTION 10. *Release of Damage Claims or Compensation.* The governing body may designate
19 any of its agencies to negotiate for or secure from the owner of land whereon reservations are made,
20 releases of claims for damages or compensation for such reservations, or agreements indemnifying the
21 governing body from such claims by others. Such properly recorded releases or amendments shall be
22 binding upon any successor in title.

23 SECTION 11. *Relationship of County and Municipal Maps.* When any county adopts an official
24 map in accordance with the terms of this act, a certified copy of the map and the ordinances adopting
25 it shall be sent to every municipality within the county. All amendments shall be sent to such munici-
26 palities. The map or amendments shall not take effect until [30] days after receipt of notification and
27 the map or amendments by the municipalities. The powers of the governing bodies of counties to
28 adopt, amend, and repeal official maps are limited to land and watercourses in those municipalities
29 wholly or partly within the county which have no official map in effect at the time an official map is
30 introduced before the governing body of the county, and until a municipal official map is in effect.
31 The adoption of an official map by any municipality whose land or watercourse are subject to county

¹Note that many states' subdivision controls require dedication of streets and other public improvements as a condition to subdivision approval. See Advisory Commission on Intergovernmental Relations' draft legislation, *Mandatory Dedication of Park and School Sites*. Maryland provides for the recording of reservation plats for officially mapped parcels of land on which the owner wishes to build: the plats are initiated by local governments when a building permit is refused, and they relieve the owner of local property taxes for a three year period of time during which public acquisition is expected to take place. Voluntary extensions of the three year period are also authorized.

1 official mapping shall repeal the county official map within the municipality adopting such ordi-
2 nance. Notwithstanding any other terms or conditions of this section, the county official map shall
3 govern as to county streets, watercourses, and public grounds even though such streets, watercours-
4 es, or public grounds are located in a municipality which had adopted an official map. When a muni-
5 cipality within a county having an official map also adopts an official map, a certified copy of the
6 map, the adopting ordinance, and any later amendments shall be forwarded to the county [planning
7 agency] and to the county governing body. Additionally, if any municipality adopts an official map, or
8 amendment thereto, that shows any street intended to lead into any adjacent municipality, a certified
9 copy of said official map or amendment shall be forwarded to the adjacent municipality.

10 SECTION 12. *Extraterritoriality.* The municipality may adopt an official map to include all terri-
11 tory within [] miles of its corporate limits, but not within the corporate limits of any other muni-
12 cipality, however, no municipality shall exercise such power beyond municipal boundaries without first
13 transmitting to the governing body of the county affected at least one copy of the official map pro-
14 posed to be applied thereto. The map shall not take effect until [30] days after the receipt of the notifi-
15 cation and map by the county governing body. The county governing body may supersede the juris-
16 diction and map in the area by adopting an official map for the unincorporated area included in the
17 municipalities' official map.

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

19 SECTION 14. *Effective Date.* [Insert Effective Date.]

5.205 PLANNED UNIT DEVELOPMENT (PUD)¹

State legislative authorization for local governments to adopt "planned unit development" regulations is one approach to implementing state aid 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 (PUD) technique 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 subject to 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.

At least 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 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 grants 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.

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, non-residential 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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

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). For an incisive commentary by one of the model statute's key drafters see J. Krasnowiecki, "Legal Aspects of Planned Unit Development in Theory and Practice," in *Land Controls: Present Problems and Future Reform*, D. Lostokin, ed. (1974).

an assurance that both the overall density and the quantity of open space will be 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. 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 relations 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 preregulation (i.e., precise controls) is incompatible with flexibility, 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. *Sections 12 and 13* provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT AUTHORIZING MUNICIPALITIES TO PROVIDE FOR PLANNED UNIT DEVELOPMENTS]

(Be it enacted, etc.)

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

(a) further the public health, safety, and general welfare in an era of increasing urbanization and or growing demand for housing of all types and design;

(b) provide for necessary commercial and educational facilities conveniently located to such housing;

(c) provide for well located, clean, safe, pleasant industrial sites involving maximum employment opportunities with a minimum of strain on transportation facilities;

(d) encourage the planning and building of new communities incorporating the best features of modern design;

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

(f) encourage innovations in residential, commercial, and industrial development and renewal so that the growing demands of the population may be met by greater variety in type, design, and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings, so that greater opportunities for better housing, employment opportunities, recreation, shops, and industrial plans conveniently located to each other may extend to all citizens and residents of this state;

(g) encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may inure to the benefit of those who need homes;

(h) lessen the burden of traffic on streets and highways;

(i) provide a procedure which can relate the type, design, and layout of residential, commercial, and industrial development to the particular site and the particular demand for housing and other facilities at the time of development in a manner consistent with the preservation of the property values within established residential areas; and

(j) insure that the increased flexibility of substantive regulations over land development authorized herein is subject to such administrative standards and procedures as shall encourage the dis-

1 position of proposals for land development without undue delay.

2 SECTION 2. *Application of Statute.* All municipalities¹ are granted the powers set forth in
3 this act, but these powers shall be exercised only by a municipality which enacts an ordinance that:

4 (a) refers to this act;

5 (b) includes a statement of objectives for planned unit development, as herein defined;

6 (c) designates the local agency which shall exercise the powers of the municipal authority, as
7 herein defined;

8 (d) sets forth the standards for a planned unit development consistent with the provisions of
9 Section 3 hereof; and

10 (e) sets forth the procedures pertaining to the application for, hearing on, and tentative and
11 final approval of a planned unit development, consistent with Sections 5 through 9 of this act.

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

15 SECTION 3. *Definitions.* As used in this act:

16 (a) "Common open space" means a parcel or parcels of land or an area of water, or a combina-
17 tion of land and water within the site designated for a planned unit development, and designed and
18 intended for the common use or enjoyment of residents and owners of the planned unit development.
19 Common open space may contain complementary structures and improvements necessary and ap-
20 propriate for the benefit and enjoyment of residents and owners of the planned unit development.

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

25 (c) "Municipal authority"² means the municipality's legislative body or any officer, board, or
26 other body designated by it to administer the ordinance adopted pursuant to this act.

27 (d) "Plan" comprises the provisions for development of a planned unit development, including a
28 plat of subdivision, all covenants relating to use, location, and bulk of buildings and other structures,
29 intensity of use or density of development, private streets, ways and parking facilities, common open
30 space and public facilities.³ The phrase "provisions of the plan" shall mean the written and graphic
31 materials referred to in this definition.

¹Many states will want to consider applying this act to counties as well, especially urban and urbanizing counties, or counties with recreational community development potential.

²This definition should be expanded to include counties where the act is broadened to include such units.

³Developers of new towns whose program stretches over 15 to 20 years often will not be able to provide such specific planning data. Hence, states may wish to address large scale new town PUD plans in a separate section.

1 (e) "Planned unit development" means an area of land, controlled by a landowner, to be devel-
2 oped as a single entity for [a number of] dwelling units, and commercial and industrial uses, if any,
3 the plan for which does not correspond in lot size, bulk, or type of dwelling or commercial or indus-
4 trial use, density, lot coverage, and required open space to the regulations established in any one or
5 more districts created, from time-to-time, under the provisions of a municipal [or county] zoning
6 ordinance enacted pursuant to [cite appropriate statute].

7 (f) "Statement of objectives for planned unit development" means a written statement of the
8 goals of the municipality [or county] with respect to land use for various purposes, density of
9 population, direction of growth, location and function of streets and other public facilities, and
10 common open space for recreation or visual benefit, or both, and such other factors as the municipal-
11 ity [or county] may find relevant in determining whether a planned unit development shall be auth-
12 orized.

13 SECTION 4. *Standards and Conditions for Planned Unit Development.* Every ordinance adop-
14 ted pursuant to the provisions of this act shall set forth the standards and conditions by which a
15 proposed planned unit development shall be evaluated. The municipal authority may prescribe,
16 from time-to-time, rules and regulations to supplement the standards and conditions set forth in the
17 ordinance provided:

18 (1) the rules and regulations are not inconsistent with the ordinance;

19 (2) the rules and regulations are placed on the public record; and

20 (3) any amendment or change of the rules and regulations shall not apply to any plan for
21 which an application for tentative approval has been made prior to placing on the public record the
22 amendment or change.¹ The standards and conditions and all supplementary rules and regulations
23 established for a particular planned development authorized pursuant to the ordinance shall not
24 be inconsistent with the following provisions.

25 (a) Permitted uses may include and shall be limited to:

26 (1) dwelling units, whether detached, semidetached, or multistoried structures, or any
27 combinations thereof;

28 (2) any appropriate non-residential use, and such other uses as exist or may reasonably be
29 expected to exist in the future;

30 (3) public and private educational facilities; and

31 (4) industrial uses and buildings.

32 An ordinance may establish regulations setting forth the timing of development among the
33 various types of uses and subgroups thereunder, and may specify whether some non-residential uses

¹This provision recognizes the principle of equitable estoppel or vested rights in property. States should insert the appropriate state standard relative to vested rights.

1 are to be built before, after, or at the same time as the residential uses.

2 (b) (1) Standards governing the density, or intensity of land use, shall take into account that
3 the density, or intensity of land use, otherwise allowable on the site under the provisions of a zoning
4 ordinance previously enacted pursuant to [*cite zoning enabling act*], may not be appropriate for a
5 planned unit development. The standards may vary the density or intensity of land use, otherwise
6 applicable to the land within the planned unit development in consideration of

7 (i) the amount, location, and proposed use of common open space;

8 (ii) the location and physical characteristics of the site of the proposed planned unit
9 development; and

10 (iii) the location, design, and type of dwelling units and other uses.

11 (2) In the case of a planned unit development proposed to be developed over a period of
12 years, such standards to encourage the flexibility of housing density, design, and type, may auth-
13 orize a deviation in each section to be developed from the density, or intensity of use, established
14 for the entire planned unit development. The ordinance may authorize the municipal authority to
15 allow for a greater concentration of density, or intensity of land use, within some section or sections
16 of the development, whether it be earlier or later in the development, than in others. The ordinance
17 may require that the approval by the municipal [or county] authority of a greater concentration of
18 density or intensity of land use for any section to be developed be offset by a smaller concentration
19 in any completed prior stage or by an appropriate reservation of common open space on the remain-
20 ing land by a grant of easement or by covenant in favor of the municipality [or county]; provided,
21 that such reservation, as far as practicable, shall defer the precise location of the common open space
22 until an application for final approval is filed, so that flexibility of development which is a prime
23 objective of this act can be maintained.

24 (c) The standards shall require that any common open space resulting from the application of
25 standards for density, or intensity of land use, be set aside for the use and benefit of the residents
26 in such development. The standard shall include provisions by which the amount and locations of
27 any common open space shall be determined and its improvement and maintenance for common open
28 space use be secured, subject, however, to the following:

29 (1) The ordinance may provide that the municipality [or county] may accept the dedication
30 of land or any interest therein for public use and maintenance [but the ordinance shall not require,
31 as a condition of the approval of a planned unit development, that land proposed to be set aside for
32 common open space be dedicated or made available to public use].¹ The ordinance may require that
33 the landowner provide for, and establish an organization for, the ownership and maintenance of any

¹The case law regarding mandatory dedication is evolving rapidly. See the Advisory Commission on Intergovernmental Relations draft legislation, *Mandatory Dedication of Park and School Sites*, for one approach.

1 common open space for the benefit of residents of the development; that for a period of not less
2 than 20 years, such organization shall not be dissolved nor shall it dispose of any common open
3 space, by sale or otherwise, except to an organization conceived and established to own and maintain
4 the common open space for the benefit of such development; and that, thereafter, such organization
5 shall not be dissolved, nor shall it dispose of any of its open space without first offering to dedicate
6 the same to the municipality [county] or any other government agency.

7 (2) If the organization established to own and maintain common open space, or any suc-
8 cessor organization, at any time after establishment of the planned unit development fails to main-
9 tain the common open space in reasonable order and condition in accordance with the plan, the munic-
10 pality [or county] may serve written notice upon such organization or upon the residents and owners
11 of the planned unit development setting forth the manner in which the organization has failed to
12 maintain the common open space in reasonable condition. The notice shall include a demand that
13 such deficiencies of maintenance be cured within [30] days thereof, and shall state the date and place
14 of a hearing thereon which shall be held within [14] days of the notice. At the hearing, the municipal-
15 ity [or county] may modify the terms of the original notice as to the deficiencies and may give an ex-
16 tension of time within which they shall be cured. If the deficiencies set forth in the original notice
17 or modifications are not corrected within the [30] days or any extension thereof, the municipality
18 [or county] may enter upon the common open space and maintain it for a period of [one year]. The
19 entry and maintenance shall not vest in the public any rights to use the common open space except
20 when it is voluntarily dedicated to the public by the owners. Before the expiration of the [year], the
21 municipality [or county], upon its initiative or upon the request of the organization theretofore
22 responsible for the maintenance of the common open space, shall call a public hearing upon notice
23 to the organization, or to the residents of the planned unit development, to be held by the municipal
24 [or county] authority, at which hearing the organization or the residents of the planned unit develop-
25 ment shall show cause why maintenance by the municipality [or county] shall not, at the election of
26 the municipality [or county], continue for a succeeding [year]. If the municipal [or county] authority,
27 determines that the organization is ready and able to maintain the common open space in reasonable
28 condition, the municipality [or county] shall cease to maintain the common open space at the end
29 of the [year]. If the municipal [or county] authority determines that the organization is not ready
30 and able to maintain the common open space in a reasonable condition, the municipality [or county]
31 may continue to maintain the common open space during the next succeeding [year] and subject to a
32 similar hearing and determination, in each [year] thereafter. The decision of the municipal [or county]
33 authority in any such case shall constitute a final administrative decision reviewable in accordance
34 with the provisions applicable to appeals on individual rezoning applications.

35 (3) The cost of the maintenance by the municipality [or county] shall be assessed ratably

1 against the properties within the planned unit development that have a right of enjoyment of the
2 common open space, and shall become a tax lien on the properties. The municipality [or county],
3 at the time of entering upon the common open space for the purpose of maintenance, shall file a
4 notice of such lien in the manner provided by law upon the properties affected by such lien within
5 the planned unit development.

6 (d) No planned unit shall be authorized that contains less than [five] dwelling units, or less than
7 [five] commercial uses, or less than [three] industrial uses, single or in combination.

8 (e) The authority granted to a municipality [or county] to establish standards for the location,
9 width, course, and surfacing of public streets and highways, alleys, ways for public service facili-
10 ties, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, storm water drain-
11 age, water supply and distribution, sanitary sewers and sewage collection and treatment, shall be
12 vested in the municipal [or county] authority for the purposes of this act. The standards applicable to
13 a planned unit development may be different than, or modifications of, the standards and conditions
14 otherwise required of subdivisions authorized under a subdivision control ordinance of the munic-
15 ality [or county]; provided however, that an ordinance adopted pursuant to this act shall set forth
16 the limits and extent of any modifications or changes in such standards and conditions in order that
17 a landowner may know the limits and extent of permissible modifications from the standards other-
18 wise applicable to subdivisions. The limits of modification or change established in an ordinance
19 adopted pursuant to this act, as well as the degree of modification or change within the limits auth-
20 orized in a particular case by the municipal [or county] authority shall take into account that the
21 standards and conditions established in the subdivision control ordinance of the municipality [or
22 county] may not be appropriate or necessary for land development of the type or design contemplated
23 by this act or for the planning and creation of a planned community.

24 (f) An ordinance adopted pursuant to this act shall set forth the standards and criteria by which
25 the design, bulk, and location of buildings shall be evaluated. All standards and criteria for any
26 feature of a planned unit development shall be set forth with sufficient certainty to protect the public
27 interest and provide reasonable criteria by which specific proposals for a planned unit development
28 can be evaluated. No standards in the ordinance shall unreasonably restrict the ability of the land-
29 owner to relate the plan to the particular site and to the particular demand for housing, commercial,
30 or industrial users existing at the time of development.

31 SECTION 5. *Enforcement and Modification of Provisions of the Plan.*

32 (a) The provisions of the plan relating to:

33 (1) the use of land and the use, bulk, and location of buildings and structures;

34 (2) the quantity and location of common open space, except as provided in Section 4 hereof;

35 and

1 (3) the intensity of use of the density of residential units, shall run in favor of the municipi-
2 pality [or county] and shall be enforceable in law or in equity by the municipality [or county],
3 without limitation on any powers or regulation otherwise granted the municipality [or county] by
4 law.

5 (b) All provisions of the plan shall run in favor of the residents and owners of the planned
6 community, but only to the extent expressly provided in the plan and in accordance with the terms of
7 the plan. To that extent the provisions, whether recorded by plat, covenant, easement, or otherwise,
8 may be enforced at law or equity by the residents and owners, acting individually, jointly, or through
9 an organization designated in the plan to act on their behalf; provided, however, that no provision
10 of the plan shall be implied to exist in favor of residents and owners of the planned unit development
11 except as to those portions of the plan which have been finally approved and have been recorded.

12 (c) All those provisions of the plan authorized to be enforced by the municipality [or county]
13 under subsection (a) of this section may be modified, removed, or released by the municipality
14 [or county] (except grants or easements relating to the service or equipment of a public utility unless
15 expressly consented to by the public utility), subject to the following conditions:

16 (1) No such modification, removal, or release of the provisions of the plan by the municipal-
17 ity [or county] shall affect the rights of the residents and owners of the planned unit development to
18 maintain and enforce those provisions, at law or equity, as provided in subsection (b) of this section;

19 (2) No modification, removal, or release of the provisions of the plan by the municipality [or
20 county] shall be permitted except upon a finding by the municipal [or county] authority, following a
21 public hearing called and held in accordance with the provisions of Section 7 of this act, that the
22 same is consistent with the efficient development and preservation of the entire planned unit develop-
23 ment, does not adversely effect either the enjoyment of land abutting upon or across a street from
24 the planned unit development or the public interest, and is not granted solely to confer a special
25 benefit upon any person.

26 (d) Residents and owners of the planned unit development, to the extent expressly authorized
27 by the provisions of the plan, may modify, remove, or release their rights to enforce the provisions
28 of the plan, but no such action shall affect the right of the municipality [or county] to enforce the
29 provisions of the plan in accordance with the provisions of subsection (a) of this section.¹

30 SECTION 6. *Application for Tentative Approval of Planned Unit Development.* It is hereby
31 declared to be in the public interest that all procedures with respect to the approval or disapproval
32 of a plan for a planned unit development, and the continuing administration thereof shall be con-

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 sistent with the following provisions.

2 (a) An application for tentative approval of the plan for a planned unit development shall be
3 filed by or on behalf of the landowner.

4 (b) The application for tentative approval shall be filed by the landowner in such form, upon
5 the payment of such a reasonable fee, and with such official of the municipality [or county] as shall
6 be designated in the ordinance adopted pursuant to this act, and a copy of the plan and application
7 shall be forwarded to the [state planning agency].

8 (c) All planning, zoning, and subdivision matters relating to the platting, use, and development
9 of the planned unit development, and subsequent modifications of the regulations relating thereto,
10 to the extent such modification is vested in the municipality [or county], shall be determined and
11 established by the municipal [or county] authority.

12 (d) The ordinance shall require only such information in the application as is reasonably neces-
13 sary to disclose to the municipal [or county] authority:

14 (1) the location and size of the site and the nature of the landowner's interest in the land
15 proposed to be developed;

16 (2) the density of land use to be allocated to parts of the site to be developed;

17 (3) the location and size of any common open space and the form of organization proposed
18 to own and maintain any common open space;

19 (4) the use and the approximate height, bulk, and location of buildings and other structures;

20 (5) the feasibility of proposals for the disposition of sanitary waste and storm water;

21 (6) the substance of covenants, grants of easements, or other restrictions proposed to be
22 imposed upon the use of the land, buildings, and structures, including proposed easements or grants
23 for public utilities;

24 (7) the provisions for parking of vehicles and the location and width of proposed streets and
25 public ways;

26 (8) the required modifications in the municipal [or county] land use regulations otherwise
27 applicable to the subject property; and

28 (9) in the case of plans which call for development over a period of years, a schedule
29 showing the proposed times within which applications for final approval of all sections of the
30 planned unit development are intended to be filed.¹

31 (e) The application for tentative approval of a planned unit development shall include a
32 written statement by the landowner setting forth the reasons why, in his opinion, a planned unit
33 development would be in the public interest and would be consistent with the municipal [or county]

¹States may also wish to require information relative to the developer's financing of the project.

1 statement of objectives on planned unit development.

2 (f) The application for, and tentative and final approval of, a plan for a planned unit develop-
3 ment prescribed in this act shall be in lieu of all other procedures or approvals otherwise required
4 pursuant to zoning and subdivision control ordinances and regulations authorized to be adopted by
5 the municipality [or county].

6 SECTION 7. *Public Hearings.*

7 (a) Within [45] days after the filing of an application pursuant to Section 6, a public hearing
8 on the application shall be held by the municipal [or county] authority, in accordance with procedures,
9 including public notice, prescribed in [cite statute] for hearings on amendments to a zoning ordinance,
10 except as provided in subsections (b) and (c).

11 (b) For an application involving property situated within [200] feet of an adjoining municipality,
12 notice shall be given to the [municipal clerk] of the municipality at least [20] days and not more than
13 [30] days prior to the hearing.

14 (c) For an application involving over [300] acres, notice shall be given to the [municipal clerk] of
15 each adjoining municipality, the [county planning agency], and the [state planning agency] at least
16 [20] days and not more than [30] days prior to the hearing, for review and recommendations.

17 SECTION 8. *The Findings.*

18 (a) The municipal [or county] authority shall, within [60] days following the conclusion of the
19 public hearing, by written resolution either:

- 20 (1) grant tentative approval of the plan as submitted;
21 (2) grant tentative approval subject to specified conditions not included in the plan as sub-
22 mitted; or
23 (3) deny tentative approval to the plan.

24 If tentative approval is granted, either of the plan as submitted, or of the plan with conditions,
25 the municipal [or county] authority shall, as part of its resolution, specify the drawings, specifica-
26 tions, and surety device that shall accompany an application for final approval. If tentative approval
27 is granted subject to conditions, the landowner, within [45] days after receiving a copy of the written
28 resolution of the municipal [or county] authority, shall notify the municipal [or county] authority of
29 his acceptance of or his refusal to accept all the conditions. If the landowner refuses to accept all
30 the conditions, the municipal [or county] authority shall be deemed to have denied tentative approval
31 of the plan. If the landowner does not, within the period, notify the municipal [or county] authority of
32 his acceptance or refusal to accept all the conditions, tentative approval of the plan, with all the
33 conditions, shall stand as granted. Nothing contained herein shall prevent the municipal [or county]
34 authority and the landowner from mutually agreeing to a change in the conditions, and the municipal
35 [or county] authority, at the request of the landowner, may extend the time during which the land-

1 owner shall notify the authority of his acceptance or refusal to accept the conditions.

2 (b) The grant or denial of tentative approval by written resolution shall include conclusions and
3 findings of fact related to the specific proposal and shall set forth the reasons for the grant, with
4 or without conditions, or the denial. The resolution shall further set forth with particularity in what
5 respects the plan would or would not be in the public interest, including, but not limited to, findings
6 of fact and conclusions on the following:

7 (1) in what respects the plan is or is not consistent with the statement of objectives of a
8 planned unit development;

9 [Optional Paragraph.]

10 [(2) the extent to which the plan departs from zoning and subdivision regulations otherwise
11 applicable to the subject property, including but not limited to density, bulk, and use, and the reasons
12 why such departures are or are not deemed to be in the public interest;]¹

13 (3) the purpose, location, and amount of the common open space in the planned unit
14 development, the reliability of the proposals for maintenance and conservation of the common open
15 space, and the adequacy or inadequacy of the amount and purpose of the common open space as
16 related to the proposed density and type of development;

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

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

22 (6) in the case of a plan which proposes development over a period of years, the sufficiency
23 of the terms and conditions intended to protect the interest of the public and of the residents and
24 owners of the planned unit development in the integrity of the plan.

25 (c) If a plan is granted tentative approval, with or without conditions, the municipal [or county]
26 authority shall set forth in the written resolution the time within which an application for final
27 approval of the plan shall be filed or, in the case of a plan which provides for development over a
28 period of years, the periods of time within which applications for final approval of each part thereof
29 shall be filed. The time so established between grant of tentative approval and an application for
30 final approval shall not be less than [three] months, and, in the case of developments over a period
31 of years, the time between applications for final approval of each part of a plan shall be not less
32 than [six] years, provided nothing herein contained shall be construed to limit a landowner from the
33 presentation of any application for final approval earlier than the time period hereinabove set forth.

¹This section is recommended for states which do not recognize special PUD districts.

1 SECTION 9. *Status of Plan after Tentative Approval.*

2 (a) Within [five] working days after the adoption of the written resolution provided for in Section
3 8, it shall be certified by the [clerk] of the municipality [or county] and shall be filed in his office, and
4 a certified copy shall be mailed to the landowner. Where tentative approval is granted, it shall be
5 noted on the zoning map maintained in the office of the [clerk] of the municipality [or county].

6 (b) Tentative approval of a plan shall not qualify a plat of the planned unit development for
7 recording nor authorize development or the issuance of any building permits. A plan which has
8 been given tentative approval as submitted, or which has been given tentative approval with condi-
9 tions which have been accepted by the landowner, if the landowner has not defaulted nor violated
10 any of the conditions of the tentative approval, shall not be modified, revoked, or otherwise impaired
11 by action of the municipality [or county] pending an application or applications for final approval,
12 without the consent of the landowner if an application for final approval is filed, or, in the case
13 of development over a period of years, if applications are filed, within the periods of time specified
14 in the resolution granting tentative approval.

15 (c) If a plan is given tentative approval and thereafter, but prior to final approval, the landowner
16 elects to abandon part or all of the plan and so notifies the municipal [or county] authority in
17 writing, or if the landowner fails to file an application for final approval within the required period
18 of time, the tentative approval shall be revoked and that portion of the area included in the plan
19 for which final approval has not been given shall be subject to appropriate local ordinances, and
20 the same shall be noted on the zoning map in the office of the [clerk] of the municipality [or county]
21 and in the records of the [clerk] of the municipality [or county].

22 SECTION 10. *Application for Final Approval.*

23 (a) An application for final approval may be for all land included in a plan or, to the extent
24 set forth in the tentative approval, for a section thereof. The application shall be made to the official
25 of the municipality [or county] designated by the ordinance within the time specified by the resolution
26 granting tentative approval. The application shall include such drawings, specifications, covenants,
27 easements, conditions, and form of surety device as set forth by written resolution of the munic-
28 pal [or county] authority at the time of tentative approval. A public hearing on an application for
29 final approval of the plan, or part thereof, is not required, if the plan, or the part thereof, is in
30 substantial compliance with the plan given tentative approval.

31 (b) A plan submitted for final approval shall be deemed to be in substantial compliance with
32 the plan previously given tentative approval if any modification of the tentatively approved plan
33 does not:

- 34 (1) vary the proposed gross residential density or intensity of use by more than [5] percent nor;
35 (2) involve a reduction of the area set aside for common open space nor the substantial

1 relocation of such area; nor

2 (3) increase by more than [10] percent the floor area proposed for non-residential use; nor

3 (4) increase by more than [5] percent the total ground areas covered by buildings, nor in-
4 volve a substantial change in the height of buildings. Modifications in the location and design
5 of streets or facilities for water and storm water and sanitary sewage disposal shall not be counted
6 as a portion of the above percentage.

7 (c) A public hearing shall not be held on an application for final approval of a plan when the
8 plan is in substantial compliance with the tentatively approved plan. The burden shall be upon the
9 landowner to show the municipal [or county] authority good cause for any variation between the
10 tentatively approved plan and the plan as submitted for final approval. If a public hearing is not
11 required for final approval, and the application for final approval is filed, together with all drawings,
12 specifications, and other documents in support thereof, as required by the resolution of tentative
13 approval, the municipality [or county], within [45] days of the filing, shall grant the plan final
14 approval. If the plan contains submitted variations from the plan given tentative approval, but remains
15 in substantial compliance with the plan submitted for tentative approval, the municipal [or county]
16 authority, after meeting with the landowner, may refuse to grant final approval, and, within [45]
17 days from the filing of the application for final approval, shall advise the landowner in writing of the
18 refusal, setting forth in the notice the reasons why said variations are not in the public interest.

19 If the authority refuses approval, the landowner may:

20 (1) file his application for final approval without the variations objected to by the municip-
21 al [or county] authority on or before the last day of the time within which he was authorized by the
22 resolution granting tentative approval to file for final approval, or within [30] days from the date
23 he received notice of the refusal, whichever date shall occur last; or

24 (2) treat the refusal as a denial of final approval and notify the municipal [or county] auth-
25 ority.

26 (d) If the plan submitted for final approval is not in substantial compliance with the plan given
27 tentative approval, the municipal [or county] authority, within [45] days of the date the application
28 for final approval is filed, shall notify the landowner in writing setting forth the particular ways in
29 which the plan is not in substantial compliance. The landowner may:

30 (1) treat the notification as a denial of final approval; or

31 (2) refile the plan in a form which is in substantial compliance with the plan as tentatively
32 approved; or

33 (3) file a written request with the municipal [or county] authority that it hold a public hear-
34 ing on his application for final approval.

35 If the landowner elects either subsection (d)(2) or (3) above, he may refile his plan or file a

1 request for a public hearing, on or before the last day of the time within which he was authorized
2 by the resolution granting tentative approval to file for final approval, or [30] days from the date he
3 receives notice of the refusal, whichever date shall occur last. Any public hearing shall be held
4 within [30] days after request for the hearing is made by the landowner, and notice thereof shall be
5 given and the hearings shall be conducted in the manner prescribed in Section 7 of this act. Within
6 [45] days after the conclusion of the hearing, the municipal [or county] authority shall by resolution
7 either grant final approval to the plan or deny final approval to the plan. The grant or denial of
8 final approval of the plan shall be in the same form and contain the findings required for a
9 resolution on an application for tentative approval set forth in Section 8 of this act.

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

20 (f) A plan, or any part thereof, which has been given final approval by the municipal [or county]
21 authority, shall be so certified without delay by the [clerk] of the municipality [or county] and shall be
22 filed of record forthwith in the office of the [county clerk] before any development shall take place.
23 Upon the filing of record of the plan, all other ordinances and subdivision regulations otherwise
24 applicable to the land included in the plan shall cease to apply thereto. Pending completion within
25 [five] years of the planned unit development or of that part thereof that has been finally approved, no
26 modification of the provisions of the plan, or part thereof, shall be made, nor shall it be impaired
27 by act of the municipality [or county], except with the consent of the landowner.

28 (g) If a plan, or a part thereof, is given final approval and thereafter the landowner abandons
29 the plan or the part thereof, and notifies the municipal [or county] authority in writing; or, if the
30 landowner fails to commence the planned unit development within [18] months after final approval
31 has been granted, such final approval shall terminate and be deemed null and void unless such time
32 period is extended by the municipal [or county] authority upon written application of the landowner.

33 SECTION 11. *Judicial Review.* Any decision of the municipal [or county] authority under this act
34 granting or denying tentative approval of a plan or authorizing or refusing to authorize a modifica-
35 tion in a plan shall be a final administrative decision and subject to judicial review in the manner

- 1 provided by law for individual rezoning applications.
- 2 SECTION 12. *Separability.* [Insert separability clause.]
- 3 SECTION 13. *Effective Date.* [Insert effective date.]

5.206 MANDATORY DEDICATION OF PARK AND SCHOOL SITES¹ (INCLUDING PAYMENTS-IN-LIEU)

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 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 use 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. Moreover, in the case of large subdivisions, the need for additional parks and schools is primarily attributable to the residents of the subdivision rather than to the community as a whole. Hence it has been argued that the cost of such amenities should be borne directly by the beneficiaries. For their part, some developers have found that provisions of such "extras" as parks and school sites results in larger returns on their investment. A number of states have therefore amended enabling legislation for local subdivision regulation to include authorization for local governments to make reasonable provisions for open space, recreation, and school site land and to require appropriate dedication by the developers. One difficulty in administering such a provision is that small developments frequently will not include sufficient 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.

The clear weight of judicial authority upholds the constitutionality of required dedications. Although Illinois² has held an ordinance mandating a subdivider to dedicate land for park purposes to be unconstitutional, Montana³ has reached a contrary conclusion. New York⁴ and Wisconsin⁵ have affirmed the validity of statutes requiring either dedication of or an in lieu fee. In Connecticut,⁶ the dedication requirement was upheld, but the in lieu fee provision was struck down on the ground that benefits from its use were not confined to the subdivision's residents. In contrast, California⁷ has upheld the validity of a dedication requirement based on general public need for recreational facilities stimulated by present and future subdivisions.

Requiring dedication or an in lieu payment can relieve local governments of the need 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 development.

A more comprehensive generalized approach to securing funds to provide the service needs associated with growth involve the use of impact fees. To quote a recent publication on the subject: "Generally, an impact fee is an assessment against each new residential unit to compensate in whole or part for the added costs of public services brought about by new construction. It is to be distinguished from traditional subdivision plat requirements in which the developer must provide certain streets, sidewalks, drainage, water, and sewer services. The impact fee is typically a dollar amount per building unit, which varies with the type of unit, which may be used to cover the cost for providing the service demands generated by the new

¹This draft bill incorporated one of several approaches suggested in the Advisory Commission's report on *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968) as measures for states to consider in implementing policies for urban growth and new community development.

²*Pioneer Trust and Savings Bank v. Village of Mount Prospect*, 176 NE, 2d 799.

³*Billings Prop. v. Yellowstone County*, 394 P, 2d 182.

⁴*Genad, Inc. v. Village of Searsdale*, 218 NE, 2d 673.

⁵*Gordan v. Village of Menomonee Falls*, 137 NW, 2d 442.

⁶*Aunt Hack Ridge Estates v. Planning Commission of Danbury*, 230, A, 2d 45.

⁷*Associated Home Builders v. City of Walnut Creek*, 484 P, 2d 606.

units."¹ A bill designed to empower Florida cities and counties to levy impact fees was introduced in the 1974 session of the Florida legislature, but it failed to pass. A recent issue of *State Government* also contains an article discussing the impact fee approach.² As growth and its control becomes a more important issue for states and their localities, the impact fee and similar devices are spreading.

A recent report published by the International City Management Association discusses the evaluation of "systems development charges" imposed on developers of new systems in Oregon.³ Such charges represent an estimate of indirect costs of existing street, sewer, and water utility systems upon the local jurisdiction. They are levied in addition to other charges commonly associated with these systems (such as connection charges, special assessments, and user fees) and reflect the cost of "buying into" an already existing citywide public facility system.⁴

The following suggested legislation 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 regulation enumerate standards to be applied in deciding when it is not in the public interest to accept 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 also authorizes the adoption of a flexible dedication-payment combination approach.

The 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 endeavor to avoid or overcome it.

¹Boyd, Representative Charles W., "Florida Needs A Statewide Impact Fee," *Florida Environmental and Urban Issues*, Vol. 2 (September, 1974), p. 3 ff.

²Boyd, Representative Charles W., and Jay, Janis, "Statewide Impact Fees: Pro-Con," *State Government*, Vol. 68, No. 1 (Winter, 1975), p. 43 ff.

³League of Oregon Cities and University of Oregon, Bureau of Governmental Research and Services, "Systems Development Charges: Financing Service Extensions," *Management Information Service*, Vol. 7, No. 7 (Washington, D.C.: International City Management Association, July, 1975).

⁴The charges can be based on a combination of location, land area, building size, and building construction cost — for example, a building fee, structures fee (based on building square feet) and a systems area fee (based on land area and property elevation, with charges determined separately for streets, sewers, and water systems).

Suggested Legislation

[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,¹ 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 subdivi-
9 sion and the future residents thereof, but in no case more than [] percent of the gross area of the
10 proposed subdivision. The regulations may provide that the dedication shall be a condition prece-
11 dent to the approval of any subdivision plat. They shall set forth the standards to be applied in de-
12 termining the amount of land that is required to be dedicated. These standards shall be based upon
13 the number and type of dwelling units or structures to be included in each subdivision. The standards
14 shall also be based upon studies and surveys conducted by the [municipality, county] in order to de-
15 termine the need, if any, for school, park, and playground sites generated by existing subdivisions
16 within the [municipality, county] containing various types of dwelling units or structures.

17 The regulations may also provide that the [municipality, county], or a designated department or
18 agency thereof, shall have the authority to select the location of land areas to be dedicated for school,
19 park, and playground purposes. If such authority is exercised, the dedication provision shall take
20 into consideration variations in the relative desirability and market value of the land that may be in-
21 cluded within the area of any particular, proposed subdivision.² The [municipality, county] shall

¹As further alternatives to dedication of park and playground sites, states may wish to consider authorizing mandatory reservation of private lands devoted solely to park and playgrounds uses. If the mandated reservation approach is followed, the owner should be required to reserve appropriate areas as determined by the local government. Such areas would be developed consistent with minimum regulations and maintenance standards. If the private owner violated the standards, the local government may require dedication of the area.

²The 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 following formula:

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

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

1 specify when development of school, park, and playground facilities shall begin.

2 SECTION []. *Payment in Lieu of Dedication.* When the [governing body] adopts regulations
3 requiring a subdivider to dedicate school, park, and playground sites, as authorized by section
4 [the preceding section] may also adopt, as part of the [municipality's, county's] subdivision control
5 regulations, provisions requiring a subdivider, in lieu of dedicating the sites, to pay to the [municipal-
6 ity, county] a sum of money equal to the value of land that would otherwise be required to be dedi-
7 cated for school, park, and playground purposes. Such payments or a combination of dedication
8 and payment may be required whenever the agency charged with administering the dedication provi-
9 sions determines that it would not be in the public interest to accept the dedication in connection with
10 a particular proposed subdivision.¹ The provisions shall enumerate the standards to be applied in
11 determining when it is not in the public interest to accept the dedication and shall provide for the
12 manner of making payment. All funds so received shall be held by the [municipality, county], or a
13 designated department or agency thereof, in a special account, and shall be applied and used by the
14 [municipality, county] to acquire school, park, and playground sites for the benefit of the residents of
15 the subdivision for which the payment was made. Provisions may be adopted establishing standards
16 for the application and use of the funds in accordance with the foregoing limitation. The provisions
17 may also provide that the payment in lieu of dedication shall be a condition precedent to the approval
18 of any subdivision plat, or may provide that the payment be deferred or made in installments follow-
19 ing approval of a subdivision plat, or may provide that the payment be deferred or made in install-
20 ments following approval of a subdivision plat upon the subdivider's posting of a good and suffi-
21 cient surety bond guaranteeing the payment.

22 [Optional Section.]

23 [SECTION [] *Certification of Standards by School and Park Districts.* When the boundaries of
24 the [municipality, county] do not coincide with those of the [school district] [park district] responsible
25 for administering the school and park programs, the governing body of the [municipality] [county]
26 shall refer the standards required by [the preceding two sections] to the [school district] [park dis-
27 trict] in which the proposed subdivision is located. The standards shall not be effective until the
28 [school district] [park district] certifies, pursuant to procedures set forth in an interlocal agreement, that

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.

1 they are the same as those prevailing throughout the jurisdiction of the [school district] [park
2 district].]

3 SECTION 2. *Separability.* [Insert separability clause.]

4 SECTION 3. *Effective Date.* [Insert effective date.]

5.207 LEGISLATIVE JURISDICTION OVER FEDERAL LANDS WITHIN THE STATES¹

Unless permitted by the Federal government, state police powers do not extend to the regulation of Federally owned land or facilities. In 1961, in its report on *State and Local Taxation of Privately Owned Property Located on Federal Areas*, the Advisory Commission on Intergovernmental Relations recommended that Congress authorize and direct Federal agencies to cede to states legislative jurisdiction over government owned properties as rapidly and extensively as consistent with their essential program needs. At that time, the commission also recommended that states enact the legislation recommended by the Special Committee on Legislative Jurisdiction of the Council of State Governments. This proposal, set forth below, was included in the 1959 edition of *Suggested State Legislation* prepared by the Council of State Governments. The Commission reconsidered and reaffirmed its position in 1966.

The Federal government holds vast amounts of real property within the states. In some places, particularly in the west, the acreages in Federal ownership constitute a major percentage of the total area of the state. Elsewhere, the extent of Federal holdings is not so great, but it is still significant. Post offices, Federal office facilities, national parks and other recreational or historic areas, military installations, veterans' administration hospitals, and a variety of other establishments are to be found throughout the country. These Federal properties are held in a number of different ways, generally classified as follows:

1. **Proprietorial status.** Property held by the Federal government in this way is controlled in the same way as any private owner might control his land. In addition, the administering agency may claim certain immunities necessarily connected with the conduct of the governmental purpose for which the land is held.

2. **Concurrent jurisdiction.** Under this arrangement, the Federal government has power to make and enforce laws for the governance of the area and the people on it. At the same time, however, the state also has power to make such laws and enforce them.

3. **Partial jurisdiction.** Properties held in partial jurisdiction are lands over which the Federal government has the exclusive right to make and enforce certain specified types of law for the area and its people of the type normally enacted and enforced by the state. Partial jurisdiction is really not a single category of jurisdictional status at all, but may be used to describe a wide variety of arrangements.

4. **Exclusive jurisdiction.** Under this arrangement, the Federal government exercises full authority to make and enforce laws and the state has no jurisdiction at all, either over the area or the people on it. In the strict sense, the term "exclusive jurisdiction" is a misnomer because, at the very least, the states have reserved (and the Federal government has recognized) the power to serve and execute process. However, where the jurisdiction of the Federal government is said to be exclusive, the state is virtually excluded from control of the area or of the people on it. Such services as the state or its local subdivisions may choose to provide and such authority as they may purport to exercise are on a voluntary basis only, and not as a result of any right in the premises.

The suggested legislation which follows does not deal directly with any problems which may arise out of Federal holdings in proprietorial status. Rather, it is addressed to the difficulties which have arisen and grown widespread in cases of concurrent, partial, or exclusive jurisdiction exercised by the Federal govern-

¹Derived from: Advisory Commission on Intergovernmental Relations, *State and Local Taxation of Privately Owned Property Located on Federal Areas: Proposed Amendment to the Buck Act*, Report A-6 (Washington, D.C.: U.S. Government Printing Office, June, 1961).

ment. The problems are of two types. In the first place, owing to the largely unplanned and uncoordinated fashion in which jurisdictional transfers have taken place in the past, there are a surprisingly large number of Federal areas whose jurisdictional status is either entirely unknown or subject to some degree of doubt; in numerous instances different portions of individual Federal areas unwarrantably have different jurisdictional statuses; and, the jurisdictional statuses of many Federal areas are inconsistent with the present uses of the areas. Secondly, private persons, private property and private transactions on such areas are often unwarrantably immune from state laws which, as a matter of sound policy, should apply to them and concomitantly are denied services provided by the state and local governments for other people and property.

Section 1 of the suggested legislation is designed to remedy the first of these difficulties, at least with respect to transfers of jurisdiction occurring after passage of the act. It provides a procedure for the making of a public record of each transfer at the time when it occurs. It also provides a means whereby the state can make a study of the ramifications of each transfer before consenting to it, thereby providing some degree of assurance that transfers will be acceptable from that state's point of view.

Section 2 of the act lays down three minimum conditions which the Federal government must meet in its law if a transfer of jurisdictional status is to take place: (1) the state must have the right to tax private persons, private property, and private transactions on the Federal enclave; (2) a return of legislative jurisdiction to the state must be so affected as to give the state the same measure of control over the area with respect to the jurisdiction returned as it would have had if the enclave had never been within the legislative jurisdiction of the Federal government to the exclusion of state authority; and (3) the state must retain the right to serve and execute process. These requirements are already met in part by Federal law. However, some of this law is case law and, therefore, subject to varying court interpretations. Making them statutory requirements in state law will assure that the appropriate state officials are satisfied that Federal law at the time of the transfer already meets these minimum conditions adequately or that, if it does not, the Federal statute by which the transfer is made or accepted on the part of the United States contains specific provisions to meet them.

Section 3 of the suggested act is meant only to make it clear that transfers of jurisdiction back to the state which occur by question of law are not foreclosed by this legislation. The most notable type of case in this category is the return of legislative jurisdiction to the state which occurs as a normal incident of the sale of a piece of Federal land to a private individual.

A comprehensive Federal statute establishing the method for and consequences of transfers of legislative jurisdiction on the part of the Federal government is much needed. In fact, it had been hoped that such a Federal statute would be in force by now. The April, 1956, report of the Federal Interdepartmental Committee on Jurisdiction Over Federal Areas Within the States recognized the need for Federal as well as for state legislation. Part I of this report is a survey of the situation from the point of view of the Federal government's interests. Part II is a textbook of the law of legislative jurisdiction. Together these two volumes present much useful information on the entire subject. However, both the proposals for Federal and state legislation contained in this report proved inadequate in some respects. Consequently, the Federal Interdepartmental Committee and a committee of the Council of State Governments cooperatively evolved new legislation. The resulting draft of a Federal act was first introduced into the 85th Congress, but owing to some political difficulties, did not pass, nor have similar revisions in subsequent sessions of Congress. Nevertheless, it continues to be important that each state improve the jurisdictional situation within its own borders. In fact, the continued absence of a satisfactory Federal statute makes this even more imperative. Under present conditions, state action seems to be the most promising way of dissipating at least a part of the present confusion. Moreover, the large Federal holdings and transfers of legislative jurisdiction which must inevitably occur with respect to both old and new holdings of the Federal government make it urgent that each state have a clear law on the subject which will protect its own interests and those of its people. In this connection, it should be noted that the suggested legislation offered below has been drafted so as to be workable with or without complementary Federal legislation.

In a few instances, the Federal government has recognized the desirability of some local regulation. Under the *Lanham Act*, which provides for defense housing, the Federal administration must consult with local officials so that projects conform to local plans (42 U.S.C.A. § 1545 (1964)). Under the *Federal Urb-*

an *Land Use Act of 1968*,¹ local government must be notified before land is disposed of so the land can be zoned in accordance with the local regulations. *Executive Order No. 11512*, r180, issued pursuant to the *Intergovernmental Cooperation Act of 1968*, requires that Federal facilities conform to state, regional, and local plans, to the greatest extent practical.²

Finally, it may be appropriate to point out that this legislation does not provide for, and is in no way related to, any transfer of ownership of land or any other property. It concerns only the transfer of, and exercise of, state type legislative jurisdiction over Federal real property within the states.

In almost all instances the reforms contemplated by the suggested legislation can be accomplished by statute. However, several of the states have constitutional provisions requiring that the Federal government take exclusive jurisdiction over lands which it acquires. These provisions were designed to meet requirements of Federal statutes and policy which no longer prevail. Nevertheless, in those few states where they exist, these constitutional provisions would make impossible the enactment of the suggested legislation in the form proposed below. It should also be noted that any other requirements for the transfer or exercise of legislative jurisdiction over Federal lands which may now be on the statute books of individual states are not necessarily meant to be superseded by the suggested act. States considering enactment of this proposal should examine existing statutes on the subject to see how they wish to fit it into their existing pattern.

¹40 U.S.C.A., Sections 531-35 (Supp. 4, 1969).

²See D. Hagman, *Urban Planning and Land Development Control Law* (West, 1971), p. 123.

Suggested Legislation

[AN ACT PROVIDING FOR THE TRANSFER OF LEGISLATIVE JURISDICTION OVER FEDERAL LANDS FROM OR TO THIS STATE AND ESTABLISHING THE NECESSARY CONDITIONS FOR SUCH TRANSFERS AND FOR THE EXERCISE OF JURISDICTION THEREAFTER]

(Be it enacted, etc.)

1 SECTION 1. *Request for Transfers; Approval.*

2 (a) In order to acquire all, or any measure of, legislative jurisdiction of the kind involved in
3 Article I, Section 8, Clause 17 of the Constitution of the United States, over any land or other areas
4 or in order to relinquish such legislative jurisdiction, or any measure thereof, which may be vested
5 in the United States, the United States acting through a duly authorized department, agency, or
6 officer, may file a notice of intention to acquire or relinquish such legislative jurisdiction (hereinafter
7 called notice), together with a sufficient number of duly authenticated copies thereof to meet the
8 recording requirements of Section 1(c) of this act, with the governor. The notice may contain a
9 description adequate to permit accurate identification of the boundaries of the land or other area for
10 which the change in jurisdictional status is sought and a precise statement of the measure of legis-
11 lative jurisdiction sought to be transferred. Immediately upon receipt of the notice, the governor
12 shall furnish the [attorney general] with a copy thereof and shall request his comments and recom-
13 mendations thereon.

14 (b) The governor shall transmit said notice together with his comments and recommendations,
15 if any, and the comments and recommendation of the [attorney general], if any, to the next session of
16 the [legislature] which shall be constitutionally competent to consider the same. Unless prior to the
17 expiration of the legislative session to which said notice is transmitted as provided herein the [legis-
18 lature] has adopted a [resolution] [act] approving the transfer of legislative jurisdiction as proposed in
19 said notice, the said transfer shall not be effective.

20 (c) The governor shall cause a duly authenticated copy of notice and [resolution] [act] to be re-
21 corded in the [land records office] of the county where the land or other area affected by the transfer
22 of jurisdiction is situated, and upon such recordation the transfer of jurisdiction shall take effect. If
23 the land or other area shall be situated in more than one county, a duly authenticated copy of the
24 notice and [resolution] [act] shall be recorded in the [land records office] of each such county.

25 (d) The governor shall cause copies of all documents recorded pursuant to this act to be filed
26 with the [secretary of state].

27 SECTION 2. *Conditions.*

1 (a) In no event shall any transfer of legislative jurisdiction between the United States and this
2 state become effective nor shall the governor transmit any notice proposing such a transfer pursuant
3 to Section 1(b) of this act, unless applicable laws of the United States provide that:

4 (1) this state shall have jurisdiction to tax private persons, private transactions, and pri-
5 vate property, real and personal, resident, occurring, or situated within such land or other area to
6 the same extent that this state has jurisdiction to tax such persons, transactions, and property resi-
7 dent, occurring, or situated generally within this state; and

8 (2) any civil or criminal process¹ lawfully issued by competent authority of this state or
9 any of its subdivisions, may be served and executed within such land or other area to the same extent
10 and with the same effect as such process may be served and executed generally within this state, pro-
11 vided only that the service and execution of such process within land or other areas over which the
12 Federal government exercises jurisdiction shall be subject to such rules and regulations issued by
13 authorized officers of the Federal government, or of any department, independent establishment, or
14 agency thereof, as may be reasonably necessary to prevent interference with the carrying out of Fed-
15 eral functions; and

16 (3) this state shall exercise over such land or other area the same legislative jurisdiction
17 which it exercises over land or other areas generally within this state, except that the United States
18 shall not be required to forego such measure of exclusive legislative jurisdiction as may be vested in
19 or retained by it over such land or other area pursuant to this act, and without prejudice to the right
20 of the United States to assert and exercise such concurrent legislative jurisdiction as may be vested
21 in or retained by it over such land or other area.

22 (b) Nothing in this act shall be construed to prevent or impair any transfer of legislative juris-
23 diction to this state occurring by operation of law.

24 SECTION 3. *Separability.* [*Insert separability clause.*]

25 SECTION 4. *Effective date.* [*Insert effective date.*]

¹In states where a ticket for violation of a traffic ordinance or illegal parking is not considered process, the state may want to include language to deal with this situation.

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what is acir?

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

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

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

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

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

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

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

