

ACIR State Legislative Program

6.

Housing and
Community
Development

ACIR State Legislative Program

6.

Housing and Community Development

December 1975
Advisory Commission on Intergovernmental Relations
Washington, D.C. 20575
(202) 382-2114

M-97

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**



Summary Contents

ACIR STATE LEGISLATIVE PROGRAM

PART I – STATE GOVERNMENT STRUCTURE AND PROCESSES

- 1.1 Legislative Branch
- 1.2 Executive Branch
- 1.3 Relations with Federal and Local Governments

PART II – LOCAL GOVERNMENT MODERNIZATION

- 2.1 Formation, Boundaries, and Dissolution
- 2.2 Organization and Functions
- 2.3 Areawide Units

PART III – STATE AND LOCAL REVENUES

- 3.1 Property Taxes
- 3.2 Non-property Taxes and Other Revenues

PART IV – FISCAL AND PERSONNEL MANAGEMENT

- 4.1 Fiscal Management
- 4.2 Personnel Management

PART V – ENVIRONMENT, LAND USE, AND GROWTH POLICY

- 5.1 State Growth Policy
- 5.2 Land Use and Environmental Planning and Regulation

PART VI – HOUSING AND COMMUNITY DEVELOPMENT

- 6.1 Program Operations and Assistance
- 6.2 Fair Housing
- 6.3 Building Regulation

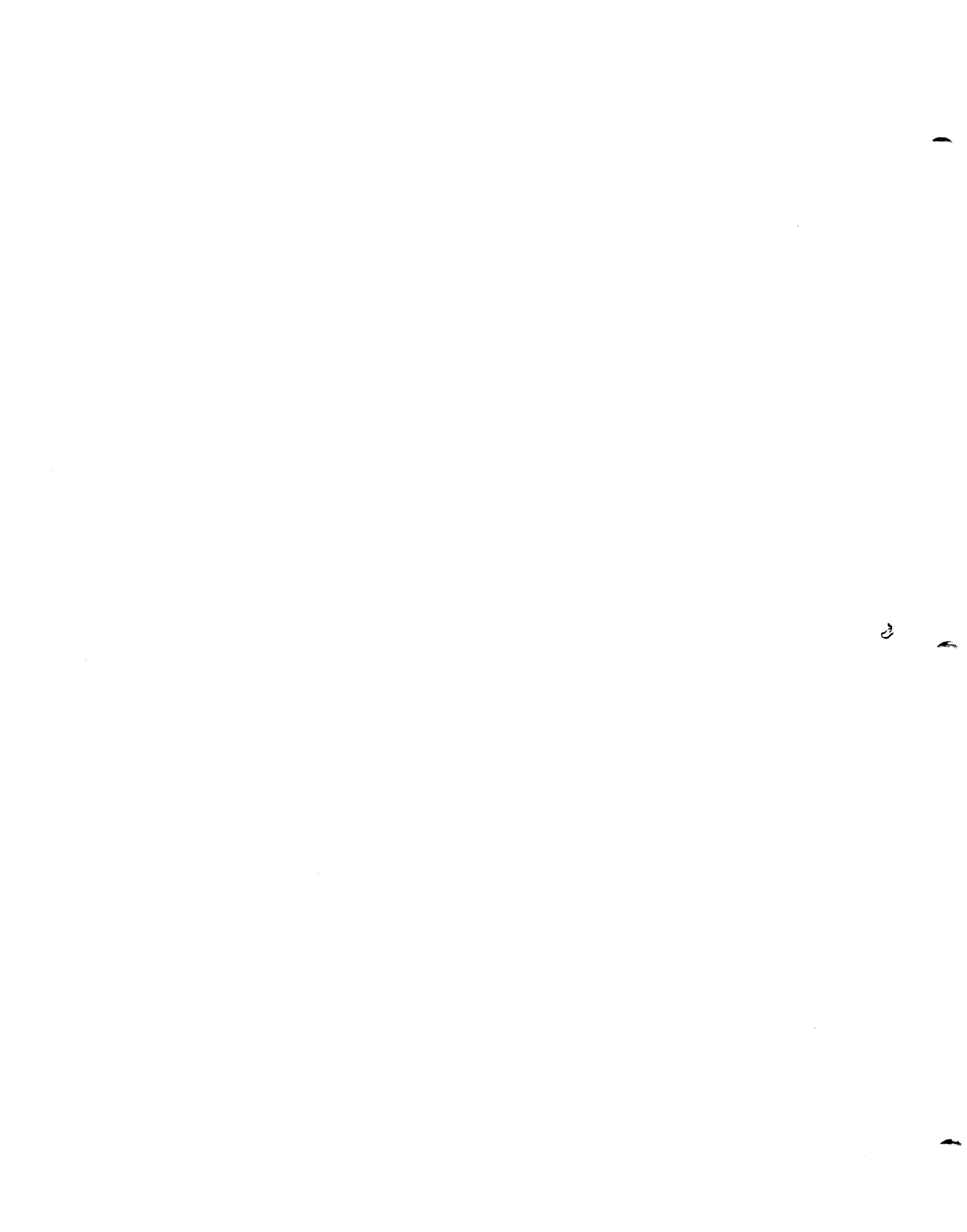
PART VII– TRANSPORTATION

PART VIII– HEALTH

PART IX – EDUCATION

PART X – CRIMINAL JUSTICE

- 10.1 Police
- 10.2 Courts
- 10.3 Corrections and Legislative Oversight



ACKNOWLEDGMENTS

The suggested state legislation in this part of the *ACIR State Legislative Program* is based largely upon existing state statutes. Robert N. Alcock, William G. Colman, Robert Rhodes, and James Tait 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.

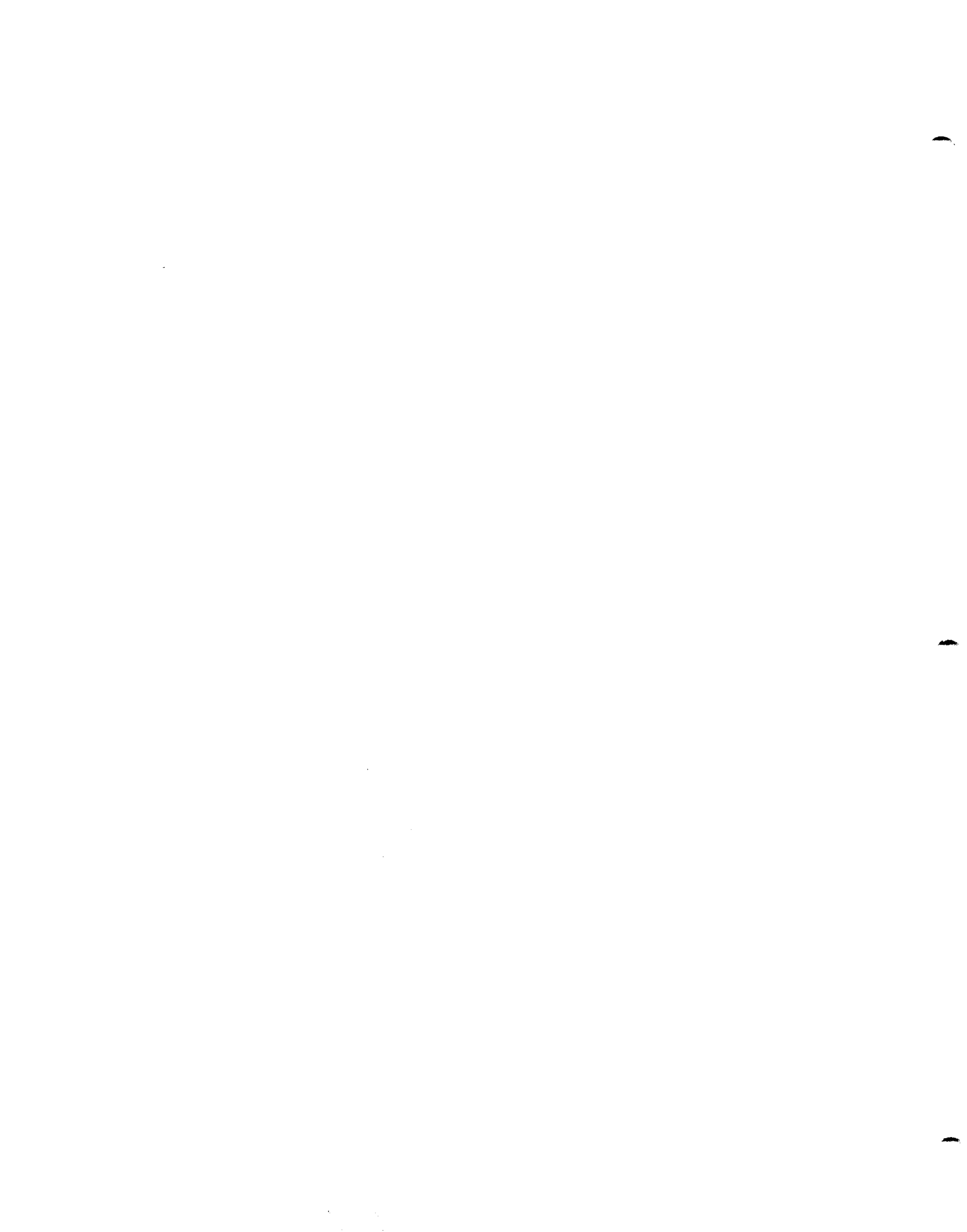
The suggested legislation was also circulated in draft form to the following national organizations for their review and comment:

- 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 VI

HOUSING AND COMMUNITY DEVELOPMENT

Table of Contents

Introduction 10

6.1 Program Operations and Assistance 13

 6.101 State Department of Community Affairs 14

 6.102 State Urban Development Corporation 23

 6.103 State Housing Finance Agency 36

 6.104 State Assistance for Rehabilitation of Private Housing 56

 6.105 Uniform Relocation Assistance 64

 6.106 State Financial Assistance and Channelization of Federal
 Grant Programs for Urban Development 72

 6.107 Private Enterprise Involvement in Urban Affairs 77

 6.108 Local Community Development and Housing Powers 78

 6.109 New Community District Act 107

 6.110 Conditional Property Tax Deferment for New Community
 Development 124

6.2 Fair Housing 128

 6.201 State Comprehensive Fair Housing Act 129

 6.202 Regional Fair Share Housing Allocations 137

6.3 Building Regulation 145

 Introduction 146

 6.301 State Building Code Act 147

 6.302 Manufactured Building Act 158

 6.303 Mobile Home Act 171

 6.304 State Assistance to Local Governments for Building
 Inspection 182

 6.305 Registration of Building Code Enforcement Officers 189

INTRODUCTION

The key role of state governments in the area of housing supply and the physical and social health of urban neighborhoods was frequently overlooked or underestimated for many years. During the two decades following World War II, developers, home builders, and urban development experts alike viewed the governmental role in community development and housing as strictly a Federal-local one. This assessment tended to be correct as long as subsidization of low income housing and urban renewal was provided through local housing and re-development agencies established independently of city or county government. However, preferences for Federal housing subsidization moved away from conventional public housing into other channels; problems of relocation became paramount in the conduct of urban renewal activities; and the stifling influence exercised by widely varying local building codes was increasingly felt by developers, architects, and building contractors. With these trends, it became apparent that advantages existed for the use of tax exempt financing for housing development through state financial intervention. It was also apparent that if order was to be brought to the chaotic building code situation, remedial action had to come through state legislation rather than through an unrealistic and undesirable single national code.

Consequently, state governments began in the late 1960s to standardize building codes and their administration, establish housing finance agencies, revise and equalize landlord-tenant relations, and stimulate and assist new community and other large scale urban development.

Program Operations and Assistance. Most states have established an agency of state government with continuing responsibilities for community development, housing policy, and planning assistance to local governments. In addition to housing finance — an activity carried on by more than 35 state governments — states have been engaged in such crucial activities as assuring adequate public capital investment for key public facilities; providing advance acquisition of land and easements and the selective use of eminent domain powers to enable properly timed large scale development; providing financial support to neighborhood service centers; and taking constitutional and statutory action to enable private enterprise involvement in community development.

Draft proposals set forth in the following pages include: (1) establishing a state department of community development; (2) authorizing the establishment of a state urban development corporation; (3) creating a state housing finance agency; (4) providing financial assistance for the rehabilitation of private housing; (5) offering state financial assistance and channeling of Federal grants for community development; (6) authorizing and requiring the provision of relocation assistance to persons and businesses displaced through state or local public works projects; (7) encouraging private enterprise involvement in urban affairs by authorizing the comingling of public and private funds for specified public purposes; (8) authorizing city and county governments to engage in housing and community development activities, using eminent domain and other related powers; (9) authorizing the creation of subordinate special districts

to provide an interim financing and governance mechanism for new communities while they are being developed; and (10) authorizing conditional property tax deferral to encourage the development of new communities.

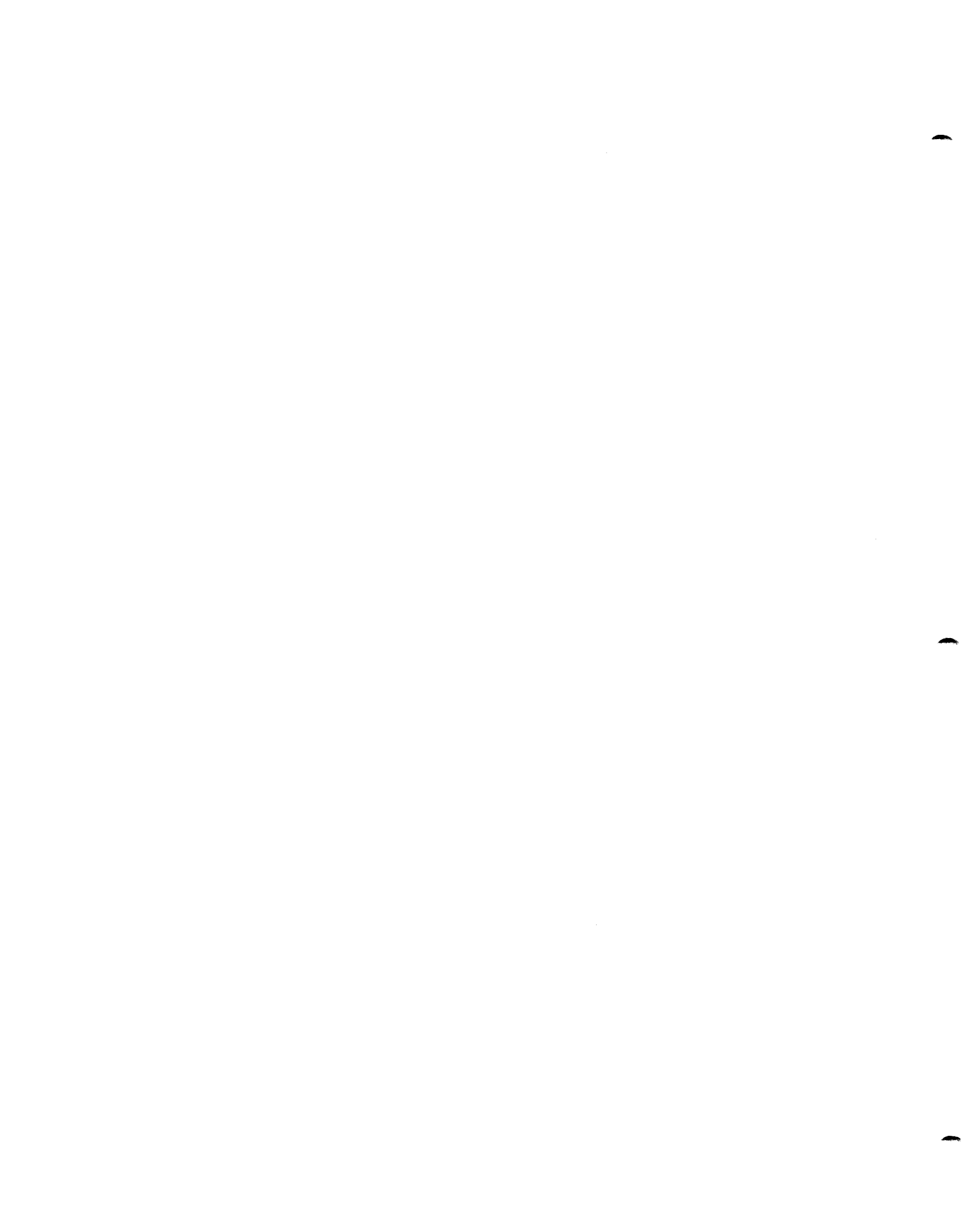
Fair Housing. Both preceding and following the enactment of open housing legislation by the Congress during the course of the civil rights movement of the 1960s, states began to enact similar open and fair housing legislation which prohibited discrimination in the sale or rental of property on grounds of race or ethnic origin. Some states went further and outlawed the practice of "block busting" and other discriminatory real estate practices.

Through the combination of Federal and state legislation, overt racial discrimination in the sale and rental of housing has been drastically reduced and, in many urban areas, it has been virtually eliminated. However, housing discrimination in terms of income has continued. Some communities have exercised zoning powers in such a way as to preclude the construction of housing within the reach of moderate and low income people. Other communities, through sanction of state law or through charter amendment, have required the submission to referendum of any proposal to construct subsidized housing, and sometime these referendum requirements have been embellished by the stipulation of a requisite extraordinary majority. More importantly, in many metropolitan areas and without resorting to exclusionary devices such as these, political leaders and citizens have proclaimed their support for low income housing but have always found a basis for ruling out any particular project. "Not in my neighborhood" has become a near universal slogan with regard to low income housing. This combination of public actions and private attitudes has tended to freeze housing patterns in many metropolitan areas, generally confining low income housing to the central cities and to particular working class and less affluent suburbs.

In a few metropolitan areas, however, councils of government and other regional organizations have begun programs to achieve a wider range of housing choice.

Two legislative proposals directed toward the objectives of fair housing and equality of housing opportunity are presented here. One is a fair housing law of the type described earlier, prohibiting discriminatory practices in the sale and rental of housing. The other is a measure establishing a procedure for metropolitan "fair share" housing allocations among the respective local governments making up the area.

Building Regulation. For many years, building regulation has been the exclusive domain of local government. Yet, effective economies in housing clearly are dependent upon the use of mass production. This requires a higher degree of building code uniformity, especially in metropolitan areas. Legislative measures proposed here comprise: (1) a state building code act which includes the power to approve new building materials for statewide use; (2) state inspection of factory built housing and approval for use on a statewide basis; (3) mobile home regulation; (4) state assistance to local governments for building inspection; and (5) registration of building code enforcement officers.



6.1 Program Operations and Assistance

6.101 STATE DEPARTMENT OF COMMUNITY AFFAIRS¹

Increasing urbanization, and the problems which it imposes on communities and states, has affected the nature of relationships within the federal system more than any other single factor in the last generation. The rapid growth of the population living in urban areas has been reflected in increasing state and local governmental indebtedness, employment, budgets, and responsibilities, not to mention Federal activities and programs directed at urban problems. If, as it has been estimated, the communities of the United States must duplicate in the next 35 years all the community facilities constructed since the time of the first settlement in the United States, then all resources — Federal, state, and local — must be employed in a coordinated and complementary fashion to insure maximum effectiveness.

At the Federal level, urbanization has been met by a growing number of urban development programs and activities administered by a host of departments and agencies. The establishment of a Department of Housing and Urban Development in 1965 reflected a recognition of the magnitude of the urban problems facing our nation and of the even more difficult problems in meshing the efforts of Federal, state, and local agencies.

In its pioneer report on *The States and the Metropolitan Problem*, the Council of State Governments recommended creation or adaptation of an agency of the state government to "aid in determining the present and changing needs of metropolitan and non-metropolitan areas of the state."² The inclusion of non-metropolitan as well as metropolitan areas in the council's recommendation reflected a desire to have the proposed state agency deal with problems of strengthening local governments generally.

The creation of a state department of community affairs presents an opportunity to bring together present and new state functions which have as their principal objective the development and expansion of state efforts to aid communities in meeting the problems of urbanization. Such an action is likely to improve the effectiveness of state programs if only because it gives the communities of the state a direct spokesman in the executive branch and because it provides a focus for policy development and execution at the state level. It also gives the governor an opportunity to make arrangements for coordinating Federal and state progress and to continuously study and evaluate the needs of communities within the state.

In addition to supporting efforts to strengthen state organization for dealing with urban problems, the Advisory Commission has urged the states to play a constructive role in the administration of Federal urban development programs within a state. To this end, the Commission adopted the following recommendation:

The Commission recommends that the states assume their proper responsibilities for assisting and facilitating urban development; to this end it is recommended that Federal grants-in-aid to local governments for urban development be channeled through the states in cases where a state (a) provides appropriate administrative machinery to carry out relevant responsibilities, and (b) provides significant financial contributions, and when appropriate, technical assistance, to the local governments concerned.³

The following draft bill is designed for use in states which desire to give appropriate organizational status to community development activities and to establish machinery for coordinating, directing, and assisting efforts to alleviate and solve local problems. It is recognized that the functions of such an agency must be tailored to fit existing organizational and program patterns in the state. The agency, well organized

¹Derived from: Advisory Commission on Intergovernmental Relations, *Impact of Federal Urban Development Programs on Local Government Organization and Planning*, Report A-20 (Washington, D.C.: U.S. Government Printing Office, January, 1964).

²Council of State Governments, *The States and the Metropolitan Problem* (Chicago, 1956), p. 128.

³Advisory Commission on Intergovernmental Relations, *Impact of Federal Urban Development Programs on Local Government Organization and Planning*, Report A-20 (Washington: U.S. Government Printing Office, January, 1964), p. 30.

and adequately staffed, would be in a position to help the state play a positive and constructive role. While the absence of an agency does not necessarily signify state inaction or disinterest, its presence is likely to increase both the level and significance of the state's local assistance activities.

The following suggested legislation draws primarily from an earlier model bill for a state department of community development and acts establishing the departments of community affairs in Pennsylvania, Texas, and Florida.

The first section of the draft contains the legislative findings and the purposes of the act which are to promote the coordination of state activities which affect local government and to provide assistance.

Section 2 establishes the department headed by a secretary. *Sections 3 and 5* assign responsibilities to the department and the secretary, and *Section 4* establishes a departmental advisory council of local officials, an interdepartmental coordinating council of state agency heads, and authorizes the creation of special advisory groups as needed.

Provisions are made in *Sections 6 and 7* for special responsibilities of the department in research and informational studies and for the assignment of state responsibility for designated community affairs and development programs to the department with an option for the handling of Federal and state grants and financial assistance. *Section 8* requires coordination of state programs and activities which have an impact on community affairs, and requires other agencies of the state to assist the department upon request. *Section 9* provides the authorization for appropriations and grants.

Sections 10 and 11 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT ESTABLISHING A DEPARTMENT OF COMMUNITY AFFAIRS]

(Be it enacted, etc.)

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

2 (a) the rapid growth being experienced by many communities within the state presents new and
3 significant problems for the governmental units of these communities in providing necessary public
4 services and in planning and developing desirable living and working areas;

5 (b) the coordination of existing state activities which affect the communities of the state requires
6 the establishment of machinery within the state government to administer new and existing programs
7 to meet these problems and to continually inform state and local officials and the public about these
8 programs and the related needs of local government;

9 (c) the full and effective use of the many grant programs of the Federal government affecting local
10 government necessitates full cooperation and coordination of existing state and local government
11 agencies; and

12 (d) it is the urgent responsibility of the state to assist communities in meeting these problems in
13 whatever way possible, including technical and financial assistance.

14 It is therefore the purpose of this act to establish a department of community affairs, to provide
15 for state financial and technical assistance to the communities of the state, and to otherwise assist
16 local governments to provide the health and living standards and conditions that the welfare of the
17 people of that state require.

18 SECTION 2. *Establishment of Department of Community Affairs.* The department of community
19 affairs¹ (hereinafter referred to as the "department") is established to carry out this act.² The depart-
20 ment shall be headed by a secretary of community development (hereinafter referred to as the "secre-
21 tary") appointed by and serving at the pleasure of the governor [by and with the consent of the [sen-
22 ate]]. The secretary shall appoint and prescribe the duties of such staff as may be necessary. [Employees
23 of the department shall be subject to pertinent civil service and personnel policies established for state
24 employees generally and shall be paid at salaries or rates of pay comparable to those of state employ-
25 ees with equivalent responsibilities in other agencies.]³ [The salary of the secretary shall be {\$]

¹Other appropriate names for the department include Department of Urban Development (Affairs), Department of Housing and Urban Development (Affairs), Department of Housing and Community Development (Affairs).

²A number of existing state statutes specifically authorize the establishment of an advisory body made up of local officials and other affected organizations to advise the office of local affairs in the carrying out of its functions and on problems facing local governments in the state; see Section 4.

³The language of this provision should reflect existing state legislative and administrative requirements relating to civil service, salary, and employee benefits. Where possible a citation to an existing state civil service act should be included to clarify the way in which existing merit systems, pay scales, and employee benefits will be applied to employees of this department.

1 per annum.]

2 SECTION 3. *Duties of the Secretary.*

3 (a) The secretary shall supervise and administer the activities of the department and shall advise
4 the governor and the [*legislature*] with respect to matters affecting community affairs generally and
5 especially with respect to the role of the state in these affairs.

6 (b) The secretary may delegate any of his functions, powers, and duties to such officers and
7 employees of the department as he may designate and may authorize such successive redelegations of
8 such functions, powers, and duties as he may deem desirable.

9 (c) The secretary may submit and adopt all necessary plans; enter into contracts; accept gifts,
10 grants, and Federal funds; prepare and submit budgets; make rules and regulations; and do all
11 things necessary and proper to carry out this act. [Federal and other funds received by the department
12 shall be paid or turned over to the [*insert name of central state financial agency, if one exists, which*
13 *normally performs such functions*] and shall be expended upon the approval of the secretary.]¹

14 SECTION 4. *Advisory Councils and Provision of Data.*

15 (a) (1) There is established in the department of community affairs an advisory council on com-
16 munity affairs consisting of the secretary as a non-voting chairman and [nine] members appointed
17 by the governor [confirmed by the [*senate*]] to provide representation of local officials and com-
18 munity leaders from the various geographical areas of the state.² Members shall serve [three] year
19 terms. Vacancies shall be filled by the governor for the remainder of the unexpired term.
20 All members shall serve without compensation except for reimbursement of their necessary expenses
21 as provided by law.

22 (2) The advisory council shall periodically review the work of the department and suggest
23 program changes as it deems necessary.

24 (b) (1) There is further established in the department of community affairs an interdepartmental
25 coordinating council on community services consisting of the secretary as chairman and [*list the*
26 *secretaries/directors of the major state programs which either directly or indirectly require local-state*
27 *coordination*]. In the event any of the foregoing offices are changed, renamed, abolished, or merged
28 with other offices, membership on the council shall devolve upon any office assuming the duties of
29 the former office.

¹This provision should be used where all Federal grants and other funds to finance state programs and activities are channeled through, and managed by, a central financial agency. It in no way intends to give such agency control of the funds but rather is to permit consolidated management of Federal grant and other non-state funds.

²If the state has already established advisory committees under the *State Planning and Growth Management Act*, the *Statewide Sub-state Districting Act*, the *State Advisory Commission on Intergovernmental Relations*, or other acts which provide substantial local official participation, it may be better to use them instead of creating an additional council under this act.

1 (2) The chairman of the coordinating council is authorized to convene, within his discretion,
2 meetings of the coordinating council at appropriate times and places for purposes which enable the
3 department of community affairs to exercise its powers and perform its duties.

4 (3) The chairman of the coordinating council is authorized to make appointments to *ad hoc*
5 working groups of the council to consider special problems within the scope of the responsibilities of
6 the department.

7 (4) The members of the coordinating council, or policymaking representatives designated by
8 them, shall participate in council meetings and in *ad hoc* working group meetings called by the chair-
9 man and, to the extent permitted by law and available funds, shall furnish information, at the request
10 of the chairman, pertaining to programs within the responsibilities of such department.

11 (5) The department of community affairs shall provide the necessary administrative services
12 for the coordinating council.

13 (6) The chairman of the coordinating council shall make periodically, and at the request of
14 the governor, a report to the governor on the activities of the council.

15 (c) There may be established by the department special advisory groups as from time-to-time
16 may be necessary to conduct studies and meet its responsibilities.

17 (d) All state agencies and political subdivisions of the state shall provide such assistance and data
18 to the secretary as will enable him to carry out his functions, powers, and duties.

19 SECTION 5. *Functions of the Department.* The department shall have the following functions
20 and responsibilities:

21 (a) cooperate with, and provide assistance to, local governments through advisory and technical
22 services;

23 (b) maintain communications with local governments and advise the governor, [*legislature*], and
24 heads of state agencies with respect to matters affecting community affairs and local government by
25 acting as their advocate at the state and Federal levels;

26 (c) assist the governor in coordinating the activities of state agencies and programs which have
27 an impact on the solution of community problems and the implementation of community plans;

28 (d) encourage and, when requested, assist the efforts of local governments to develop mutual and
29 cooperative solutions to their common problems;

30 (e) conduct programs to encourage and promote the involvement of private enterprise in the
31 solution of urban problems;

32 (f) study existing legal provisions that affect the structure and financing of local government and
33 those state activities which involve significant relations with local government units; and recommend
34 to the governor and the [*legislature*] such changes in these provisions and activities as may seem
35 necessary to strengthen local government;

1 (g) serve as a clearinghouse for information, data, and other materials which may be helpful or
2 necessary to local governments to discharge their responsibilities. The clearinghouse should also pro-
3 vide information and assistance on available Federal and state financial and technical assistance;

4 (h) carry out continuing studies and analyses of the problems faced by communities within the
5 state and develop such recommendations for administrative or legislative action as appear necessary.
6 In carrying out such studies and analyses, particular attention should be paid to the ways in which
7 the activities and services of the agencies of the state and Federal government which should be coordi-
8 nated with, and of assistance to, local government may be made more effective;

9 (i) conduct a program of preservice and in-service training for local elected officials and for local
10 officials in technical and specialized areas of local administration, in cooperation with appropriate state
11 agencies whose professional personnel possess specialized or technical knowledge which would be
12 useful in conducting such training programs. Included in such programs shall be short courses for
13 newly elected officials and short courses for administrative officials in such subjects as fiscal and
14 debt management, procurement, eminent domain procedures, community planning, and other areas in
15 which the secretary determines that there is sufficient interest among local officials to warrant pro-
16 grams; and

17 (j) conduct research and studies and prepare model ordinances, charters, and codes which may be
18 of assistance to local government.

19 SECTION 6. *Special Functions of the Department.* The department shall have the following
20 special functions and responsibilities:

21 (a) (1) conduct studies of county, municipal, and special district formation and boundary reorgani-
22 zation problems throughout the state;

23 (2) conduct studies relating to the need for, and the feasibility of, formation and service de-
24 livery adjustments that will strengthen the capability of local governments to provide and maintain
25 essential public services in a fiscally equitable manner;

26 [(3) prior to consideration of any special law, to incorporate, merge, or dissolve a munici-
27 pality, to determine that the conditions herein or otherwise prescribed by law have been met. No
28 such special law shall be enacted unless a statement by the department is attached to the original
29 copy of the bill stating whether all of the conditions herein or otherwise prescribed have been met;]¹

30 (4) submit each year a written report to the governor and [legislature] summarizing the stud-
31 ies conducted, their findings and recommendations, any findings in respect to Federal-state-county-
32 municipal-special district relationships or problems, and providing any additional information required
33 under this act or pertinent thereto;

34 (5) factors to be studied may include demographic and land area characteristics, *per capita*

¹If the state has a *State Boundary Commission Act*, this responsibility is often assigned to it or cooperatively.

1 assessed valuation, *per capita* tax burden in relation to *per capita* personal income, need for organized
2 municipal services, topographic features, cost and adequacy of governmental services and controls,
3 future needs for such services and controls, and the probable effect of alternative courses of action on
4 the tax incidence, service quality, local governmental structure, growth, environmental development,
5 and other aspects of the community;

6 (b) develop a census of local government and report on or before [March 1] of each year with
7 respect to each county, municipality, [substate district,] and special district in the state:¹

8 (1) total population, as indicated by the last preceding Federal census or other official state
9 population estimate authorized by state law;

10 (2) total equalized assessed valuation of taxable property, as indicated by the most recent
11 official state sources of such data;

12 (3) total revenues received by each unit of local government during its most recent fiscal year
13 for which data are available from:

14 (i) state aid, which for this purpose shall comprise any moneys authorized or appropri-
15 ated by the [legislature] and allocated for support of any unit of local government excluding any
16 moneys paid to any such unit in fulfillment of a specific contractual obligation between it and the state;

17 (ii) all local general revenue sources of each such unit, which for this purpose shall com-
18 prise all receipts, exclusive of amounts from borrowing, state aid, Federal government grants-in-aid,
19 Federal revenue sharing or block grants, and any charges and earnings derived from, and used in, the
20 operation of water supply, electric power, gas supply, transit system, or other proprietary activities;
21 and

22 (iii) all Federal general aid, including revenue sharing, and Federal or state grants-in-aid
23 or block grants received; and

24 (4) such other census items as may be necessary;

25 (c) (1) conduct, in consultation with the appropriate state and local agencies, a continuing study
26 of various governmental activities being conducted and services being provided by local government
27 in this state including special studies in particular activities as may be necessary;

28 (2) the study of any function or activity shall consider the appropriate relationships of local-
29 state-Federal activity in the area and shall further consider the following criteria:

30 (i) the geographic and legal adequacy of the local governmental response;

31 (ii) the degree of economic and social impact beyond the boundary of the local govern-
32 mental unit involved in the activity or function;

¹Standardized annual reporting of basic economic, demographic, and fiscal data of local units of government is an essential element in effective state-local relations, local government management, and adequate public information. Its placement in state government will vary. For an explanation of "substate districts," see *Statewide Substate Districting Act*.

1 (iii) the degree of citizen access and control necessary for appropriate governmental re-
2 sponse;

3 (iv) the management and technical capability of the local governmental units involved in
4 the function or activity; and

5 (v) the degree of economic efficiency and fiscal equity involved in the function or activity
6 and any proposals for change;

7 (3) when a specific study of an activity or function is undertaken by the department, it shall
8 notify the legislative committees and state agencies with jurisdiction over the subject matter, repre-
9 sentatives of the state organizations of various local governmental units concerned, and any other
10 person who has filed a request for such notification. The department shall further establish an advi-
11 sory committee to review the study outline and any results of recommendations developing from such
12 study;

13 (4) on or before [February 1] of each year, the department shall report to the governor and
14 [*the presiding officers of both houses of the legislature*] the status of the continuing study and any
15 specific studies undertaken pursuant to this section;

16 (d) (1) exercise the state responsibility for administering, supervising, and coordinating the
17 following community affairs and development programs and shall fully carry out the state role in
18 Federal grant programs applicable to them:¹

19 (i) projects and programs for the planning and carrying out of the acquisition, use, and
20 development of land for open space and recreational purposes;

21 (ii) programs to develop decent, safe, and sanitary housing to serve the needs of all citi-
22 zens of the community including low rent and middle income housing constructed by public authori-
23 ties or non-profit groups and other public assisted housing activities;

24 (iii) community development, urban renewal, and redevelopment activities to rebuild
25 slum areas including the provision or supervision of relocation services for individuals, families, busi-
26 nesses, and non-profit organizations to assure that such displaced are provided with comprehensive
27 relocation and financial assistance;

28 (iv) programs and projects to aid in the development, financing, and staffing of neigh-
29 borhood information and service centers;

30 [(2) all applications for Federal grants for the purposes of the programs designated under

¹Subparagraphs (i), (ii), (iii), and (iv) of paragraph (1) are given as examples of the types of program areas which might be placed directly under the new department. Among other programs which might be considered are the following: provision of schools and educational services; construction and administration of public health facilities and services; water and air pollution control and abatement programs; planning on a neighborhood, community, or regional basis; programs to alleviate and eliminate poverty; planning and construction of hospitals, airports, water supply and distribution facilities, sewage facilities and waste treatment works, transportation facilities, highways, water development and land conservation and other public works facilities; and supervision of and assistance in the development and enforcement of community building codes.

1 paragraph (1) of this subsection shall be submitted to the department. The secretary shall [approve or
2 disapprove] [review and comment upon] state grants to apply toward the non-Federal share of project
3 costs consistent with Section 8. [Approval may be conditioned upon subsequent approval of the
4 project by an appropriate Federal agency for Federal grant funds.] Upon [approval] [review] of the
5 application, the secretary shall transmit it to the appropriate Federal agency. Any application
6 [disapproved] [receiving unfavorable review] by the secretary shall be returned to the applicant with
7 written notice of modifications [necessary] [desirable] to make the project eligible, in terms of state or
8 Federal policy.]¹

9 SECTION 7. *Transfer of Responsibility.* [Use this section to transfer the functions, powers, and
10 duties and employees, property, records, and files involving programs and agencies listed in Section
11 6.]

12 SECTION 8. *Coordinating Community Development Programs.*

13 (a) The successful discharge of this act demands that all activities and programs of state agencies
14 which have an impact on community affairs be fully coordinated. State agencies shall cooperate fully
15 with the secretary and the governor in fulfilling this act. The governor and the secretary may establish
16 such coordination, advisory, or other machinery as they may find necessary to carry out this act and
17 they may issue such rules and regulations as they believe necessary and desirable to carry out the
18 provisions of this act.

19 (b) The department is further empowered to call on any state, county, special district, or municipi-
20 pal agency, department, bureau, or board for any and all information or assistance which may, in its
21 judgement, be of assistance in administering or preparing for the administration of, this chapter, and
22 such state, county, special district, or municipal agency, department, bureau, or board is hereby
23 authorized, directed, and required to furnish such information or assistance.

24 SECTION 9. *Authorization for Appropriation and State Grants.* Moneys may be appropriated
25 to carry out this act including moneys to enable the secretary to assist communities in meeting the
26 non-Federal share of Federal community development programs as follows, but in no case may the
27 state grant exceed [one-half]:

28 (a)²

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

30 SECTION 11. *Effective date.* [Insert effective date.]

¹The insertion of this paragraph may be considered independently of paragraph (1). Its use depends on the desired role for the department in Federal-local grant programs.

²List Federal grant programs for which state financial assistance is available to localities and prescribe the amount of the state grant in percentage terms. For example: "(a) For planning activities undertaken under Section 701 of the *Housing Act of 1954*, as amended, state grants to municipal, county, or regional planning bodies may be [20 to 50] percent of the non-Federal share of the cost of such activities." Other Federal programs for which some states already provide financial assistance in meeting the non-Federal share include: open space, urban renewal, public housing, airport development, hospital and medical facility construction, and waste treatment works.

6.102 STATE URBAN DEVELOPMENT CORPORATION¹

For two decades, Federal, state, and local governments have been attempting to combat urban decay through urban renewal programs. These programs have often suffered from slow execution, bureaucratic restrictions, and lack of qualified private sponsors. Because of these delays and also because of the risks involved qualified private firms have not been willing to sponsor urban renewal projects and to develop the land after it has been cleared. Due to the lack of private sponsors, large tracts of valuable urban land have been cleared and then allowed to lie vacant.²

Experience has shown that even with assurance of adequate financing, private investors may be reluctant to incur the risks of developing urban projects. In light of this situation, the States Urban Action Center, has initiated legislation to create a State Urban Development Corporation to aid in rebuilding urban areas. The primary aim of the corporation is to stimulate private investment in blighted areas by assuming initial development risks and avoiding delays of development. The corporation is authorized to initiate the planning, building, and developing of needed urban facilities. In addition, it may sponsor urban renewal projects and build certain housing, commercial, and civic facilities. The corporation is empowered to sell or lease its projects to public agencies or private investors at the earliest time, whether during planning, construction, or operation.

The corporation can bear the risks of projects during planning, acquisition, and building stages when returns on initial investment are minimal. This will permit investors to invest in existing, functioning projects without having to incur the risks and delays which now characterize urban renewal projects.

Financing of corporation projects is accomplished through an initial state appropriation and the sale of bonds, loans from the Federal government, and private institutions, public urban renewal or community development grants, and interest subsidies and mortgage insurance under various Federal housing programs. The corporation may acquire property by eminent domain and its obligations are exempt from state income taxes and, with certain possible exceptions, from Federal income taxes.³ Projects are exempted from municipal real estate taxes; however, the state is required to reduce the tax loss to a municipality by reimbursing it for the full amount of property taxes collected on the property before construction of a project.

In addition to helping rebuild existing urban core areas, the corporation can aid private enterprise in building new cities and towns by using its power of eminent domain to help provide the necessary land. States wishing to draw upon the recent experience of a state urban development corporation may desire to contact the New York State Urban Development Corporation.

Section 1 is concerned with definitions. *Section 2* creates the state urban development corporation; establishes its membership; provides for a business advisory council and one or more community advisory committees; allows employees or officers of the state to serve as members of the committee; provides that the corporation shall exist until terminated by law; that a majority of the directors constitute a quorum for transacting business or exercising powers or functions of the corporation; and the corporation shall take affirmative action in its dealings with firms, persons, labor unions, and others. *Section 3* enumerates the powers of the corporation.

Section 4 requires that before the corporation may acquire, construct, reconstruct, rehabilitate, or manage a project, it shall find and state in a written report that: the project is a qualified industrial, residential, land use improvement, civic, or multipurpose project as defined in Section 1 of this act; there is substantial

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). See, *State and Local Land Development Corporations*.

²An essential and more detailed discussion of urban development corporations may be found in Section I-A of "Action For Our Cities, Part Three: Employment and Economic Development," States Urban Action Center, Inc. (1968).

³The interest on corporation revenue bonds issued for housing and civic projects would be exempt from Federal income taxes. The enactment of Section 107 of the *Revenue and Expenditure Control Act of 1968* (P.L. 90-364), as amended by the *Renegotiation Amendments of 1968* (P.L. 90-634), has abolished the Federal tax exemption for state and local industrial revenue bond issues of \$5-million or more.

need for the project; the plans and specifications for the project assure adequate light, air, sanitation, access, and safety; there is a feasible method for resident relocation; if it is a civic project, it will be leased to, or owned by, a public agency or public benefit corporation; and if the project is industrial, substantial and persistent underemployment or unemployment must exist in the proposed project's area.

Section 5 gives the corporation the right to achieve its purposes and exercise functions through one or more subsidiaries.

Section 6 authorizes the corporation to acquire property for its immediate or future use and provides for the procedures by which such property shall be acquired. *Section 7* makes provisions for the acquisition of real property from a municipality or urban renewal agency.

Section 8 exempts the corporation and its subsidiaries from taxes on its projects, property, or money, other than assessments for local improvements, levied by a municipality. *Section 9* includes residential projects in the tax exemption.

Section 10 requires the corporation to work closely, consult, and cooperate with local elected officials and community leaders in effectuating the purposes of this act.

Section 11 allows the corporation to sell or lease all or any portion of a project to any individual, partnership, trust, association or corporation, or public agency.

Section 12 requires the corporation to establish a capital account consisting of equity capital of the corporation. This account shall contain all moneys appropriated by the state, and from other sources, for the purposes of the account. *Section 13* authorizes the corporation to issue bonds and notes.

Section 14 requires state departments to aid the corporation in carrying out its functions. *Section 15* requires the corporation to annually submit financial and performance reports to the governor and the legislature.

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

Suggested Legislation¹

[AN ACT ESTABLISHING AN URBAN DEVELOPMENT CORPORATION]

(Be it enacted, etc.)

1 SECTION 1. *Definitions.*

2 (a) "Corporation" means the urban development corporation of this state, created by this article.

3 (b) "Bonds" and "notes" mean the bonds and notes, respectively, issued by the corporation
4 pursuant to this article.

5 (c) "Municipality" means any county, town, city, or village.

6 (d) "Project" means a specific work or improvement including lands, buildings, improvements,
7 real and personal property, or any interest therein — including lands under water, riparian rights,
8 space rights, and air rights — acquired, owned, constructed, reconstructed, rehabilitated, or improved
9 by the corporation or any subsidiary thereof, including a residential project, an industrial project, a
10 land use improvement project, or a civic project, all as defined herein, or any combination thereof,
11 which combination shall be referred to as a "multipurpose project." The term "project" includes
12 projects or any portion of a project.

13 (1) "Residential project" means a project, or that portion of a multipurpose project, which is
14 designated and intended for the purpose of providing housing accommodations for persons of limited
15 income and other facilities as may be incidental or appurtenant thereto.

16 (2) "Industrial project" means a project, or that portion of a multipurpose project, designed
17 and intended to provide facilities for manufacturing, industrial, commercial, wholesale, retail, ware-
18 housing, or research and development purposes, including but not limited to machinery and equip-
19 ment deemed necessary for the operation thereof.

20 (3) "Land use improvement project" means a project for the clearance, replanning, recon-
21 struction, rehabilitation, renewal, redevelopment, conservation, restoration, or improvement of a
22 substandard and insanitary area, and for recreational or other facilities incidental or appurtenant
23 thereto.

24 (4) "Civic project" means a project, or that portion of a multipurpose project, which is
25 designed and intended to provide facilities for educational, cultural, health, recreational, community,
26 or other civic purposes.

27 (e) "Project cost" means the sum total of all costs incurred by the corporation in carrying out all
28 works and undertakings which the corporation deems reasonable and necessary for the development

¹See also draft bill, *State and Local Land Development Corporations*, for a somewhat more limited approach.

1 of a project. These include, but are not necessarily limited to, the costs of all necessary studies, sur-
2 veys, plans and specifications, architectural, engineering, or other special services, the cost of
3 acquisition of land and buildings, site preparation and development, construction, reconstruction,
4 rehabilitation, improvement, and the acquisition of machinery and equipment as may be necessary in
5 connection with the project; the necessary expenses incurred in connection with the initial occupancy
6 of the project, the allocable portion of the administrative and operating expenses of the corporation,
7 the cost of financing the project, including interest on bonds and notes issued by the corporation to
8 finance the project from the date thereof to the date when the corporation determines that the project
9 is substantially occupied; indemnity and surety bonds and premiums on insurance, legal fees, fees and
10 expenses of trustees, depositories and paying agents for the bonds and notes issued by the corpora-
11 tion; and relocation costs, all as the corporation deems necessary.

12 (f) "Subsidiary" means a corporation created in accordance with Section 5 of this act.

13 (g) "Substantial or insanitary area" means a slum, blighted, deteriorated, or deteriorating area, or
14 an area which has a blighting influence on the surrounding area, whether used for residential, com-
15 mercial, industrial, or other purposes, or vacant land. The term includes air rights over private or
16 public facilities of any type, if the corporation deems the development of these air rights necessary
17 to eliminate a blighting influence on the surrounding area.

18 (h) "Urban renewal agency" means a public benefit corporation or agency formed to carry out
19 an urban renewal project or projects pursuant to the urban renewal laws of this state or of the
20 Federal government.

21 SECTION 2. *State Urban Development Corporation.*

22 (a) There is hereby created the state urban development corporation. The corporation shall be a
23 corporate governmental agency and shall constitute a public benefit corporation.

24 (b) The corporation shall be governed and all its corporate powers exercised by a board of direc-
25 tors to consist of the following [nine] members:

26 (1) [*the commissioner of housing and community development*], [*the commissioner of*
27 *commerce*], [*the commissioner of banking*], and [*the commissioner of insurance*], all serving
28 *ex officio*;¹ and

29 (2) [five] directors, who shall be appointed by the governor with the advice and consent of
30 the [*senate*]. These directors shall serve for a term of [] years [*add a provision for staggered terms*
31 *of office*].²

32 (c) From among the directors appointed by him, the governor shall appoint the chairman of the

¹If the state has a state planning board, its director might be substituted for one of the above mentioned officials or else added as an *ex officio* member. If the latter approach were adopted, the number of directors appointed by the governor should be reduced to four.

²Alternatively, such directors might serve at the pleasure of the governor.

1 corporation, who shall be chief executive officer.

2 (d) The chairman of the corporation shall be entitled to receive a salary of [\$] *per annum* [as
3 the board of directors shall determine for his services as chief executive officer]. The other directors
4 shall serve without salary, but each director shall be entitled to reimbursement for his actual and
5 necessary expenses incurred in the performance of his official duties.

6 (e) The directors appointed under subsection (b)(2) in this section, other than the chairman of
7 the corporation, may engage in a private employment, profession, or business.

8 (f) The governor shall appoint a business advisory council for urban development to advise and
9 make recommendations to the corporation with respect to development of policies and programs and
10 to encourage maximum participation in projects of the corporation by the private sector of the econ-
11 omy, including members of the council and firms and corporations with which they are affiliated.
12 This council shall consist of not more than [25] members, who shall serve at the pleasure of the
13 governor, and who shall be broadly representative of the business and financial community. The
14 members shall serve without salary, but shall be entitled to reimbursement for their actual and
15 necessary expenses incurred in the performance of their duties.

16 (g) The corporation shall establish one or more community advisory committees to consider and
17 advise the corporation upon matters submitted to them by the corporation concerning the develop-
18 ment of any area or any project, and may establish rules and regulations with respect to such com-
19 mittees. The members of the community advisory committees shall serve at the pleasure of the
20 corporation without salary, but shall be entitled to reimbursement for their actual and necessary
21 expenses incurred in the performance of their duties.

22 (h) Notwithstanding any inconsistent provisions of law, no officer or employee of the state or any
23 civil division thereof shall be deemed to have forfeited, or shall forfeit, his office or employment by
24 reason of his acceptance of membership on the corporation or on a community advisory committee
25 created by this section.

26 (i) The corporation shall exist until terminated by law, provided the corporation shall not be
27 terminated so long as it has bonds, notes, and other obligations outstanding, unless adequate
28 provision is made for the payment in the documents securing the bonds, notes, and other obligations.
29 Upon termination of the existence of the corporation, its rights and properties pass to the state.

30 (j) A majority of the directors of the corporation constitute a quorum for the transaction of any
31 business or the exercise of any power or function of the corporation. The corporation may delegate
32 to one or more of its directors, officers, agents, or employees, powers and duties as it deems proper.

33 (k) The corporation shall take affirmative action in working with construction firms, contrac-
34 tors and subcontractors, labor unions, and manufacturing and industrial firms so that residents of
35 areas in which projects are to be located are afforded priority in the construction work on projects of

1 the corporation, and in the business operations of tenants and occupants of industrial projects
2 undertaken by the corporation.

3 SECTION 3. *Powers of the Corporation.* Except as otherwise limited by this article, the corpora-
4 tion shall have power;

5 (a) to sue and be sued;

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

7 (c) to make and execute contracts and all other instruments necessary or convenient for the
8 exercise of its powers and functions under this article;

9 (d) to make and alter bylaws for its organization and internal management and, subject to
10 agreements with noteholders, to make rules and regulations with respect to its projects, operations,
11 properties, and facilities;

12 (e) to acquire, hold, and dispose of real or personal property for its corporate purposes;

13 (f) to appoint officers, agents, and employees, prescribe their duties and fix their compensation;

14 (g) to acquire or contract to acquire from any individual, partnership, trust, association, or cor-
15 poration, or any public agency, by grant, purchase, condemnation, or otherwise, real or personal
16 property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign,
17 exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber real or personal
18 property or interest therein;

19 (h) to create subsidiaries as provided in Section 5 of this article;

20 (i) to acquire, construct, reconstruct, rehabilitate, improve, alter or repair or provide for the
21 construction, improvement, alteration or repair of any project;

22 (j) to arrange or contract with a municipality for the planning, replanning, opening, grading, or
23 closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the
24 acquisition by a municipality of property or property rights or for the furnishing of property or
25 services, in connection with a project;

26 (k) to sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or en-
27 cumber any project, and in the case of the sale of any project, to accept a purchase money mortgage
28 in connection therewith; and to lease, repurchase, or otherwise acquire and hold any project which the
29 corporation has theretofore sold, leased, or otherwise conveyed, transferred, or disposed of;

30 (l) to grant options to purchase any project or to renew any leases entered into by it in connection
31 with any of its projects, on terms and conditions as it deems advisable;

32 (m) to prepare or cause to be prepared plans, specifications, designs, and estimates of costs for
33 the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project
34 and from time-to-time to modify these plans, specifications, designs, or estimates;

35 (n) to manage any project, whether owned or leased by the corporation, and to enter into agree-

1 ments with any individual, partnership, trust, association, or corporation, or with any public agency,
2 for the purpose of causing any project to be managed;

3 (o) to provide advisory, consultative, training, and educational services, technical assistance, and
4 advice to any individual, partnership, trust, association, or corporation, or to any public agency, to
5 carry out the purposes of this article;

6 (p) to purchase, sell, or pledge the shares, bonds, or other obligations or securities of any sub-
7 sidiary corporation, on terms and conditions as the corporation deems advisable;

8 (q) subject to the provisions of any contract with noteholders or bondholders, to consent to the
9 modification, with respect to rate of interest, time of payment of any installment of principal or
10 interest, security, or any other terms, of any loan, mortgage, commitment, contract, or agreement of
11 any kind to which the corporation is a party;

12 (r) in connection with any property on which it has made a mortgage loan, to foreclose on this
13 property or commence any action to protect or enforce any right conferred upon it by any law,
14 mortgage, contract, or other agreement, and to bid for or purchase this property at any foreclosure
15 or at any other sale, or acquire or take possession of the property; and if the corporation completes,
16 administers, pays the principal of, and interest on, any obligations incurred in connection with the
17 property, dispose of, and otherwise deal with, the property, in a manner as may be necessary or
18 desirable to protect the interests of the corporation therein;

19 (s) to borrow money and to issue its bonds and notes and to provide for the rights of the holders
20 thereof;

21 (t) as security for the payment of the principal of and interest on any bonds issued and any
22 agreements made in connection therewith, to mortgage and pledge any or all of its projects, whether
23 owned or thereafter acquired; and to pledge the revenues and receipts therefrom or from any part
24 thereof, and to assign or pledge the lease or leases on all or any portion of these projects and to assign
25 or pledge the income received by virtue of the lease or leases;

26 (u) to invest funds held in reserve or sinking funds, or any moneys not required for immediate
27 use or disbursement, at the discretion of the corporation, in obligations of this state, or of the United
28 States, or obligations the principal and interest of which are guaranteed by this state or the United
29 States, and in []¹;

30 (v) to procure insurance against loss in connection with its property and other assets and opera-
31 tions in amounts and from insurers as it deems desirable;

32 (w) to engage the services of consultants on a contract basis for rendering professional and
33 technical assistance and advice;

¹If desired, list other types of investments.

1 (x) to contract for and to accept any gifts or grants or loans for funds or property or financial or
2 other aid in any form from the Federal government or any agency or instrumentality thereof, or from
3 the state or a municipality or any agency or instrumentality thereof, or from any other source and,
4 subject to the provisions of this article, to comply with the terms and conditions thereof; and

5 (y) to do all things necessary or convenient to carry out its purposes and exercise the powers
6 given and granted in this article.

7 SECTION 4. *Projects of the Corporation; Findings.* Before the corporation may acquire, con-
8 struct, reconstruct, rehabilitate, or manage a project, it shall find and state in a written report that:

9 (a) the project qualifies as an industrial project, a residential project, a land use improvement
10 project, a civic project, or a multipurpose project, as defined in Section 1 of this act;

11 (b) a substantial need for the project exists in the area in which the project is to be located, or in
12 an area reasonably accessible to this area, and in the case of an industrial or residential project, that
13 this need cannot be fully met by the unaided operation of private enterprise;

14 (c) the plans and specifications for the project assure adequate light, air, sanitation, access, and
15 safety;

16 (d) there is a feasible method for the relocation of residents displaced from the project area into
17 decent, safe, and sanitary dwellings, which are or will be provided in the project area or in other areas
18 not generally less desirable in regard to public utilities and public commercial facilities at rents or prices
19 within the financial means of residents and reasonably accessible to their places of employment.

20 Insofar as is feasible, the corporation shall offer housing accommodations to residents in residential
21 projects of the corporation. The corporation may render to business and commercial tenants and to
22 families or other persons displaced from the project areas, assistance as it deems necessary to enable
23 them to relocate;

24 (e) in the case of a civic project, the project will be leased to, or owned by the state, a municipality
25 or an agency or instrumentality thereof, or by a public benefit corporation; and

26 (f) in the case of an industrial project, a condition of substantial and persistent unemployment or
27 underemployment exists in the area in which the project is to be located, and the acquisition or
28 construction and operation of a project will prevent, eliminate, or reduce unemployment or under-
29 employment in the area.

30 SECTION 5. *Subsidiaries.*

31 (a) The corporation has the right to exercise its powers and functions through one or more sub-
32 sidiaries. The corporation by resolution may direct any of its directors, officers, or employees to
33 organize a subsidiary pursuant to the [corporation laws] of this state. This resolution shall prescribe
34 the purposes for which the subsidiary corporation is to be formed.

35 The corporation shall be deemed as a subsidiary whenever and so long as:

1 (1) more than half of the outstanding voting shares of the corporation are owned by the
2 corporation; or

3 (2) the corporation has the power to designate, and has so designated a majority of the
4 directors of the corporation.

5 (b) The corporation may transfer to any subsidiary any moneys, real or personal or mixed prop-
6 erty, or any project to carry out the purposes of this article. Each subsidiary shall have all the powers,
7 privileges, immunities, tax exemptions, and other exemptions of the corporation to the extent they
8 are not inconsistent with the statute or statutes pursuant to which the subsidiary was incorporated.

9 (c) No officer or director of the corporation shall receive additional compensation, either direct or
10 indirect, other than reimbursement for actual and necessary expenses incurred in the performance of
11 his duties, by reason of his serving as an officer or director of any subsidiary.

12 SECTION 6. *Acquisition of Property.*

13 (a) The corporation, upon making a finding that it is necessary or convenient to acquire any real
14 property for its immediate or future use, may acquire the property in any lawful manner, including
15 condemnation pursuant to the provisions of [*insert reference to the condemnation law*] where not
16 inconsistent with this act, notwithstanding that the property may already be devoted to a public use.
17 The property shall not thereafter be taken for any other public use without the consent of the
18 corporation.

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

23 (c) It shall be lawful for the duly authorized agents of the corporation to enter onto the real
24 property, at reasonable hours, for the purpose of making soundings, borings, and appraisals as may
25 be deemed necessary.

26 (d) All condemnation proceedings hereunder shall be brought in [*a court of competent jurisdic-*
27 *tion*] and the compensation to be paid shall be determined by the court without a jury and without the
28 appointment of commissioners.

29 (e) The court may decree that title to any real property acquired by condemnation shall vest in the
30 corporation upon the entry and filing of an order of immediate possession.

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

34 (g) All persons in possession of the property at the time of vesting of title, at the option of the
35 corporation, shall become tenants at will thereof, and pay a rent to be agreed upon, unless within ten

1 days after vesting, these persons actually remove from the premises.

2 SECTION 7. *Acquisition of Real Property from a Municipality or Urban Renewal Agency.* A
3 municipality or an urban renewal agency, in addition to employing any other lawful method of
4 utilizing or disposing of any real property and appurtenances thereto, or any interest therein, owned
5 or acquired by the municipality or agency, may sell, lease for a term not exceeding 99 years, or other-
6 wise dispose of any real property and appurtenances thereto, or any interest therein, to the corpora-
7 tion, without public auction, competitive bidding, or public notice.

8 SECTION 8. *Tax Exemptions.*

9 (a) [Subject to the provisions of Section 9 of this act,] the corporation and its subsidiaries shall
10 not be required to pay any taxes, other than assessments for local improvements, upon, or in respect
11 of, a project or any property or moneys of the corporation or any of its subsidiaries, levied by a
12 municipality. Neither the corporation nor any of its subsidiaries shall be required to pay state taxes
13 of any kind.

14 (b) All bonds, notes, and other obligations of the corporation and its subsidiaries are hereby
15 declared to be issued for a public purpose and, together with interest thereon, shall at all times be
16 free from taxation, except for estate and gift taxes and taxes on transfer.

17 (c) To prevent undue loss of revenues to municipalities, there shall annually be appropriated
18 and paid by the state, during the then current state fiscal year, to any municipality in which an indus-
19 trial project is located, a sum equal to 100 percent of the average annual real property taxes paid or
20 due to the municipality on the real property constituting the project site for three years prior to the
21 time of its acquisition by the corporation or a subsidiary, or in the case of real property acquired by
22 the corporation from an urban renewal agency or from a municipality which acquired the property
23 for urban renewal purposes, for three years prior to the time of its acquisition by the agency or
24 municipality. The chairman of the corporation shall annually make and deliver to the governor and
25 the [state director of the budget] his certificate stating the sum, if any, required to be paid to each
26 municipality pursuant to this section, and the sum or sums so certified, if any, shall be appropriated
27 and paid to each municipality.

28 [SECTION 9. *Special Provisions Relating to Residential Projects.* Residential projects of the
29 corporation or its subsidiaries, shall be exempt from taxes, other than assessments for local improve-
30 ments, levied by any municipality to the extent and in the manner provided by the law.]

31 SECTION 10. *Cooperation with Municipalities.*

32 (a) In effectuating the purposes of this act, the corporation shall work closely, consult, and
33 cooperate with local elected officials and community leaders at the earliest practicable time. The
34 corporation shall give primary consideration to local needs and desires and shall foster local initiative
35 and participation in connection with the planning and development of its projects. Wherever possible,

1 activities of the corporation shall be coordinated with local and regional urban renewal and related
2 projects, and the corporation shall assist municipalities in carrying out these projects.

3 (b) Except with respect to a project consisting in whole or in part of real property acquired from
4 a municipality or an urban renewal agency pursuant to Section 7 of this act, the corporation or any
5 subsidiary, before commencing the acquisition, construction, reconstruction, rehabilitation, alteration,
6 or improvement of any project, shall comply with the following procedure.

7 (1) The corporation shall file a copy of the general project plan, including the findings
8 required pursuant to Section 4 hereof, in its corporate offices and in the office of the clerk of the
9 municipality in which the project is to be located, and shall provide a copy thereof to the chief execu-
10 tive officer of the municipality, the chairman of the planning board or commission of the municipality
11 or, if there is no planning board or commission, to the presiding officer of the local legislative body
12 of the municipality; and the corporation shall furnish any other person, on request, a digest of the
13 plan.

14 (2) The corporation shall publish a notice of the filing of the plan and the availability of a
15 digest in one newspaper of general circulation within the municipality. The notice shall state that a
16 public hearing will be held to consider the plan at a specified time and place on a date not less than
17 30 days after publication.

18 (3) The corporation shall conduct a public hearing pursuant to the notice.

19 (4) A municipality may, within 30 days after the hearing, recommend approval, disapproval,
20 or modification of the plan, by majority vote of its planning board or commission, or, in the event
21 there is no planning board or commission, by majority vote of its local legislative body; and any other
22 person, within this time, may submit written comments on the plan to the corporation.

23 (5) The corporation, after due consideration of any testimony, recommendations, and com-
24 ments, shall affirm modify, or withdraw the plan in the manner provided for the initial filing of such
25 plan in paragraph (1) of this subsection, provided, that in the event the municipality has recom-
26 mended disapproval or modification of the plan, the corporation may affirm the plan only by a vote
27 of two-thirds of the directors thereof then in office.

28 (c) After complying with the applicable requirements of subsections (a) and (b) of this section,
29 the corporation and any subsidiary thereof, in constructing, reconstructing, rehabilitating, altering, or
30 improving of any project, shall comply with the requirements of any applicable local laws, ordinances,
31 codes, charters, or regulations, unless the corporation finds, with respect to any project, that com-
32 pliance with local building construction codes is not feasible or practicable, then it shall comply with
33 the requirements of the state model building construction code. A municipality shall not modify or
34 change the drawings, plans, or specifications relating to a project of the corporation or any subsidiary,
35 nor require that a person, firm, or corporation employed on any project perform his work in any other

1 manner than as provided by the plans and specifications. A municipality shall not require that a
2 person, firm, or corporation obtain other or additional authority, approval, permit, or certificates from
3 the municipality in relation to the work being done. The doing of any work by a person, firm, or
4 corporation in accordance with the terms of the drawings, plans, specifications, or contracts shall not
5 subject the person, firm, or corporation to any liability or penalty, civil or criminal, other than as may
6 be stated in the contracts or incidental to their proper enforcement. A municipality shall not require
7 the corporation or its subsidiary, lessee, or successor in interest to obtain any additional authority,
8 approval, permit, or certificate from the municipality as a condition of owning, using, maintaining,
9 operating, or occupying a project developed by the corporation or its subsidiary. These provisions
10 shall not preclude any municipality from exercising the right of inspection for the purpose of requir-
11 ing compliance by a project with local requirements for operation and maintenance affecting the
12 health, safety, and welfare of the occupants; provided, this compliance does not require changes,
13 modifications, or additions to the original construction of the project.

14 (d) Each municipality in which any project of the corporation or of any subsidiary is located,
15 whether then owned by the corporation, a subsidiary, or a successor in interest thereto, shall provide
16 police, fire, sanitation, health protection, and other municipal services of the same character to the
17 project to the same extent as they are provided to other residents of the municipality.

18 SECTION 11. *Lease or Sale of Projects of the Corporation.*

19 (a) The corporation may sell or lease for a term not exceeding 99 years all or any portion of the
20 real or personal property constituting a project to any individual, partnership, trust, association, or
21 corporation, or any public agency, upon terms and conditions as may be approved by the corpora-
22 tion. The corporation may enter into a contract for sale or lease either prior to, at the date of, or sub-
23 sequent to the completion of a project by the corporation. Where the contract for sale or lease is
24 entered into after the commencement of construction and prior to the physical completion of the
25 improvement to be conveyed or leased, the corporation may complete the construction and develop-
26 ment of the improvement prior to the actual conveyance or lease.

27 (b) Any sale or lease may be made without public sale or competitive bidding.

28 (c) If a sale or lease is made to any individual, partnership, trust, association, or private corpora-
29 tion, and relates to all or a substantial portion of a project, there shall be published in at least one
30 newspaper of general circulation in the municipality in which the project is located a notice which
31 shall include a statement of the proposed purchaser or lessee, the price or rental to be paid, all other
32 essential conditions of the sale or lease, and a statement that a public hearing upon the sale or lease
33 will be held before the corporation at a specified time and place on a date not less than [] days after
34 the publication. The hearing shall be held in accordance with this notice, [provided that with respect
35 to an industrial project the corporation determines that trade secrets or other confidential information

1 about the prospective purchaser's or lessee's business operations, products, processes, or designs
2 would otherwise be revealed by the public notice and public hearing, the requirements of this sub-
3 division may be waived by unanimous vote of the directors of the corporation then in office.]

4 SECTION 12. *Capital Account.* The corporation shall establish a special account consisting of
5 equity capital of the corporation, to be known as the capital account, and shall pay into this account
6 all moneys appropriated and made available by the state for the purposes of the account and any
7 other sources. All moneys held in the capital account may be used by the corporation to finance all or
8 any part of the project costs of projects of the corporation or any subsidiary corporation, the costs of
9 managing these projects, and to pay the administrative and other expenses of the corporation or its
10 subsidiary corporations. All moneys held in this account and not required for immediate disbursement
11 shall be invested in obligations of the state or of the United States or obligations the principal and
12 interest of which are guaranteed by this state or the United States, and any interest or income on the
13 moneys in this account shall be added to the account.

14 SECTION 13. *Bond Authorization.* The corporation shall issue bonds and notes in a principal
15 amount not exceeding [\$], excluding bonds and notes issued to refund outstanding bonds and notes.

16 [At this point, specific provisions conforming to particular state law may be added relating to
17 issuance of bonds and notes, redemption of the bonds and notes, bonds and notes as legal invest-
18 ments, remedies of noteholders and bondholders, and state guaranty of the bonds and notes and
19 liability therefor.]

20 SECTION 14. *Assistance by State Departments.* Every officer and state department subject to the
21 approval of the governor shall render assistance and services as may be requested by the corporation
22 in aid of its functions.

23 SECTION 15. *Annual Report; Examinations.*

24 (a) The corporation shall submit to the governor and the [legislature] within [] days after the
25 end of its fiscal year a complete and detailed report setting forth: its operations and accomplishments;
26 its receipts and expenditures during a fiscal year; its assets and liabilities at the end of the fiscal year,
27 including a schedule of its mortgage loans and commitments and the status of reserve or other funds;
28 and a schedule of its bonds and notes outstanding at the end of the fiscal year, together with a state-
29 ment of the amounts redeemed and issued during the fiscal year.

30 (b) The [comptroller of the state] may, from time-to-time, and shall at least once every [] years,
31 examine the books and accounts of the corporation.

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

33 SECTION 17. *Effective date.* [Insert effective date clauses.]

6.103 STATE HOUSING FINANCE AGENCY¹

In recent years, housing America's citizens has become more and more difficult. State governments, historically lacking direct involvement in housing, have responded to the pressing housing needs of their citizens through the creation of innovative and flexible organizations generally known as housing finance agencies. To date more than 30 states have established such agencies.

The basic concept guiding the operations of these agencies is the same, although their specific programs vary. A public agency is created and authorized to issue tax exempt bonds. The low net interest cost on the money generated from the sale of the bonds enables the agency to finance, at below market interest rates, the construction of housing for qualified low and moderate income persons. The savings achieved by the agency borrowing its money at the lower tax exempt rate is passed on to the ultimate housing consumer.

By using this tax exempt bonding capacity, the state is able to raise funds at interest rates 2-3 percentage points below prevailing market rates. It also can extend the repayment period. By combining the savings in interest cost with the longer repayment period, the considerable reduction in monthly payments can provide adequate housing for a substantial additional number of citizens.

The draft legislation provides four main programs.

1. *Mortgage Purchase Program.* The state agency, working in cooperation with private lenders, would purchase mortgages or mortgage backed securities. The lending institutions would then make the money available for the development of housing for qualified families.

2. *Loans to Lenders.* The state agency would directly lend its funds to private lending institutions which would relend the money to qualified low or moderate income families or to developers of low or moderate income housing.

3. *Direct Development Loans.* Where loans are not otherwise available, as is the case in many rural areas, the state agency may make loans directly to public agencies, non-profit corporations, and private developers.

4. *Housing Development Fund.* Subject to appropriations or development for sufficient non-earmarked reserves, the agency may make 3 percent interest seed-money loans to units of local governments, local housing authorities, and non-profit sponsors for predevelopment costs. The legislation also provides for matching grants to local units of government and housing authorities willing to utilize their resources in plans of housing assistance that would include land and building acquisition, improvement, relocation, or conservation projects.

As with any financial institution, there is always potential for adverse developments. This potential can be virtually eliminated by the use of adequate managerial controls and sound underwriting practices. A number of controls are included in the proposed legislation which would help insure solvency and effectiveness. Provisions have been included that would limit the amount of money raised through the selling of bonds. Another safeguard would require that all loans to financial institutions have sufficient collateral. Still another regulating control would require that all direct loans to eligible developers be guaranteed or have Federal or private mortgage insurance. This would greatly reduce the state's exposure in case of default on the loan. Careful study of the proposed legislation will show many other such safeguarding provisions.

Several states may need a constitutional amendment to undertake these programs. Others will need such an amendment to provide for the strongest and least expensive type of bond financing — that of revenue

¹Derived from: Advisory Commission on Intergovernmental Relations, *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, Report A-25 (Washington, D.C.: U.S. Government Printing Office, January, 1965).

bonds secondarily backed by the full faith and credit of the state. Since most states began their program without approval of the voters, they use revenue bonds (a more costly bond) backed with the "moral obligation" of the state. This type of revenue bond is often said to not be in the best fiscal interest of the people since no responsible official contemplates ever letting a bond go into default under any condition. Recent market history provides encouragement to adopting the full faith and credit route, saving an additional 1-2 percentage points of interest. The suggested constitutional amendment provides for a program of secondarily pledging the full faith and credit of the state, with safeguards for determining the fiscal sufficiency of the pledged revenues.

Section 1 of the suggested legislation sets forth the legislative findings and purposes of the act. *Section 2* sets forth the state's housing policy. *Section 3* provides definitions of the terms used. *Section 4* provides for the creation of a state housing finance agency and its membership, their terms of office, and reimbursement for expenses. *Section 5* deals with quorum and voting requirements necessary to conduct meetings and take action.

Section 6 authorizes the agency to employ an executive director who may then hire such employees as he may require.

Section 7 enumerates the powers of the agency not provided elsewhere in the legislation. *Section 8* provides for special powers relating to mortgages and loans to lenders, and *Section 9* provides for special powers relating to mortgage and construction insurance.

Section 10 mandates the agency to establish a housing development fund, subject to appropriation of moneys by the legislature or transfer of surpluses from other operations, and authorizes the agency to use such fund moneys for payments for debt services and reserve requirements and for advances and grants to units of local government and local housing authorities.

Section 11 enumerates the agency's special powers regarding loans.

Section 12 authorizes the issuance of revenue bonds and notes on behalf of the agency and provides for terms, approval, and limitations.

Section 13 authorizes the agency to establish one or more reserve funds, or one or more accounts within a reserve fund, in order to secure bonds of the agency not backed by the full faith and credit of the state, and sets out the moneys to be paid into the fund or account and the manner of disbursement from the fund or account.

Section 14 provides that the property of the agency and any income therefrom shall not be exempt from taxation by the state or any of its political subdivisions. It further provides that all notes and bonds of the agency constitute legal investment without limitation for all public bodies and all others and constitute eligible securities for deposit as collateral for the security of any public funds.

Section 15 mandates that preference be given to those low and moderate income persons displaced by governmental action.

Section 16 provides that no person be excluded from participation in, denied the benefits of, or subjected to discrimination under, any program or project developed and funded, in whole or in part, with funds available under this act, and provides for procedures to be followed should such occur.

Section 17 provides that in the case of conflict with any provisions of other law, general, special, or local, the provisions of this act shall prevail.

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

Suggested Constitutional Amendment

[AN AMENDMENT TO THE STATE CONSTITUTION TO PROVIDE BONDS FOR HOUSING AND RELATED COMMUNITY DEVELOPMENT FACILITIES]

(Be it enacted, etc.)

1 SECTION [1]. *Bonds for Housing and Related Community Development Facilities.*

2 (a) The [legislature] may by law authorize the issuance of bonds to finance or refinance housing
3 and related community development facilities.

4 (b) The bonds shall be secured by a pledge of, and shall be payable primarily from, all or any
5 part of revenues to be derived from the financing, operation, or sale of such facilities, mortgage or
6 loan payments, or from any other revenues or assets that may be legally available for such purposes;
7 and, when authorized, the bonds may be additionally secured by the full faith and credit of the state.

8 (c) No bonds shall be issued unless a state fiscal agency, created by law, has made a determination
9 that the debt service requirements of the bonds proposed to be issued and all other bonds secured by
10 the same pledged revenues will not exceed the pledged revenues available for payment of such debt
11 service requirements, as defined by law.

Suggested Legislation

[AN ACT ESTABLISHING A STATE HOUSING FINANCE AGENCY AND PROVIDING FOR PROGRAMS THEREOF]¹

(Be it enacted, etc.)

1 SECTION 1. *Legislative Findings and Purpose.* The [legislature] finds and declares that:

2 (a) there exists a shortage of decent, safe, and sanitary housing for persons and families of low
3 and moderate income;

4 (b) it is necessary to create inducements and opportunities for private and public investment in
5 housing and related community development activities; and

6 (c) to this end, a [state] housing finance agency is necessary to encourage the investment of
7 private capital in housing and community development through the use of public financing, to
8 stimulate the construction and rehabilitation of housing, to facilitate the purchase and sale of existing
9 housing, to provide construction and mortgage loans, to make loans to, and purchase mortgage loans
10 from, private lending institutions, and to provide mortgage insurance.

11 SECTION 2. *State Housing Policy.* It is the housing policy of this state to:

12 (a) promote housing which will contribute to economically balanced neighborhoods, and which
13 does not increase existing concentrations of housing for those of low and moderate incomes;

14 (b) promote housing in areas with adequate community facilities and access to public transporta-
15 tion; and

16 (c) promote housing which is a part of large scale multipurpose development or redevelopment and
17 part of a unified community development effort.

18 SECTION 3. *Definitions.* As used in this act, the following words and terms shall have the
19 following meanings unless the context shall indicate another or different meaning or intent.

20 (a) "Agency" means the [state] housing finance agency created pursuant to this act.

21 (b) "Bonds," "notes," "bond anticipation notes," and "other obligations" mean any bonds, notes,
22 debentures, interim certificates, or other evidences of financial indebtedness issued by the agency
23 under, and pursuant to, this act.

24 (c) "Development costs" means the total of all costs incurred in connection with residential
25 housing approved by the agency as reasonable and necessary, which costs shall include, but not
26 necessarily be limited to, the following: costs of land acquisition and any building thereon, including
27 payments for options, deposits, or contracts to purchase properties on the proposed housing site or

¹Suggested short title: [State] Housing Finance Agency Act.

1 payments for the purpose of such properties; costs of site preparation, demolition, and development;
2 fees for architectural, engineering, legal, accounting, and other services paid or payable in connection
3 with the planning, execution, and financing of residential housing; costs of studies, surveys, plans,
4 and permits; costs of insurance, interest financing, taxes, assessments, and other operating and
5 carrying costs during construction; costs of construction, rehabilitation, reconstruction, fixtures,
6 furnishings, equipment, machinery, and apparatus related to the real property; costs of land improve-
7 ments including, without being limited to, landscaping and off-site improvements, whether any such
8 cost has been paid in cash or in a form other than cash; necessary expenses in connection with in-
9 itial occupancy of residential housing, reasonable builder's and developer's profit and risk fee in addi-
10 tion to job overhead, an allowance established by the agency for working capital, contingency reserves,
11 and reserves for any anticipated operating deficits during the early years of occupancy; and the cost of
12 such other items, including tenant relocation, as the agency shall determine to be reasonable and
13 necessary for the development of the residential housing.

14 (d) "Eligible developer" means any individual, joint venture, partnership, limited partnership,
15 trust, firm, association, corporation, cooperative, condominium, local public housing authority, other
16 governmental agency, or other legal entity, or any combination thereof, approved by the agency as
17 qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain residential
18 housing whether organized for profit, for limited profit, or not for profit;

19 (e) "Eligible persons" means persons or families, irrespective of race, creed, national origin, or
20 sex, determined pursuant to rule by the agency, to be of low and moderate income requiring such
21 assistance as is made available by this act on account of insufficient personal or family income, taking
22 into consideration such facts as:

- 23 (1) the amount of the total income of such persons and families available for housing needs;
- 24 (2) the size of the family;
- 25 (3) the cost and condition of housing facilities available;
- 26 (4) the ability of such persons and families to obtain housing in the normal private housing
27 market and to pay the amounts at which private enterprise is providing sanitary, decent, and safe
28 housing; and

29 (5) if appropriate, standards established for various Federal programs determining eligibility
30 based on income of such persons and families.

31 (f) "Governmental agency" means the United States of America, the state, the several counties
32 and municipalities of the state, any other state, and any department, division, public corporation,
33 public agency, political subdivision, or other public instrumentality of any of the foregoing.

34 (g) "Lending institution" means any bank or trust company, mortgage banker, savings bank,
35 credit union, national banking association, savings and loan association, building and loan associa-

1 tion, insurance company, public or private corporation, or other financial institution or govern-
2 mental agency authorized to transact business in this state and which customarily provides service or
3 otherwise aids in the financing of mortgages located in the state.

4 (h) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a
5 lien on real property in fee simple or on a leasehold under a lease having a remaining term, at any time
6 such mortgage is acquired, which does not expire for at least that number of years beyond the maturity
7 date of the obligation secured by such mortgage as is established by the agency as necessary to protect
8 its interest as mortgagee.

9 (i) "Mortgage loan" means an interest bearing obligation secured by a mortgage on land and
10 improvements in the state.

11 (j) "Real property" means all lands, including improvements and fixtures thereon, and property
12 of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and
13 right, legal or equitable, therein including terms of years and liens by way of judgment, mortgage, or
14 otherwise, and the indebtedness secured by such liens.

15 (k) "Residential housing" means one or more new or existing residential dwelling units financed
16 pursuant to the provisions of this act for the primary purpose of providing sanitary, decent, and safe
17 dwelling accommodations for eligible families in need of housing, including any buildings, land,
18 improvement, equipment, facilities, or other real or personal properties which are necessary, con-
19 venient, or desirable in connection therewith, and including but not limited to the related facilities for
20 streets, sewers, utilities, parks, and other public facilities as the agency determines by rule will im-
21 prove the quality of the residential living for eligible persons; and

22 (l) "Secured loan" means a loan secured by a mortgage or a security interest in a project.

23 SECTION 4. *Agency; Creation, Membership, Terms, Expenses.*

24 (a) There is hereby created [*within the department of community affairs*] a state agency and
25 instrumentality, which shall be a public body corporate and politic, to be known as the [*state*] hous-
26 ing finance agency. The agency shall consist of the [*secretary of the department of community*
27 *affairs, ex officio, and six*] members appointed by the governor subject to confirmation by the
28 [*senate*] from the following:

- 29 [(1) one citizen actively engaged in the savings and loan industry;
30 (2) one citizen actively engaged in the residential home building industry;
31 (3) one citizen actively engaged in the banking or mortgage banking industry;
32 (4) one citizen who is a representative of labor engaged in residential home building; and
33 (5) two citizens of the state who are not members or representatives of the above named
34 groups].

35 (b) Of the members first appointed, [*three*] shall be designated to serve for a term of two years,

1 and [three] for a term of four years from the dates of their appointment but thereafter members of the
2 agency shall be appointed for a term of four years, except that all vacancies shall be filled for the
3 unexpired term.

4 (c) The chairman of the agency shall be [*the secretary of the department of community affairs,*
5 *ex officio and voting,*] with a vice chairman elected by the members thereof. Any additional officers,
6 who need not be members, as may be deemed necessary by the members of the agency, may be
7 designated and elected by the members thereof.

8 (d) A member of the agency shall receive no compensation for his services but shall be entitled to
9 the necessary expenses, including *per diem* and travel expenses, incurred in the discharge of his duties,
10 as provided by law.

11 SECTION 5. *Meetings, Quorum, and Votes.* The powers of the agency shall be vested in the
12 members thereof in office from time-to-time. Four members of the agency shall constitute a quorum
13 for the purpose of conducting its business and exercising its powers for all other purposes. Action
14 may be taken by the agency upon a vote of a majority of the members present unless this act or a rule
15 of the agency requires a larger number.

16 SECTION 6. *Executive Director; Agents and Employees.* The agency shall employ an executive
17 director, who shall subsequently employ legal and technical experts and such other agents and employ-
18 ees, permanent and temporary, as he may require. The provisions of the state personnel law contained
19 in [*appropriate state citation*] shall not apply to up to [ten] officers and policymaking employees of
20 this agency as determined by the agency.

21 SECTION 7. *Powers of the Agency.* The agency shall have all the powers necessary or con-
22 venient to carry out and effectuate the purposes and provisions of this act, including the following
23 powers which are in addition to all other powers granted by other provisions of this act:

24 (a) to sue and be sued; to have a seal, to alter the same at pleasure and to authorize the use of a
25 facsimile thereof; to make and execute contracts and other instruments necessary or convenient to the
26 exercise of the powers of the agency;

27 (b) to undertake and carry out studies and analyses of housing needs within the state and ways of
28 meeting such needs upon request of the governor;

29 (c) to participate in Federal housing assistance and Federal community development, insurance,
30 and guarantee programs and to agree and comply with any conditions attached to Federal financial
31 assistance unless otherwise prohibited by this act;

32 (d) to provide for the collection and payment of fees and charges, regardless of method of pay-
33 ment, in connection with its loans, commitments, and servicing, including but not limited to reimburse-
34 ment of costs of financing by the agency, service charges, and insurance premiums as the agency shall
35 determine to be reasonable and as shall be approved by the agency;

1 (e) to assist eligible developers to initiate housing projects for eligible persons as provided in this
2 act;

3 (f) to acquire real and personal property, or any interest therein where such acquisition is
4 necessary or appropriate to protect any loan or to participate in any program in which the agency has
5 an interest; to sell, transfer, and convey any such property to a buyer and in the event such sale,
6 transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to
7 lease such property to a tenant;

8 (g) to borrow money and to issue negotiable bonds and notes for the purposes provided in this
9 part and to provide for and secure the payment thereof and to provide for the rights of the holders
10 thereof;

11 (h) to purchase bonds or notes of the agency out of any funds or money of the agency available
12 therefor, and to hold, cancel, or resell such bonds or notes;

13 (i) to invest any funds held in reserves or sinking funds, or any funds not required for immediate
14 disbursement, in such investments as may be authorized [by law for other public funds] [and in any
15 bonds, notes, or other obligations of any agency, corporation, or instrumentality of the United
16 States];

17 (j) to set standards for projects which are financed by the agency under this chapter and to provide
18 for inspections to determine compliance with such standards;

19 (k) to contract for and to accept gifts, grants, loans, or other aid from the United States govern-
20 ment or any persons or corporations;

21 (l) to insure or procure insurance for any of its bonds or notes or any underlying obligations
22 thereof against any loss in connection with its property and other assets;

23 (m) to make rules necessary to carry out the purposes of this act and to exercise any power
24 granted in this act;

25 (n) to engage the services of private consultants on a contract basis for rendering professional
26 and technical assistance and advice;

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

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

31 SECTION 8. *Special Powers; Mortgages and Loans to Lenders.* The agency shall have the special
32 power to:

33 (a) (1) invest in, purchase or make commitments to purchase, and take assignments from lending
34 institutions of mortgage loans and promissory notes accompanying such mortgage loans, including
35 Federally insured mortgage loans or participations with lending institutions in such promissory notes

1 and mortgage loans, for the construction, rehabilitation, purchase, leasing, or refinancing of residen-
2 tial housing within the state, provided that, at or before the time of purchase, the lending institution
3 certifies to the agency with respect to all mortgage loans transferred to the agency:

4 (i) that the mortgage loans transferred to the agency are for residential housing for
5 eligible persons within the state, except that the agency, pursuant to rule, may acquire a reasonable
6 number of mortgage loans for residential housing within the state for occupants other than eligible
7 persons, upon a determination that sufficient mortgage loans for eligible persons are not available to
8 adequately serve the purposes of the agency's housing program within the geographical area served by
9 the lending institution from which such mortgage loans are to be acquired; and

10 (ii) that the proceeds of sale or equivalent money shall be reinvested in mortgage loans
11 for residential housing for eligible persons within the state in an aggregate principal amount equal to
12 the amount of such sale proceeds;

13 (2) make and enter into contracts and agreements with lending institutions for the servicing
14 and processing of mortgage loans purchased by the agency pursuant to this section; and

15 (3) sell, at public or private sale, with or without public bidding, any mortgage or other
16 obligation held by the agency.

17 (b) (1) make loans to lending institutions under terms and conditions requiring the proceeds
18 thereof to be used by such lending institutions for the making of new mortgage loans for residential
19 housing in the state for eligible persons;

20 (2) purchase mortgage backed securities from lending institutions under terms and conditions
21 requiring that the proceeds of such purchases finance new mortgage loans for residential housing in
22 the state for eligible persons to the extent that the mortgages backing the securities are not so
23 qualified;

24 (3) require that loans to, or mortgage backed securities purchased from, lending institutions
25 shall be additionally secured as to payment of both principal and interest by a pledge of, and lien upon,
26 collateral security in such amounts and consisting of such obligations, securities, and mortgage loans
27 as the agency shall by resolution determine to be necessary to assure the payment of such loans or
28 securities purchased and the interest thereon as the same become due. The agency may require in the
29 case of any or all lending institutions that any required collateral be lodged with a bank or trust
30 company located either within or outside the state designated by the agency as custodian therefor. In
31 the absence of such requirement, a lending institution shall, if collateral is to be provided for the loan
32 or securities purchased, upon receipt of the proceeds from the agency, enter into an agreement with
33 the agency containing such provisions as the agency shall deem necessary to adequately identify and
34 maintain such collateral and service the same. The agreement shall provide further that such lending
35 institution shall hold such collateral as an agent for the agency and shall be held accountable as the

1 trustee of an express trust for the application and disposition thereof and the income therefrom solely
2 to the uses and purposes in accordance with the provisions of such agreement. A copy of each such
3 agreement and any revisions or supplements thereto shall be filed with [the appropriate state official]
4 and no further filing or other action under [statute number] entitled [the uniform commercial code
5 secured transactions], or any other law of the state shall be required to perfect the security interest of
6 the agency in such collateral or any additions thereto or substitutions therefor, and the lien and trust
7 for the benefit of the agency so created shall be binding from and after the time made as against all
8 parties having claims of any kind in tort, contract, or otherwise against such lending institution. The
9 agency may also establish such additional requirements as it shall deem necessary with respect to the
10 pledging, assigning, setting aside, or holding of such collateral and the making of substitutions
11 therefor or additions thereto and the disposition of income and receipts therefrom;

12 (4) collect, enforce the collection of, and foreclose on any collateral securing its loan or
13 purchase of securities of such collateral and sell the same at public or private sale, with or without
14 public bidding, and otherwise deal with such collateral as may be necessary to protect the interest of
15 the agency therein, all subject to any agreement with bondholders or noteholders; and

16 (5) adopt, modify, or repeal any other conditions governing the making of loans to, or
17 purchasing of securities from, lending institutions and the application of the proceeds thereof.

18 SECTION 9. *Special Powers; Mortgage and Construction Insurance.*

19 (a) The agency shall have the special power to insure and coinsure, undertake commitments to
20 insure, and participate with other public or private institutions in the insuring of mortgage and
21 construction loans, temporary or permanent, to eligible developers to finance the construction or
22 rehabilitation of residential housing and related facilities for eligible persons and to eligible persons to
23 finance the construction, rehabilitation, or purchase of residential housing.

24 (b) Subject to the prior appropriation of money by the [legislature] for the express purpose of the
25 fund or upon receipt of proceeds from bonds authorized herein or upon transfers from other funds
26 available to the agency, there shall be established by the agency a mortgage insurance reserve fund
27 funded by such appropriations, bonds proceeds, or transfers. The agency may use the money held in
28 the fund to provide mortgage and construction loan insurance in accordance with the provisions of
29 this section.

30 SECTION 10. *Housing Development Fund; Advance and Grants.*

31 (a) (1) Subject to the prior appropriation of money by the [legislature] for the express purpose of
32 the fund or upon sufficient surpluses being developed in other operations for transfer to purposes
33 authorized under this section, there shall be established by the agency a housing development fund
34 funded by such appropriations or transfers. The agency may use the money held in the fund to make
35 payments for debt service or reserve requirements if no other money is available for such purposes

1 and to make advances and grants in accordance with the provisions of this part.

2 (2) The agency may use the money held in the fund to make advances to units of local
3 government, local housing authorities, and non-profit housing corporations for development costs of
4 proposed projects that will be financed with mortgage loans containing provisions for insured
5 advances. The proceeds of the advance may be used only to defray the development costs of the
6 project. Each advance shall be repaid in full by the recipient to the agency concurrent with receipt of
7 the portion of the mortgage loan paid at the initial closing of the mortgage or construction loan with
8 interest to be [3] percent.

9 (b) The agency may use the money held in the fund to make grants to units of local government
10 and local housing authorities, in such amounts as the agency determines, not to exceed the net costs,
11 exclusive of any Federal aid or assistance, as are incurred by the local unit in a plan of housing
12 assistance, including, without limitation, land and building acquisition, improvements, relocation, or
13 conservation, provided, however, that any money granted shall be matched with an equal amount of
14 local money exclusive of any Federal aid or assistance. Land and buildings qualifying for a grant
15 under this section shall be the site upon which housing is, or is to be, situated and sites designated for
16 other uses that are reasonably related to such housing.

17 SECTION 11. *Special Powers; Loans.* Provided that no loans shall be made unless the agency
18 finds that the construction or rehabilitation will be undertaken in an economical manner in the case of
19 eligible developers and that loans are not otherwise available, wholly or in part, from ordinary lenders
20 upon reasonably equivalent terms and conditions, the agency may:

21 (a) make, undertake commitments to make, and participate with lending institutions in the
22 making of mortgage loans, including, without limitation, Federally insured or guaranteed mortgage
23 loans, and to make temporary loans and advances in anticipation of mortgage loans to eligible
24 developers to finance the construction or rehabilitation of residential housing and related facilities for
25 eligible persons. Mortgage loans made by the agency to eligible developers shall be subject to the
26 following terms and conditions:

27 (1) no application for a mortgage loan shall be approved unless the applicant is an eligible
28 developer;

29 (2) the mortgage loan may be in an amount not to exceed [100] percent of the development
30 cost as approved by the agency in the case of a non-profit housing corporation or any public body or
31 agency, and in an amount not to exceed [90] percent of the development cost as approved by the
32 agency in the case of any other eligible developer;¹

33 (3) the mortgage loan shall be secured in such manner and be repaid in such period, not

¹This would allow non-profit housing developers to have no equity in projects but would require some slight equity to be held on the part of any other eligible developer.

1 exceeding [40] years plus the period necessary to complete construction, as may be determined by the
2 agency. In addition to such interest charges which shall be paid at least annually, the agency may
3 make and collect such fees and charges, including, but not limited to, reimbursement of the agency's
4 operating expenses, financing costs, service charges, insurance premiums, and mortgage insurance
5 premiums, as the agency determines to be reasonable;

6 (4) each mortgage and promissory note accompanying such mortgage shall contain such
7 terms and provisions and be in such form as approved by the agency;

8 (5) each mortgage loan to an eligible developer for residential housing shall be subject to an
9 agreement between the agency and the eligible developer which will subject the eligible developer and
10 its principals or stockholders, if any, to limitations established by the agency as to rentals and other
11 charges, builder's and developer's profits and fees, and the disposition of its property and franchise to
12 the extent more restrictive limitations are not provided by the law under which the eligible developer is
13 incorporated or organized or by this act which shall be the exclusive method under state or local laws
14 or ordinances to control such rental payments or other such charges by eligible developers receiving
15 money hereunder;

16 (6) the agency shall have the power at all times during the construction or rehabilitation of
17 such residential housing and the operation thereof:

18 (i) to enter upon and inspect any residential housing, including all parts thereof, for the
19 purpose of investigating the physical and financial condition thereof, and its construction, rehabilita-
20 tion, operation, management, and maintenance, and to examine all books and records of the eligible
21 developer with respect to capitalization, income, and other matters relating thereto and to make such
22 charges as may be required to cover the cost of such inspections and examinations;

23 (ii) to order such alterations, changes, or repairs as may be necessary to protect the
24 security of its investment in residential housing or the health, safety, and welfare of the occupants
25 or users thereof and to insure that the residential housing is or has been constructed or rehabilitated in
26 conformity with all applicable plans and specifications and building codes; and

27 (iii) to order any managing agent or eligible developer of residential housing to do such
28 acts as may be necessary to comply with the provisions of all applicable laws, ordinances, or building
29 codes, or any rule or regulation of the agency or the terms of any agreement concerning said residential
30 housing or to refrain from doing any acts in violation thereof, and in this regard the agency shall be a
31 proper party to file a complaint and to prosecute thereon for any violations of laws, ordinances, or
32 building codes as set forth herein;

33 (b) make, undertake commitments to make, and participate with lending institutions in the
34 making of mortgage loans to eligible persons for the purchase of residential housing including,
35 without limitation, persons who are eligible or potentially eligible for Federally insured or guaranteed

1 mortgage loans or Federally assisted programs. Mortgage loans to eligible persons shall be subject to
2 the following conditions:

3 (1) no application for a mortgage loan shall be approved unless the applicant is an eligible
4 person;

5 (2) the mortgage loan may be in an amount not to exceed [100] percent of the cost of
6 housing;

7 (3) the mortgage loan shall be secured in such manner and be repaid in such period, not
8 exceeding [40] years as may be determined by the agency, and shall bear interest at a rate determined
9 by the agency. In addition to such interest charges which shall be paid at least annually, the agency
10 may make and collect such fees and charges, including, but not limited to, reimbursement of the
11 agency's operating expenses, financing costs, service charges, insurance premiums, and mortgage
12 insurance premiums, as the agency determines to be reasonable;

13 (c) make additional conditions respecting the grant of loans or mortgage loans, pursuant to this
14 act, including, without limitation, the regulation of eligible developers and eligible persons and the
15 admission of tenants and other occupants or users of residential housing, and enter into regulatory
16 and other agreements and contracts with eligible developers under the provisions of this act;

17 (d) institute any action or proceeding against any eligible developer or person receiving a loan
18 under the provisions hereof, or owning any residential housing hereunder, in [*any court of competent*
19 *jurisdiction*], in order to enforce the provisions of this act or the terms and provisions of any agree-
20 ment or contract between the agency and such recipients of loans under the provisions hereof, or to
21 foreclose its mortgage, or to protect the public interest, the occupants of the residential housing, or
22 the stockholders or creditors, if any, of such eligible developers. In connection with any such action or
23 proceedings it may apply for the appointment of a receiver to take over, manage, operate, and maintain
24 the affairs of such eligible developer. The agency, through such agent as it shall designate, is hereby
25 authorized to accept the appointment of such receiver of any such eligible developer when so
26 appointed by [*a court of competent jurisdiction*]. In the event of the reorganization of any eligible
27 developer, to the extent possible under the provisions of law, such reorganization shall be subject to
28 the supervision and control of the agency and no such reorganization shall be had without the prior
29 written consent of the agency. In the event of a judgment against any eligible developer in any action
30 not pertaining to the foreclosure of a mortgage, there shall be no sale of any of the real property
31 included in any residential housing of such eligible developer except upon 60 days written notice to
32 the agency. Upon receipt of such notice the agency shall take such steps as in its judgment may be
33 necessary; and

34 (e) any developer or person who knowingly misrepresents to the agency any items required
35 herein and any officer or employee of the agency who knowingly accepts such misrepresentation or

1 misrepresents to others any items required herein shall, upon conviction, be guilty of a [*misdemeanor*
2 *in the first degree*].

3 SECTION 12. *Bonds and Notes; Purposes, Terms, Approval, Limitations.*

4 (a) Revenue bonds and notes¹ may be issued on behalf of the agency from time-to-time in such
5 principal amount as, in the opinion of the agency, shall be necessary to provide sufficient funds for
6 achieving its purposes, provided, however, the state shall not be liable for such bonds or notes of the
7 agency and such bonds and notes shall not be a debt of the state. Such bonds and notes shall contain
8 on the face thereof a statement to such effect.

9 (b) State bonds² payable primarily from pledged revenues, and further pledging the full faith and
10 credit of the state as additional security, may be issued on behalf of the agency from time-to-time in
11 such principal amount as, in the opinion of the agency, shall be necessary to provide sufficient funds
12 for achieving its purposes.

13 (c) The agency shall not issue annually bonds and notes backed by the full faith and credit of the
14 state in an aggregate principal amount exceeding 10 percent of the maximum amount of bonds
15 authorized [by the [*legislature*]] [*constitution*], excluding bonds and notes issued to refund outstand-
16 ing bonds and notes.

17 (d) Bonds and notes issued on behalf of the agency shall be issued by the [*central state bond*
18 *agency*] pursuant to the state bond act [*statutory citation*], where not in conflict with the provisions
19 of this act. In cases of conflict, this act shall be controlling.

20 (e) (1) Notes and bonds of the agency shall be authorized by a resolution or resolutions of the
21 agency, provided, however, that any such resolution authorizing the issuance of notes or bonds shall
22 delegate to the [*central state bond agency*] the power to issue such notes or bonds from time-to-time.

23 ** (2) The agency shall have the power, from time-to-time, to issue notes, to renew notes and
24 bonds, to pay notes, including the interest thereon, and whenever it deems refunding expedient, to
25 refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not
26 matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its
27 corporate purposes. The refunding bonds may be:

28 (i) sold and the proceeds applied to the purchase, redemption, or payment of the bonds
29 to be refunded; or

30 (ii) exchanged for the bonds to be refunded.

¹This section (and the following *Section 12*) must be developed consistent with the general state bonding provisions. A number of agencies are authorized a totally separate bonding act from the "normal" state bonding operation; others are carefully interwoven into the existing state bonding pattern if there is a central state bond agency. This act contemplates working through a central state bond agency. Those provisions included herein that are frequently covered by the state bond act or other legislation and therefore should be examined for conformity with this act are marked with **.

²State constitutional provisions should be reviewed.

1 (3) Except as may otherwise be expressly provided by resolution of the agency, every issue of
2 its notes and bonds shall be general obligations of the agency payable out of any revenues or moneys
3 of the agency, subject only to any agreements with the holders of particular notes or bonds pledging
4 any particular revenues. Any such bonds or notes may be additionally secured by a pledge of any
5 grant or contribution from the Federal government or any corporation, association, institution, or
6 person or a pledge of any moneys, incomes, or revenues of the agency from any source.

7 **(f) The notes and bonds shall be authorized by resolution or resolutions of the agency, shall
8 bear such date or dates, and shall mature at such time or times as such resolution or resolutions may
9 provide, except that no note, including any renewals thereof, shall mature more than five years from
10 the date of its original issue and no bond shall mature more than 50 years from the date of its issue as
11 the resolution may provide. The bonds may be issued as serial bonds payable in annual installments or
12 as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or
13 rates, including variations in such rates, be in such denominations, be in such form, either coupon or
14 registered, carry such registration privileges, be executed in such manner, be payable in such medium
15 of payment, at such place or places, and be subject to such terms of redemption, including redemption
16 prior to maturity, as such resolution or resolutions may provide. The notes and bonds of the agency
17 may be sold by the agency at public or private sale, at such price or prices as the agency shall
18 determine.

19 **(g) Any resolution or resolutions authorizing any notes or bonds of the agency or any issue
20 thereof may contain provisions, which shall be a part of the contract or contracts with the holders
21 thereof, as to:

22 (1) pledging all or any part of the revenues of the agency to secure the payment of notes or
23 bonds or of any issue thereof, subject to such agreements with holders of notes and bonds as may
24 then exist;

25 (2) pledging all or any part of the assets of the agency, including mortgages and obligations
26 securing the same, to secure the payment of notes or bonds or of any issue of notes or bonds, subject
27 to such agreements with holders of notes or bonds as may then exist;

28 (3) the use and disposition of the income from mortgages owned by the agency and payment
29 of the principal of mortgages owned by the agency;

30 (4) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

31 (5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied
32 and pledging such proceeds to secure the payment of notes or bonds or of any issue thereof;

33 (6) limitations on the issuance of additional notes or bonds, the terms upon which additional
34 notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds;

35 (7) the procedure, if any, by which the terms of any contract with holders of notes or bonds

1 may be amended or abrogated, the amount of notes or bonds the holders of which must consent there-
2 to, and the manner in which such consent may be given;

3 (8) limitations on the amount of moneys to be expended by the agency for its operating
4 expenses;

5 (9) vesting in a trustee or trustees such property, rights, powers, and duties in trust as the
6 agency may determine, which may include any or all of the rights, powers, and duties of the trustee
7 appointed by the holders of notes or bonds pursuant to this part, and limiting or abrogating the right
8 of holders of notes or bonds to appoint a trustee under this part or limiting the rights, powers, and
9 duties of such trustee;

10 (10) defining the acts or omissions to act which shall constitute a default in the obligations
11 and duties of the agency to the holders of notes or bonds and providing for the rights and remedies of
12 holders of notes or bonds in the event of such default, including as a matter of right the appointment
13 of a receiver, provided, however, that such rights and remedies shall not be inconsistent with the
14 general laws of the state and the other provisions of this act; and

15 (11) any other matters, of like or different character, which in any way affect the security or
16 protection of holders of notes or bonds.

17 ** (h) Any pledge made by the agency shall be valid and binding from the time when the pledge is
18 made; the revenues, moneys, or property so pledged and thereafter received by the agency shall imme-
19 diately be subject to the lien of such pledge without any physical delivery thereof or further act, and
20 the lien of any such pledge shall be valid and binding as against all parties having claims of any kind
21 in tort, contract, or otherwise against the agency, irrespective of whether such parties have notice
22 thereof. Neither the resolution nor any other instrument by which a pledge is created need be
23 recorded.

24 ** (i) The agency, subject to such agreements with noteholders or bondholders as may then exist,
25 shall have the power, out of any funds available therefor, to purchase notes or bonds of the agency,
26 which may thereupon be cancelled at a price not exceeding:

27 (1) if the notes or bonds are then redeemable, the redemption price then applicable plus
28 accrued interest to the next interest payment thereon; or

29 (2) if the notes or bonds are not then redeemable, the redemption price applicable on the first
30 date after such purchase upon which the notes or bonds become subject to redemption plus accrued
31 interest to such date.

32 ** (j) In the discretion of the agency, the notes and bonds may be secured by a trust indenture by
33 and between the agency and a corporate trustee, which may be any bank having the power of a trust
34 company or any trust company within or without the state. Such trust indenture may contain such
35 provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders as

1 may be reasonable and proper and not in violation of law, including covenants setting forth the duties
2 of the agency in relation to the exercise of its corporate powers and the custody, safeguarding, and
3 application of all moneys. The agency may provide by such trust indenture for the payment of the
4 proceeds of the notes or bonds and the revenues to the trustee under such trust indenture or other
5 depository, and for the method of disbursement thereof, with such safeguards and restrictions as it
6 may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of
7 the operating expenses of the agency. If the notes or bonds shall be secured by a trust indenture, the
8 noteholders or bondholders shall have no authority to appoint a separate trustee to represent them.

9 **(k) Whether or not the notes and bonds are of such form and character as to be negotiable
10 instruments under the terms of the uniform commercial code, the notes and bonds are hereby made
11 negotiable instruments within the meaning of, and for all the purposes of, the uniform commercial
12 code, subject only to the provisions of the notes and bonds relating to registration.

13 **(l) In the event that any of the members or officers of the agency shall cease to be members or
14 officers of the agency prior to the delivery of any notes or bonds or coupons signed by them, their
15 signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes, the same as
16 if such members or officers had remained in office until such delivery.

17 **(m) Neither the members of the agency nor any other person executing such notes or bonds
18 issued under this act shall be subject to personal liability or accountability by reason of the issuance
19 thereof.

20 **(n) The agency shall have the power to provide for the replacement of lost, destroyed, or
21 mutilated bonds or notes.

22 **(o) Revenue bonds or notes shall bear interest at such rate or rates as approved by the agency
23 notwithstanding any other provision of law.

24 **(p) Unless otherwise specifically provided by the [*central state bond agency*], which is hereby
25 given the power to waive such requirement, the notes and bonds of the agency shall be sold at public
26 sale at such price or prices as the agency shall determine.

27 SECTION 13. *Debt Service Reserve Funds; Receipts, Disbursements.*

28 (a) In order to secure bonds of the agency not backed by the full faith and credit of the state, the
29 agency shall create and establish one or more reserve funds or within a reserve fund one or more
30 accounts securing particular bonds of the agency and to be held in the manner specified in the bond
31 resolution of the agency. The reserve funds shall be held by [*the designated state agency for other*
32 *reserves*] or by a trustee or trustees designated by the agency for such purpose as may be required by
33 bond indenture and shall be known as debt service reserve funds. The agency shall pay into any
34 such reserve fund or the appropriate account within such fund:

35 (1) any money appropriated and made available by the state for the purpose of such fund or

1 account;

2 (2) any proceeds of sale of bonds, to the extent provided in the resolution of the agency
3 authorizing the issuance thereof;

4 (3) any money directed to be transferred by the agency to such fund or account; and

5 (4) any other money which may be made available to the agency for the purpose of such fund
6 or account from any other source or sources.

7 (b) All money held in or credited to any reserve fund or account, except as hereinafter provided,
8 shall be used solely for the payment of the principal of bonds of the agency secured by such reserve
9 fund or account as the same mature; required payments to any sinking fund established for the
10 amortization of such bonds, hereinafter referred to as "sinking fund payment;" the purchase or
11 redemption of such bonds of the agency; the payment of interest on such bonds of the agency; or the
12 payment of any redemption premium required to be paid when such bonds are redeemed prior to
13 maturity. Money in any reserve fund or account shall not be withdrawn therefrom at any time in such
14 amount as would reduce the amount of the fund to less than the minimum debt service reserve require-
15 ment as provided in the bond resolution securing such bonds, except for the purpose of paying the
16 principal of, sinking fund payment, redemption premium, and interest on bonds of the agency
17 secured by such reserve fund or account maturing and becoming due, and sinking fund payments for
18 the payment of which other money is not available. Any income or interest earned by, or increment to,
19 any reserve fund or account due to the investment thereof may be transferred to any other fund or
20 account of the agency as shall be designated by the agency to the extent such transfer does not reduce
21 the amount of the reserve fund or account below the minimum debt service reserve requirement.

22 (c) The agency shall not issue bonds at any time secured in whole or in part by a reserve fund or
23 account if, upon the issuance of such bonds, the amount of such fund or account will be less than the
24 minimum debt service requirement for such fund or account, unless the agency at the time of issuance
25 of such bonds shall deposit in such fund or account from the proceeds of the bonds issued, or from
26 other sources, an amount which together with the amount then in such account will not be less than
27 the minimum debt service reserve requirement for such fund or account.

28 (d) To assure the continued operation and solvency of the agency carrying out the
29 public purposes of this act, all reserve funds and any accounts therein shall be continuously main-
30 tained in an amount equal to the minimum debt service requirement for such funds and accounts. In
31 order to further assure maintenance of the debt service reserve funds and accounts, the chairman of
32 the agency on or before [December 1] shall certify to the governor the amount, if any, necessary to
33 restore any reserve fund or account, after transferring to such fund or account any money in other
34 funds or accounts of the agency not allocated to a specific debt service reserve requirement, to the
35 minimum debt service requirement for such fund or account. The governor [shall] include in the

1 annual budget the amount so certified by the chairman of the agency; however, the [legislature] is not
2 obligated to appropriate such amount.¹

3 (e) In computing the amount of any reserve fund or account for the purposes of this section,
4 securities in which all or a portion of the fund is invested shall be valued as provided by the resolution
5 of the agency creating such fund or account or, if not so provided, at par, or if purchased at less than
6 par, at their cost.

7 SECTION 14. *Exemption From Taxes and Eligibility as Investment.*

8 (a) Any real property of the agency which may be acquired on foreclosure, and personal property
9 associated therewith, the income therefrom, and the operations thereof shall not be exempt from
10 taxation by the state or any of its political subdivisions.

11 (b) All notes and bonds of the agency shall be legal investments without limitation for all
12 public bodies of this state; for all banks, trust companies, savings banks, savings associations,
13 savings and loan associations, and investment companies; for all administrators, executors, trustees,
14 and other persons carrying on an insurance business; and for all other persons whatsoever who are
15 now or may hereafter be authorized to invest in notes or bonds or other obligations of the state, and
16 shall be and constitute eligible securities to be deposited as collateral for the security of any state,
17 county, municipal, or other public funds. This subsection shall be considered as additional and
18 supplemental authority and shall not be limited without specific reference hereto.

19 SECTION 15. *Preference to Displaced Persons.* Among low income or moderate income persons
20 in programs or projects developed or funded under this act, preference shall be given to those dis-
21 placed by governmental action.

22 SECTION 16. *Antidiscrimination.*

23 (a) No person in the state shall, on the grounds or basis of race, creed, color, national origin, or
24 sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination
25 under, any program or project developed or actually funded in whole or in part with funds made
26 available under this act.

27 (b) Whenever the [secretary] determines that a recipient of assistance under this act has failed to
28 comply with subsection (a) or an applicable regulation, he shall notify the [chief executive officer] of
29 such recipient of the non-compliance and shall request the [chief executive officer] to secure com-
30 pliance. If, within a reasonable period of time, not to exceed 60 days, [the chief executive officer] of
31 the recipient of assistance under this act fails or refuses to secure compliance, the [secretary] is
32 authorized to:

33 (1) refer the matter to the attorney general with a recommendation that an appropriate civil

¹In some states, a constitutional amendment may be necessary to permit this procedure.

1 action be instituted;

2 [(2) exercise the powers and functions provided by Title VI of the *Civil Rights Act of 1964*
3 (42 U.S.C. 2000d);]

4 (3) exercise the powers and functions provided for in Section 10 of this act;

5 (4) terminate, reduce, or limit the availability of payments under this act and demand repay-
6 ment in full of any payments previously made; or

7 (5) take such other action as may be provided by law.

8 SECTION 17. *Inconsistent Provisions of Other Laws Superseded.* Insofar as the provisions of
9 this act are inconsistent with the provisions of any other law, general, special or local, the provisions
10 of this act shall be controlling.

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

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

6.104 STATE ASSISTANCE FOR REHABILITATION OF PRIVATE HOUSING¹

In a 1965 report on *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, the Advisory Commission on Intergovernmental Relations recommended the enactment of state legislation providing for state financial and technical assistance to counties and municipalities for establishing and administering urban renewal and public housing services in metropolitan areas. The Commission observed:

Large central cities are making strong efforts to strengthen and renew their deteriorating and blighted neighborhoods, but the task is enormous and complex and necessarily slow of accomplishment. In many suburban areas. . . the problems are not yet so formidable although they are likely to become so as the suburbs grow. . . . Disparities in unsound, owner occupied housing are greatest in metropolitan areas. . . .

Code enforcement is a major aspect of unsound housing, both owner and renter occupied. But building and housing code enforcement programs will work effectively only if the owners of deteriorated properties are able to obtain the necessary capital to make improvements. Such financing is often difficult to obtain from private sources because slum properties involve a high degree of risk and, in many cases, a low yield. Accordingly, code enforcement measures might be supplemented by a program of state financial assistance for the rehabilitation of homes and multiple dwellings.

Such a program has been developed by the States Urban Action Center. It provides (i) state loan guarantees to eliminate lender's risks, (ii) state interest supplements to permit loans to be made at low interest rates while providing a reasonable return to lenders, and (iii) partial exemption from municipal real estate taxes. Assistance is limited to certain deteriorated urban areas, as defined by an appropriate state department, and available only to borrowers who establish their inability to obtain financing from conventional commercial sources.

By providing that loan capital be supplied by banks and other private institutions, this legislation will limit the cost of the program to the state. In addition, state interest supplements will permit owners of deteriorated properties to obtain loans at low rates they can afford, while providing lending institutions with a fair return on their investments.

To guarantee eligible rehabilitation loans, a housing rehabilitation corporation is established. The corporation functions to guarantee rehabilitation loans made by private lending institutions to owners of eligible housing accommodations. If consistent with state constitutional provisions, the aggregate contingent liabilities of the corporation may be backed by the full faith and credit of the state. This state guaranty would further reduce the risk to the private lender.

An optional provision provides certain real estate tax exemptions for owners receiving state assistance under this proposal. Depending on state constitutional restrictions and local conditions, these exemptions could be mandated by state law or be made subject to the approval of the local legislative body. This proposal authorizes a tax exemption for an appropriate fraction of the amounts of increased valuation attributable to improvements made under the program.

A detailed discussion of this proposal may be found in the States Urban Action Center report *Action for Our Cities, Part Two: Housing* (pp. 50-54). This proposal is drawn from one appearing in the Council of State Governments, *Suggested State Legislation, 1970*, p. 84. Slight modifications have been made to the 1970 version.

Section 1 of the suggested legislation defines the terms used.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, Report A-25 (Washington, D.C.: U.S. Government Printing Office, January, 1965). Draft legislation drawn from Council of State Governments, *Suggested State Legislation, 1970*, p. 84.

Section 2 lists those requirements necessary for designation of an area as a code enforcement and rehabilitation area.

Section 3 establishes a housing rehabilitation corporation, and *Section 4* prescribes the appointment of a board of directors. *Section 5* delineates those conditions under which the corporation may be terminated.

Section 6 lists the general powers and duties of the corporation, in addition to specific powers provided elsewhere.

Section 7 exempts the corporation's property and income from taxation.

Section 8 deals with assistance by state governments, financial reports to be filed by the corporation with the governor and the legislature each year, and examination of the corporation's books by the state comptroller.

Section 9 specifies those conditions under which the corporation may guarantee loans; *Section 10* specifies the maximum amount of loans the corporation may guarantee; *Section 11* provides for state guaranty of the corporation's liabilities.

Section 12 establishes a guaranty reserve account.

Section 13 authorizes interest assistance to financial institutions with respect to corporation guaranteed loans, delineates under which conditions, and provides for state guaranty of amounts payable.

Section 14 deals with the temporary removal by the commissioner of tenants from premises to be rehabilitated.

Section 15 provides for the exemption of rehabilitated property from local or municipal taxes under certain conditions.

Section 16 provides for an initial "start-up" appropriation for the corporation.

Sections 17 and 18 provide for separability and effective date clauses, respectively.

Suggested Legislation

[ASSISTANCE FOR REHABILITATING PRIVATE HOUSING]¹

(Be it enacted, etc.)

1 SECTION 1. *Definitions.*

2 (a) "Commissioner" means the [head of the appropriate state agency] who also shall be the
3 chairman of the "corporation."

4 (b) "Corporation" means the housing rehabilitation corporation of this state.

5 (c) "Cost of rehabilitation" means the sum total of the costs incurred by an owner and approved
6 by the commissioner as reasonable and necessary for carrying out the rehabilitation of a housing
7 accommodation or accommodations, including, but not limited to, all costs of necessary studies, plans,
8 surveys and specifications, architectural, legal, engineering services, and supplies, labor, and all other
9 services.

10 (d) "Financial institution" means any bank, trust company, national banking association, savings
11 bank, savings and loan association, Federal savings and loan association, credit union, or Federal
12 credit union, any insurance company, or any other individual, partnership, trust, association, or
13 public or private corporation engaged in the business of making loans to finance the rehabilitation of
14 housing accommodations.

15 (e) "Housing accommodation" means any building, structure, or portion thereof which is
16 designed to be and is occupied as the residence or home of one or more persons or families.

17 (f) "Owner" means any person, firm, or corporation having the legal or beneficial ownership of
18 a housing accommodation or of a building or structure containing one or more housing accommoda-
19 tions.

20 (g) "Rehabilitation" means the improvement and repair of one or more housing accommodations
21 and facilities incidental thereto.

22 SECTION 2. *Designation of Code Enforcement and Rehabilitation Area; Eligibility.* The commis-
23 sioner may, upon nomination by the governing body of a municipality or county, designate any area
24 of such municipality or county as a code enforcement and rehabilitation area, if he finds:

25 (a) that the area is substandard or unsanitary;

26 (b) that a substantial proportion of the housing accommodations in the area are in a deteriorating
27 or deteriorated condition, and fail to conform to any applicable municipal or county housing code,

¹Some states may find it desirable to incorporate the substance of this draft bill into the general powers, duties, and activities of the state housing finance agency. (See draft bill entitled *State Housing Finance Agency.*)

1 fire ordinances, or health regulations; and

2 (c) that rehabilitation assistance under this act is needed to render housing accommodations
3 adequate, safe, and sanitary and to conform to any applicable municipal or county housing codes, fire
4 ordinances, or health regulations, and that sufficient financial assistance for this purpose is not
5 available from private, municipal, or Federal sources.

6 SECTION 3. *Housing Rehabilitation Corporation.* There is established the housing rehabilitation
7 corporation of this state, which shall be a corporate governmental agency and a public corporation.

8 SECTION 4. *Governing Body.* The corporation shall be governed and all its corporate powers
9 exercised by a board of directors consisting of the following three members:

10 (a) the head of the [*department of housing and community development*], who shall be the chair-
11 man and chief executive officer of the corporation;

12 (b) the [*commissioner of banking*]; and

13 (c) the head of the state [*budget agency*]. Members shall serve until their successors assume
14 office. Members shall serve without compensation but shall be paid their expenses. The powers
15 of the corporation [including the power to delegate powers to members and employees] shall be vested
16 in and exercised by not less than two of its members.

17 SECTION 5. *Duration.* The existence of the corporation shall continue until terminated by law,
18 but the corporation shall remain in existence so long as loans guaranteed by the corporation pursuant
19 to this article are outstanding. Upon the dissolution of the corporation, its rights and properties shall
20 pass to the state.

21 SECTION 6. *General Powers and Duties.* In addition to specific powers provided elsewhere by
22 law, the corporation may:

23 (a) sue and be sued;

24 (b) have a seal and alter it at will;

25 (c) make contracts and other instruments;

26 (d) make bylaws, rules, and regulations governing its operations and the use of its property and
27 facilities;

28 (e) acquire, hold, mortgage, pledge, and dispose of real or personal property;

29 (f) appoint officers, agents, and employees, prescribe their powers and duties, and fix their
30 compensation;

31 (g) invest any funds not required for immediate use or disbursement, including any funds held in
32 reserve, in obligations of this state or of the United States, or obligations the principal and interest of
33 which are guaranteed by this state or the United States;

34 (h) agree to guarantee and guarantee loans made by financial institutions to owners of housing
35 accommodations, as herein provided, and take action upon default of these loans as herein provided;

1 (i) enter into agreements to pay annual sums in lieu of taxes to any political subdivision of the
2 state with respect to any real property owned by the corporation;

3 (j) accept any gifts, grants, or loans of funds or property or financial or other aid of any form
4 from the state or Federal government or any agency thereof or from any other sources and to comply
5 with the terms and conditions thereof [not inconsistent with this act];

6 (k) engage the services of any state department on a contract basis for rendering staff or profes-
7 sional assistance, and engage the services of any private person, firm, or corporation on a contract
8 basis for rendering staff or professional assistance, or advice; and

9 (l) conduct its affairs, manage its business, and do any and all things necessary in aid of its
10 purposes, powers, and duties as defined by law.

11 SECTION 7. *Exemption from Taxation of Property and Income.* The property of the corporation
12 and its income and operations shall be exempt from taxation.

13 SECTION 8. *Assistance by State Departments; Reports; Examinations.*

14 (a) Each state officer and department shall render assistance and services as may be requested by
15 the corporation.

16 (b) The corporation shall file with the governor and the [legislature] within [] days after the end
17 of its fiscal year a report of its operations, receipts and expenditures during the year, and its assets and
18 liabilities [including a schedule of outstanding guaranties] at the end of such year. This report shall
19 be open to public inspection. The corporation shall file additional reports of its operations and
20 financial condition as required by law or administrative rule.

21 (c) The [state comptroller] may from time-to-time, and shall at least once every [] years, exam-
22 ine the books and accounts of the corporation.

23 SECTION 9. *Guaranty of Loans.*

24 (a) The corporation may guarantee a loan made by a financial institution to an owner to finance
25 the cost of rehabilitation of a housing accommodation, subject to the requirements of this section.

26 (b) This guaranty shall constitute an undertaking by the corporation to pay promptly to the
27 holder of a guaranteed loan, any installment of principal or interest, upon which the owner is in
28 default.

29 (c) No guaranty shall be made by the corporation pursuant to this act unless:

30 (1) the housing accommodation for which the guaranty is made is located in an area desig-
31 nated by the commissioner as a code enforcement and rehabilitation area pursuant to Section 2 of this
32 act;

33 (2) the commissioner certifies that the owner is unable to secure necessary funds for rehabili-
34 tation from ordinary sources upon reasonable terms and conditions; and that the loan for which the
35 guaranty is made is an acceptable risk, taking into consideration the need for the rehabilitation, the

1 security, if any, available for the loan or loans, and the ability of the owner to repay the loan;

2 (3) the loan for which the guaranty is made shall not exceed, in aggregate, [90] percent of the
3 cost of rehabilitation of the housing accommodation; and

4 (4) the commissioner approves in advance all plans and specifications of the rehabilitation to
5 be carried out.

6 (d) Any loan for which the guaranty is made shall be repaid, with interest at a rate as may be
7 agreed upon by the owner, the financial institution, and the corporation, in periodic, but not
8 necessarily equal, payments of principal and interest, within a period of not more than [] years. The
9 loan may also contain other conditions, consistent with the provisions of this act, as may be pre-
10 scribed by the commissioner by regulation, or as may be agreed upon by the owner, the financial
11 institution, and the corporation.

12 (e) The corporation, subject to the approval of the board, may charge a premium for any guaranty
13 made pursuant to this act. This premium shall not exceed [[] ths of [one] percent] of the principal
14 amount of the loan guaranteed.

15 (f) The commissioner, pursuant to regulations adopted by the board, shall specify for housing
16 accommodations for which guaranties are made:

17 (1) standards of repair and maintenance by the owner; and

18 (2) schedules of maximum rents and rent increases.

19 (g) So long as any guaranteed loan remains outstanding, the corporation may:

20 (1) approve or disapprove in advance any sale by an owner of a housing accommodation and
21 the terms and conditions of the sale; and

22 (2) approve or disapprove in advance all borrowing by an owner from any other person,
23 firm, or corporation.

24 (h) If the corporation, pursuant to the terms of a guaranty, makes any payment upon a defaulted
25 loan to the holder thereof, the corporation shall be subrogated to the rights of the holder.

26 (i) The directors, officers, and employees of the corporation shall not be subject to any personal
27 liability on account of any guaranty made by the corporation.

28 SECTION 10. *Maximum Aggregate Guaranties by the Corporation.* The corporation shall not
29 guarantee any loan pursuant to Section 9 of this act, which causes the aggregate principal amount of
30 the loans guaranteed by the corporation to exceed [\$].

31 SECTION 11. *Pledge of State Credit.*¹ [*Consistent with state constitutional provisions,*] the
32 aggregate contingent liabilities of the corporation on guaranties made pursuant to Section 9 of this
33 act, subject to the maximum aggregate limit set forth in Section 10, are guaranteed by the state. If the
34 corporation fails to make payment when due on any guaranty, the [comptroller] shall set apart from

¹This section should be considered in light of state constitutional provisions relating to debt limitations.

1 the first revenues thereafter received, applicable to the general fund of the state, a sum sufficient to
2 make payment to the holder, and shall apply the moneys set apart; thereupon the state shall be sub-
3 rogated to the rights of the holder.

4 SECTION 12. *Guaranty Reserve Account.* The corporation shall establish a special account, to
5 be known as the guaranty account, and shall pay into this account moneys appropriated and made
6 available by the state for the purposes of the account, all premiums received pursuant to subsection (e)
7 of Section 9 of this act, and other moneys [from any other source] available for the purposes of the
8 account. All moneys held in the guaranty reserve account shall be used by the corporation to meet its
9 liabilities on guaranties made pursuant to Sections 9 and 10 of this act, and to pay the administrative
10 costs of the corporation.

11 SECTION 13. *Interest Assistance.*

12 (a) The commissioner, in the name of the state, may provide interest assistance to any financial
13 institution with respect to any loan guaranteed by the corporation pursuant to this act. This assist-
14 ance, subject to the limitations of this section, may be in amounts as determined by the commissioner
15 to be necessary to enable the owner to afford the interest cost of the loan.

16 (b) A contract for interest assistance shall constitute an undertaking by the state to grant to a
17 holder of a guaranteed loan for a term not to exceed the term of the loan periodic supplements to the
18 interest payable by the owner.

19 (c) [*Consistent with state constitutional provisions,*] the good faith and credit of the state is
20 pledged to the payment of all amounts payable under all contracts for interest assistance, as these
21 amounts fall due. If the commissioner fails to pay an amount when due, the [comptroller] shall set
22 apart from the first revenues thereafter received, applicable to the general fund of the state, a sum
23 sufficient to pay the amount, and shall apply the moneys thus set apart.

24 [(d) The amounts payable in any year under a contract for interest assistance, when added to the
25 interest payable in that year by the owner upon the guaranteed loan, shall not exceed the maximum
26 rate of interest which the financial institution could charge the owner under the state usury laws.]

27 (e) Any contract for interest assistance may also contain other conditions, consistent with the
28 provisions of this act, as may be prescribed by the commissioner, pursuant to regulations approved by
29 the board.

30 (f) Payments of interest assistance shall be made directly to the holder of the guaranteed loan,
31 shall not be subject to the control of the owner, and shall not constitute income to the owner for
32 taxation or other purposes.

33 SECTION 14. *Temporary Removal of Tenants.*

34 (a) The commissioner, with respect to any premises for which a guaranteed rehabilitation loan is
35 made pursuant to this act, may order any tenants temporarily to vacate the premises during the course

1 of the rehabilitation, if he finds it necessary to have the premises vacated to proceed with
2 rehabilitation.

3 (b) Whenever the commissioner orders a person temporarily to vacate the premises, he shall pay to
4 the person the actual, necessary, and reasonable expenses of moving from the premises and obtaining
5 temporary accommodations elsewhere. Pursuant to the terms of [*state uniform relocation assistance or*
6 *similar statute*], before ordering temporary vacation of premises, the commissioner shall ascertain the
7 availability of standard housing for the period. This payment shall not exceed the amount of [\$]
8 for any tenant and his family.

9 [(c) Any tenants who have been temporarily ordered to vacate the premises shall have the right of
10 reinstatement therein, after the rehabilitation has been completed.]

11 SECTION 15. *Real Estate Tax Exemptions.* [Upon the consent of the local legislative body of the
12 municipality,] the real property constituting or containing the housing accommodation with respect
13 to which a guaranteed loan is made pursuant to this act, shall be exempt from local or municipal
14 taxes, other than assessments for local improvements, to the extent of [] percent of that portion of
15 the value which represents an increase over the assessed valuation of the property immediately before
16 the rehabilitation was commenced and which is attributable to the rehabilitation. The tax exemptions
17 may operate and continue during the period of rehabilitation of the housing accommodation and
18 during the period after completion of the rehabilitation so long as the loan or guaranty by the cor-
19 poration remains outstanding, but shall not continue more than [] years after the date of completion
20 of the rehabilitation.

21 SECTION 16. *Initial Appropriation.* [*Appropriate provision for limited start-up appropriation*
22 *for the corporation.*]

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

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

6.105 UNIFORM RELOCATION ASSISTANCE¹

Relocation of persons and businesses displaced by governmental construction programs is a serious and growing problem in the United States. All indications are that the pace of displacement will accelerate with increased urbanization and the consequent mounting demands for urban services and the growth of Federal, state, and local programs for the renewal of cities and the construction of roads. It has been estimated that from 1964 to 1972 the Federally aided urban renewal and highway programs alone dislocated 825,000 families and individuals and 136,000 businesses.

In its 1965 report, *Relocation: Unequal Treatment of People and Businesses Displaced by Governments*, the Advisory Commission on Intergovernmental Relations found great inconsistencies in provisions for relocation assistance among levels of government and among programs at the same level. As a result, a family at that time could be displaced by a state or local public works project and receive no moving expenses, payments, or advisory assistance, while a family across the street, displaced by a Federally aided urban renewal project, would be reimbursed for moving expenses and receive governmental help in locating a new residence.

There are serious problems even where governments make earnest efforts to provide relocation assistance. The single greatest problem in relocating families is the shortage of standard housing for low income groups, particularly non-whites, the elderly, and large families. Among business displacees, small businesses owned and operated by the elderly are major displacement casualties. Advice and assistance are of growing importance for these groups that are most seriously affected by displacement.

In preparation of its relocation study, the Commission cooperated with the United States Conference of Mayors in a joint survey of the problems and practices of 100 cities over 100,000 population. The survey disclosed that Federally assisted urban renewal and highway activities together, accounted for about 65 percent of the people, and about 90 percent of the businesses displaced by governmental action in urban areas.

Uniform relocation policies for all Federal and Federally assisted projects were established by Congress with the passage of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* (P.L. 91-646). The act requires that after July 1, 1972, all states must provide substantially the same relocation benefits and advisory assistance as that required of Federal agencies for persons displaced by Federally aided projects. Establishment of uniformity among Federally aided state and local programs, however, still leaves the problem of inconsistencies and inadequacies among other state and local programs.

State governments should assume responsibility for establishing greater consistency and equity in the relocation practices of state and local programs. Principles of fair treatment — as basic as those in the eminent domain law on which the process of public property taking depends — are matters of fundamental statewide concern and, therefore, require legislative consideration.

The following draft bill is consistent with the provisions of the Federal act and would establish a uniform state relocation policy for persons and businesses displaced by state and local programs. A displaced person would be entitled to reimbursement on the basis of either (a) actual and reasonable expenses involved in moving himself, his family, his business or farm operation, or other personal property, or (b) a fixed payment in accordance with a fixed schedule. The legislation includes the minimum dollar amounts, shown in brackets, which comply with the Federal law.

State or local agencies causing displacement would be required to provide a relocation assistance program which could include: (1) determining the relocation needs of displacees; (2) assisting businessmen and farmers in obtaining and becoming established in suitable business locations or replacement farms; (3) supplying information about Federal government assistance programs; and (4) helping to minimize hardships caused by relocation. State or local agencies would also be required to provide temporary relocation for displaced families and individuals and to provide assurance that standard housing is available or being made available that is comparable in quality, cost, and relocation to that from which they are displaced.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Relocation: Unequal Treatment of People and Businesses Displaced by Governments*, Report A-26 (Washington, D.C.: U.S. Government Printing Office, January, 1965).

The governor or the state community affairs department would be required to establish regulations to assure that payments are reasonable and fair, that payments are made with reasonable promptness, and that there is provision for appropriate administrative review of any determination as to the eligibility for relocation payments authorized by the act.

In the interest of economy and efficiency, state and local agencies are authorized to use the administrative machinery of other state agencies or units of local government for making relocation payments and providing relocation services.

In cases where a local government causes displacement by a program in which the state shares part of the cost, the locality would be entitled to reimbursement for the relocation cost in the same manner, and to the same extent, as it receives reimbursement for other project costs.

The draft bill was prepared by a task force consisting of persons from the Office of Management and Budget, Federal Departments of Housing and Urban Development, Transportation, Justice, and Defense, the National Governors' Conference, the Council of State Governments, and the Advisory Commission on Intergovernmental Relations.

Section 1 sets out the declaration of policy and *Section 2* deals with definitions.

Section 3 provides for assistance in the form of moving and related expenses for displaced persons and businesses. *Sections 4 and 5* provide assistance for replacement housing for homeowners and for tenants and certain others, respectively.

Section 6 requires the establishment of relocation assistance advisory programs. *Section 7* requires an agency to assure that housing comparable or superior to that from which the individual(s) is being displaced be available before displacement.

Section 8 provides that the governor or department of community affairs adopt certain rules and regulations to assure that payments and assistance is administered fairly, that the displaced person be paid as soon as practicable; and, aggrieved persons may have their applications reviewed by the department of community affairs or a similar state agency assigned this task.

Section 9 allows the administering agency to contract for the services of any individual, firm, association, corporation, or other governmental agency in connection with these programs.

Section 10 asserts that there shall be funds available to carry out these programs.

Section 11 requires that states participate in the cost of local relocation payments and services.

Section 12 mandates that persons moved as the result of building code enforcement or voluntary rehabilitation of buildings pursuant to a governmental program are deemed to be displaced.

Section 13 provides that payments shall not be considered as income or resources. *Section 14* provides for an appeal procedure. *Sections 15, 16, and 17* provide for separability, repeals, and effective date clauses, respectively.

Suggested Legislation

[AN ACT TO PROVIDE FOR UNIFORM, FAIR, AND EQUITABLE TREATMENT
OF PERSONS, BUSINESSES, AND NON-PROFIT ORGANIZATIONS
DISPLACED BY STATE AND LOCAL PROGRAMS]

(Be it enacted, etc.)

1 SECTION 1. *Declaration of Policy.* The purpose of this act is to establish a uniform policy for
2 the fair and equitable treatment of persons displaced by the acquisition of real property by state
3 and local land acquisition programs, by building code enforcement activities, or by a program of
4 voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental
5 supervision. The policy shall be uniform as to:

- 6 (1) relocation payments;
7 (2) advisory assistance;
8 (3) assurance of availability of standard housing; and
9 (4) state reimbursement for local relocation payments under state assisted and local pro-
10 grams.

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

12 (a) "Agency" means any department, agency, or instrumentality of the state, or of a political
13 subdivision of the state, or any department, agency, or instrumentality of two or more political sub-
14 divisions of the state.

15 (b) "Person" means any individual, partnership, corporation, or association.

16 (c) "Displaced person" means any person who, on or after the effective date of this act, moves
17 from real property, or moves his personal property from real property, as a result of the acquisition
18 of such real property, in whole or in part, or as the result of the written order of the acquiring agency
19 to vacate real property, for a program or project undertaken by an agency, and solely for the pur-
20 poses of Sections 3(a) and (b) and Section 6 of this act.

21 (d) "Non-profit organization" means [define for state purposes; might use definition for tax
22 exemption purposes].

23 (e) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

- 24 (1) for the purchase, sale, lease, and rental of personal and real property, and for the manu-
25 facture, processing, or marketing of products, commodities, or any other personal property;
26 (2) for the sale of services to the public;
27 (3) by a non-profit organization; or
28 (4) solely for the purposes of Section 3(a) of this act, for assisting in the purchase, sale,

1 resale, manufacture, processing, or marketing of products, commodities, personal property, or
2 services by the erection and maintenance of an outdoor advertising display or displays, whether or not
3 such display or displays are located on the premises on which any of the above activities are con-
4 ducted.

5 (f) "Farm operation" means any activity conducted solely or primarily for the production of one
6 or more agricultural products or commodities, including timber, for sale or home use, and customarily
7 producing such products or commodities in sufficient quantity to be capable of contributing material-
8 ly to the operator's support.

9 SECTION 3. *Moving and Related Expenses.*

10 (a) If an agency acquires real property for public use it shall make fair and reasonable relocation
11 payments to displaced persons and businesses as required by this act, for:

12 (1) actual, reasonable expenses in moving the person, his family, business, farm operation,
13 or other personal property;

14 (2) actual direct losses of tangible personal property as a result of moving or discontinuing a
15 business or farm operation, but not to exceed an amount equal to the reasonable expenses that would
16 have been required to relocate such property as determined by the agency; and

17 (3) actual, reasonable expenses in searching for a replacement business or farm.

18 (b) Any displaced person eligible for payments under subsection (a) of this section who is dis-
19 placed from a dwelling and who elects to accept the payments authorized by this subsection in lieu
20 of the payments authorized by subsection (a) of this section may receive a moving expense allowance,
21 determined according to a schedule established by the agency, not to exceed [\$300], and a dislocation
22 allowance of [\$200].

23 (c) Any displaced person eligible for payments under subsection (a) of this section who is dis-
24 placed from his place of business or from his farm operation and who elects to accept the payment
25 authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may
26 receive a fixed payment in an amount equal to the average annual net earnings of the business or
27 farm operation, except that such payment shall not be less than [\$2,500] nor more than [\$10,000].
28 In the case of a business, no payment shall be made under this subsection unless the agency is satis-
29 fied that the business:

30 (1) cannot be relocated without a substantial loss of its existing patronage; and

31 (2) is not a part of a commercial enterprise having at least one other establishment not being
32 acquired by the agency, which is engaged in the same or similar business. For purposes of this sub-
33 section, the term "average annual net earnings" means one-half of any net earnings of the business
34 or farm operation, before Federal, state, and local income taxes, during the two taxable years immedi-
35 ately preceding the taxable year in which the business or farm operation moves from the real proper-

1 ty acquired for such project, or during such other period as the agency determines to be more equit-
2 able for establishing such earnings, and includes any compensation paid by the business or farm
3 operation to the owner, his spouse, or his dependents during such period.

4 SECTION 4. *Replacement Housing for Homeowners.*

5 (a) In addition to payments otherwise authorized by this act, the agency shall make an addi-
6 tional payment not in excess of [\$15,000] to any displaced person who is displaced from a dwelling
7 actually owned and occupied by the displaced person for not less than 180 days prior to the initiation
8 of negotiations for the acquisition of the property. The additional payment shall include the follow-
9 ing elements:

10 (1) the amount, if any, which when added to the acquisition cost of the dwelling acquired,
11 equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary
12 dwelling adequate to accommodate such displaced person, reasonably accessible to public services and
13 places of employment and available on the private market. All determinations required to carry out
14 this paragraph shall be determined by regulations issued pursuant to Section 8 of this act;

15 (2) the amount, if any, which will compensate the displaced person for any increased interest
16 costs which the person is required to pay for financing the acquisition of a comparable replacement
17 dwelling. The amount shall be paid only if the dwelling acquired was encumbered by a *bona fide*
18 mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation
19 of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the ag-
20 gregate interest and other debt service costs of that amount of the principal of the mortgage on the
21 replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling,
22 over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present
23 value. The discount rate shall be determined by regulations issued pursuant to Section 8 of this act;
24 and

25 (3) reasonable expenses incurred by the displaced person for evidence of title, recording fees,
26 and other closing costs incident to the purchase of the replacement dwelling, but not including pre-
27 paid expenses.

28 (b) The additional payment authorized by this section shall be made only to a displaced person
29 who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than
30 the end of the one year period beginning on the date on which he receives final payment of all costs
31 of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever
32 is the later date.

33 SECTION 5. *Replacement Housing for Tenants and Certain Others.* In addition to amounts
34 otherwise authorized by this act, an agency shall make a payment to or for any displaced person
35 displaced from any dwelling not eligible to receive a payment under Section 4, which dwelling was

1 actually and lawfully occupied by the displaced person for not less than 90 days prior to the initia-
2 tion of negotiations for acquisition of such dwelling. The payment shall be either:

3 (a) the amount necessary to enable the displaced person to lease or rent for a period not to
4 exceed [four years], a decent, safe, and sanitary dwelling of standards adequate to accommodate the
5 person in areas not generally less desirable in regard to public utilities and public and commercial
6 facilities, and reasonably accessible to his place of employment, but not to exceed [\$4,000]; or

7 (b) the amount necessary to enable the person to make a downpayment (including incidental
8 expenses described in Section 4(a)(3)) on the purchase of a decent, safe, and sanitary dwelling of
9 standards adequate to accommodate such person in areas not generally less desirable in regard to pub-
10 lic utilities and public and commercial facilities, but not to exceed [\$4,000], except that if the amount
11 exceeds [\$2,000] the person must equally match any amount in excess of [\$2,000] in making the
12 downpayment.

13 SECTION 6. *Relocation Assistance Advisory Programs.*

14 (a) Whenever the acquisition of real property for a program or project undertaken by an agency
15 will result in the displacement of any person on or after the effective date of this act, the agency shall
16 provide a relocation assistance advisory program for displaced persons which shall offer the services
17 prescribed in subsection (b) of this section. If the agency determines that any person occupying
18 property immediately adjacent to the real property acquired is caused substantial economic injury
19 because of the acquisition, it may offer the person relocation advisory services under the program.

20 (b) Each relocation assistance program required by subsection (a) shall include such measures,
21 facilities, or services as may be necessary or appropriate in order:

22 (1) to determine the needs of displaced persons, business concerns, and non-profit organiza-
23 tions for relocation assistance;

24 (2) to assist owners of displaced businesses and farm operations in obtaining and becoming
25 established in suitable business locations or replacement farms;

26 (3) to supply information concerning programs of the Federal, state, and local governments
27 offering assistance to displaced persons and business concerns;

28 (4) to assist in minimizing hardships to displaced persons in adjusting to relocation; and

29 (5) to secure, to the greatest extent practicable, the coordination of relocation activities
30 with other project activities and other planned or proposed governmental actions in the community
31 or nearby areas which may affect the carrying out of the relocation program.

32 SECTION 7. *Assurance of Availability of Standard Housing.* Whenever the acquisition of real
33 property for a program or project undertaken by an agency will result in the displacement of any per-
34 son on or after the effective date of this act, the agency shall assure that, within a reasonable period
35 of time prior to displacement, there will be available in areas not generally less desirable in regard

1 to public utilities and public and commercial facilities and at rents or prices within the financial
2 means of the families and individuals displaced, decent, safe, and sanitary dwellings at least equal
3 in number to the number of, and available to, displaced persons who require dwellings, and reason-
4 ably accessible to their places of employment, [except that regulations issued pursuant to Section 8
5 of this act may prescribe situations when these assurances may be waived].

6 SECTION 8. *Authority of the [Governor] [Department of Community Affairs].*

7 (a) The [governor] [department of community affairs] shall adopt rules and regulations neces-
8 sary to assure that:

9 (1) the payments and assistance authorized by this act shall be administered in a manner
10 which is fair and reasonable, and as uniform as practicable;

11 (a) a displaced person who makes proper application for a payment authorized by this act
12 shall be paid promptly after a move or, in hardship cases, be paid in advance; and

13 (3) any person aggrieved by a determination as to eligibility for a payment authorized by this
14 act, or the amount of a payment, may have his application reviewed by the [department of communi-
15 ty affairs].

16 (b) The [governor] [department of community affairs] may prescribe other regulations and
17 procedures, consistent with the provisions of this act.

18 SECTION 9. *Administration.* In order to prevent unnecessary expense and duplication of
19 functions, and to promote uniform and effective administration of relocation assistance programs
20 for displaced persons, the agency [with the approval of the governor or the [department of communi-
21 ty affairs]] may enter into contracts with any individual, firm, association, or corporation for services
22 in connection with those programs, or may carry out its functions under this act through any Federal
23 agency or any department or instrumentality of the state or its political subdivisions having an
24 established organization for conducting relocation assistance programs.

25 SECTION 10. *Fund Availability.* Funds appropriated or otherwise available to any agency for the
26 acquisition of real property, or any interest therein for a particular program or project, shall be
27 available also for obligation and expenditure to carry out the provisions of this act as applied to that
28 program or project.

29 SECTION 11. *State Participation in Cost of Local Relocation Payments and Services.* If a [unit of
30 local government] acquires real property, and state financial assistance is available to pay the cost,
31 in whole or part, of the acquisition of that real property, or of the improvement for which the prop-
32 erty is acquired, the cost to the [unit of local government] of providing the payments and services pre-
33 scribed by this act shall be included as part of the costs of the project for which state financial assist-
34 ance is available, and the [unit of local government] shall be eligible for state financial assistance for
35 relocation payments and services in the same manner and to the same extent as other project costs.

1 SECTION 12. *Displacement by Building Code Enforcement or Voluntary Rehabilitation.* A per-
2 son who moves or discontinues his business, or moves other personal property, or moves from his
3 dwelling on or after the effective date of this act as the direct result of building code enforcement
4 activities, or a program of rehabilitation of buildings conducted pursuant to a governmental program,
5 is deemed to be a displaced person for the purposes of this act.

6 SECTION 13. *Payments Not to be Considered as Income or Resources.* No payment received
7 by a displaced person under this act shall be considered as income or resources for the purpose of
8 determining the eligibility or extent of eligibility of any person for assistance under any state law,
9 or for the purposes of the state's personal income tax law, corporation tax law, or other tax laws. These
10 payments shall not be considered as income or resources of any recipient of public assistance and
11 the payments shall not be deducted from the amount of aid to which the recipient would otherwise
12 be entitled.

13 SECTION 14. *Appeal Procedure.* Any person or business concern aggrieved by a final adminis-
14 trative determination pursuant to [cite *administrative procedures act*], concerning eligibility for reloca-
15 tion payments authorized by this act, may appeal that determination to the [court of appropriate
16 jurisdiction] in the area in which the land taken for public use is located, or in which the building
17 code enforcement activity occurs, or the voluntary rehabilitation program is conducted.

18 SECTION 15. *Separability.* [Insert separability clause].

19 SECTION 16. *Repeals.* [Cite existing state relocation statutes.]

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

6.106 STATE FINANCIAL ASSISTANCE AND CHANNELIZATION OF FEDERAL GRANT PROGRAMS FOR URBAN DEVELOPMENT¹

A generally accepted characteristic of our federal system of government in the United States is the sharing of responsibilities among the three levels of government — Federal, state, and local. This is especially true in meeting problems of urban growth and development. The states as well as the Federal and local governments have a vital stake and responsibility in this area.

Since World War II, the growth of direct relationships between the Federal government and cities, counties, and other units of local government has been of increasing concern to state governors and legislatures. The tendency of Federal agencies and local governments to “bypass” the states has been deplored. On the other hand, the Congress and local governments, especially the larger cities, have contented that inaction on the part of state government should not be permitted to deprive a local government of Federal aid if the grant application met all requirements set forth in the Federal statute.

Gradually, at both state and Federal levels, considerable agreement has been developing to the effect that if a state government desires to assert fully its responsibilities in a Federally aided field of local activity with funds and administrative machinery, then the relationship should be primarily Federal-state in character. On the other hand, it is widely agreed that if the state chooses to remain aloof from the problem toward which the Federal aid is directed then local units of government should be free to participate in the Federal program and to deal directly with the Federal agencies concerned. This policy was first spelled out in the *Federal Airport Act of 1946*.

In the meantime, many problems of local government in urban areas become more acute and state leadership and concern are called for increasingly. As the Council of State Governments has pointed out in its publication, *State Responsibility in Urban Regional Development*,

State government possesses singular qualifications to make profound and constructive contributions to urban regional development practice. The state is in fact an established regional form of government. It has ample powers and financial resources to move broadly on several fronts. Far ranging state highway, recreation and water resources development programs, to name a few, have had and will continue to have great impact on the development of urban and regional areas. Moreover, the state occupies a unique vantage point, broad enough to allow it to view details of development within its boundaries as part of an interrelated system, yet close enough to enable it to treat urban regional problems individually and at first hand.²

The Advisory Commission on Intergovernmental Relations has recommended “that the states assume their proper responsibilities for assisting and facilitating urban development; to this end it is recommended that Federal grants-in-aid to local governments for urban development be channeled through the states in cases where a state (a) provides appropriate administrative machinery to carry out relevant responsibilities, and (b) provides significant financial contributions and, when appropriate, technical assistance to the local governments concerned.”³

State legislation to carry out these responsibilities for urban development should establish appropriate administrative machinery and technical assistance programs, as well as financial assistance for local urban development activities. Financial contributions should be significant and not token; they might appropriately be between 20 and 50 percent of the non-Federal share of urban development programs. These two contributions — namely (a) the creation of suitable state administrative machinery and (b) state financial assistance — would give the states a meaningful and effective role in urban affairs. State appropriations should be sufficient to match the availability of Federal grants so as to assure that state involvement does

¹Derived from: Advisory Commission on Intergovernmental Relations, *Impact of Federal Urban Development Programs on Local Government Organization and Planning*, Report A-20 (Washington, D.C.: U.S. Government Printing Office, January, 1964).

²*State Responsibility in Urban Regional Development: A Report to the Governor's Conference* (Chicago: The Council of State Governments, 1962), pp. 17-18.

³Advisory Commission on Intergovernmental Relations, *Impact of Federal Urban Development Programs on Local Government Organization and Planning* (Washington: U.S. Government Printing Office, 1964), p. 30.

not act to reduce the eligibility of localities for Federal aid.

The following legislation would: (1) authorize state financial and other assistance to localities for specified purposes; (2) designate appropriate state administrative machinery to carry out the states' urban development responsibilities; and (3) provide that where the foregoing conditions are met with respect to any Federal aid program, all funds and relationships with respect to such program would flow through the state except as might be provided otherwise for purposes of administrative convenience by the state agency concerned.

In other words, the proposed legislation provides a framework within which states can "buy into" present programs of Federal aid to localities, assuming concurrently with such action, policy control, coordinative and other aspects of the usual state-local relationships. (This concept accords with customary state practice in that state prescriptions governing Federally aided local programs generally stem from a legislative desire to safeguard the expenditure of state funds.) In this manner, the state becomes able to exercise its influence with regard to the scope and type of projects undertaken and to assure the coordination of such projects with other aspects of overall state policy.

Programs which might benefit from state financial and technical assistance and from state coordination include urban planning assistance, economic development, community development, the planning and construction of hospitals, waste treatment works, public housing, and airports. Appropriate portions of the following suggested legislation could be enacted to supplement existing or new legislation in any of these program areas, or other areas deemed appropriate by the legislatures.

In order to assist in the state function of developing state programs of assistance and to provide the necessary leadership and concern, a state may desire to enact a general program of financial reporting and voluntary administrative assistance along with the Commission's recommended financial participation. This program should provide comprehensive coverage of all activities in the state and be carefully structured to complement those particular programs in which the state has asserted its full responsibilities including financial assistance. Suggested legislation in this case has been developed from the Council of State Governments' volume of *Coordination of Federally Aided Local and State Agency Programs* as well as California's 1971 Chapter 1462 establishing a model cities coordinator.

Section 1 sets forth the purpose of the act, and *Section 2* provides definitions of terms used.

Section 3 mandates that units of governments may not apply for or expend Federal grants except in accordance with the provisions of this act.

Section 4 requires governmental units to submit a copy of their application to the state clearinghouse agency prior to submission to a Federal agency, and *Section 5* requires notification to the state clearinghouse agency once a grant has been awarded.

Section 6 provides the manner of reporting of expenditures, including a report to the governor and the legislature.

Section 7 deals with programs of direct state interest and sets out the procedures to be followed by the appropriate state agencies regarding grant applications for such programs.

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

Suggested Legislation

[AN ACT RELATING TO STATE FINANCIAL ASSISTANCE AND
CHANNELIZATION OF FEDERAL GRANT PROGRAMS
FOR URBAN DEVELOPMENT]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The purpose of this act is to provide information which will assist in the
2 development of an effective urban problem solving capability in this state and to designate certain
3 programs for direct state financial assistance and consideration so as to:

4 (a) develop maximum flexibility in Federal assistance in order to provide this state and its local
5 governments a greater ability to define their needs, set their priorities, and design programs which
6 respond directly to local conditions;

7 (b) recognize the local governmental skills and resources needed to lead urban problem solving
8 efforts;

9 (c) coordinate independent local, state, and Federal programs so that the resources of all levels
10 of government will be concentrated on the most pressing urban problems; and

11 (d) develop programs which integrate specialized services of different agencies to meet the multi-
12 faceted nature of urban problems and specifically coordinate and integrate physical and social
13 planning and delivery of services.

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

15 (a) "Application" means a written request to a Federal agency for grant funds.

16 (b) "Federal grant" means any financial assistance made to a governmental unit by an agency of
17 the United States government, whether a loan, gift, grant, contract, or in any other form.

18 (c) "Governmental unit" means any agency of state government and any county, city, village,
19 town, township, special district, university or other public educational institution, school district, or
20 any other applicant for Federal grants, or any agency or combination thereof, and shall also include
21 any non-profit organization established to participate in service programs funded primarily by the
22 Federal, state, or local governments.

23 (d) "[State central information reception agency]" means that state agency designated [by the
24 governor] [by law] to receive notices of Federal grant information under OMB Circular A-98, Treasury
25 Circular 1082, or successor circulars.

26 (e) "[State clearinghouse]" means the state agency designated [by the governor] [by law] to be
27 responsible for the general administration of this act.¹

¹In most states this would be the agency responsible for the project notification and review system clearinghouse under OMB Circular A-95 or successor circulars.

1 (f) "State plan" means the statement of goals, objectives, and programs designed to define and
2 accomplish the mission of the state agency for which it is made.

3 SECTION 3. *Procedures to be Followed.* No unit of government shall make application for or
4 expend Federal grants for any purpose inconsistent with the provisions of this act.

5 SECTION 4. *Submission of Application.* Any governmental unit which makes application shall
6 submit a copy of its application to the [state clearinghouse] prior to submission to a Federal agency.
7 The form and procedure of submission shall be determined by the [state clearinghouse], and shall
8 generally conform with requirements for administering *Circular A-95* of the United States Office of
9 Management and Budget or successor circulars.

10 SECTION 5. *Notification to [State Central Information Reception Agency].* When a local unit
11 is notified by a Federal agency that a grant has been awarded, it shall immediately notify the [state
12 central information reception agency]. The agency shall specify the form and procedure of the notifi-
13 cation, which shall conform as nearly as practicable to the procedures required under *Treasury*
14 *Circular 1082*. *Treasury Circular 1082* reports shall be sufficient for the purposes of this act.

15 SECTION 6. *Reporting of Expenditures.* All expenditures of Federal grant funds by local units
16 shall be recorded, accounted for, reported, and audited in the same manner as the general funds of
17 the applicant and, if necessary, to conform to applicable Federal law. A report of all expenditures of
18 Federal funds by units shall be made to the governor and the state [legislature] at the time designed
19 by the governor.

20 SECTION 7. *Programs of Direct State Interest.*

21 (a) (1) The [legislature] finds that the Federal government has established and continues to es-
22 tablish grant programs of direct assistance to the local governments of the state, and that, due to the
23 large number of local governments in the urban areas of the state and the lack of coincidence of serv-
24 ice needs and tax jurisdictions, it frequently is difficult for local governments to marshal the
25 technical and financial resources needed to meet the needs of its residents. For the state to assume its
26 proper responsibility and leadership in meeting the needs of its urban residents, the declared policy
27 of the state is to render technical assistance, contribute to the non-Federal share of the cost of the fol-
28 lowing Federally aided programs, and to assume responsibility for coordinating relationships between
29 local governments and Federal agencies with regard to such programs:

30 [(2) *et. seq.*, should consist of those programs in which the state believes it has a direct state
31 interest including the provision of state financial assistance. The paragraphs should be developed by
32 describing the program through use of Federal nomenclature and objectives, by designating the
33 appropriate state agency to administer the grants, and by providing state grants for [50] percent of the
34 non-Federal share of the individual project costs. States which are funding, through state grants
35 outside of Federal matching shares, a significant portion of an overall program in a broad program

1 *area may desire to use that method of assistance in lieu of direct state sharing in the Federal match.*
2 *This could be true of a program where the Federal grant only covers one aspect of a program such as*
3 *capital (Federal participation) and operating (no Federal participation) costs.]*

4 (b) (1) Any application for Federal grants for a purpose of program designated in subsection (a)
5 shall be submitted to the state agency designated in subsection (a) as responsible for the state
6 program in the field concerned. The head of such state agency shall approve or disapprove state
7 grants to be applied to the non-Federal share of project costs consistent with the purposes of sub-
8 section (a). An approval may be conditioned upon subsequent approval of the project by an appropri-
9 ate Federal agency for Federal grant funds. Upon approval of an application, the head of the appro-
10 priate state agency shall transmit it to the appropriate Federal agency. Any application disapproved
11 by the head of the appropriate state agency shall be returned to the applicant with written notice of
12 the modifications necessary to make the project eligible, in terms of state or Federal policy and law.

13 (2) The heads of state agencies may provide by administrative regulation the procedures
14 by which negotiations and other relationships between local units of government and Federal agen-
15 cies are conducted with respect to programs designated in subsection (a)

16 (c) Heads of the state agencies designated in subsection (a) shall establish appropriate technical,
17 administrative, coordinative, and other measures relating to project sponsors within the state eligible
18 for Federal grants in order to facilitate their participation in the program established by this act. They
19 shall establish, with the approval of the governor, necessary rules and regulations to carry out their
20 responsibilities under this act.

21 SECTION 8. *Separability.* [Insert separability clause.]

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

6.107 PRIVATE ENTERPRISE INVOLVEMENT IN URBAN AFFAIRS¹

During the past few years, both the Congress and the Federal executive branch have given consideration to methods through which the Federal government and private enterprise could work together more effectively in meeting the crises in the nation's cities. This concern was prompted by the growing realization that no single level of government — not even all levels of government working in concert — could cope adequately with the manifold problems confronting local governments in our metropolitan areas; deep involvement of the private sector is required.

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

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

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

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

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Impact of Federal Urban Development Programs on Local Government Organization and Planning*, Report A-20 (Washington, D.C.: U.S. Government Printing Office, January, 1964).

Suggested Constitutional Provision

[PRIVATE ENTERPRISE INVOLVEMENT IN URBAN AFFAIRS]

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

6.108 LOCAL COMMUNITY DEVELOPMENT AND HOUSING POWERS¹

One of the more recent "block grant" programs to be enacted by Congress is in the area of community development. The new program not only combines a number of existing programs and provides for greater flexibility, but also authorizes "urban counties" to participate directly in the Federal formula (entitlement) grant. Non-urban counties as well as other units in such areas participate *via* discretionary funds, oftentimes with state governmental assistance.

The new Federal law, the *Housing and Community Development Act of 1974* (PL 93-383), encourages the granting of a broader local authority and calls for greater local planning as well as a change in the terminology from "model cities" and "urban renewal" to "community development." It also requires, more than ever before, the careful melding under the leadership of the general purpose local governments of various housing and community development programs.

Notwithstanding the relatively small amount of past suburban concern with several major components of this program, community development efforts are needed and should be carried out in all parts of most metropolitan areas. The Advisory Commission on Intergovernmental Relations has recommended:

That states enact legislation authorizing counties in metropolitan areas to provide urban renewal and public housing services to unincorporated areas and small municipalities . . . for establishing such services and coordinating their administration, especially in multicounty metropolitan areas.²

In most metropolitan areas, the central city is making strong efforts to strengthen and renew its deteriorating and blighted neighborhoods and to provide decent and sanitary housing for their citizens. In many suburban areas which surround these central cities, the problems are not yet so formidable, although they are likely to become so as the suburbs grow, particularly the older ones whose industry and residential character are becoming more like the central cities they border.

Increased county responsibility for community development programs would tend to broaden the area of jurisdiction by including unincorporated and incorporated areas that now do not have programs of their own. In those counties where slum clearance and residential dislocation will be substantial, public housing and other housing programs will probably be necessary to enable relocation needs to be met. This has been the case in central cities. Cooperation between counties and city development and housing agencies, and even joint city-county programs in certain cases, would be mutually advantageous. Such cooperation is common where county programs now exist.

County development powers would not exclude continued exercise of similar powers by municipal governments and, to the contrary, might facilitate the program of small municipalities which could not maintain full professional staffs on their own or provide adequate relocation housing within their own borders. Examples of this can be found in the Pittsburgh metropolitan area, among others, where county development staffs perform, under contract, the technical services needed to carry out community development projects for which the individual municipality is the actual sponsor. Larger municipalities within counties, especially major central cities, will undoubtedly want to continue using their own highly developed staffs, with the counties performing development services and sponsoring projects only in unincorporated areas. Where central city staff is available, a county might find it advantageous to contract with it for staff serv-

¹Derived from: Advisory Commission on Intergovernmental Relations, *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, Report A-25 (Washington, D.C.: U.S. Government Printing Office, January, 1965).

²*Ibid.*, p. 114. Community development and housing goals are linked together both in the Advisory Commission on Intergovernmental Relations recommendation and the new Federal "block grant" program. Therefore, this draft bill combines the previous draft legislation on *Low Rent Housing For Low Income Families* and on *Urban Renewal*. In a number of cases localities have had combined housing and renewal-development agencies for many years.

ices. The indispensable roles of the counties are that of project sponsor, agent for the procurement of Federal aid, and provider of broad planning and program support in unincorporated areas where there is no other government capable of performing these roles.

Many counties, both within and outside metropolitan areas, may have large rural populations that might resist having the county provide urban type, renewal housing and other community development services. A municipality with an active program of its own might also resist contributing to a county program out of general county revenues. In such situations, the Commission has recommended that it may be appropriate to create a county subordinate tax area in order to administer and finance a needed service in the selected area. At least 20 states currently utilize the subordinate taxing area device to provide governmental services. (See suggested legislation on *County Subordinate Service Areas*.)

State programs of technical and financial assistance can do much to encourage needed community development and housing programs in small suburban jurisdictions and outlying unincorporated areas. A number of states, for example, provide localities with staff assistance to prepare local programs needed to qualify for Federal community development and housing grants and to advise local officials on planning and carrying out their programs. The state might also stimulate local programs by matching the local share of costs. Where the establishment of a local agency in small municipalities and unincorporated areas is impractical, the state itself might undertake this responsibility.

The suggested legislation below authorizes municipalities and counties to provide for the traditional rehabilitation, clearance, and redevelopment of slums and blighted areas, as well as the expanded list of open space, public works, housing, and public services activities eligible for Federal assistance under the provisions of recent amendments of the *Federal Housing Act*. Existing state urban renewal laws may require amendments in order for states and localities to receive the full benefits from the Federal program.

The following legislation places the community development responsibility in the hands of the general purpose unit of government rather than in a separate authority. The governing body may exercise all or part of its community development powers through a board or a commission or through such offices of a municipality or county as it may by resolution determine. If the local governing body itself does not choose to exercise all or part of its community development powers, it may have such powers carried out by a community development agency or by the housing authority, if one exists or is subsequently established in the community. The community development agency or the housing authority then is vested with such community development powers as may be delegated to it by the local governing body, except as required by Federal law; it cannot proceed with a project without: (a) a program supported by the local governing body; (b) approval of the project by the local governing body; (c) conformance of the project with the locality's general plan; (d) provision of the local share of funds, if required, by the local governing body; and (e) a public hearing.

The bill would permit political subdivisions to enter into interlocal agreements to undertake jointly or cooperatively community development activities. The initiative in such joint undertakings is left with the localities themselves. The suggested act specifies the basic contents of such agreements and requires review by the attorney general before an agreement goes into effect.

So that the states may assume an appropriate role, provision is made for state technical and financial assistance to municipalities and counties in planning and carrying out community development activities.

In some states, it may be desirable to authorize a state agency to exercise the powers given to municipalities and counties under this act. The states could then undertake community development and housing projects in small communities and unincorporated areas where carrying out a program would otherwise be impracticable or impossible. Any state wishing to follow this course might add appropriate provisions to the suggested act. In this case, a finding should be added to *Section 1* of the act and a new section drafted specifying appropriate procedures to carry out this function.

Section 1 sets forth findings and a declaration of necessity. *Section 2* provides definitions of terms used in this act.

Section 3 requires a county or municipality to provide maximum opportunity for participation by private enterprises in development, redevelopment, rehabilitation, or renewal activities.

Section 4 provides for the exercise of certain housing and renewal powers granted by the act only after adoption, by the local governing body of the municipality or county, of a resolution finding that certain

housing factors or blighted areas exist therein and that public action to overcome these conditions is necessary.

Section 5 deals with the preparation and approval, based on certain findings of the local governing body, of a plan for community development.

Section 6 authorizes any municipality, county, or public body authorized to perform comprehensive planning work to prepare a communitywide plan or program for housing, renewal, and community development.

Section 7 grants municipalities and counties all powers necessary or convenient to carry out and effectuate the purposes and provisions of the act, including certain enumerated powers. *Section 8* provides for expansion of operation beyond the territorial limits of a municipality or county.

Section 9 authorizes counties and municipalities to enter into agreements for joint or cooperative action, pursuant to the act and subject to approval by the local governing bodies of the participating counties and municipalities.

Section 10 grants a municipality or county the power of eminent domain and prescribes procedures for compensation.

Section 11 authorizes municipalities and counties to dispose of property in a community renewal area and sets out the procedures whereby such disposal may occur. *Section 12* provides guidance on the exercise of housing project powers.

Section 13 provides municipalities and counties with the power to issue bonds to finance community renewal and housing projects and sets out the limitations on such bonds. *Section 14* authorizes any person, political subdivision, and public or private officer who owns or controls funds to use them for purchase of bonds or other obligations. *Section 15* provides certain remedies for obligees of a municipality or county.

Section 16 exempts all property of a municipality or county, including funds owned or held for purposes of this act, from all taxes and levies and sale by virtue of an execution. It further provides for waivers of such exemption in the case of profitmaking portions, and for payment in lieu of taxes.

Section 17 provides other public bodies with certain discretionary powers regarding cooperation with municipalities and counties undertaking a community development project.

Section 18 provides for a presumption of compliance with the provisions of the act in all transfers of property.

Section 19 authorizes a municipality or county to exercise its community development powers, as earlier described, or to grant them to a community development agency or housing or renewal authority, except for certain specified powers.

Section 20 authorizes the creation of a community development agency in each municipality and county.

Section 21 prohibits any public official or employee of a municipality or county board or commission and any commissioner or employee of a housing or renewal authority or community development agency from acquiring or holding an interest in any community development project.

Section 22 requires the appropriate state agency to provide technical and advisory assistance, upon request, to municipalities and counties for a community development project and authorizes the state agency to assist housing projects and to make community development grants for a certain percentage of project costs to municipalities and counties.

Sections 23 and 24 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT PROVIDING AUTHORIZATION FOR MUNICIPALITIES AND COUNTIES TO UNDERTAKE COMMUNITY DEVELOPMENT ACTIVITIES]

(Be it enacted, etc.)

1 SECTION 1. *Findings and Declaration of Necessity.* It is hereby found that the proper develop-
2 ment of municipalities and counties requires public actions to provide necessary public facilities and
3 services. It is also found and declared that there exist, in municipalities and counties of the state,
4 slum and blighted areas (as herein defined) which constitute a serious and growing menace, injurious
5 to the public health, safety, morals, and welfare of the residents of the state; that the existence of
6 such areas contributes substantially and increasingly to the spread of disease and crime, constitutes
7 an economic and social liability imposing onerous local government burdens which decrease the tax
8 base and reduce tax revenues, substantially impairs or arrests the sound growth of communities,
9 retards the provision of housing accommodations, aggravates traffic problems, and substantially im-
10 pairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the
11 prevention and elimination of slums and blight is a matter of state policy and state concern in order
12 that the state and its communities shall not continue to be endangered by areas which are focal centers
13 of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because
14 of the extra services required for police, fire, accident, hospitalization, and other forms of public pro-
15 tection, services, and facilities.

16 It is further found and declared that certain slum or blighted areas, or portions thereof may
17 require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since
18 the prevailing condition of decay may make impracticable the reclamation of the area by conservation
19 or rehabilitation; that other areas or portions thereof may, through the means provided in this act, be
20 susceptible of conservation or rehabilitation in such a manner that the conditions and evils herein
21 before enumerated may be eliminated, remedied, or prevented; and that salvageable slum and blighted
22 areas can be conserved and rehabilitated through appropriate public action as herein authorized, and
23 the cooperation and voluntary action of the owners and tenants of property in such areas.

24 There also exists a serious shortage of decent, safe, and sanitary housing in the state available
25 to persons and families of low, moderate, and middle income which impairs the economic value of larg-
26 er areas, characterized by depreciated value, impaired investments, reduced capacity to pay taxes, and
27 lack of new development to meet the needs of area residents and is a menace to health, safety, morals,
28 and welfare of citizens of the state.

1 It is further found and declared that the powers conferred by this act on municipalities and
2 counties will enable the elimination and prevention of slums and blight and the provision of housing
3 in a more coordinated, orderly, and efficient manner, and the carrying out of these activities in small
4 communities or unincorporated areas where their undertaking is impractical without the provisions of
5 this act.

6 It is further found and declared that municipalities and counties are unable to provide the re-
7 habilitation, clearance, and redevelopment of such slums and blighted areas, the provision of housing
8 and the proper development of other areas and services without state technical services and financial
9 assistance, and that the granting of state financial assistance is a public purpose for which public
10 moneys may be expended.¹

11 It is further found and declared that the powers conferred by this act are for public uses and pur-
12 poses for which public money may be expended and the power of eminent domain and police power
13 exercised; and that the necessity in the public interest for the provisions herein enacted is hereby de-
14 clared as a matter of legislative determination.

15 SECTION 2. *Definitions.* The following terms, wherever used or referred to in this act, shall
16 have the following meanings, unless a different meaning is clearly indicated by the context.

17 (a) "Agency" or "community development agency" means a public agency created under Section
18 20 of this act.

19 (b) "Area of operation" means the area within the corporate limits of the municipality or the terri-
20 torial limits of the county; but a county shall not undertake any project or projects within the bounda-
21 ries of any municipality without the request or consent, by resolution, of the local governing body of
22 the municipality and a municipality may not undertake any project or projects outside its area of
23 operation without the request or consent of the local governing body of the county.

24 (c) "Board" or "commission" means a board, commission, department, division, office, body, or
25 other unit of the municipality or county authorized to undertake community development projects.

26 (d) "Bonds" means any notes, interim certificates, certificates of indebtedness, debentures, or
27 other obligations issued pursuant to this act.

28 (e) "Clerk" means the clerk or other official of the municipality or county who is the custodian
29 of the official records of such municipality or county.

30 (f) "Community development" means any activity for development, rehabilitation, redevelopment,
31 or renewal of a community in order to provide a decent and safe place to work and live including, but
32 not limited to, elimination and reconstruction of slum and blighted areas, community renewal and
33 housing projects, the provision of necessary open space, parklands, public works, community facili-
34 ties, housing, economic development, and related public services.

¹If state financial assistance is not to be included in this bill, this paragraph should be omitted.

1 (g) "Community renewal area" means a [slum area or a blighted area or a combination thereof]¹
2 which the local governing body designates as appropriate for a community renewal project:

3 [(1) "Blighted area" means an area which by reason of the presence of a substantial number
4 of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot
5 layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions;
6 deteriorating or missing improvements; diversity of ownership; tax or special assessment delinquency
7 exceeding the fair value of the land; defective or unusual conditions of title; or existing conditions
8 which endanger life or property by fire and other causes; or any combination of such factors, sub-
9 stantially impairs or arrests the sound growth of a municipality or county, retards the provision of
10 housing accommodations, or constitutes an economic or social liability and is a menace to the public
11 health, safety, morals, or welfare in its present condition and use; but if the blighted areas consists
12 of open land, the conditions contained in the proviso in Section 5(d) shall apply and any disaster area
13 referred to in Section 5 (g) shall constitute a "blighted area."

14 (2) "Slum area" means an area in which there is a predominance of buildings or improve-
15 ments, whether residential or non-residential, which by reason of dilapidation, deterioration, age or
16 obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density
17 of population and overcrowding, or the existence of conditions which endanger life or property by fire
18 and other causes, or any combination of such factors is conducive to ill health, transmission of di-
19 sease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety,
20 morals, or welfare.]

21 (h) "Community renewal plan" means a plan, as it exists from time-to-time, for a community re-
22 newal project, which plan:

23 (1) shall conform to the general plan for the municipality or county as a whole except as
24 provided in Section 5 (g); and

25 (2) shall be sufficiently complete to indicate such land acquisition, demolition and removal of
26 structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in
27 the community renewal area along with zoning and planning changes, if any, land uses, maximum
28 densities, and building requirements.

29 (i) "Community renewal project" means undertakings and activities in a community renewal
30 area for the elimination and prevention of the development or spread of slums and blight, and may
31 involve slum clearance and redevelopment in the area, or rehabilitation or conservation in the area,
32 or a program of code enforcement in the area, or any combination or part thereof in accordance with
33 the community renewal plan. Such undertakings and activities may include but not be limited to:

¹Since Federal funds are no longer restricted to such areas, states should review this section to make sure that it meets their own needs.

- 1 (1) acquisition of a slum area or a blighted area or portion thereof;
- 2 (2) demolition and removal of buildings and improvements;
- 3 (3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and
4 other improvements necessary for carrying out in the community renewal area the objectives of this
5 act in accordance with the community renewal plan;
- 6 (4) disposition of any property acquired in the area (including sale, initial leasing, or retention
7 by the municipality or county itself) at its fair value for uses in accordance with the community re-
8 newal plan;
- 9 (5) carrying out plans for a program of code enforcement and a program of voluntary or
10 compulsory repair and rehabilitation of buildings or other improvements in accordance with the
11 community renewal plan;
- 12 (6) acquisition of real property in the community renewal area which, under the community
13 renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, including related
14 commercial uses;
- 15 (7) acquisition of any other real property in the community renewal area where necessary to
16 eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other
17 uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or
18 deterioration, or to provide land for needed public facilities;
- 19 (8) acquisition, without regard to any requirement that the area be a slum or blighted area, of
20 air rights in an area consisting principally of land in highways, railway or subway tracks, bridge or
21 tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area
22 and over which air rights sites are to be developed for the elimination of such blighting influences
23 and for the provision of housing [and related facilities and uses] [designed specifically for, and limited
24 to, families and individuals of low or moderate income];¹ and
- 25 (9) construction of foundations and platforms necessary for the provision of air rights sites
26 of housing [and related facilities and uses] designed specifically for, and limited to, families and in-
27 dividuals of low or moderate income.
- 28 (j) "Executive" means the mayor of a municipality or other officer or body having the duties cus-
29 tomarily imposed upon the executive head of a municipality or the presiding officer of a county gov-
30 erning board.
- 31 (k) "Federal government" means any department, agency, or instrumentality, corporate or other-
32 wise, of the United States of America.
- 33 (l) "Housing authority" means a housing authority created by or established pursuant to [insert
34 *appropriate statutory citation*].

¹Some states may be constitutionally required to set this limit, although the new Federal act encourages dispersion of such housing among other residences and compatible uses.

1 (m) "Renewal authority" means an urban renewal authority created by, or established pursuant to,
2 [insert appropriate statutory citation].

3 (n) "Housing project" or "project" means:

4 (1) any work or undertaking (on contiguous or non-contiguous sites):

5 (i) to demolish, clear, or remove buildings from any residential slum area; or

6 (ii) to provide, or assist in providing — by any suitable method, including but not limited
7 to: rental; sale of individual units of single or multifamily structures under conventional, condomini-
8 um, or cooperative sales contract; lease-purchase agreement; loans; or subsidizing of rentals or
9 charges — decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommoda-
10 tions for persons of low or moderate income; or

11 (iii) to accomplish a combination of the foregoing;

12 (2) this work or undertaking may include buildings, land, equipment, facilities, and other
13 real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water
14 service, utilities, parks, site preparation and landscaping, and facilities for administrative, community,
15 health, recreational, welfare, or other purposes.

16 The term "housing project" also may be applied to the planning of buildings and other improve-
17 ments, the acquisition of property or any interest therein, the demolition of existing structures, the
18 construction, reconstruction, rehabilitation, alteration, or repair of the improvements, and all other
19 work in connection therewith; and the term includes all other real and personal property and all tangi-
20 ble assets held or used in connection with the housing project.

21 (o) "Local governing body" means the [council or board of commissioners] or other legislative
22 body charged with governing the municipality or county.

23 (p) "Obligee" means any bondholder, agent, or trustee for any bondholders, or lessor demising
24 property used in connection with community development or housing projects, or any assignee or as-
25 signees of such lessor's interest or any part thereof, and the Federal government when it is a party to
26 any contract with the municipality or county or respecting the project.

27 (q) "Person" means any individual, firm, partnership, corporation, company, association, joint
28 stock association, or body politic; and shall include any trustee, receiver, assignee, or other person
29 acting in a similar representative capacity.

30 (r) "Persons of low and moderate income" means persons or families who [as determined by the
31 public body undertaking a housing project] cannot afford to pay the amounts at which private enter-
32 prise unaided by public subsidy is providing a substantial supply of decent, safe, and sanitary hous-
33 ing.

34 (s) "Public body" means the state and any county or municipality; and any board, commission,
35 authority, agency, district, subdivision, or any department, agency, instrumentality, corporate or

1 otherwise of any of the foregoing.

2 (t) "Public officer" means any officer who is in charge of any department or branch of the gov-
3 ernment of the municipality or county relating to health, fire, building regulations, or to other activi-
4 ties concerning dwellings in the municipality or county.

5 (u) "Related activities" means:

6 (1) planning work for the preparation of a general neighborhood renewal plan, or for the
7 preparation or completion of a communitywide plan or program pursuant to Section 6 of this act; and

8 (2) the functions related
9 7 (e) and Section 11 of this act.

10 (v) "Real property" means all lands, including improvements and fixtures thereon, and property
11 of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right,
12 and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage,
13 or otherwise.

14 SECTION 3. *Encouragement of Private Enterprise.*¹ A municipality or county, to the extent it
15 determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity,
16 consistent with the needs of the municipality or county as a whole, to the development, rehabilitation,
17 redevelopment or renewal of the community by private enterprise. A municipality or county shall give
18 consideration to this objective in exercising its powers under this act, including the approval of com-
19 munity renewal plans, communitywide plans, or programs for community development, and general
20 neighborhood renewal plans, the exercise of its zoning powers, the enforcement of other laws, codes,
21 and regulations relating to the use of land, and the use of occupancy of buildings and improvements,
22 the disposition of any property acquired, and the provision of necessary public improvements and
23 services.

24 SECTION 4. *Finding of Necessity by Local Governing Body.*

25 (a) No municipality or county shall exercise the authority conferred upon municipalities or coun-
26 ties by this act with respect to community renewal projects until after the local governing body of the
27 municipality or county shall have adopted a resolution finding that:

28 (1) one or more slum or blighted areas exist in such municipality or county;² and

29 (2) the rehabilitation, conservation, redevelopment, or a combination thereof, of such area
30 or areas, including public services needed to support such renewal efforts and including but not limit-
31 ed to services concerned with employment, economic development, crime prevention, child care, health,

¹Some states may desire to authorize local governments to commingle public and private funds for purposes of this act. See *Private Enterprise Involvement in Urban Affairs*.

²The new Federal act no longer requires this limitation on powers; however, state constitutional standards should be reviewed as to the standards necessary for use of the acquisition and disposal (renewal) powers.

1 drug abuse, education, welfare, or recreation needs of persons residing in such areas, is necessary in
2 the interest of the public health, safety, morals, or welfare of the residents of such municipality or
3 county.

4 (b) No municipality or county shall exercise the authority conferred by this act with respect to
5 housing projects until after its governing body shall have adopted a resolution finding that:

6 (1) insanitary or unsafe inhabited dwelling accommodations exist in the municipality or county;

7 or

8 (2) there is a shortage of safe and sanitary dwelling accommodations in municipality or county
9 available to persons of low and moderate income at rentals or prices they can afford;

10 (3) there are persons living in the municipality or county with incomes insufficient to rent or
11 purchase existing safe and sanitary dwelling space.

12 SECTION 5. *Preparation and Approval of Plan for Community Renewal Project.*

13 (a) A community renewal project for a community renewal area shall not be planned or initiated
14 unless the governing body has, by resolution, [determined such area to be a slum or blighted area, or a
15 combination thereof, and] designated such area as appropriate for a community renewal project.

16 (b) The municipality or county may itself prepare or cause to be prepared a community redevelop-
17 ment plan, or any person or agency, public or private, may submit such a plan to a municipality or
18 county. Prior to its approval of a community renewal project, the local governing body shall submit
19 the plan to the planning commission of the municipality or county, if any, for review and recommen-
20 dations as to its conformity with the general plan for the development of the municipality or county as
21 a whole. The planning commission shall submit its written recommendations with respect to the
22 proposed community renewal plan to the local governing body within 30 days after receipt of the
23 plan for review. Upon receipt of the recommendations of the planning commission, or, if no recom-
24 mendations are received within said 30 days, then without such recommendations, the local governing
25 body may proceed with the hearing on the proposed community renewal project prescribed by subsec-
26 tion (c) hereof.

27 (c) The local governing body shall hold a public hearing on a community renewal project after
28 public notice thereof by publication in a newspaper having a general circulation in the area of opera-
29 tion of the municipality or county. The notice shall describe the time, date, place, and purpose of the
30 hearing, shall identify the community renewal area covered by the plan, and shall outline the scope of
31 the community renewal project under consideration.

32 (d) Following such hearing, the local governing body may approve a community renewal project
33 and the plan therefor if it finds that:

34 (1) a feasible method exists for the location of families who will be displaced from the com-
35 munity renewal area in decent, safe, and sanitary dwelling accommodations within their means and

1 without undue hardship to such families;

2 (2) the community renewal plan conforms to the general plan of the municipality or county
3 as a whole;

4 (3) the community renewal plan gives due consideration to the provision of adequate park
5 and recreational areas and facilities that may be desirable for neighborhood improvement, with special
6 consideration for the health, safety, and welfare of children residing in the general vicinity of the site
7 covered by the plan;

8 (4) the community renewal plan will afford maximum opportunity, consistent with the sound
9 needs of the municipality or county as a whole, for the rehabilitation or redevelopment of the com-
10 munity renewal area by private enterprise; and

11 (5) if the community renewal area consists of an area of open land to be acquired by the
12 municipality or county, the area shall not be so acquired unless;

13 (i) if it is to be developed for residential uses, the local governing body shall determine
14 that a shortage of housing of sound standards and design which is decent, safe, and sanitary exists
15 in the municipality or county; that the need for housing accommodations has been or will be increased
16 as a result of the clearance of slums in other areas; that the conditions of blight in the area and the
17 shortage of decent, safe, and sanitary housing cause or contribute to an increase in, and spread of,
18 disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the
19 acquisition of the area for residential uses is an integral part of, and essential to, the program of the
20 municipality or county; or

21 (ii) if it is to be developed for non-residential uses, the local governing body shall deter-
22 mine that such non-residential uses are necessary and appropriate to facilitate the proper growth and
23 development of the community in accordance with sound planning standards and local community
24 objectives, which acquisition may require the exercise of governmental action, as provided in this act,
25 because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper
26 subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography,
27 or faulty lot layouts, the need for the correlation of the area with other areas of a municipality or
28 county by streets and modern traffic requirements, or any combination of such factors or other con-
29 ditions which retard development of the area.

30 (e) A community renewal plan may be modified at any time; but if modified after the lease or sale
31 by the municipality or county of real property in the community renewal project area, the modification
32 may be conditioned upon such approval of the owner, lessee, or successor in interest as the munic-
33 ipality or county may deem advisable and in any event shall be subject to such rights at law or in equity
34 as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

35 (f) Upon the approval by the local governing body of a community renewal plan or of any modi-

1 fications thereof, such plan or modifications shall be deemed to be in full force and effect for the
2 respective community renewal area and the municipality or county may then cause such plan or modi-
3 fication to be carried out in accordance with its terms.

4 (g) Notwithstanding any other provisions of this act, where the local governing body certifies that
5 an area is in need of redevelopment or rehabilitation as a result of flood, fire, hurricane, earthquake,
6 storm, or other catastrophe respecting which the governor of the state has certified the need for dis-
7 aster assistance under P.L. 288, 93rd Congress, or other Federal law, the local governing body may
8 approve a community renewal plan and a community renewal project with respect to such area without
9 regard to the provisions of subsection (d) of this section and the provisions of this section requiring
10 a general plan for the municipality or county and a public hearing on the community renewal project.

11 SECTION 6. *Neighborhood and Communitywide Plans.*

12 (a) (1) A municipality, county, or any public body authorized to perform comprehensive planning
13 work may prepare a general neighborhood renewal plan for a community renewal area or areas, to-
14 gether with any adjoining areas having specially related problems which may be of such scope that
15 community renewal activities may have to be carried out in stages. Such plan may include, but is not
16 limited to, a preliminary plan which:

- 17 (i) outlines the community renewal activities proposed for the area or areas involved;
18 (ii) provides a framework for the preparation of community renewal plans; and
19 (iii) indicates generally the land uses, population density, building coverage, prospective
20 requirements for rehabilitation and improvement of property, and portions of the areas contemplated
21 for clearance and redevelopment.

22 (2) A general neighborhood renewal plan shall, in the determination of the local governing
23 body, conform to the general plan of the locality as a whole.

24 (b) A municipality, county, or any public body authorized to perform comprehensive planning
25 work may prepare or complete a communitywide plan or program for community development which
26 shall conform to the general plan for the development of the municipality or county as a whole and
27 may include, but is not limited to, identification of housing needs and of renewal areas, measurement
28 of blight, determination of resources needed and available for housing and renewal to rehabilitate, re-
29 develop, or renew such areas, identification of potential housing and renewal project areas and types
30 of action contemplated, and scheduling of community development activities.

31 [(c)¹ Authority is hereby vested in every municipality and county to prepare, to adopt, and to re-
32 vise, from time-to-time, a general plan for the physical and social development of the municipality or
33 county as a whole — giving due regard to the environs and metropolitan surroundings — to establish

¹This subsection is suggested for inclusion only in states where municipalities and counties lack legislative authorization for the preparation of a general plan.

1 and maintain a planning commission for such purpose and related planning activities, and to make
2 available and to appropriate necessary funds therefor.]

3 SECTION 7. *Powers.* Every municipality and county shall have all the powers necessary or
4 convenient to carry out and effectuate the purposes and provisions of this act, including the following
5 powers in addition to others herein granted:

6 (a) to undertake and carry out community development projects and related activities within its
7 area of operation; to undertake and carry out studies and analyses of housing, renewal, and communi-
8 ty development needs; and to make and execute contracts and other instruments necessary or con-
9 venient to the exercise of its powers under this act; and to disseminate housing, renewal and com-
10 munity development information;

11 (b) to provide or to arrange or contract for the furnishing or repair by any person or agency,
12 public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for, or
13 in connection with, a community development project; to install, construct, and reconstruct streets,
14 utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it
15 may deem reasonable and appropriate attached to Federal financial assistance and imposed pursuant to
16 Federal law relating to the determination of prevailing salaries or wages or compliance with labor
17 standards, in the undertaking or carrying out of a community development project and related activi-
18 ties, and to include in any contract let in connection with such a project and related activities, provi-
19 sions to fulfill such of said conditions as it may deem reasonable and appropriate;

20 (c) within its area of operation, to enter into any building or property in any community renewal
21 or housing project area in order to make inspections, surveys, appraisals, soundings, or test borings,
22 and to obtain an order for this purpose from [*a court of competent jurisdiction*] in the event entry is
23 denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent do-
24 main, or otherwise, any real property, or personal property for its administrative purposes, together
25 with any improvements thereon; to hold, improve, clear, or prepare for development or renewal any
26 such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real prop-
27 erty; to insure or provide for the insurance of any real or personal property or operations of the
28 municipality or county against any risks or hazards, including the power to pay premiums on any
29 such insurance; and to enter into any contracts necessary to effectuate the purposes of this act; but
30 no statutory provision with respect to the acquisition, clearance, or disposition of property by public
31 bodies shall restrict a municipality, county, or other public body exercising powers thereunder, in the
32 exercise of such functions with respect to a community renewal or housing project and related activi-
33 ties, unless the [*legislature*] shall specifically so state;

34 (d) to lease or rent dwelling space in existing privately owned buildings for subsidized occupancy
35 by persons with incomes insufficient to meet market rental levels;

1 (e) with the approval of the local governing body and prior to approval of a community renewal
2 plan, or approval of any modifications of the plan;

3 (1) to acquire real property in a community renewal area, demolish and remove any structures
4 on the property, and pay all costs related to the acquisition, demolition, or removal, including any
5 administrative or relocation expenses;

6 (2) to assume the responsibility to bear any loss that may arise as the result of the exercise of
7 authority under this subsection in the event that the real property is not made part of the community
8 renewal project;

9 (f) to invest any community development funds held in reserve or sinking funds, or any such
10 funds not required for immediate disbursement, in property or securities in which savings banks may
11 legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to
12 Section 13 of this act at the redemption price established therein or to purchase such bonds at less than
13 redemption price, all such bonds so redeemed or purchased to be cancelled;

14 (g) to borrow money and apply for and accept advances, loans, grants, contributions, and any
15 other form of financial assistance from the Federal government, the state, county, or other public
16 body, or from any sources, public or private, for the purposes of this act, and to give such security
17 as may be required and to enter into and carry out contracts or agreements in connection therewith;
18 and to include in any contract for financial assistance with the Federal government for, or with re-
19 spect to, a community development project and related activities such conditions imposed pursuant to
20 Federal laws as the municipality or county may deem reasonable and appropriate and which are not in-
21 consistent with the purposes of this act;

22 (h) within its area of operation, to make or have made all surveys and plans necessary to the
23 carrying out of the purposes of this act and to contract with any person, public or private, in making
24 and carrying out such plans and to adopt or approve, modify, and amend such plans, which plans
25 may include, but are not limited to:

26 (1) plans for carrying out a program of voluntary or compulsory repair or rehabilitation of
27 buildings and improvements;

28 (2) plans for the enforcement of state and local laws, codes, and regulations relating to the
29 use of land and the use and occupancy of buildings and improvements and to the compulsory repair,
30 rehabilitation, demolition, or removal of buildings and improvements; and

31 (3) appraisals, title searches, surveys, studies, and other plans and work necessary to prepare
32 for the undertaking of community development projects and related activities;

33 (i) to develop and report methods and techniques, and carry out demonstrations and other activi-
34 ties within its area of operation, for the prevention and the elimination of slums and urban blight and
35 developing and demonstrating new or improved means of providing housing for families and persons

1 of low income and to apply for, accept, and utilize grants of funds from the Federal government for
2 such purposes;

3 (j) to prepare plans for and assist in the relocation of persons, including individuals, families,
4 business concerns, non-profit organizations, and others, displaced by any community development
5 activities, and to make relocation payments to, or with respect to, such persons for moving and read-
6 justment expenses and losses of property for which reimbursement or compensation is not otherwise
7 made, including the making of such payments financed by the Federal government;

8 (k) to appropriate such funds and make such expenditures as may be necessary to carry out the
9 purposes of this act, and to levy taxes and assessments for such purposes; to zone or rezone any
10 part of the municipality or county within its area of operation or make exceptions from building regu-
11 lations; and to enter into agreements with a housing authority or a community development agency
12 vested with community development powers under Section 16 of this act, which agreements may
13 extend over any period, notwithstanding any provision or rule of law to the contrary, respecting
14 action to be taken by such municipality or county pursuant to any of the powers granted by this act;

15 (l) to provide special permitting processes, including without limitation the granting of increased
16 density, and to grant priority on the provision of public improvements and services for private hous-
17 ing projects which provide for not less than [15] percent and not more than [25] percent of its housing
18 units for persons of low and moderate income;

19 (m) to provide grants or guarantees for loans to persons of low and moderate income in rehabili-
20 tating their living quarters or to any persons in rehabilitating their living quarters located in a slum or
21 blighted area;

22 (n) to provide for tax abatement¹ not to exceed [] years from local *ad valorem* taxes, in whole
23 or in part, for any property located within a community renewal area, reconstructed or rehabilitated
24 for housing and to provide for taking into consideration in valuing for tax purposes any restriction
25 on the use or income of property owned by a qualified non-profit or limited dividend housing corpora-
26 tion, association, or cooperative;

27 (o) to close, vacate, plan, or replan streets, roads, sidewalks, ways or other places; and to plan or
28 replan any part of the municipality or county;

29 (p) within its area of operation, to organize, coordinate, and direct the administration of the pro-
30 visions of this act as they apply to such municipality or county in order that the objective of remedy-
31 ing renewal areas, preventing the causes thereof and providing sufficient housing within such munici-
32 pality or county may be most effectively promoted and achieved, and to establish such new office or
33 offices of the municipality or county or to reorganize existing offices in order to carry out such pur-

¹Some states may have constitutional provisions which may require a change in this approach.

1 pose most effectively; and

2 (q) to exercise all or any part or combination of powers herein granted.

3 SECTION 8. *Area of Operation.*

4 (a) The area of operation of any municipality, county, or housing authority may be increased to
5 include additional contiguous areas upon the request or consent, by resolution, of the governing body
6 of the municipality or county within which the additional area lies.

7 (b) No county, counties operating jointly, or housing authority established therefor, shall under-
8 take any renewal or housing project within the boundaries of any municipality unless a resolution
9 shall have been adopted by the governing body of the municipality [and by any housing authority
10 which shall have been theretofore established and authorized to exercise powers hereunder in the
11 municipality] declaring that there is need for the county, combined counties, or housing authority, as
12 the case may be, to exercise powers under this act within that municipality unless otherwise provided
13 by law.

14 SECTION 9. *Cooperation Among Municipalities and Counties.*¹

15 (a) Any power or powers, privileges, or authority exercised or capable of exercise by a munici-
16 pality or a county under this act may be exercised and enjoyed jointly with any other municipality or
17 county of this state or any adjoining state, including but not limited to the preparation of community
18 development, housing, and community renewal plans, the undertaking and carrying out of community
19 development, housing, and renewal projects and related activities, the power of eminent domain, and
20 the issuance of bonds.

21 (b) Any two or more municipalities, two or more counties, or any combination thereof may enter
22 into agreements with one another for joint or cooperative action pursuant to the provisions of this
23 act. Entry into such agreements shall be authorized by the local governing bodies of the participating
24 municipalities and counties.

25 (c) Agreements entered into pursuant to this section shall specify the following:

26 (1) the duration of the agreement;

27 (2) the precise organization, composition, and nature of any separate legal administrative
28 entity created thereby together with the powers delegated thereto;

29 (3) the purpose or purposes of the agreement;

30 (4) the manner of financing the joint or cooperative exercise of powers under this act and

¹Section 9 constitutes one method of authorizing two or more municipalities, counties, or combinations of municipalities and counties, to undertake community development projects. It is possible that states which already have a general interlocal cooperation act would not need this specific authorization. Another method would be a separate regional community development law. Each state must carefully consider its own constitutional and legal requirements in determining which method to use. Additionally, local counsel should be consulted particularly concerning bond issuances and other financing problems; see legislation on *Interlocal Contracting and Joint Enterprises*, *Regional Home Rule Charters*, and *Regional Service Corporations*. As pointed out in the introduction to the first of these other bills, interstate cooperation of this type may be carried without formal compacts approved by Congress.

1 establishing and maintaining a budget therefor;

2 (5) the permissible method or methods of terminating the agreement and for the disposal
3 of property upon termination; and

4 (6) any other necessary or proper matters.

5 (d) In the event that the agreement does not establish a separate legal entity to conduct the joint
6 or cooperative undertaking, the agreement shall, in addition to paragraphs 1, 3, 4, 5, and 6 enumerated
7 in subsection (c) hereof, contain the following:

8 (1) provisions for an administrator or a joint board responsible for administering the joint or
9 cooperative undertaking. In the case of a joint board, municipalities and counties party to the agree-
10 ment shall be represented; and

11 (2) the manner of acquiring, holding, and disposing of real and personal property used in the
12 joint or cooperative undertaking.

13 (e) Every agreement made hereunder shall, prior to, and as a condition precedent to, its entry into
14 force, be submitted to the [attorney general] who shall determine whether the agreement is in proper
15 form and compatible with the laws of this state. The [attorney general] shall approve an agreement
16 submitted to him hereunder unless he shall find that it does not meet the conditions set forth herein
17 and shall detail in writing addressed to the local governing bodies of the municipalities and counties
18 concerned the specific respects in which the proposed agreement fails to meet the requirements of law.
19 Failure to disapprove an agreement submitted hereunder within 60 days of its submission shall
20 constitute approval thereof.

21 (f) Financing of joint projects by agreement shall be as provided by law.

22 (g) Prior to its entry into force, an agreement made pursuant to this act shall be filed with the
23 municipal or county clerk of the respective municipalities or counties concerned and with the
24 [secretary of state].

25 (h) Any municipality or county entering into an agreement pursuant to this section may appro-
26 priate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal
27 or administrative entity created to operate the joint or cooperative undertaking by providing personnel
28 or services therefor.

29 (i) Any one or more municipalities or counties may contract with any one or more other munici-
30 palities or counties to perform any governmental service, activity, or undertaking which any entering
31 into the contract are authorized by law to perform, but such contract shall be authorized by the local
32 governing body of each party to the contract. Such contract shall set forth fully the purposes, powers,
33 rights, objectives, and responsibilities of the contracting parties.

34 SECTION 10: *Eminent Domain*.

35 (a) A municipality or county shall have the right to acquire by condemnation any interest in real

1 property, including a fee simple title thereto, which it may deem necessary for, or in connection with, a
2 community development project and related activities under this act.¹ A municipality or county may
3 exercise the power of eminent domain in the manner provided in [*insert appropriate statutory citation*],
4 and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain
5 in the manner now or which may be hereafter provided by any other statutory provisions for the exer-
6 cise of the power of eminent domain. Property already devoted to a public use may be acquired in like
7 manner; but no real property belonging to the United States, the state, or any political subdivision of
8 the state may be acquired without its consent.

9 (b) In any proceeding to fix or assess compensation for damages for the taking [or damaging]²
10 of property, or any interest therein, through the exercise of the power of eminent domain or con-
11 demnation, evidence or testimony bearing upon the following matters shall be admissible and shall be
12 considered in fixing such compensation or damages, in addition to evidence or testimony otherwise
13 admissible;

14 (1) any use, condition, occupancy, or operation of such property, which is unlawful or vio-
15 lative of, or subject to elimination, abatement, prohibition, or correction under, any law or any ordi-
16 nance or regulatory measure of the state, county, municipality, other political subdivision, or any
17 agency thereof, in which such property is located, as being unsafe, substandard, insanitary, or other-
18 wise contrary to the public health, safety, or welfare;

19 (2) the effect on the value of such property, or any such use, condition, occupancy, or opera-
20 tion, or of the elimination, abatement, prohibition, or correction of any such use, condition, occu-
21 pancy, or operation.

22 (c) The foregoing testimony and evidence shall be admissible notwithstanding that no action has
23 been taken by any public body or public officer toward the abatement, prohibition, elimination, or
24 correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public
25 body or public officer charged with the duty or authority so to do has rendered, made, or issued any
26 judgment, decree, determination, or order for the abatement, prohibition, elimination, or correction of
27 any such use, condition, occupancy, or operation shall be admissible and shall be *prima facie* evidence
28 of the existence and character of such use, condition, or operation.

29 SECTION 11. *Disposal of Property in Community Renewal Area.*

30 (a) A municipality or county may sell, lease, or otherwise transfer real property or any interest
31 therein acquired by it for a community renewal project, and may enter into contracts with respect
32 thereto in a community renewal area for residential, recreational, commercial, industrial, educational,
33 or other uses or for public use, or may retain such property or interest for public use, in accordance

¹In some states a more detailed standard for use of this power may be constitutionally required.

²Insert if required by state constitution.

1 with the community renewal plan, subject to such covenants, conditions, and restrictions, including
2 covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the
3 development or spread of future slums or blighted areas or to otherwise carry out the purposes of
4 this act; but the sale, lease, other transfer, or retention, and any agreement relating thereto, may be
5 made only after the approval of the community renewal plan by the local governing body. The pur-
6 chasers or lessees and their successors and assigns shall be obligated to devote such real property
7 only to the uses specified in the community renewal plan, and may be obligated to comply with such
8 other requirements as the municipality or county may determine to be in the public interest, including
9 the obligation to begin within a reasonable time any improvements on such real property required by
10 the community renewal plan. Such real property or interest shall be sold, leased, otherwise trans-
11 ferred, or retained at not less than its fair value for uses in accordance with the community renewal
12 plan. In determining the fair value of real property for uses in accordance with the community renewal
13 plan, a municipality and county shall take into account and give consideration to the uses provided
14 in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the
15 purchaser or lessee or by the municipality or county retaining the property; and the objectives of such
16 plan for the prevention of the recurrence of slum or blighted areas. The municipalities or county in
17 any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or
18 lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior
19 written consent of the municipality or county until he has completed the construction of any or all
20 improvements which he has obligated himself to construct thereon. Real property acquired by a muni-
21 cipality or county which, in accordance with the provisions of the community renewal plan, is to be
22 transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying
23 out of the provisions of the community renewal plan. Any contract for such transfer and the com-
24 munity renewal plan, or such part or parts of such contract or plan as the municipality or county
25 may determine, may be recorded in the land records of the [appropriate jurisdiction] in such manner as
26 to afford actual or constructive notice thereof.

27 (b) A municipality and county may dispose of real property in a community renewal area to pri-
28 vate persons only under such reasonable competitive bidding procedures as it shall prescribe or as
29 hereinafter provided in this subsection. A municipality and county may, by public notice by publica-
30 tion in a newspaper having a general circulation in the community [30 days prior to the execution of
31 any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instru-
32 ment of conveyance with respect thereto under the provisions of this section], invite proposals from,
33 and make available all pertinent information to, private redevelopers or any persons interested in
34 undertaking to redevelop or rehabilitate a community redevelopment area, or any part thereof. Such
35 notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those

1 interested within 30 days after the date of publication of such notice, and that such further informa-
2 tion as is available may be obtained at such office as shall be designed in said notice. The municipality
3 or county shall consider all such redevelopment or rehabilitation proposals and the financial and legal
4 ability of the persons making such proposals to carry them out, and may negotiate with such persons
5 for proposals for the purchase, lease, or other transfer of any real property acquired by the munici-
6 pality or county in the community renewal area. The municipality or county may accept such pro-
7 posal as it deems to be in the public interest and in furtherance of the purposes of this act; but a modi-
8 fication of intention to accept such proposal shall be filed with the governing body not less than 30
9 days previous to any such acceptance. Thereafter, the municipality or county may execute such con-
10 tract in accordance with the provisions of subsection (a) and deliver deeds, leases, and other instru-
11 ments and take all steps necessary to effectuate such contract.

12 (c) A municipality and county may temporarily¹ operate and maintain real property acquired by
13 it in a community renewal area for, or in connection with, a community renewal project pending the
14 disposition of the property as authorized in this act, without regard to the provisions of subsection (a)
15 above, for such uses and purposes as may be deemed desirable even though not in conformity with the
16 community renewal plan.

17 (d) Any real property acquired pursuant to Section 7(c) may be disposed of without regard to
18 other provisions of this section if the local governing body has consented to the disposal.

19 (e) Notwithstanding any other provisions of this act, where the municipality or county is situated
20 in an area designated as a renewal area under the *Federal Area Redevelopment Act* (PL 87-27), or any
21 act supplementary thereto, land in a community renewal project area designated under the community
22 renewal plan for industrial or commercial uses may be disposed of to any public body or non-profit
23 corporation for subsequent disposition as promptly as practicable by the public body or corporation
24 for redevelopment in accordance with the community renewal plan, and only the purchaser from, or
25 lessee of, the public body or corporation, and their assignees, shall be required to assume the obli-
26 gation of beginning the building of improvements within a reasonable time. Any disposition of land
27 to a public body or corporation under this subsection shall be made at its fair value for uses in ac-
28 cordance with the community renewal plan.

29 SECTION 12. *Operation of Housing Not for Profit.*

30 (a) No municipality or county shall construct or operate any housing project for profit, or as a
31 source of revenue to the municipality or county. Each municipality and county shall manage and
32 operate its housing projects in an efficient manner so as to enable it to fix the rentals or payments for
33 dwelling accommodations at low rates consistent with its providing decent, safe, and sanitary dwelling
34 accommodations for persons of low and moderate income. To this end, a municipality or county shall

¹Some states may desire to further limit the extent of use of this power.

1 fix the rentals or payments for dwellings in its projects or for space leased in privately owned buildings
2 at no higher rates than it finds to be necessary in order to produce revenues which, together with
3 applicable other available moneys, revenues, income, and receipts of the municipality and county from
4 whatever sources derived, including Federal financial assistance necessary to maintain the low rent
5 character of the projects, will be sufficient:

6 (1) to pay, as the same becomes due, the principal and interest on its bonds;

7 (2) to create and maintain such reserves as may be required to assure the payment of principal
8 and interest as may become due on its bonds;

9 (3) to meet the cost of, and to provide for, maintaining and operating the projects, including
10 necessary reserves therefor and the cost of any insurance, and the administrative expenses relating to
11 its housing projects; and

12 (4) to make such payments in lieu of taxes and, after payment in full of all obligations for
13 which Federal annual contributions are pledged, to make such repayments of Federal and local con-
14 tributions as it determines are consistent with the maintenance of the low rent character of the projects.

15 (b) Rentals or payments for dwellings shall be established and the projects administered, insofar
16 as possible, to assure that any Federal financial assistance required shall be strictly limited to amounts
17 and periods necessary to maintain the low rent character of the projects. Nothing herein shall be
18 construed to limit the amount which may be charged for non-dwelling facilities. All such income, to-
19 gether with other income and revenue derived through operations under this act, shall be used in the
20 operation of the projects to aid in accomplishing the public, governmental, and charitable purposes
21 of this act.

22 (c) A municipality or county shall issue regulations establishing eligibility requirements, consis-
23 tent with the purposes and objectives of this act, for admission to, and continued occupancy in, its projects.

24 (d) Nothing contained in this section shall be construed as limiting the power of a municipality
25 or county, with respect to a housing project, to vest in an obligee the right, in the event of a default, to
26 take possession or cause the appointment of a receiver thereof, free from all the restrictions imposed
27 by this section.

28 SECTION 13. *Issuance of Housing and Community Renewal Bonds.*¹

29 (a) Any municipality or county shall have power to issue bonds, from time-to-time, in its discre-
30 tion, to finance the undertaking of any community renewal or housing project under this act, in-
31 cluding, without limiting the generality thereof, the payment of principal and interest upon any ad-
32 vances for surveys and plans or preliminary loans, and shall also have power to issue refunding
33 bonds for the payment or retirement of the bonds previously issued by it. Bonds shall be made pay-

¹In some states, municipalities and counties may already have adequate statutory bonding powers which can be used for community development purposes. In these cases, these bonding powers could be incorporated by reference in this bill. Local counsel should be consulted concerning the legal acceptability of this method.

1 able, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the
2 municipality or county derived from, or held in connection with, its undertakings and carrying out of
3 community renewal or housing projects under this act; but payment of the bonds, both as to principal
4 and interest, may be further secured by a pledge of any loan, grant, or contribution from the Federal
5 government or other source, in aid of any community renewal or housing projects of the municipality
6 or county under this act, and by a mortgage of any such community renewal or housing projects, or
7 any part thereof, title to which is in the municipality or county.

8 (b) Bonds issued under this section shall not constitute an indebtedness within the meaning of
9 any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions
10 of any other law or charter relating to the authorization, issuance, or sale of bonds.¹ Bonds issued
11 under the provisions of this act are declared to be issued for an essential public and governmental
12 purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes
13 unless otherwise provided by law or the resolution authorizing the issuance.²

14 (c) Bonds issued under this section shall be authorized by resolution or ordinance of the local
15 governing body and may be issued in one or more series and shall bear such date or dates, be payable
16 upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding [7.5]
17 percent *per annum*, be in such denomination or denominations, be in such form either with or with-
18 out coupon or registered, carry such conversion or registration privileges, have such rank or priority,
19 be executed in such manner, be payable in such medium of payment, at such place or places, and be
20 subject to such terms of redemption, with or without premium, be secured in such manner, and have
21 such other characteristics, as may be provided by such resolution or ordinance, or trust indenture or
22 mortgage issued pursuant thereto.

23 (d) Bonds may be sold at not less than par at public sales held after notice published prior to such
24 sale in a newspaper having a general circulation in the area of operation and in such other medium of
25 publication as the municipality and county may determine or may be exchanged for other bonds on the
26 basis of par; but bonds may be sold to the Federal government at private sale at not less than par, and,
27 in the event less than all of the authorized principal amount on the bonds is sold to the Federal gov-
28 ernment, the balance may be sold at private sale at not less than par at an interest cost to the munici-
29 pality or county not to exceed the interest cost to the municipality or county of the portion of the
30 bonds sold to the Federal government.

31 (e) In case any of the public officials of the municipality or county whose signatures appear on
32 any bonds or coupons issued under this act shall cease to be such officials before the delivery of the

¹Where there is no limit as recommended by the Advisory Commission on Intergovernmental Relations in the legislation on *State Constitutional Restrictions on Local Borrowing*, this limitation would not be necessary.

²Federal authority for issuing subsidized taxable bonds as well as the state income tax law (if applicable) should be reviewed prior to adopting this sentence without modification.

1 bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the
2 officials had remained in office until such delivery. Any provisions or any law to the contrary not-
3 withstanding, any bonds issued pursuant to this act shall be fully negotiable.

4 (f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued
5 under this act or the security therefor, any bond reciting in substance that it has been issued by the
6 municipality or county in connection with a community renewal and housing project as herein de-
7 fined, shall be conclusively deemed to have been issued for such purpose and the project shall be con-
8 clusively deemed to have been planned, located, and carried out in accordance with the provisions of
9 this act.

10 SECTION 14. *Bonds as Legal Investments.* All banks, trust companies, bankers, savings banks
11 and institutions, building and loan associations, savings and loan associations, investment companies,
12 and other persons carrying on a banking or investment business; all insurance companies, insurance
13 associations, and other persons carrying on an insurance business; and all executors, administrators,
14 curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds
15 belonging to them or within their control in any bonds or other obligations issued by a municipality or
16 county pursuant to this act or by any community development agency or housing authority vested
17 with community development project powers under Section 19 of this act; but the bonds and other
18 obligations shall be secured by an agreement between the issuer and the Federal government in which
19 the issuer agrees to borrow from the Federal government and the Federal government agrees to lend
20 to the issuer, prior to the maturity of such bonds or other obligations, moneys in any amount which,
21 together with any other moneys irrevocably committed to the payment of principal and interest on the
22 bonds or other obligations, will suffice to pay the principal of the bonds or other obligations with
23 interest to maturity thereon, which moneys under the terms of said agreement are required to be used
24 for the purpose of paying the principal of, and the interest on, the bonds or other obligations at their
25 maturity. Bonds and other obligations shall be authorized security for all public deposits. It is the
26 purpose of this section to authorize any persons, political subdivisions, and officers, public or private,
27 to use any funds owned or controlled by them for the purchase of any bonds or other obligations.
28 Nothing contained in this section with regard to legal investments shall be construed as relieving any
29 person of any duty of exercising reasonable care in selecting securities.

30 SECTION 15. *Remedies of an Obligee.*

31 (a) An obligee of a municipality or county has the right, in addition to all other rights which may
32 be conferred on the obligee, subject only to any contractual restrictions binding upon the obligee:

33 (1) by mandamus, suit, action, or proceeding at law or in equity, to compel a municipality or
34 county and the officers, agents, or employees thereof to perform each and every term, provision, and
35 covenant contained in any contract of the municipality or county with, or for, the benefit of the

1 obligee, and to require the carrying out of any or all such covenants and agreements of the munic-
2 ipality or county and the fulfillment of all duties imposed by this act; and

3 (2) by suit, action, or proceeding in equity, to enjoin any acts or things which may be unlaw-
4 ful, or the violation of any of the rights of obligee of the municipality or county.

5 (b) A municipality or county has power, by its resolution, trust indenture, mortgage, lease, or
6 other contract, to confer upon any obligee the right, in addition to all rights that may otherwise be
7 conferred, upon the happening of an event of default as defined in the resolution or instrument, by
8 suit, action, or proceeding in [*any court of competent jurisdiction*]:

9 (1) to cause possession of any project or any part thereof to be surrendered to any such
10 obligee;

11 (2) to obtain the appointment of a receiver of any project of the municipality or county or
12 any part thereof and of the rents and profits therefrom. If a receiver is appointed, he may enter and
13 take possession of such project or any part thereof and operate and maintain same, and collect and
14 receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such
15 moneys in a separate account or accounts and apply the same in accordance with the obligations of
16 the municipality or county as the court shall direct; and

17 (3) to require the municipality or county and the officers, agents, and employees thereof to
18 account as if it and they were the trustees of an express trust.

19 **SECTION 16. *Property Exempt from Taxes and from Levy and Sale***

20 (a) All property of a municipality or county, including funds, owned or held by it for the purpose
21 of this act shall be exempt from levy and sale by virtue of an execution, and no execution or other
22 judicial process shall issue against the same nor shall judgment against a municipality or county be a
23 charge or lien upon such property; but the provisions of this section shall not apply to, or limit the
24 right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to
25 this act by a municipality or county on its rents, fees, grants, or revenues from community renewal
26 and housing projects.

27 (b) The property of a municipality or county, acquired or held for the purposes of this act, is
28 declared to be public property used for essential public and governmental purposes and such property
29 shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision
30 thereof; but such tax exemptions shall terminate when the municipality or county sells, leases, or
31 otherwise disposes of the property to a purchaser or lessee which is not a public body entitled to tax
32 exemption with respect to the property.

33 (c) A municipality or county may waive the exemptions provided in (a) and (b) with respect to
34 claims or taxes against any portion of a project used for profitmaking purposes; provided, however,
35 that such waiver does not affect or impair the rights of any obligee with relation to such property.

1 (d) In lieu of taxes on property exempt under this section, a municipality or county may agree to
2 make such payments to any public body, including itself, as it finds consistent with the mainte-
3 nance of the low rent character of housing projects or resale of renewal projects and the achievement
4 of the purpose of this act.

5 SECTION 17. *Cooperation by Public Bodies.*

6 (a) For the purpose of aiding in the planning, undertaking, or carrying out of a community
7 development project and related activities authorized by this act, any public body may, upon such
8 terms, with or without consideration, as it may determine:

9 (1) dedicate, sell, convey, or lease any of its interest in any property or grant easements,
10 licenses, or other rights or privileges therein to a municipality or county;

11 (2) incur the entire expense of any public improvements made by such public body in exer-
12 cising the powers granted in this section;

13 (3) do any and all things necessary to aid or cooperate in the planning or carrying out of a
14 community development, housing or renewal plan, and related activities;

15 (4) lend, grant, or contribute funds to a municipality or county, and borrow money and apply
16 for and accept advances, loans, grants, contributions, and any other form of financial assistance from
17 the Federal government, the state, county, or other public body, or from any other source;

18 (5) enter into agreements, which may extend over any period, notwithstanding any provision
19 or rule of law to the contrary, with the Federal government, a municipality, county, or other public
20 body respecting action to be taken pursuant to any of the powers granted by this act, including the
21 furnishing of funds or other assistance in connection with a community development, housing or
22 renewal project, and related activities; and

23 (6) cause public buildings and public facilities, including parks, playgrounds, recreational,
24 community, educational, water, sewer, or drainage facilities, or any other works which it is other-
25 wise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade,
26 regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or
27 rezone any part of the public body or make exceptions from building regulations; and cause admin-
28 istrative and other services to be furnished to the municipality or county.

29 (b) If at any time title to, or possession of, any community development project is held by any
30 public body or governmental agency, other than the municipality or county which is authorized by
31 law to engage in the undertaking, carrying out, or administration of community development projects
32 and related activities including any agency or instrumentality of the United States of America, the
33 provisions of the agreements referred to in this section shall inure to the benefit of, and may be
34 enforced by, such public body or governmental agency. As used in this subsection, the terms "mu-
35 nicipality" and "county" shall also include a community development agency or a housing authority

1 vested with all or some of the community development powers pursuant to the provisions of
2 Section 19.

3 (c) Any sale, conveyance, lease, or agreement provided for in this section may be made by a
4 public body after public notice but without appraisal, advertisement, or public bidding.

5 (d) For the purpose of aiding in the planning, undertaking, or carrying out of any community
6 development project and related activities of a community development agency or a housing authority
7 hereunder, a municipality and county may, in addition to its other powers and upon such terms, with
8 or without consideration, as it may determine, do and perform any or all of the actions or things
9 which, by the provisions of subsection (a) of this section, a public body is authorized to do or per-
10 form, including the furnishing of financial and other assistance.

11 (e) For the purposes of this section, or for the purpose of aiding in the planning, undertaking,
12 or carrying out of a community development project and related activities of a municipality or county,
13 such municipality or county may, in addition to any authority to issue bonds pursuant to Section 13,
14 issue and sell its general obligation bonds. Any bonds issued by a municipality or county pursuant
15 to this section shall be issued in the manner and within the limitations prescribed by the applicable
16 laws of this state for the issuance and authorization of general obligation bonds by such municipality
17 or county. Nothing in this section shall limit or otherwise adversely affect any other section of
18 this act.

19 SECTION 18. *Title of Purchaser.* Any instrument executed by a municipality or county and pur-
20 porting to convey any right, title, or interest in any property under this act shall be conclusively
21 presumed to have been executed in compliance with the provisions of this act insofar as title or other
22 interest of any *bona fide* purchasers, lessees, or transferees of the property is concerned.

23 SECTION 19. *Exercise of Powers in Carrying Out Community Development Projects and Related*
24 *Activities.*

25 (a) A municipality or county may itself exercise all or part of its community development powers,
26 as herein defined, or may, if the governing body by resolution determines such action to be in the
27 public interest, elect to have all or some of these powers exercised by a community development agency
28 created under Section 20 [or other law] or by its housing or urban renewal authority, if one exists or
29 is subsequently established. In the event the local governing body makes such determination, the
30 community development agency or the authority, as the case may be, shall be vested with all such
31 community development powers as may be conferred on such agency or authority by the municipality
32 or county. If the local governing body does not elect to make such determination, the municipality or
33 county in its discretion may exercise its community development powers through a board or commis-
34 sion or through such officers as its local governing body may by resolution determine.

35 (b) As used in this section, the term "community development powers" may include all the rights,

powers, functions, and duties of a municipality or county under this act, except the following:

- (1) the power to determine an area to be a renewal area and to designate such area as appropriate for a community renewal project and to hold any public hearings required with respect thereto;
- (2) the power to approve;
 - (i) community development plans and modifications thereof;
 - (ii) general neighborhood renewal plans and communitywide plans or programs for housing and community development;
 - (iii) a housing project;
 - (iv) the acquisition, demolition, removal, or disposal of property in a community renewal area;
- (3) the power to establish a general plan for the locality as a whole;
- (4) the power to carry out a program of code enforcement;
- (5) the power to make the determinations and findings provided for in Section 3, Section 4, and Section 5(d);
- (6) the power of a county or municipality to establish an agency under subsection(a) of this section and Section 20;
- (7) the power to issue general obligation bonds under Section 17(d),
- [(8) the power of eminent domain as provided in Section 10;
- (9) the power to assume the responsibility to bear loss as provided in Section 7(e);] and
- (10) the power to appropriate funds, levy and abate taxes and assessments, provide special permitting procedures and to exercise other powers provided for in Sections 7(k), (l), and (n).

SECTION 20. *Community Development Agency.*¹

(a) There is hereby authorized to be created in each municipality and county by resolution or ordinance of the local governing body a public body corporate and politic to be known as the community development agency of [the municipality or county]. The agency shall exercise those community development power or portions thereof conferred by this act and which may be delegated to it by the local governing body as provided in Section 19.

(b) If the community development agency is authorized to transact business and exercise powers hereunder, the local executive [by and with the advice and consent of the local governing body], shall appoint a board of the community development agency which shall consist of [five] commissioners.¹ The term of office of each such commissioner shall be [two years].

(c) A commissioner shall receive no compensation for his services but shall be entitled to the

¹In some states, this section may have to be written to actually create and to provide further for recognition of previously created agencies.

¹Variations in appointive practices among the states may require that other language be used to indicate what official or body appoints members to the agency board and how officers of the agency board are selected. Care should be taken to provide proper procedures for both municipalities and counties.

1 necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each com-
2 missioner shall hold office until his successor has been appointed and has qualified. A certificate of
3 the appointment or reappointment of any commissioner shall be filed with the clerk of the munici-
4 pality or county, as the case may be, and such certificate shall be conclusive evidence of the due and
5 proper appointment of the commissioner.

6 (d) The powers of a community development agency shall be exercised by the commissioners
7 thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting
8 business and exercising the powers of the agency and for all other purposes. Action may be taken by
9 the agency upon a vote of a majority of the commissioners present, unless in any case the laws shall
10 require a larger number. Any persons may be appointed as commissioners if they reside within the
11 area of operation of the agency, which shall be coterminous with the area of operation of the munici-
12 pality or county, and are otherwise eligible for such appointments under this act.

13 (e) In the case of a community development agency of an individual municipality or county, the
14 local executive shall designate a chairman and vice chairman from among the commissioners. In the
15 case of a joint community development agency serving two or more municipalities or counties, the
16 chairman and vice chairman shall be designated as provided in the agreement establishing the joint
17 agency. An agency may employ an executive director, technical experts, and such other agents and
18 employees, permanent and temporary, as it may require, and determine their qualifications, duties,
19 and compensation. For legal service as it may require, an agency may employ or retain its own
20 counsel and legal staff. An agency authorized to transact business and exercise powers under this act
21 shall file, with the local governing body, on or before [March 31] of each year, a report of its activities
22 for the preceding [calendar] [fiscal] year, which report shall include a complete financial statement setting
23 forth its assets, liabilities, income, and operating expense as of the end of the [calendar] [fiscal] year.
24 At the time of filing the report, the agency shall publish in a newspaper of general circulation in the
25 community a notice to the effect that such report has been filed with the municipality or county and
26 that the report is available for inspection during the business hours in the office of the municipal or
27 county clerk and in the office of the agency.

28 (f) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed
29 only after a hearing and after he shall have been given a copy of the charges at least [ten] days prior
30 to such hearings and have had an opportunity to be heard in person or by counsel.

31 SECTION 21. *Interested Public Officials, Commissioners, or Employees.* No public official or
32 employee of a municipality or county board or commission and no commissioner or employee of a
33 housing or renewal authority or community development agency which has been vested by a mu-
34 nicipality or county with community development powers under Section 19 shall voluntarily acquire
35 or hold any interest prior to appointment or employment as an officer, commissioner, or employee,

1 he shall immediately disclose his interest in writing to the public body exercising community devel-
2 opment powers, and the disclosure shall be entered upon its minutes, and the officer, commissioner,
3 or employee shall not participate in any action by the public body relating to the property or
4 contract in which he has any interest. Any violation of the foregoing provisions of the section con-
5 stitutes misconduct in office. This section shall not be applicable to the acquisition of any interest
6 in bonds of the municipality, county, or authority issued in connection with any community devel-
7 opment project, or to the execution of agreements by banking institutions for the deposit or handling
8 of funds in connection with a project or to acting as a trustee under any trust indenture, or to utility
9 services the rates for which are fixed or controlled by a government agency.

10 [SECTION 22. *State Aid.*

11 (a) The [*insert name of appropriate agency of state government*] shall provide technical and
12 advisory assistance, upon request, to municipalities and counties for a community development
13 project as defined in this act. Such assistance may include, but need not be limited to, preparation
14 of plans, programs, relocation planning, special statistical and other studies and compilations,
15 technical evaluations and information, training activities, professional services, surveys, reports,
16 documents, and any other similar service functions.¹

17 (b) The [*appropriate state agency*] may make community development grants to municipalities
18 and counties for [] percent of the individual net project costs. Advances from capital grants may be
19 made for relocation planning, pursuant to regulations adopted by the [*appropriate state agency*].
20 Grants shall be made from funds appropriated by the [*legislature*] for these purposes and shall be
21 exclusive of those costs reimbursed or paid by grants from the Federal government.

22 (c) The [*appropriate state agency*] may:

23 (1) finance, by mortgage loans or otherwise, the construction or rehabilitation of housing
24 projects in this state;

25 (2) make temporary loans or advances in anticipation of permanent loans and issue bonds,
26 bond anticipation notes, and other obligations of the agency payable solely from the revenues or other
27 funds of the agency; and

28 (3) otherwise assist with housing programs as provided in this act.²

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

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

¹States may wish to authorize provision of such technical services to local governments on a reimbursable basis. However, rather than provide authorization within this statute, such states might consider a separate act providing general authorization for all state agencies to provide technical services as proposed in the suggested legislation *State Technical Services for Local Governments*.

²The suggested legislation, *State Financial Assistance and Channelization of Federal Grant Programs for Community Development*, gives the states a meaningful and effective role in Federal programs of grants-in-aid to local governments for community development. States may wish to consider the provisions set forth in this bill as guidelines in drafting this subsection or passage of a separate act to encompass several programs in Federally aided fields of local activity. The suggested legislation, *State Housing Finance Agency*, also provides a means of reaching the objectives of subsections (b) and (c) of this section.

6.109 NEW COMMUNITY DISTRICT ACT¹

A major problem in developing a responsive governmental pattern in both urban and rural America results from both the lack of a modern county (areawide) government in many areas and from the view held by many courts (and legislatures) that municipal corporations may not be established unless a community of persons actually exists. This impedes the proper development, with sufficient planned governmental infrastructures, of planned new communities in vacant areas of the state.

The suggested legislation authorizes the establishment of a special, but temporary "new community" district to provide the necessary interim governmental activity, coordinated with the private development, until such time as an appropriate general purpose government may be able to respond. The draft provides maximum safeguards for open operation, reporting and review, and providing a "fit" into existing and future general governmental activity.

The draft is adapted from a bill enacted in Florida² (1975) drawn in turn from legislation enacted in Ohio and Kentucky.

Section 1 states the purpose and findings of the act. *Section 2* mandates this act as the sole authority for the future establishment of independent special districts. *Section 3* defines the words and terms used in the act.

Section 4 provides for establishment of a new community district by petition and sets out the procedures to be followed by the petitioner and the county having jurisdiction over the majority of land to be contained in the district. It also provides for appeal procedures.

Section 5 authorizes the new community district to contract or expand its boundaries by petition, to merge with other districts, and to be terminated by direction of a boundary commission (if one exists), through annexation by a municipality, merger with a county, incorporation as a municipality, or dissolution.

Section 6 deals with the membership of the governing board, recordkeeping by the board, meetings, and payment to members of the board.

Section 7 enumerates the general powers of the community district and *Section 8* enumerates the district's special powers relating to public improvements and community facilities. Special powers of the district relating to special assessments and maintenance taxes are listed in *Section 9*, while those special powers relating to borrowing are listed in *Section 10*.

Section 11 requires the district to provide financial reports as prescribed by law; to prepare an annual report on its activities and furnish such to the governor, presiding officers of the legislature, appropriate departments, presiding officer of the governing bodies of units of local general purpose government and any other public agency within its boundaries, and, for a fee, to any interested person; to adopt an annual budget as submitted by the district manager and after review by the local governing authorities having jurisdiction over the area included in the district; to provide for an annual post-audit of its financial records; and to submit any proposed issuance of bonds and the project to be financed to the local governing authority having jurisdiction over the area included in the district for review and approval.

Section 12 mandates the district to take affirmative steps to provide for the full disclosure of information related to the public financing and maintenance of improvements to real property in the districts.

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *The Problem of Special Districts in American Government*, Report A-22 (May, 1964), and *Urban and Rural America: Policies for Future Growth*, Report A-32 (Washington, D.C.: U.S. Government Printing Office, April, 1968).

²Chapter 75, *Laws of Florida* (1975).

Suggested Legislation

[AN ACT PROVIDING FOR NEW COMMUNITY DISTRICTS TO RESPOND TO
THE NEED FOR GOVERNMENTAL INFRASTRUCTURE
IN DEVELOPING AREAS]¹

(Be it enacted, etc.)

1 SECTION 1. *Purpose.*

2 (a) The [legislature] finds that the expansion of growth areas in the state into presently vacant
3 land is proceeding rapidly and haphazardly, often contrary to the best use of the land, and causing
4 sprawl and degradation of vital natural resources; that the conservation of critical and sensitive
5 environmental zones is of the highest priority, and must be incorporated in a state growth program;
6 and that most municipal and county governments in this state, without the assistance and mech-
7 anisms as provided in this act, are not able to implement, administer, and manage the processes re-
8 quired to promote and provide service to new community and large scale development as outlined
9 herein.

10 (b) It is the intent of the [legislature] to provide local general purpose government with the first
11 opportunity to provide governmental services and to promote private initiative and voluntary partici-
12 pation in planned urbanization by authorizing new community districts in those areas of the state
13 and for those services where local general purpose government has determined it presently cannot
14 directly respond. These districts may be created when certain criteria of size and accountability are
15 met with maximum consideration given to local desires and capability and to state and regional
16 goals, policies, and growth plans.

17 (c) In order to accomplish the purposes of this act, it is necessary for the state to develop,
18 implement, coordinate, and enforce a new communities policy and, one essential element shall be a
19 positive incentive for quality development through the mechanism of granting to private developers
20 certain limited status as a temporary, special improvement district in order to operate and finance the
21 cost, delivery, and maintenance of necessary pre-development capital improvements of water, sewer,
22 road, and drainage systems consistent with existing local systems and state growth policies.

23 [Optional Section.]

24 [SECTION 2. *Preemption; Sole Authority.* This act shall constitute the sole authorization for
25 the future establishment of independent special districts having the power to provide the capital
26 improvements for sewer, road, water management and supply, solid waste and erosion control
27 systems, and community facilities for development of lands, except for independent special districts

¹Suggested short title: *New Communities District Act of 19--*.

1 and municipal service taxing and benefit units established pursuant to [*appropriate state laws*]. All
2 other independent special districts created by local ordinance or by a court or state agency order for
3 these purposes shall, in the future, be established pursuant to this act.]¹

4 SECTION 3. *Definitions*. The following words and terms shall have the meaning indicated un-
5 less the context clearly indicates a different meaning:

6 (a) “*Ad valorem bonds*” means bonds which are payable from the proceeds of *ad valorem* taxes
7 levied on real and tangible personal property and are generally referred to under general obligation
8 bonds.

9 (b) “*Assessable improvements*” includes, without limitation, any and all sewer systems, storm
10 sewers and drains, water systems, streets, roads of the new community district, or that portion or
11 portions thereof, local in nature and of special benefit to the premises or lands served thereby,
12 and any and all modifications, improvements, and enlargements thereof.

13 (c) “[*Board*]” or “[*Board of Supervisors*]” means the governing board of the new community dis-
14 trict, as herein defined, or if such board be abolished, the board, body or commission succeeding to
15 the principal functions thereof or to whom the powers given by this act to the board shall be given by
16 law.

17 (d) “*Bond*” includes “*certificate*,” and provisions applicable to bonds shall be equally applicable
18 to certificates. “*Bond*” includes general obligation bonds, assessment bonds, refunding bonds, reve-
19 nue bonds, and other such obligations in the nature of bonds as are provided for in this act, as the
20 case may be.

21 (e) “[*Commission*]” means the [*appropriate state agency or boundary commission*].

22 (f) “*Cost*,” when used with reference to any project, includes, but is not limited to, the expenses
23 of determining the feasibility and practicability of acquisition, construction, or reconstruction; the
24 cost of surveys, estimates, plans, and specifications; the cost of improvements; engineering, fiscal
25 and legal expenses and charges; the cost of all labor, materials, machinery, and equipment; cost of
26 all lands, properties, rights, easements, and franchises acquired; financing charges; the creation of
27 initial reserve and debt service funds; working capital; interest charges incurred or estimated to be
28 incurred on money borrowed prior to and during construction and acquisition and for such reason-
29 able period of time after completion of construction or acquisition as the [*board*] may determine; the
30 cost of issuance of bonds pursuant to this act including advertisements and printing, the cost of any
31 election held pursuant to this act, and all other expenses of issuance of bonds; discount, if any, on
32 the sale or exchange of bonds; administrative expenses; such other expenses as may be necessary or
33 incidental to the acquisition, construction, or reconstruction of any project or to the financing

¹This optional section highlights the need to control the fragmentation of government which special districts often bring (and partial-ly avoided by this act through its termination and review mechanisms), yet also recognizes the need for flexibility to allow certain other types of districts.

1 thereof, or the development of any lands within the new community district; and reimbursement of
2 any public or private body, person, or firm or corporation for any moneys advanced in connection
3 with any of the foregoing items of cost. Any obligation or expense incurred prior to the issuance of
4 bonds in connection with the acquisition, construction, or reconstruction of any project or improve-
5 ment thereon, or in connection with any other development of land that the [board] of the new com-
6 munity district shall determine to be necessary or desirable in carrying out the purposes of this act,
7 may be treated as a part of such cost.

8 (g) "[Department]" means the [department of community affairs or other appropriate state
9 agency].

10 (h) "Elector" means a voter or qualified elector under state law who resides within the new com-
11 munity district.

12 (i) "General obligation bonds" means bonds which are secured by, or provide for, their payment
13 by, the pledge, in addition to those special taxes levied for their discharge and such other sources as
14 may be provided for their payment or pledged as security under the resolution authorizing their
15 issuance, of the full faith and credit and taxing power of the new community district and for payment
16 of which recourse may be had against the general fund of the new community district.

17 (j) "Improvement bonds" means special obligations of the new community district which are
18 payable solely from proceeds of the special assessments levied for an assessable project.

19 (k) "Landowner" means the owner of the freehold estate, as appears by the deed record, includ-
20 ing trustees, private corporations, and owners of condominium units; it does not include reversion-
21 ers, remaindermen, or mortgagees, who shall not be counted and need not be notified of proceedings
22 under this act.

23 (l) "New community district" means a local or regional unit of special purpose government cre-
24 ated pursuant to this act and limited to the purpose of performing those specialized functions specifi-
25 cally prescribed in this act whose governing authority is an independent body created, organized,
26 constituted, and authorized to function specifically as prescribed in this act, and whose location,
27 formation, powers, governing body, operation, duration, accountability, requirements for disclosure,
28 and termination are specifically set forth in this act.

29 (m) "Order" means the ordinance or ruling that establishes the district.

30 (n) "Petitioner" means landowner and/or private developer who is proposing the new commun-
31 ity district.

32 (o) "Project" means any development, improvement, property, utility, facility, works, enter-
33 prise, or service, now existing or hereafter undertaken or established, under the provisions of this
34 act.

35 (p) "Refunding bonds" means bonds issued to refinance outstanding bonds of any type and the

1 interest and redemption premium thereon. Refunding bonds shall be issuable and payable in the same
2 manner as the refinanced bonds, except that no approval by the electorate shall be required unless
3 required by the state constitution.

4 (q) "Revenue bonds" means obligations of the new community district which are payable from
5 revenues derived from sources other than *ad valorem* taxes on real or tangible personal property and
6 which do not pledge the property, credit, or general tax revenue of the new community district.

7 (r) "Sewer system" means any plant, system, facility, or property, and additions, extensions,
8 and improvements thereto at any future time, constructed or acquired as part thereof, useful or neces-
9 sary or having the present capacity for future use in connection with the collection, treatment, purifi-
10 cation, or disposal of sewage, including without limitation industrial wastes resulting from any
11 process of industry, manufacture, trade, or business or from the development of any natural re-
12 sources; and, without limiting the generality of the foregoing, shall include treatment plants, pump-
13 ing stations, lift stations, valves, force mains, intercepting sewers, laterals, pressure lines, mains, and all
14 necessary appurtenances and equipment, all sewer mains, laterals and other devices for the reception
15 and collection of sewage from premises connected therewith, and all real and personal property, and
16 any interest therein, rights, easements, and franchises of any nature whatsoever relating to any such
17 system and necessary or convenient for operation thereof.

18 (s) "Water management and control facilities" means any lakes, canals, ditches, reservoirs, dams,
19 levees, sluiceways, floodways, pumping stations, or any other works, structures, or facilities for the
20 conservation, control, development, utilization and disposal of water, and any purposes appurtenant,
21 necessary, or incidental thereto, and includes all real and personal property and any interest therein,
22 rights, easements, and franchises of any nature relating to any such water management and control
23 facilities or necessary or convenient for the acquisition, construction, reconstruction, operation, or
24 maintenance thereof.

25 (t) "Water system" means any plant, system, facility, or property, and additions, extensions,
26 and improvements thereto at any future time, constructed or acquired as part thereof, useful or neces-
27 sary or having the present capacity for future use in connection with the development of sources,
28 treatment, or purification and distribution of water and, without limiting the generality of the fore-
29 going, includes dams, reservoirs, storage tanks, mains, lines, valves, pumping stations, laterals, and
30 pipes for the purpose of carrying water to the premises connected with such system, and all rights,
31 easements, and franchises of any nature whatsoever relating to any such system and necessary or
32 convenient for the operation thereof.

33 SECTION 4. *Establishment of District; Petition.*

34 (a) A petition requesting establishment of a new community district shall be filed by the peti-
35 tioner with the county having jurisdiction over the majority of land in the area in which the district

1 is to be located, or, when state action is requested, with the [department], who shall assume the respon-
2 sibilities assigned a county hereunder. The petition shall contain:

3 (1) a description, by metes and bounds, of the property to be included in the district and a
4 listing, with the last known address, of all owners of real property within the general external
5 boundaries of the district which are to be excluded from the district, including a listing of owners
6 of such land;

7 (2) a request for the specific governmental powers which the district will be authorized to
8 assume pursuant to this act in addition to the general powers authorized pursuant to Section 7 of
9 this act, including a statement describing the capacity of existing local facilities, the future thereof,
10 and the role of the new community district in providing for compatability of facilities with local
11 and/or regional services;

12 [(3) a statement showing the coordination of this petition with a development of regional
13 impact pursuant to [appropriate statutory citation] and a preliminary plan showing the initial master
14 plan for development;]¹

15 (4) a statement showing creation of the district as being the best alternative available for de-
16 livering the specific services sought to be delivered and that the area is amenable to separate special
17 district government;

18 (5) specific statements showing compliance with the following standards:

19 (i) the new community district shall consist of land which is substantially contiguous
20 and developable as one functional interrelated community and the total acreage of which shall not be
21 less than [1,000] acres unless the land is wholly contained within one or more municipalities in
22 which case the total acreage shall not be less than [] acres;

23 (ii) the petitioner shall have control, by deed, trust agreement, contract, or option, of
24 [75] percent of the land to be included in the new community district;

25 (iii) the new community district shall be shown to have the capability to build infra-
26 structures which will be compatible with the overall general purpose government facilities in the land
27 area involved;

28 (iv) the petitioner shall commit to apply for, and accept, housing subsidy and assistance
29 programs for low and moderate income individuals in an amount not less than [15] percent nor more
30 than [25] percent, as provided in the order, of the total residential units to be developed, or lots to be
31 sold to individual owners, over the succeeding calendar year or some other period, not more than five
32 years, agreed upon and stated in the order creating such new community districts;

33 (v) commitment to comply with all ecological, environmental, economic, and other gov-

¹Some states have a system which identifies major developments such as the one proposed in this act and provides for special processing. If such a coordinated land use regulatory approach is used, this act should easily fit into the process.

1 ernmental, procedural, and policy requirements of local and state general purpose government;

2 (6) the proposed plan for termination.¹

3 (b) Upon receipt of the petition, the county shall request written comments and recommendations
4 from adjacent local governments, the regional planning agency, and the [appropriate state agency]
5 who shall notify all [appropriate state agencies] the [state agency head] determines to have an interest
6 in the proposed new community.

7 (c) (1) Within [90 days] after the petition is filed, a local hearing shall be held by the county.
8 If the area proposed to be included in the district is under the jurisdiction of more than one unit
9 of local government, the county with whom the petition is filed shall convene and conduct a joint
10 hearing of all units with jurisdiction over any of the area proposed to be included. Notice of the hear-
11 ing shall be sent to all agencies receiving notices of the petition, all persons owning property within
12 the proposed district, and any other person who has filed with the county or the [department] a re-
13 quest for such notice. Notice shall be further provided by publication in a newspaper of general
14 circulation in the area affected no less than [seven nor more than 14 days] in advance of such hearing.
15 Transfer of control of the land to petitioner or written approval or consent by a landowner or agency,
16 filed with the petition, shall constitute a waiver of the specific notice requirement contained in
17 this paragraph.

18 (2) All relevant information, studies, data, comments, and recommendations received by the
19 county shall be presented at the hearing. Interested persons shall be heard concerning establishment
20 of the district.

21 (d) Either prior to the hearing or within [14] days after the hearing is concluded, each person or
22 agency affected shall submit in writing its specific recommendations and detailed reasons therefor
23 concerning establishment of the proposed new community district to the convenor. Such written
24 recommendations shall be made available to the petitioner and to all affected general purpose local
25 governments.

26 (e) (1) Within [45 days] after the hearing, and after consideration of all the comments and
27 recommendations received from various agencies and persons, and after determining that the pro-
28 posed new community district and development conforms to the requirements of this section, the
29 county shall make, by non-emergency ordinance or, if more than one county is involved, by joint
30 ordinance, a final order granting or denying establishment of the district and specifying the powers
31 authorized the district in addition to the general powers granted by Section 7 of this act. Failure to
32 enact an ordinance within the specified time may be considered a denial for the purposes of any
33 appeal authorized under subsection (h) of this section. The order shall be filed with the [secretary

¹This places everyone on notice of the temporary nature of this district and begins developing a consideration of optional ways to phase it out when it has met the needs for which it was established.

1 of state, the board of the local governing body or bodies affected, and the department].

2 (2) Such order shall not be effective within the boundaries of any municipality if such
3 municipality, within [45] days, specifically excludes the area by ordinance. In such case the district
4 boundaries shall be deemed amended to exclude any such area.

5 (f) The order creating the district may be amended upon petition of the district [board] pursuant
6 to the same procedures as the initial establishment.

7 [Optional Subsection.]

8 [(g) The [department], in conjunction with the [state land use planning agency]¹ and the units
9 of local government involved, may create a new community district pursuant to this act within
10 any area designated for major development potential pursuant to [appropriate state law] or within
11 any area covered by a state comprehensive plan established pursuant to [appropriate state law]. In
12 such case the [department] may, by rule as it deems necessary, act in the place of the county or mu-
13 nicipality provided herein.]

14 (h) (1) Within [30 days] after the ordinance is enacted or fails to be timely enacted, either the
15 petitioner, an adjacent unit of local general purpose government [an appropriate regional planning
16 agency], or the [appropriate state agencies] may appeal the ordinance or failure to pass the ordinance
17 to the [commission] by filing a notice of appeal with the [commission]. The appellant shall furnish
18 a copy of the notice of appeal to the opposing party, as the case may be, and to the local government
19 which enacted or failed to enact the ordinance. The filing of the notice of appeal shall stay the
20 effectiveness of the ordinance, and shall stay any judicial proceedings in relation to the ordinance,
21 until after the completion of the appeal process. Upon motion and good cause shown the [commis-
22 sion] may permit materially affected parties to intervene in the appeal.

23 (2) Prior to issuing its order, the [commission] shall hold a hearing pursuant to the
24 provisions of [state administrative procedures act]. The [commission] shall encourage the submis-
25 sion of appeals on the record made below in cases in which the ordinance was enacted or failed
26 to be enacted after a full and complete hearing before the local government or an agency thereof.

27 (3) The [commission] shall have the power to designate a hearing officer to conduct hearings,
28 who shall have the power to issue notices of hearings and subpoenas requiring the attendance of
29 witnesses and the production of evidence, to administer oaths, and to take testimony as may be
30 necessary or in conformity with this part. Such hearing officer shall certify and file with the [commission]
31 recommendations, findings of fact, and a proposed order.

32 (4) Within [120] days, the [commission] shall issue a decision granting or denying the new
33 community district and specifying the special powers it may exercise pursuant to this part. Decisions
34 of the [commission] shall contain a statement of the reasons therefor pursuant to the standards of this

¹See *State Planning and Growth Management Act*.

1 part. Decisions of the [commission] are subject to judicial review under [state administrative
2 procedures act].

3 (i) Any order creating the new community district shall be issued expressly and only for the
4 purposes of, and consistent with the provisions of, this act and shall not, under any circumstances
5 or in any manner, be cited or raised by the petitioner or any other person as evidence of support by
6 or approval of the county, the [department], or any other state agency of the proposed development
7 for any other purposes. The burden of proof under other proceedings remains unaltered by this act.
8 Nothing in this act can relieve a developer from the application of the [appropriate environmental
9 and other regulatory laws]; however, the proposed new community district shall also be a development as
10 defined in those acts and proceedings under those acts, may at the option of the developer be con-
11 ducted independently of, but simultaneously with, proceedings under this act.

12 SECTION 5. *Termination, Contraction or Expansion of District.*¹

13 (a) The district may contract or expand its boundaries by petition of either the governing body
14 or owner of lands to be included or excluded. The petition shall be made in the same manner and
15 shall have the same effect as a petition under Section 4; provided, however, that the standards for
16 annexation and contraction of a municipality pursuant to [appropriate state law] shall be additionally
17 applied.

18 (b) The district may merge with other districts pursuant to [appropriate state law].

19 (c) The district shall remain in existence unless one of the following methods of termination is
20 exercised at any time following the first replacement of a member appointed by the petitioner pursu-
21 ant to Section 6(a) or such shorter time provided in the order, in addition to the preferred method
22 set forth in the order creating it:

23 (1) upon meeting the standards of [appropriate state law] and upon assumption of the dis-
24 trict's debt, a municipality may annex all the land included in the district by ordinance;

25 (2) upon providing any one or all of those services offered by the district at a similar level
26 and upon assumption of the district's debt related to the services assumed, a county may merge, by
27 non-emergency ordinance, all the land included in the district into its system for delivering such
28 services;

29 (3) upon meeting the requirements of [appropriate state law], the governing body of the
30 district shall propose to the legislative delegation representing the area a charter incorporating the
31 area as a municipality; or

32 (4) in the event the district has not sold bonds or entered into a firm underwriting agreement
33 for the sale of its bonds or received its development orders pursuant to [appropriate state law] within

¹If there is a state boundary commission, this section should be carefully drafted to make it consistent with that statute; see *Local Government Creation, Dissolution, and Boundary Adjustment*.

1 [three years] of the issuance of the order creating it, the district shall be automatically dissolved and
2 a statement to that effect shall be filed with the same bodies receiving the order creating the district.

3 SECTION 6. *Governing Body; Members and Meetings.*

4 (a) (1) The initial governing body of the proposed district shall be composed of [two] members
5 appointed by the county with jurisdiction over the area included within the district or, if more than
6 one, by a joint agreement as specified in the order creating the district, to represent the interests of
7 the local citizenry and [three] members appointed by the petitioner to serve as his representatives to
8 insure completion of the project.

9 (2) Members shall serve [four year] overlapping terms with one each of the initial public and
10 petitioner members appointed to serve initial [two year] terms.

11 (3) Members appointed by the petitioner shall be replaced by public members who reside
12 in the district and are appointed by the county with jurisdiction over the area included within the
13 district at a population level specified in the ordinance or according to a schedule calculated to
14 achieve one such replacement each time the new community gains a proportion equal to one-third of
15 its projected total population or has one-third of its platted residential lots sold, whichever occurs
16 first.

17 (b) Members of the district [*board*] to be known as [*supervisors*], entering into office shall take
18 and subscribe to the oath of office as prescribed by law and shall hold office for the terms for
19 which they are elected or appointed and until their successors are chosen and qualified. In case of a
20 vacancy in office, the vacancy shall be filled in the same manner as the original office for the remain-
21 der of the term unless the office is an elective one with less than [28 months] remaining in which case
22 the remaining members of the [*board*] may fill the vacancy by appointment.

23 (c) A majority of the members of the [*board*] shall constitute a quorum for the purpose of con-
24 ducting its business and exercising its powers and for all other purposes. Action taken by the dis-
25 trict shall be upon a vote of a majority of the members present unless law, the local ordinance creating
26 the district, or rule of the district requires a larger number.

27 (d) As soon as practicable after each election or appointment, the [*board*] shall organize by elect-
28 ing one of its members as chairman and by electing a secretary, who need not be a member of the
29 [*board*], and such other officers as the [*board*] may deem necessary.

30 (e) The [*board*] shall keep a permanent record book entitled "record of proceedings of [*name*]
31 new community district," in which shall be recorded minutes of all meetings, resolutions, proceed-
32 ings, certificates, bonds given by all employees, and any and all corporate acts, which book shall at
33 reasonable times be opened to inspection in the same manner as state, county and municipal records
34 pursuant to [*appropriate state public records law*], as well as such other persons as the [*board*] may deter-
35 mine to have proper interest in the proceedings of the [*board*]. Such record book shall be kept at any

1 office or other regular place of business maintained by the [board] in the county or municipality in
2 which the new community district is located.

3 (f) All meetings shall be open to the public and governed by the provisions of [appropriate
4 state "sunshine" law].

5 (g) Each supervisor shall be entitled to receive for his services an amount not to exceed [\$100] per
6 month. In addition, each supervisor shall receive travel and *per diem* expenses as set forth in [ap-
7 propriate state law].

8 SECTION 7. *General powers.* A new community district established pursuant to this part shall
9 have, in addition to any special powers as may hereinafter be authorized by the order creating such
10 district or subsequently amended, all the powers necessary or convenient to carry out and effectuate
11 the purposes for which it was established, including the following general powers:

12 (a) to sue and be sued in the name of the district; to adopt and use a seal and authorize the use
13 of a facsimile thereof; to acquire by purchase, gift, devise, or otherwise, real and personal property,
14 or any estate therein; to make and execute contracts and other instruments necessary or convenient
15 to the exercise of its powers;

16 (b) to employ and fix the compensation of a district manager who shall have charge and super-
17 vision of the works of the district and who may hire or otherwise employ and terminate such other
18 persons, including without limitation, professional, supervisory, and clerical, as may be necessary
19 and authorized by the [board]. The compensation and other conditions of employment of such officers
20 and employees shall be as provided by the board and shall not be governed by any rule applicable
21 to state employees in the classified service unless the [board], with the approval of the [secretary of
22 the department of administration], so provides:

23 (c) to apply for coverage of its employees under the state retirement system in the same manner
24 as if such employees were state employees, subject to necessary action by the district to pay employer
25 contributions into the state retirement fund;

26 (d) to authorize compensation for members of the district [board] for *per diem*, travel, and other
27 reasonable expenses for meetings, hearings, and other official business consistent with [appropriate
28 state law];

29 (e) to contract for the services of consultants to perform planning, engineering, legal, or other
30 appropriate services of a professional nature. Such contracts shall be subject to the requirements
31 of the state law relating to public bidding;

32 (f) to borrow money, accept gifts, apply for and use grants or loans of money or other
33 property from the United States, the state, a local unit of government or any person, for any district
34 purposes, and enter into agreements required in connection therewith, and hold, use, and dispose of
35 such moneys or property for any district purposes in accordance with the terms of the gift, grant,

1 loan, or agreement relating thereto.

2 (g) to adopt bylaws, rules, resolutions, and orders pursuant to the provisions of [*the state*
3 *administrative procedure act*] prescribing the powers, duties, and functions of the officers of the dis-
4 trict, the conduct of the business of the district, the maintenance of records, and the form of
5 certificates evidencing tax liens and other documents and records of the district. The [*board*] may
6 adopt administrative rules and regulations with respect to any of the projects of the district, and de-
7 fine the area to be included thereon on such notice as required for elections and public hearings;

8 (h) to maintain offices at such place or places as it may designate within the district;

9 (i) to make use of any public easements, dedications to public use, platted reservations for public
10 purposes, or any reservations for specific public purposes within the boundaries of the district for
11 those purposes authorized the district;

12 (j) to lease as lessor or lessee to or from any person, firm, corporation, association, or body,
13 public or private, any projects of the type that the district is authorized to undertake and facilities
14 or property of any nature for the use of the district to carry out any of the purposes of this act auth-
15 orized such district;

16 (k) to borrow money and issue bonds, certificates, warrants, notes, or other evidences of indebt-
17 edness as hereinafter provided; to levy such tax and special assessments as may be authorized; to
18 charge, collect, and enforce fees and other user charges; and to establish a budget and fiscal year in
19 conformance with [*state fiscal law — local government*];

20 (l) to raise, by user charges or fees authorized by resolution of the [*board*], amounts of money
21 which are necessary for the conduct of district activities and services and enforce their receipt and
22 collection in the manner prescribed by resolution not inconsistent with law;

23 (m) to exercise the right and power of eminent domain pursuant to the provisions of [*appropri-*
24 *ate state law*] over any property within the state, except municipal, county, state, and Federal
25 property, for the uses and purposes of the district relating solely to water, sewer, roads, and drainage,
26 specifically including, without limitation, the power for the taking of easements for the drainage of
27 the land of one person and through the land of another;

28 (n) to cooperate with or contract with other governmental agencies as may be necessary, conven-
29 ient, incidental, or proper in connection with any of the powers, duties, or purposes of the district as
30 stated in the act and by local ordinance;

31 (o) to exercise such special powers as may be authorized by the order creating such district
32 pursuant to Sections 8 through 10 of this act.

33 SECTION 8. *Special Powers; Public Improvements and Community Facilities.* The district shall
34 have, concurrent within the boundaries of the district with other public bodies and agencies and
35 subject to the regulatory jurisdiction and approval of any regulatory bodies and agencies, and the

1 [board] may exercise, any or all of the following special powers relating to public improvements and
2 community facilities as may be specifically authorized by the order creating such district or as it may
3 be amended from time-to-time:

4 (a) to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and
5 maintain systems and facilities for:

6 (1) water management and control for the lands within the district and to connect some
7 or any of such facilities with roads and bridges as, in the judgment of the [board], is deemed advisable
8 to provide access;

9 (2) water supply, sewer, and waste water management, or any combination thereof, and
10 to construct and operate connecting, intercepting, or outlet sewers and sewer mains and pipes and
11 water mains, conduits or pipelines in, along, and under any streets, alleys, highways, or other public
12 places or ways within the district when deemed necessary or desirable by the [board];

13 (3) waste collection and disposal system, and to sell or otherwise dispose of any effluent, res-
14 idue, or other byproducts of such system or sewer system;

15 (4) bridges or culverts that may be needed in the district, across any drain, ditch, canal,
16 floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over
17 levees and embankments, and to construct any and all of said works and improvements across,
18 through, or over any public right-of-way, highway, grade, fill, or cut in the district;

19 (5) highways, streets, roads, alleys, sidewalks, storm drains, bridges, and public thorough-
20 fares of all kinds and descriptions (hereinafter collectively and severally referred to as "public
21 roads"), and connections to any extensions of any and all existing public roads within the district,
22 deemed necessary or convenient by the [board] to provide access to and efficient development of the
23 territory within the district and as may, from time-to-time, be deemed appropriate by the [board]
24 adequate to service the district and its residential, park, recreational, commercial, and industrial areas
25 with such public roads to equal or exceed the specifications or requirements of the county in which
26 such public roads are located.

27 (6) indoor and outdoor recreational, cultural, and educational uses;

28 (7) fire prevention and control, including fire stations, water mains and plugs, fire trucks
29 and other vehicles, and equipment;

30 (8) police buildings and related structures for use in the law enforcement system when
31 authorized by proper governmental agencies;

32 (9) common, private, or contract carriers, buses, vehicles, railroads, monorails, airplanes,
33 helicopters, boats, and any others, including transportation facilities and devices, whether now or
34 hereafter invented or developed;

35 (10) community redevelopment and to exercise any power and duty authorized a communi-

1 ty redevelopment agency pursuant to *[appropriate state law]*; and

2 (11) industrial development and to exercise any power and duty authorized an industrial
3 development authority pursuant to *[appropriate state law]*;

4 (b) to regulate, prohibit, and restrict by appropriate resolution following the procedures of
5 *[state administrative procedures act]* and, in connection with the provision of one or more services
6 through its systems and facilities:

7 (1) all structures, materials, things, whether solid, liquid, or gas, whether permanent or
8 temporary in nature, which come upon, come into, connect to, or be a part of any facility owned or
9 operated by the district, limited to water, sewer, or surface water management;

10 (2) the supply and level of water within the district, including the diversion of waters from
11 one area, lake, pond, river or stream, basin, and water control facility to another, the control and
12 restrictions of the development and use of natural or artificial streams or bodies of water, lakes or
13 ponds, and the taking of all measures determined by the *[board]* to be necessary or desirable to prevent
14 or alleviate land erosion; and

15 (3) the use of sewers and the supply of water within the district and the use and main-
16 tenance of outhouses, privies, septic tanks, or other sanitary structures or appliances within the
17 district, including the prescription of methods in pretreatment of wastes not amenable to treatment
18 with domestic sewage before accepting such wastes for treatment and to refuse to accept such wastes
19 when not sufficiently pretreated as may be prescribed.

20 SECTION 9. *Special Powers; Special Assessments and Maintenance Taxes.* The district shall
21 have, and the *[board]* may exercise, any or all of the following special powers relating to special
22 assessments and maintenance taxes as may be specifically authorized by the order creating such
23 district, or as it may be amended from time-to-time and, if required, by referendum of the electors
24 of such district:

25 (a) to assess, impose, and foreclose special assessment liens upon lands in the district for
26 the costs of projects benefiting such lands in proportion to the benefits received by such land as
27 provided in *[appropriate state law]*;

28 (b) to assess, levy, and collect annual maintenance taxes based upon a footage or other equitable
29 basis for the maintenance costs of those services requiring such maintenance;

30 (c) to levy and collect *ad valorem* taxes as may be required for general obligation or *ad valorem*
31 debt service and for other purposes as may be authorized by vote of the electors;

32 (d) such special assessments and taxes shall be collected in the same manner and subject to the
33 conditions as are special assessments and taxes of the county or, in the case of special assessments,
34 may be collected as may be specifically authorized under *[appropriate state law]*, and consistent with
35 the authority granted by the order establishing the district, as amended.

1 SECTION 10. *Special Powers; Borrowing.*

2 (a) The district [*board*] may borrow money, contract loans, and issue bonds as defined in Section
3 1 of this act, from time-to-time, to finance the undertaking of any capital or other project
4 for the purposes permitted by the order creating the district and by the state constitution, and may
5 pledge the funds, credit, property, and taxing power of the district for the payment of such debts and
6 bonds as hereinafter provided.

7 (b) (1) Bonds issued under this part shall be authorized by resolution of the district [and, if
8 required by the state constitution, by affirmative vote of the electors of the district]. Such bonds may
9 be issued in one or more series and shall bear such date or dates, be payable upon demand or mature
10 at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be
11 in such form, registered or not, with or without coupon, carry such conversion or registration
12 privileges, have such rank or priority, be executed in such manner, be payable in such medium of pay-
13 ment, at such place or places, be subject to such terms of redemption, with or without premium,
14 be secured in such manner, and have such other characteristics as may be provided by such resolu-
15 tion or trust indenture or mortgage issued pursuant thereto.

16 (2) The district [*board*] shall determine the terms and manner of sale and distribution or
17 other disposition of any and all bonds it may issue and shall have any and all powers necessary or
18 convenient to such disposition.

19 (3) Any general obligation or *ad valorem* bond shall, in addition to being authorized by
20 resolution, be further specifically approved by the local governing authority, individually or if more
21 than one jointly, having jurisdiction over the area included in the district.

22 (4) The district [*board*] may establish and administer such sinking funds as it deems neces-
23 sary or convenient for the payment, purchase, or redemption of any outstanding bonded indebtedness
24 of the district.

25 (5) The district [*board*] may levy *ad valorem* taxes upon real and tangible personal property
26 within the district as it deems necessary to make payment, including principal and interest, upon
27 the general obligation and *ad valorem* bonded indebtedness of the districts or into any sinking funds
28 created under subsection (b)(4) of this section.

29 SECTION 11. *Reports and Reviews.*

30 (a) The district shall provide financial reports, in such form and in such manner, as prescribed
31 pursuant to [*appropriate state law*].

32 (b) The district shall prepare an annual report on its activities and shall furnish such to the
33 governor and [*presiding officers of the legislature*], the [*department*], the presiding officer of the gov-
34 erning bodies of the units of local general purpose government and [*any other agency*] within its
35 boundaries, and, [upon payment of a fee if such be established by the district,] to any interested per-

1 son. Such report shall include:

- 2 (1) a financial statement in the form provided for financial reporting to the state;
- 3 (2) the budget for the year in which the report is filed, including an outline of its programs
4 and activities for such period; and
- 5 (3) any other information deemed necessary by the district or which the [department] may
6 require under a rule established pursuant to the provisions of [state administrative procedures
7 act] authority to promulgate is hereby granted.

8 (c) Prior to [September 1] of each year, the district manager shall prepare and submit to the dis-
9 trict, to all units of local general purpose government, and [any other agency] having jurisdiction
10 over lands in the district a proposed annual budget for the next fiscal year. Not later than [October 1],
11 the district shall adopt its annual budget for the ensuing fiscal year.

12 (d) The district shall make provision for an annual independent post-audit of its financial rec-
13 ords. The [appropriate state officer] is hereby instructed and authorized to make such audit pursuant
14 to [appropriate state law]. The district may, with the approval of the [officer] make provision for an
15 annual post-audit of all or any of its accounts with an independent auditor authorized to do business
16 in the state.

17 (e)(1) The district [board] shall submit to the local governing authorities having jurisdiction over
18 the area included in the district, at least [60 days] prior to adoption, the proposed annual budget for
19 the ensuing fiscal year and any long term financial plan or program, and shall further submit any
20 other plans or programs of the district for future operations.

21 (2) The local governing authorities shall review the proposed annual budget and any long
22 term financial plan or program and make comments and recommendations thereon. Any other plans
23 or programs of the district for future operations shall be reviewed pursuant to the same procedure
24 and to the same extent as future plans or programs of the local government pursuant to its policies.

25 (3) Prior to authorizing any general obligation or *ad valorem* bond by resolution and, if
26 required, by referendum, the district shall submit its proposed issuance and the project to be financed
27 thereunder to the local governing authority having jurisdiction over the area included in the district
28 for review and approval, individually or, if more than one, jointly. Until approved by a non-emergency
29 ordinance of the local governing authority, the district shall have no power to authorize the issuance
30 of such debt.

31 SECTION 12. *Disclosure of Public Financing.*

32 (a) The district shall take affirmative steps to provide for the full disclosure of information relat-
33 ing to the public financing and maintenance of improvements to real property pursuant to this act.
34 Such information shall be provided by platted residential units and in such other formats as may be
35 necessary.

1 (b) The petitioner and any subsequent purchaser, for the sole purpose of resale, shall provide
2 for adequate financial disclosure of the method of public financing in order to allow comparative
3 shopping by prospective purchasers.

4 (c) The [*appropriate state land sales agency*] shall assure that disclosures made pursuant to [*ap-*
5 *propriate land sales statute*] meet the requirements of this section.

6 (d) The [*department*], in conjunction with the [*appropriate state land sales agency*], shall keep a
7 current list of districts and their disclosures pursuant to this act and shall make such studies and re-
8 ports and take such actions, including filing with the [*attorney general*], as it deems necessary.

9 (e) The district shall not finance any improvement which is committed to be provided by the
10 developer, by contract or otherwise, without a specific finding of the extent of such commitment
11 and payment to the district by the developer to such extent.¹

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

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

¹Another option to this subsection (which is needed to prevent "windfalls" to developers when public financing as provided by this act is used in an existing partial development) would be: "(e) The district shall not finance any improvement for which property purchasers have been charged by contract or otherwise, and such charge paid to the developer, without a specific finding as to the amount of such purchasers' contribution or payment, and payment by the developer of an amount equal to such contribution or payment to the district."

6.110 CONDITIONAL PROPERTY TAX DEFERMENT FOR NEW COMMUNITY DEVELOPMENT¹

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

The following suggested state legislation provides state funds to reimburse localities for local property taxes deferred during the initial development stage of new communities. The state is authorized to advance the amount of the deferred taxes to the locality. This approach would relieve an immediate financial burden and materially assist completion of the project. At a later date, when the developer's investment begins to pay off, the locality can recoup its deferred revenues and repay the state. It should be emphasized that the developer's property tax liabilities to local government are accrued and met, but that his ultimate tax outlay is delayed, with no interest charged, until the beginning of the cash flow from the development.²

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

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

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

Section 1 sets forth the short title of the proposed legislation. *Section 2* contains the legislation's purpose — to promote the urban growth policies and the urbanization plan of the state by advancing state funds through political subdivisions to finance local property taxes on land designated for new communities. *Section 3* deals with definitions.

Section 4 makes provisions for the creation of a new community property tax financing fund. *Section 5* sets out the procedures by which new community developers may apply for deferral of local real estate property taxes for new community development. *Section 6* sets out the time period over which deferred taxes may be applied for.

Section 7 deals with the manner in which the developer must pay, to the local political subdivision, the taxes deferred for the new community development. *Section 8* makes provisions for political subdivisions to be reimbursed from the state new community property tax financing fund the exact amount of property taxes agreed by the political subdivision and the new community developer to be deferred, and for repayment to the state after the deferred taxes have been collected.

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

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).

²This benefit would be either an alternative to, or in addition to, the benefits accruing under the Commission's suggested legislation entitled *New Community District Act*.

Suggested Legislation

[AN ACT TO DEFER DEVELOPER'S LOCAL PROPERTY TAXES
IN A NEW COMMUNITY]

(Be it enacted, etc.)

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

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

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

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

12 (b) "New community developer" means any person, partnership, firm, company, or corporation
13 organized for profit who undertakes a new community development project that conforms to the state
14 urbanization plan.

15 (c) "State urbanization plan" consists of [*cite the statutes, official documents, and other instru-*
16 *ments which set forth the state's policies and official guidelines for promoting and controlling urban*
17 *growth*].

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

27 SECTION 5. *Application for Property Tax Deferral.* A new community developer may apply for
28 deferral of the real estate property tax by a political subdivision in which the new community is to be

1 located in an amount not to exceed the amount of the property tax which would otherwise be paid to
2 the political subdivision. The claim shall be filed in the manner prescribed by the chief elected official
3 of such political subdivision. The application shall contain, but shall not be limited to, the following
4 information:

5 (a) general description of the project;

6 (b) legal description of all real estate constituting the project;

7 (c) plans and other documents required to show the type and general character of the project;

8 (d) general description of the structures and population contemplated upon completion of the
9 project;

10 (e) costs and cost estimates of the project;

11 (f) schedule of the time anticipated for the completion of major segments as well as the entire
12 project; and

13 (g) evidence of the arrangement made by the developer for financing all costs of the project.

14 SECTION 6. *Period in which Optional Payment may be Claimed.* A new community developer
15 may continue to apply for deferrals from the political subdivision in which the new community is
16 located in the amount of the property tax which would otherwise be paid by him in any subsequent
17 year during a period of [five] consecutive years, if his application for the initial claim is approved, and
18 if he continues to conform to the state urbanization plan and the financial and other criteria set forth
19 in this act.

20 SECTION 7. *Repayment by the New Community Developer.* At a time designated by the new
21 community developer, but no later than [ten] years after the initial payment to the developer, the
22 [appropriate local official] shall request payment of any deferred real estate property taxes. If the new
23 community developer does not make prompt payment at the times and in the amounts due, the entire
24 amount of the payments, together with interest at the rate of [6] percent *per annum*, shall become due
25 and payable and shall be a liability of the developer to the political subdivision to be collected in the
26 same manner that delinquent taxes are collected.

27 SECTION 8. *State Reimbursement.* Upon approval by a political subdivision of an application
28 submitted pursuant to Section 5 of this act, the political subdivision shall submit to the state
29 [department of community affairs or finance] a request for reimbursement from the state new com-
30 munity property tax financing fund the exact amount of property taxes agreed by the political sub-
31 division and the new community developer to be deferred. Before authorizing a payment to a political
32 subdivision, the [director] of [state planning agency] shall determine that the project conforms to the
33 state urbanization plan, and that sufficient housing will be provided for low income families. Pay-
34 ments of deferred taxes received by a political subdivision pursuant to Section 7 of this act, exclusive
35 of interest or penalties, shall be promptly transmitted by the political subdivision to the state new

- 1 community property tax financing fund.
- 2 SECTION 9. *Separability.* [Insert separability clause.]
- 3 SECTION 10. *Effective Date.* [Insert effective date.]

6.2 Fair Housing

6.201 STATE COMPREHENSIVE FAIR HOUSING ACT¹

In 1968, the Federal government enacted landmark legislation designed to promote fair housing practices throughout the nation by prohibiting discriminatory conduct and practices in the sale, rental and financing of Federally financed or subsidized homes.² A number of states have passed similar legislation extending the prohibition against discrimination to additional housing accommodations.³ The following suggested legislation is drawn largely from Ohio's comprehensive state fair housing law.⁴

Section 1 states the purpose of the act, and *Section 2* defines the terms used. Key among the definitions is the one concerning housing accommodations, which includes all residential units plus vacant land offered for sale or lease; states may wish to define further the nature of vacant land to be covered by the act.

Section 3 prohibits a broad spectrum of discriminatory acts, as well as discriminatory motivated practices. Included within the proscribed activities are the refusal to sell, lease, transfer, finance, or otherwise withhold housing from any person because of race, color, religion, ancestry, sex or national origin. Discriminatory restrictive covenants or blockbusting practices are also declared unlawful in *Section 3*. Additional prohibited actions include denial of participation in multiple listing services, coercion or intimidation of persons exercising fair housing statutory rights, and discrimination in the sale of burial lots.

Section 4 authorizes the administering state agency to initiate investigations of unlawful practices, hold hearings, subpoena witnesses and evidence, and adopt appropriate rules and regulations. However, before instituting the formal administrative complaint procedure provided in *Section 5*, the agency must determine that a probable violation exists and must also attempt to induce statutory compliance through informal persuasion and conciliation. Broad due process rights are afforded a respondent prior to and during a hearing held on the complaint. The agency's final written order must incorporate findings of fact and conclusions of law, based on competent and substantial evidence. In addition, under *Section 6*, aggrieved private parties may bring civil actions in the appropriate state court to enforce rights granted pursuant to the legislation. Remedies available through judicial orders include injunctions, restraining orders, and awards of actual damages.

Section 7 provides for judicial review of agency orders, while *Section 8* grants local governments an opportunity to adopt local fair housing ordinances. If found by the state agency to meet the minimum requirements of this act, these local ordinances will supersede the state legislation. *Section 9* authorizes a penalty for violation of any statutory provision.

Sections 10 and 11 provide for separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, Report A-25 (Washington, D.C.: U.S. Government Printing Office, January, 1965).

²P.L. 90-284, Title 42, Sec. 3601, U.S.C.A.

³See for example *Missouri Revised Statute* (1973), Ch. 213, and *Wisc. Stat.* (1971), Sec. 101.22.

⁴*Ohio Revised Code Annotated* (1971), Title 41, Ch. 41.

Suggested Legislation

[STATE COMPREHENSIVE FAIR HOUSING LAW]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is the purpose of this act to prohibit discriminatory acts, and practices
2 motivated by a desire to discriminate, in connection with the sale, lease, transfer, or financing of
3 housing accommodations anywhere in this state.

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

5 (a) "[Agency]" means the [state agency authorized to administer this act].

6 (b) "Burial lot" means any lot for the burial of deceased persons within any public burial ground
7 or cemetery, including but not limited to, cemeteries owned and operated by municipal corporations,
8 counties, townships, or companies or associations incorporated for cemetery purposes.

9 (c) "Housing accommodations" includes any building or structure or portion thereof which is
10 used or occupied or is intended or designed to be used or occupied as the home residence or sleeping
11 place of one or more individuals; and any vacant land offered for sale or lease.¹

12 It also includes any housing accommodations held or offered for sale or rent by an owner or a
13 real estate broker, salesman, or agent, or by any other person pursuant to authorization of the owner
14 or his legal representative.

15 (d) "Person" includes an individual, partnership, association, organization, corporation, legal
16 representative, trustee, trustee in bankruptcy, receiver, and any organized group of persons. It also
17 includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman,
18 agent, employee, lending institution, and the state, and all political subdivisions, authorities, agencies,
19 boards, and commissions thereof.

20 (e) "Restrictive covenant" means any specification limiting the transfer, rental, lease, or
21 other use of any housing accommodations because of race, color, religion, national origin, sex, or
22 ancestry, or any limitation based upon affiliation with, or approval by, any person, directly or in-
23 directly, employing race, color, religion, national origin, sex, or ancestry, as a condition of affiliation
24 or approval.

25 (f) "Unlawful discriminatory practice" means any action prohibited by Section 3 of this act.

26 SECTION 3. *Unlawful Discriminatory Practices.* It is an unlawful discriminatory practice for
27 any person, because of race, color, religion, ancestry, sex, or national origin to:

28 (a) refuse to sell, transfer, assign, rent, lease, sublease, finance, or otherwise deny or withhold

¹States may wish to further define the nature of land, (e.g., suitable or intended for residential development).

1 housing accommodations from any person;

2 (b) represent to any person that housing is not available for inspection when it is available;

3 (c) refuse to lend money, whether secured by mortgage or otherwise, for the acquisition, con-
4 struction, rehabilitation, repair, or maintenance of housing or otherwise withhold financing of hous-
5 ing from any person, provided such person lends money as one of the principal aspects of his busi-
6 ness or incidental to his principal business;

7 (d) discriminate against any person in the terms or conditions of selling, transferring, assign-
8 ing, renting, leasing, or subleasing any housing or in furnishing facilities, services, or privileges
9 in connection with the ownership, occupancy, or use of any housing;

10 (e) discriminate against any person in the terms or conditions of any loan of money, whether
11 secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or main-
12 tenance of housing;

13 (f) print, publish, or circulate any statement or advertisement relating to the sale, transfer,
14 assignment, rental, lease, sublease, or acquisition of housing or the loan of money, whether secured
15 by mortgage or otherwise, which indicates any preference, limitation, specification, or discrimination
16 based upon race, color, religion, ancestry, sex, or national origin;

17 (g) make any inquiry, elicit any information, make or keep any record, unless otherwise required
18 by law, or use any form or application containing questions or entries concerning race, color, religion,
19 ancestry, sex, or national origin in connection with the sale or lease of housing or the loan of money,
20 whether secured by mortgage or otherwise;

21 (h) include in any transfer, rental, or lease of housing a restrictive covenant, or honor or exer-
22 cise, or attempt to honor or exercise, a restrictive covenant; however, the prior inclusion of a restric-
23 tive covenant in the chain of title shall not be a violation of this provision;

24 (i) induce, discourage, or solicit or attempt to induce, discourage, or solicit a housing listing,
25 sale, or transaction by representing that a change has occurred or may occur with respect to the racial,
26 religious, or ethnic composition of the block, neighborhood, or area in which the property is located,
27 or by representing that the presence or anticipated presence of persons of any race, color, religion,
28 ancestry, or national origin in the area will or may result in the following:

29 (1) the lowering of property values;

30 (2) a change in the racial, religious, or ethnic composition of the block, neighborhood, or
31 area in which the property is located;

32 (3) an increase in criminal or antisocial behavior in the area; or

33 (4) a decline in the quality of the schools serving the area;

34 (j) deny any person access to, or membership or participation in, any multiple listing service, real
35 estate brokers' organization, or other service, organization, or facility relating to the business of sel-

1 ling or renting housing accommodations, or discriminate in the terms or conditions of such access,
2 membership, or participation;

3 (k) coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account
4 of his having aided or encouraged any other person in the exercise of, any right granted or protected
5 by this section;

6 (l) by force or threat of force, attempt to or intentionally injure, intimidate, or interfere with:

7 (1) any person who is or has been selling, purchasing, renting, financing, occupying, or
8 contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling,
9 or applying for or participating in any service, organization, or facility relating to the business of
10 selling or renting housing accommodations;

11 (2) any person who is or has been participating in, or who is lawfully aiding or encourag-
12 ing other persons to participate in any of the activities, services, organizations, or facilities described
13 in subsection (l) of this section, or who is engaging lawfully in speech or peaceful assembly opposing
14 any denial of the opportunity to so participate;

15 (m) refuse to sell, transfer, assign, rent, lease, sublease, finance, or otherwise deny or withhold
16 burial lot from any person;

17 (n) discriminate in any manner against any person because he has opposed any unlawful prac-
18 tice defined in this section, or because he has made a charge, testified, assisted, or participated in
19 any manner in any investigation, proceeding, or hearing authorized by this act;

20 (o) aid, abet, incite, compel, or coerce any act declared by this section to be an unlawful dis-
21 criminatory practice, or obstruct or prevent any person from complying with this act, or any order
22 issued hereunder, or attempt directly or indirectly to commit any act declared by this section to be an
23 unlawful discriminatory practice.

24 SECTION 4. *[Agency] Investigations.*

25 (a) The *[agency]* may:

26 (1) initiate and undertake investigations of possible unlawful discriminatory practices;

27 (2) hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the
28 testimony of any person under oath, and require the production for examination of any books and
29 papers relating to any matter under investigation by the *[agency]*.

30 (b) (1) In conducting a hearing or investigation, the *[agency]* shall have access at reasonable
31 times to premises, records, documents, individuals, and other evidence or possible sources of evidence
32 and may examine, record, and copy any material and take and record the testimony or statements of
33 any persons reasonably necessary to further the investigation. The *[agency]* may issue subpoenas
34 to compel access to, or the production of, materials or the appearance of persons, and may issue
35 interrogatories to a respondent, (subject to the same limitations applicable in a civil action in the

1 [court]).

2 (2) Upon written application by a respondent, the [agency] shall issue subpoenas in the
3 respondent's name subject to the same limitations as subpoenas issued by the [agency]. Subpoenas
4 issued at the request of a respondent shall indicate on their face the name and address of the respond-
5 ent and shall state that they were issued at his request.

6 (3) Witnesses summoned by [agency] subpoena are entitled to the same witness and mileage
7 fees as witnesses in judicial proceedings.

8 (4) Within [five] days after service of a subpoena upon any person, the person may petition
9 the agency to revoke or modify the subpoena. The [agency] shall grant the petition if it finds that
10 the subpoena requires appearance or attendance at an unreasonable time or place, that it requires
11 production of evidence which does not relate to any matter before the [agency], that it does not de-
12 scribe with sufficient particularity the evidence to be produced, that compliance would be unduly
13 onerous, or for other good reason.

14 (5) In case of refusal to obey a subpoena, the [agency] or person at whose request it was
15 issued may petition for enforcement in the [court] in the county in which the person to whom the
16 subpoena was addressed resides, was served, or transacts business.

17 SECTION 5. *Administrative Enforcement.*¹

18 (a) No person shall engage in an unlawful discriminatory practice. The [agency] shall bring
19 appropriate administrative and judicial action to enforce the provisions of this act; however, before
20 instituting a formal hearing authorized by this section it shall attempt, by informal methods of
21 persuasion and conciliation, to induce compliance with this act. The [agency] may create [conciliation
22 councils] to assist in effectuating this provision.

23 (b) Whenever it is charged in writing and under oath by a person, referred to as the complainant,
24 that any person, referred to as the respondent, has engaged or is engaging in unlawful discriminatory
25 practices, or upon its own initiative, the [agency] may initiate a preliminary investigation. The charge
26 shall be filed with the [agency] within [six] months after the alleged unlawful discriminatory practice
27 is committed. If the [agency] determines after investigation that it is not probable that an unlawful dis-
28 criminatory practice has or is being engaged in, it shall notify the complainant that a complaint will
29 not be issued. If the [agency] determines after investigation that it is probable that an unlawful discrim-
30 inatory practice has or is being engaged in, it shall endeavor to eliminate the practice by informal
31 methods of conference, conciliation, and persuasion. Nothing said or done during such endeavors
32 shall be disclosed by any member of the [agency] or be used as evidence in any subsequent proceeding.
33 If, after investigation and conference, the [agency] determines the unlawful discriminatory practice

¹These proceedings should conform to a state's administrative practices act. The suggested provision is drawn from Section 4112.05, *Ohio Revised Code* (1971).

1 will be eliminated, it may treat the complaint as conciliated. If the [agency] fails to eliminate the unlaw-
2 ful discriminatory practice and obtain voluntary compliance with this act, it shall issue and serve
3 upon the respondent a written complaint stating the charges and containing a notice of hearing.¹ The
4 hearing shall be held not less than [ten] days after service of the complaint. The place of hearing
5 shall be within the county where the alleged unlawful discriminatory practice has occurred or where
6 the respondent resides or transacts business. A complaint issued pursuant to this section must be
7 issued within [one year] after the alleged unlawful discriminatory practice was committed.

8 (c) A complaint may be amended by the [agency] at any time prior to or during the hearing. The
9 respondent may file an answer to the original and amended complaint, appear at the hearing in
10 person or by attorney, and examine and crossexamine witnesses.

11 (d) The complainant shall be a party to the proceeding and any person who is an indispensable
12 party to a complete determination or settlement of a question involved in the proceeding shall be
13 joined. Any person who has an interest in the subject of the hearing may be permitted by the [agency]
14 to appear and present oral or written arguments.

15 (e) In any proceeding, the agency shall not be bound by judicial rules of evidence, but shall
16 consider all reliable, probative, and substantial evidence. Testimony taken at the hearing shall be under
17 oath, transcribed, and filed with the [agency]. Copies of the transcript shall be available to the public
18 at cost.

19 (f) If upon all competent and substantial evidence the [agency] determines the respondent has
20 engaged in, or is engaging in, any unlawful discriminatory practice, it shall state, in writing, its
21 findings of fact and conclusions of law, and shall issue and serve on the respondent an order requir-
22 ing the respondent to cease and desisit from the unlawful discriminatory practice and to take further
23 affirmative or other action to effectuate the purposes of this act.

24 (g) If upon all the evidence, the [agency] finds that a respondent has not engaged in an unlawful
25 discriminatory practice, it shall state, in writing, its findings of fact and conclusion, and shall issue
26 and serve on the complainant and the respondent an order dismissing the complaint. A copy of the
27 order shall be delivered to the [attorney general and other appropriate public officers].

28 [Optional Section.]

29 [SECTION 6. *Judicial Enforcement.*¹

30 (a) Rights granted by this act may be enforced by aggrieved private persons by filing civil
31 actions in [court] within [180 days] after the alleged discriminatory housing practice occurred.

32 (b) If the [court] finds that a discriminatory housing practice has occurred or is about to occur, it

¹States may wish to refer to appropriate provisions of the state administrative practice act in lieu of the suggested provisions. The sug-
suggested provisions presume that an agency governing board will decide the question, possibly on the recommendation of a hearing
examiner, and with the agency representing the complainant.

¹This is an optional provision if states wish to provide for both administrative and judicial remedies.

1 may enjoin the respondent from engaging in such practice or order appropriate affirmative action.

2 (c) Any sale, encumbrance, or rental consummated prior to the issuance of a court order issued
3 under this section, and involving a *bona fide* purchaser, encumbrancer, or tenant without actual
4 notice of the existence of a charge by a complainant or a civil action under this section shall not be
5 affected by such order.

6 (d) Upon application by the plaintiff and in such additional appropriate circumstances, the
7 [court] may appoint an attorney for the plaintiff and may authorize the commencement of civil action
8 without the payment of costs.

9 (e) The [court] may grant appropriate relief, including without limitation, a permanent or tempo-
10 rary injunction, and may award to the plaintiff actual damages and court costs. |

11 SECTION 7. *Judicial Review and Enforcement.*

12 (a) A complainant or respondent affected by a final [agency] order, including a refusal to issue
13 a complaint, may obtain judicial review of the order. The [agency] may obtain a court order to enforce
14 its final orders in a proceeding provided in this section. Such proceeding shall be brought in the
15 [court] within the county wherein the unlawful discriminatory practice was committed or wherein any
16 respondent required in the order to cease and desist from an unlawful discriminatory practice or to
17 take affirmative action, resides or transacts business.

18 (b) Such proceedings shall be initiated by filing a petition in [court] as provided in this section
19 and serving a copy of the petition on the [agency] and all parties who appeared before the [agency].
20 Within [ten] days of filing, the [agency] shall file with the court a transcript of the hearing record. The
21 transcript shall include all proceedings in the case, including all evidence and offers of evidence.
22 The [court] may grant appropriate temporary relief or restraining orders and may issue an order
23 enforcing, modifying and enforcing, or setting aside in whole or in part, the agency order. The [court]
24 may require the posting of sufficient bond before granting temporary relief or a restraining order.

25 (c) An objection that has not been argued before the [agency] shall not be considered by the
26 [court], [under this section] unless the failure or neglect to argue such objection is excused because of
27 extraordinary circumstances.

28 (d) The [court] may grant a request for the admission of additional evidence if the additional evi-
29 dence is newly discovered and could not with reasonable diligence have been ascertained prior to the
30 hearing before the [agency].

31 (e) The findings of the [agency] as to the facts shall be conclusive if supported by reliable, proba-
32 tive, and substantial evidence on the record and any additional evidence the [court] has admitted.

33 (f) The jurisdiction of the [court] shall be exclusive and its judgment and order shall be final
34 subject to appellate review. Violation of the [court's] order shall be punishable as contempt.

35 (g) If a proceeding to obtain judicial review is not instituted by a complainant or respondent

1 within [30] days following service of an [agency] order, the [agency] may obtain a decree of the [court]
2 enforcing the order.

3 (h) All suits brought under this section shall be heard and determined as expeditiously as
4 possible.

5 SECTION 8. *Local Government Option.* This act shall apply to all [local governments] within
6 the state. However, a local government may adopt an ordinance, which, if determined by the agency
7 to conform to the minimum requirements of this act, shall supersede this act. Such an ordinance, so
8 long as it meets the minimum requirements of this act, may provide more stringent standards than
9 this act. The [agency] shall make its determination as to the adequacy of a local ordinance pursuant to
10 the requirements of the [state administrative practices act] and shall incorporate its decision in an
11 [agency] order.

12 SECTION 9. *Penalty.* Any person who violates any provision of this act shall be fined not less
13 than [\$], nor more than [\$].

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

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

6.202 REGIONAL FAIR SHARE HOUSING ALLOCATIONS¹

This nation is increasingly experiencing various patterns of geographic segregation and the consequent loss of housing opportunities for certain racial and economic groups. The well documented emigration of upper income families from central cities, and escalating land and transportation costs have combined to isolate lower income groups and to insulate higher income suburban residents. Exclusionary land use practices employed by numerous, independent, local units of government have further debilitated the potential development of a balanced housing market. Yet, all residents of a local community should be afforded the opportunity to be accommodated in comfortable, safe, and sanitary housing located within reasonable access to job opportunities.

In its 1965 report on *Metropolitan Social and Economic Disparities*, the Advisory Commission on Intergovernmental Relations recommended that "zoning authority be exercised in a manner to permit a wide range of housing prices," pointing out "the need for some type of regional or metropolitan planning in order that courts may have a standard against which to measure legislative determinations dealing with exclusion of uses." To accomplish these ends, government must affirmatively recognize the duty of cities and counties to absorb a fair share of regional growth, and particularly low and moderate income housing needs. Increasingly, state courts are recognizing the responsibility of governments to plan and regulate land use in order to meet regional housing needs.² The courts are tending to overrule local land use regulatory actions that tend to "zone out" low income people or people with large families. Types of zoning restrictions often utilized to achieve such exclusionary objectives include requirements for large lots, prohibition of multifamily structures, and maximum limits on the number of bedrooms. The New Jersey Supreme Court in its decision in the case of *Southern Burlington County N.A.A.C.P. versus Township of Mount Laurel* stated:

We conclude that every municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipalities' fair share of the present and prospective regional need therefore. These obligations must be met unless the particular municipality can sustain the heavy burden of demonstrating peculiar circumstances which dictate that it should not be required so to do.

Moreover, in a number of metropolitan areas, cities and suburbs have voluntarily agreed to adopt fair share plans for the allocation of lower income housing units. In Dayton, Ohio, several thousand units have been constructed in the suburbs. A similar program is operating in the Washington, D.C., metropolitan area. Other localities such as Fairfax County, Virginia, and Montgomery County, Maryland, have adopted ordinances requiring subdivision builders to allocate specific percentages for low and moderate income housing as a condition to receiving building permits. Additional jurisdictions award density bonuses to developers providing a substantial number of low and moderate income housing units. However, many of these local efforts succeed more in providing adequate housing for current lower income suburban dwellers than in affording new suburban housing opportunities to central city residents.

Additional, limited advances have been made at the state level. The New York State Urban Development Corporation was granted authority to acquire land by eminent domain in order to provide housing and to preempt conflicting local land use regulations. In 1973, however, suburban jurisdictions were statutorily

¹Derived from: Advisory Commission on Intergovernmental Relations, *Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations in Central Cities and Suburbs*, Report A-25 (Washington, D.C.: U.S. Government Printing Office, January 25, 1965).

²For a comprehensive analysis of fair housing litigation, see National Committee Against Discrimination and the Urban Land Institute, "Fair Housing and Exclusionary Land Use," *ULI Research Report 23* (1974).

granted power to disapprove local residential projects proposed by the corporation. The 1969 Massachusetts "Anti-Snob Zoning" law provides limited authority for the state to review and override local zoning decisions that prevent construction or operation of publicly financed low and moderate income housing. The following draft legislation draws upon and expands a number of the provisions incorporated in the Massachusetts Act¹ and the Florida *Environmental Land and Water Management Act of 1972*.²

Key to the draft legislation is the *Section 2* definition of low and moderate income housing. A suggested approach includes both private and publicly sponsored projects which meet minimum criteria relating to number of units and sales or rental prices.

Section 3 mandates regional agencies to prepare and submit to an appropriate state administering agency a regional low and moderate income housing plan. The plan should reflect the region's required need for such housing over a period of time. Based on the regional estimate, each city and county within the region is allocated a fair share of the regional total pursuant to several statutory criteria. These criteria are drawn from the fair share programs developed by Dayton, Ohio, and the Metropolitan Washington, D.C., Council of Governments.³ The regional plan and the allocations must annually be reviewed and revised as necessary. *Section 4* affords local governments and residents basic procedural due process opportunities to be notified of the proposed plan and allocations and to be present and heard at a hearing prior to adoption by the regional agency.

Four avenues of enforcement through voluntary compliance or otherwise are provided. First, regional agencies are required to document, in the A-95 review process, the extent to which local projects in housing and community development assist or hinder the attainment of the localities' fair share; second, local governments are given flexibility in *Section 5* for imposing quota requirements for low and moderate income housing upon proposed subdivisions and other developments in exchange for "density bonuses;" third, applicants for local zoning or other approval of low and moderate income housing projects are allowed to appeal to a state agency if the application is denied and the locality has not attained or adequately provided for meeting its fair share allocation; and fourth, the state housing finance agency is authorized to lease units in existing privately owned structures within a recalcitrant jurisdiction, making such units available to low and moderate income families.

Consistent with the draft's legislative intent that the fair share program be implemented through local governments, *Section 5* authorizes local governments to grant "density bonuses" to developers in exchange for making substantial provision for low and moderate income housing. *Section 6* provides that a low and moderate income housing project proposal be filed with the locality having jurisdiction. The local government must hold a hearing on the application and render a decision within a fixed period. If the local government's regional fair share allocation is not satisfied or reasonably provided for at the time of the hearing, it must approve the application, with or without reasonable conditions.

If a project is denied or approved with conditions that would render it uneconomic to build or operate, *Section 7* enables the applicant to appeal the local decision to the state agency. The issues that may be appealed to the state are limited to: (1) whether the local government has satisfied, or provided for the attainment of its regional fair share; and (2) whether conditions attached to the local approval would render the building or operation of the project uneconomic. After formal hearing, the state agency may vacate the local denial or modify the conditions appropriately.

The state agency must also consider the state development plan and relevant local plans and programs. State agency orders may be enforced by the petitioner, regional agency, or the state agency.

Section 8 requires the state housing finance agency to endeavor to satisfy a local government's regional fair share if the state agency determines after a hearing that the local government has not satisfied or is not attempting to satisfy its fair share. The state housing finance agency is authorized to lease space in privately owned dwellings in jurisdictions failing to meet fair share allocations.

Section 9 specifies types of administrative procedures under the act.

Sections 10 and 11 provide for separability and effective date clauses, respectively.

¹Massachusetts General Laws, Annual C., 40B §§ 20-23.

²Florida Statutes, Ch. 380.

³See Metropolitan Washington Council of Governments, "Fair Share Housing Formula," January, 1972.

Suggested Legislation

[REGIONAL FAIR SHARE HOUSING ALLOCATIONS]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is the purpose of this legislation to provide adequate and balanced
2 housing for persons of low and moderate income throughout the state and within particular regions of
3 the state. It is the further intent of this legislation to provide housing within a reasonable distance
4 of employment and to insure that each municipality and county makes available to its residents a fair
5 share of present and prospective needs for low and moderate income housing units. It is the fur-
6 ther intent of the [legislature] that this legislation be implemented through local government ad-
7 ministrative machinery to the maximum extent possible.

8 SECTION 2. *Definitions.*

9 (a) "By rule" means adoption of an administrative rule pursuant to the [state administrative
10 practices act].

11 (b) "Local government" means a city, county, or other political subdivision of the state authorized
12 to adopt [zoning or subdivision regulations], pursuant to [citation].

13 (c) "Low and moderate income housing project" means any proposed housing development or
14 portion thereof comprising units designed to sell for [\$25,000] or less, or rent for [\$150] per month
15 or less.¹

16 (d) "Region" means the territory embraced by a Standard Metropolitan Statistical Area as defined
17 by the U.S. Office of Management and Budget.²

18 (e) "Regional fair share" means that portion of a region's low and moderate income housing units
19 allocated to a local government by a regional planning agency [or metropolitan area planning
20 agency].

21 (f) "Uneconomic" or "uneconomic governmental condition" means a condition or conditions
22 imposed upon a project by a governmental body that makes it impossible for the developer to build or
23 operate without financial loss, or which prohibits a developer from realizing a reasonable return on
24 his investment, as ascertained by the subsidizing agency, without substantially modifying the project
25 design.

26 SECTION 3. *Regional and Local Low and Moderate Income Housing Plans.*

¹States should consider the insertion of an appropriate escalator clause so that the dollar values specified are held relatively constant.

²States may initially wish to limit this mandate to metropolitan areas, particularly those areas included in Standard Metropolitan Statistical Areas, SMSA, designated by the United States Office of Management and Budget. If it is desired to apply the act to non-metropolitan areas as well, see *Statewide Substate Districting Act*.

1 (a) No later than [date], each regional planning agency created pursuant to [citation]¹ shall pre-
2 pare or cause to be prepared and submit to the [state agency],² a regional low and moderate income
3 housing plan. The plan shall estimate the number of low and moderate income housing units required
4 for the region during the next [10] years. In developing the regional estimate, the regional agency
5 shall consider the availability of public and private financing and relevant market conditions. Based
6 on such estimate, the regional agency shall allocate to each city and county within the region a fair
7 share of the regional total. In developing the regional total, the regional planning agency shall use the
8 most recent data and population statistics published by the United States Bureau of the Census and
9 shall consider additional relevant reports and studies by other governmental agencies. In apportioning
10 each city or county regional fair share, the council shall consider: the number of overcrowded or
11 deficient housing units; the number of heads of households earning less than [\$10,000]³ annually
12 who commute into the city or county for employment; the number of acres of vacant residential land
13 presently sewered or expected to be sewered within the next [six] years; the number of vacant housing
14 units in each city and county; the potential *per capita* fiscal resources of each city and county, defined
15 by the total real estate value of the jurisdiction, plus the total of all personal income, divided by the
16 population; the percent of all jobs in the region within [30] minutes commuting time of city or county
17 residents; and the percent of all housing units in each city or county valued at less than [\$25,000]³
18 or renting for less than [\$150]³ per month.

19 (b) Each local government within the region, in turn, shall prepare within [] months a plan
20 by which it proposes to accommodate its allocation of low and moderate income housing units consis-
21 tent with regional and state growth policies. Such plans shall be submitted to the regional agency
22 [and the state planning agency] for approval.

23 (c) The regional housing plan and fair share allocations shall be reviewed annually by each
24 regional planning agency. Revisions to the housing plan, allocations thereunder, and local plans
25 pursuant thereto shall be effected in the same manner as original adoption.

26 SECTION 4. *Adoption of a Regional Housing Plan.*

27 (a) Each regional agency shall adopt by rule, the regional housing plan and the respective fair
28 share allocations for each city and county. Such adoption may be joined in one proceeding. At least
29 [30] days prior to adoption, the agency shall transmit a copy of the proposed regional plan and city
30 and county allocations to the governing body of each local government in the region. Any interested
31 party may submit written comments or may present oral testimony to the council on the proposed
32 rule. Such comments and testimony shall be incorporated into the hearing record. Adoption of a rule

¹Establishment of regional planning agencies of various types is dealt with in draft legislation for statewide substate districts and umbrella multijurisdictional organizations.

²Appropriate agencies include state departments of community development or community affairs, or similar agencies responsible for local government and regional agency contact. See the Commission's draft, *State Department of Community Development*.

³States should consider insertion of appropriate escalator clause language.

1 by an agency shall constitute final administrative action, directly appealable to *[appropriate court]*. A
2 copy of the adopted rule shall be transmitted by an agency to each local government governing body,
3 to persons requesting a copy, and *[to the state planning agency]*.

4 (b) Upon adoption of a plan and regional allocations, all state, regional, and local government
5 comments on proposed Federally assisted housing and community development projects, pursuant
6 to any review and comment requirements of the United States Government, and all state supported
7 housing projects, shall be consistent with, and further the implementation of, the regional housing
8 plan and allocations thereunder.

9 SECTION 5. *Authorization for Local Zoning to Achieve Balanced Housing.* Notwithstanding any
10 other provision of law, local governing bodies otherwise empowered to engage in land use planning,
11 zoning, and subdivision regulation are hereby authorized to impose in local law or ordinances, as a
12 condition to issuance of building permits for construction of residential developments comprising
13 [25] or more housing units in number on land zoned for residential use, certain conditions and
14 requirements as follows:

15 (a) a minimum percentage [not to exceed 15] of the total units in the development to consist of
16 low and moderate income housing; and

17 (b) to help assure economic feasibility of such new construction such zoning provisions may
18 also include an additional number of units up to not more than [15] percent above the number that
19 would otherwise be allowed as a maximum in the zone.

20 SECTION 6. *Low and Moderate Income Housing Project Applications.*

21 (a) Application forms for low and moderate income housing projects shall be designed and
22 provided by the *[state housing or planning agency]*.

23 (b) An applicant proposing a low and moderate income housing project shall file a single appli-
24 cation with *[the local government agency]*. Within [45] days after receipt of an application, the
25 *[local government agency]* shall hold a hearing on the application. The hearing shall be on the
26 record, consistent with the provisions of the *[state administrative practices act]*. The *[local government*
27 *agency]* shall render a decision within [45] days following the hearing.

28 (c) If a combination of authorized plus permitted units has not equaled a city or county's
29 regional fair share at the time the application is decided, and if the project conforms to other relevant
30 local government plans and ordinances, the *[local government agency]* by resolution shall approve
31 the application and may attach reasonable conditions to such approval. For purpose of this section,
32 the term "authorized" includes zoning or subdivision plat approval, or granting of a building permit.
33 The term "permitted" includes units constructed and in the process of being constructed. If the
34 *[local government agency]* approves with conditions or denies the application, it shall specify in the
35 resolution the reasons for such action.

1 (d) Copies of the local government resolution shall be transmitted within [10] days to the
2 applicant and the regional planning agency.

3 SECTION 7. *Appeal of Project Decision to State Agency.*¹

4 (a) If a project application [involves [25] or more units of low and moderate income housing]²
5 and is denied, or approved with governmental conditions which would render the building or opera-
6 tion of the project uneconomic, the applicant or the regional planning agency may appeal the decision
7 to the [state agency]. Such an appeal may be taken to the [state agency] within [30] days following re-
8 ceipt of the local government resolution by filing with the [state agency] a petition stating the rea-
9 sons for appeal. Within [10] days following receipt of a petition, the [state agency] shall notify the
10 local government which issued the resolution of the petition for review. The local government shall
11 transmit to the [state agency] within [10] days a certified copy of the resolution, the application, and the
12 hearing record for the application.

13 (b) A hearing on the appeal shall be held by the [state agency] within [45] days following receipt
14 of the resolution, application, and hearing record. The hearing shall be held on the record, consistent
15 with [the state administrative practices act]. The [state agency] shall render a written decision on the
16 appeal, stating findings of fact and conclusions of law within [30] days following the hearing, unless
17 such time is extended by mutual consent of the petitioner and the local government which issued the
18 resolution. The [state agency] may allow interested parties to intervene in the appeal upon timely
19 motion and a showing of good cause.

20 (c) The hearing on the appeal shall be limited to the following issues.

21 (1) In the case of denial of an application:

22 (i) has the local government authorized or permitted the construction of units equal to
23 its regional fair share;

24 (ii) has the local government offered encouragement or incentives for the development of
25 low and moderate income housing, including utilization of authority conferred under Section 5 of this
26 act; and

27 (iii) would the project applied for be consistent with the approved local plan for
28 accommodating the locality's fair share allocation.

29 (2) In the case of approval with conditions, would such conditions render the construction or
30 operation of the project uneconomic.

31 (d) (1) In the case of a denial, if the [state agency] determines that the local government has not
32 authorized or permitted the construction of units equal to its regional fair share, [and has not taken

¹States may also wish to consider the Commission's draft legislation, *State Planning and Growth Management Act*, particularly Section 12 dealing with developments of regional impact.

²Some states might wish to limit state review to those large projects that presumptively would contribute in meaningful degree to achievement of the local government's fair share allocation.

1 reasonable steps otherwise to endeavor to meet its regional fair share),¹ it shall by order vacate the
2 local government's decision and approve the application with or without reasonable conditions.

3 (2) If the [state agency] determines that a local government had not authorized or permitted
4 the construction of units equal to its regional fair share at the time the application was decided, but
5 has subsequently authorized or permitted such units, it may approve the application with or without
6 reasonable conditions.

7 (3) In making its determinations, the [state agency] shall also consider the application
8 relative to the state development plan² policies and relevant local government plans and programs.

9 (e) In the case of approval with conditions, if the [state agency] determines that such conditions
10 will render the construction or operation of the project uneconomic, it shall by order modify or
11 remove such conditions so that the project would no longer be uneconomic and otherwise affirm the
12 approval of the application.

13 (f) State agency action required in this section shall supersede the local government decision and
14 the [state agency] shall have the same authority as the [local government agency] relative to
15 authorizing the project with or without reasonable conditions, [including minimum standards imposed
16 by state building codes and by the state housing finance authority].

17 SECTION 8. *Direct State Leasing of Low and Moderate Income Housing.*

18 (a) If the [state agency] determines that a local government [is not reasonably attempting to
19 satisfy] [has not satisfied] its regional fair share through powers conferred under Section 5 of this
20 act or otherwise, it shall notify the [state housing finance agency] of such determination. The [state
21 agency] shall make such a determination consistent with [the state administrative practices act].
22 Upon receipt of such notification, the [state housing finance agency] shall declare the local juris-
23 diction a high priority area for the leasing of low and moderate income housing and shall endeavor to
24 satisfy the local government's regional fair share.

25 (b) Subsequent to the determination specified in subsection (a) above, the [state housing finance
26 agency] shall examine the prospects for low and moderate income housing within said jurisdiction. If
27 it finds that failure to construct such housing is due to market conditions or reasons other than land
28 use regulations imposed by the local governing body, the [state housing finance agency] shall
29 endeavor to have made available state or Federal funds or both for the purpose of leasing housing
30 space in existing multifamily dwellings in said jurisdiction for the accommodation of low and moderate
31 income families; provided, however, that in any multifamily, structure of [10] units or more, no more

¹States may wish to grant local governments greater flexibility by authorizing the agency to affirm the local denial if local plans and programs reasonably indicate that the local jurisdiction will satisfy its fair share within a reasonable period.

²See the commission's draft legislation, *State Planning and Growth Management Act* relative to the state development plan.

1 than [10] percent of such units may be under lease to the [*state housing finance agency*] at any one
2 time.¹

3 SECTION 9. *Enforcement.*

4 (a) [*State agency*] orders issued pursuant to Section 7 shall constitute final administrative action
5 and subject to direct appeal to the [*appropriate court*].

6 (b) The [*state agency*], regional planning agency, or the petitioner may institute appropriate
7 judicial proceedings to enforce [*state agency*] orders.

8 (c) The [*state agency*] may institute appropriate judicial proceedings to enforce the provisions of
9 this act.

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

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

¹Such a restriction may be desirable to prevent any significant concentration of leased units for low income people within a given structure or development.

6.3

Building Regulation

INTRODUCTION¹

There are many thousands of local jurisdictions in the United States administering and enforcing building codes with widely varying provisions. Many of the difficulties and needs in building code adoption, administration, and enforcement have been documented in a report of the Advisory Commission on Intergovernmental Relations entitled *Building Codes: A Program for Intergovernmental Reform*.

The commission concluded that a widely adopted uniform building code would go far toward eliminating arbitrary restrictions which in turn add to the cost of production. Adoption of uniform building codes would stimulate initiative and innovation in the development of new construction materials and techniques by making possible a prompt, wide market for such products. It would reduce the cost of research and testing which is incurred in the development, maintenance, and servicing of building codes by local governments.

Traditionally, building code preparation, administration, and enforcement have been delegated to local governments by the states as an exercise of the states' police powers. State governments, however, still retain some jurisdiction in matters of building regulation, and are frequently involved in administering minimum building and mechanical codes.

State and local governments occupy a key position in efforts to modernize building codes and to achieve uniformity. It is at the state and local levels that broad police power exists to regulate all phases of building construction. The major ultimate responsibility for administration and enforcement of building regulations must and will remain with local jurisdictions. State governments, therefore, have a significant responsibility to provide the framework within which the objectives of modernization and uniformity can be realized. In addition, states may provide for materials testing as in Massachusetts and Texas, or for energy insulation or energy efficiency standards as in California and New York.

In its report, the Commission recommended preparation of a model state code and procedures for adoption and maintenance by local governments. It is the purpose of the draft legislation which follows to suggest language which will accomplish this objective. Naturally, the state agency responsible for preparation of a model state building code should take into account the standards and requirements of nationally recognized codes. The Commission urges, at a minimum, that states not establishing a model code program, facilitate the adoption and amendment of nationally recognized models by local governments. This can be accomplished through enabling legislation authorizing adoption and amendment of codes by reference.

The commission also recommended the establishment of an appeals procedure through a state construction review agency to develop uniform statewide building standards by an evolutionary process as the need arises. Language to accomplish this objective is also included in the draft legislation.

Adoption of modern and uniform codes throughout a state is increasingly being achieved through the development and maintenance of model state building codes. In Connecticut, New Jersey, and New York, state agencies have been assigned responsibility for developing model building construction codes for optional adoption by local governments. The *Minnesota State Building Code for Public Buildings* will be available to local governments for adoption by reference in the near future. In North Carolina and Wisconsin, state agencies responsible for the mandatory minimum statewide building regulations over certain types of construction have developed optional model codes for one and two family dwellings, not subject to regulation under provisions of the mandatory code.

The most extensive program of state development of model building codes is that of New York. The *State Building Construction Code* has been adopted by more than 450 communities — nearly two-thirds of the codable municipalities in the state. Local governments may adopt the state code by simple resolution. Once adopted, however, changes of the technical provisions by a community must be approved by the state. To help accomplish all of these objectives, the Commission offers the following five draft bills: *State Building Code Act*, *Manufactured Building Act*, *Mobile Home Act*, *State Assistance to Local Governments for Building Inspection*, and *Registration of Building Code Enforcement Officers*.

¹This introduction to the following five bills is derived from: Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform*, Report A-28 (Washington, D.C.: U.S. Government Printing Office, January, 1966). The five bills are: *State Building Code Act*, *Manufactured Building Act*, *Mobile Home Act*, *State Assistance to Local Governments for Building Inspection*, and *Registration of Building Code Enforcement Officers*.

6.301 STATE BUILDING CODE ACT¹

With the growth of a nationwide market for many types of building products and regional markets for others, including manufactured components and whole building units of room size and larger, a uniform and comprehensive approach to regulation of the construction of buildings has become highly desirable. The *State Building Code Act* and two companion bills, the *Manufactured Building Act* and the *Mobile Home Act*, respond to this need through state rather than Federal action by promoting interstate and interstate uniformity of regulation and interstate reciprocal acceptance of building products. This act represents a synthesis of the experience of Federal, state, and local governments in regulating construction and manufacture to enable states to better protect the public health, safety, and welfare. The three acts are written in a manner permitting them to be administered by a single state agency and a single building code council if a state enacts any two of them, or all three. If a state enacts but one of them, each act is complete and may be administered independently.

The basic regulatory scheme of the *State Building Code Act* parallels the existing situation in most places: (1) a builder submits to a local enforcement agency the plans and specifications for a building he intends to erect within the jurisdiction; (2) the local enforcement agency issues a building permit if the proposed building will comply with the state building code; (3) the local enforcement agency inspects the building during construction; and (4) if the finished building complies with the state building code, the local enforcement agency issues a certificate of occupancy.

The following *State Building Code Act* was drafted by representatives of the National Conference of States on Building Codes and Standards; the National Association of Home Builders; the Southern Building Code Congress; the Building Officials and Code Administrators International, Inc.; the International Conference of Building Officials; and the design professions, with assistance by the United States Department of Commerce and the United States Department of Housing and Urban Development.

Section 1 sets forth legislative findings relative to a state building code act and the legislature's intent in passing such legislation. *Section 2* deals with definitions.

Section 3 provides for the establishment of a building codes council, and *Section 4* sets forth the powers of the council and the state administrative agency charged with the enforcement of this act.

Section 5 deals, primarily, with the objectives of the building code and the repeal of local and other state building regulations. *Section 6* provides for local exemptions from adoption of the state building code, *Section 7* provides for locally applied variations to the state building code, and *Section 8* disallows enforcement of the code by the state administrative agency in areas where local enforcement agencies have jurisdiction. *Section 9* allows the administrative agency to provide training programs in building code administration and enforcement.

Section 10 reserves zoning and related powers to local government. *Section 11* provides for the establishment of a fee schedule for inspections and the enforcement of this act.

Section 12 requires the building code council to hear appeals on any rules, regulations, or decisions pursuant to this act. *Section 13* provides for injunctive relief, in any court of competent jurisdiction, against the offering for sale, delivery, use, occupancy, erection, alteration, or installation of any building not conforming to the requirements of this act or the state building code. *Section 14* allows an aggrieved person(s) to bring a civil action against any person(s) violating this act, and *Section 15* provides for criminal penalties for violation of the act.

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform*, Report A-28 (Washington, D.C.: U.S. Government Printing Office, January, 1966).

Suggested Legislation

[AN ACT RELATING TO ESTABLISHING A STATE BUILDING CODE]¹

(Be it enacted, etc.)

1 SECTION 1. *Legislative Findings and Intent.* [Note each state should write its own legislative
2 findings to meet the individual conditions. The following are suggested possibilities:]

3 (a) Conditions exist in this state which create a shortage of decent, safe, and sanitary housing
4 and buildings, such as schools, hospitals, and other public facilities, at prices which residents and
5 political subdivisions of this state can afford. This shortage contributes to an increase in community
6 tension, crime, and blight, and constitutes a menace to the health, safety, and welfare of the residents
7 of this state. Increasing the available supply of housing and other buildings at prices which residents
8 and political subdivisions of this state can afford will alleviate community tension and blight, reduce
9 crime, increase the building inventory subject to property taxes, increase employment, attract new
10 industries, and materially improve the health, safety, and welfare of the residents of this state.

11 (b) The use of new and improved technologies, techniques, and materials will increase the avail-
12 able supply of housing and other buildings at prices which most residents and political subdivisions
13 of this state can afford.

14 (c) Uniformity of building codes and uniformity in procedures for enforcing codes throughout
15 the nation and the state are matters of nationwide and statewide interest and concern in that uniformi-
16 ty would increase the efficiency of the building industry and further assure the safety of its products.

17 (d) The use of new technologies, techniques, and materials is enhanced by the utilization and
18 application of uniform building codes and uniform procedures for enforcing building codes within
19 this state, and would be further enhanced by widespread reliance upon uniform and reasonable ma-
20 terial specifications and the use of performance criteria.

21 (e) The [legislature] intends, by this act, to create conditions in this state which will facilitate
22 the production and use of new technologies, techniques, and materials consistent with the require-
23 ments of health, safety, and welfare.

24 (f) The [legislature] intends that the administration and enforcement of this act shall be within
25 the jurisdiction of a single administrative agency.

26 SECTION 2. *Definitions.* Wherever used or referred to in this act, the terms defined herein have
27 the meanings assigned to them unless a different meaning is clearly indicated by the context.

28 (a) “[Administrative agency]” means the [agency] which is charged with the administration and

¹Suggested short title: [State] Building Code Act.

1 enforcement of this act.

2 (b) "Building" means any combination of materials, whether portable or fixed, which comprises
3 a structure affording facilities or shelter for any use or occupancy. The word "building" shall be
4 construed wherever used herein as if followed by the words "or part or parts thereof and all equip-
5 ment therein" unless the context clearly requires a different meaning. "Building" shall not mean a
6 mobile home certified pursuant to the [State Mobile Home Act] or a manufactured building certified
7 pursuant to the [State Manufactured Building Act].

8 (c) "Construction" means the erection, fabrication, reconstruction, demolition, alteration, con-
9 version, or repair of a building, or the installation of equipment therein.

10 (d) "Equipment" means facilities or installations, including, but not limited to, plumbing, heat-
11 ing, electrical, ventilating, air conditioning, and refrigerating facilities or installations, and elevators,
12 dumbwaiters, escalators, boilers, and pressure vessels.

13 (e) "Local enforcement agency" means the agency or agencies of local government with authority
14 to make inspections of buildings, and to enforce the laws, ordinances, and regulations enacted by
15 the state and by the local government which establish standards and requirements applicable to the
16 construction, alteration, repair, occupancy, or demolition of buildings.

17 (f) "Local government" means any county, city, municipal corporation, town, or other political
18 subdivision of this state with authority to establish standards and requirements applicable to the
19 construction, alteration, repair, occupancy, or demolition of buildings.

20 SECTION 3. [Building Code Council].

21 (a) A [building code council or such other name as may be designated for this function, herein-
22 after called the "council"] is created. The [council] shall consist of 12 qualified persons, the [chief
23 executive officer of the administrative agency] (non-voting), a representative of the general public,
24 one registered architect, one registered professional engineer (structural), one registered professional
25 engineer (mechanical), one registered professional engineer (electrical), one licensed general contractor,
26 one representative of the building trades, one homebuilder, one building code enforcement officer
27 from local government, one mobile home manufacturer, and one building manufacturer.

28 (b) Members of the [council], except the [chief executive officer of the administrative agency], shall
29 be appointed by the governor for four year terms of office and serve until qualified successors are
30 appointed, except that the governor, for the first appointments to the [council], shall appoint three
31 members for terms of four years, three members for terms of three years, three members for terms of
32 two years, and two members for terms of one year. Three or more consecutive failures by a member
33 to attend meetings of the [council], without reasonable cause, constitute cause for removal of the
34 member from the [council] by the governor, or by the chairman with concurrency by a majority of
35 the [council]. The governor shall appoint a new member when a vacancy occurs. When a vacancy

1 occurs, a majority of the remaining members of the [council] may appoint an interim member to fill
2 the vacancy for the remainder of the term or until the governor appoints a permanent member.

3 (c) Members of the [council] shall receive an allowance of [\$] per day or part of a day actually
4 spent attending to the business of the [council] and be compensated for traveling expenses as pro-
5 vided in [appropriate statutory reference].

6 (d) The [council] shall meet at the written request of the [chief executive officer of the administra-
7 tive agency] or of three or more members of the [council]; but the [council] shall meet no fewer than
8 [] times per year.

9 (e) The [council] shall establish rules and regulations and bylaws for its internal operation.

10 (f) The [council] shall be part of the [administrative agency] and exercise its powers, duties, and
11 functions independently of the [administrative agency], except that all budgeting, procurement, and
12 related functions shall be under the direction and supervision of the [chief executive officer of the
13 administrative agency].

14 (g) No member may act as a member of the [council] or vote as such in connection with any
15 matter in which he has a private interest.

16 (h) The [council] may employ an executive secretary. The [administrative agency] shall assign
17 personnel to assist the [council] in the performance of its functions.

18 SECTION 4. Powers of [Council and Administrative Agency].

19 (a) The [administrative agency] shall, and any other interested party may, propose rules and
20 regulations and amendments thereto. The [council] shall adopt and may amend or repeal rules and
21 regulations. After adoption by the [council], the [administrative agency] shall publish, administer, and
22 enforce the rules and regulations. The rules and regulations shall cover the following:

23 (1) the construction of all buildings and inspection thereof for compliance with the [State
24 Building Code];

25 (2) the issuance and revocation of permits or licenses for buildings;

26 (3) the use or occupancy of buildings;

27 (4) the standards and requirements for materials and equipment to be used in buildings in-
28 cluding, but not limited to, standards and requirements for safety, noise insulation and abatement,
29 energy conservation, ingress and egress, and sanitary conditions;

30 (5) fees for functions performed pursuant to this act;

31 (6) the establishment of classifications of fire zones pursuant to Section 11 of this act, and,

32 (7) the administration and enforcement of this act.

33 (b) The [administrative agency] shall propose and the [council] shall [may] adopt the codes,
34 standards, and requirements which apply to buildings and are promulgated by such organizations as
35 the Building Officials and Code Administrators International, Inc., International Conference of Build-

1 ing Officials, Southern Building Code Congress, Council of American Building Officials, and other
2 nationally recognized organizations including governmental agencies (hereinafter referred to as
3 "model codes"), if the [council] determines that each such code meets the following requirements:

4 (1) that its adoption will not substantially reduce regional uniformity of building regula-
5 tions;

6 (2) that such code does not discriminate against particular technologies, techniques, and
7 materials;

8 (3) that such code does not unnecessarily increase the cost of construction in the state;

9 (4) that such code will protect the public health, safety, and welfare within the state; and

10 (5) that the state will be adequately represented in the code modification proceedings of the
11 model code group whose code is proposed to be adopted. If the [council] determines that all of the
12 codes fail to meet one or more of the requirements, the [council] shall adopt a code which is comprised
13 of one or more of the model codes, or which is amended to the extent necessary to meet the require-
14 ments.

15 (c) The [council] shall endeavor to maintain the rules and regulations current with the state of the
16 art. The [council] shall be deemed to have done so, if it adopts, without change, such improvements,
17 amendments, and research findings as may be issued by the national model code organization within
18 one year of their issuance. Any other amendments adopted by the [council] shall meet the criteria
19 set forth in subsection (b) above and be supported by written findings of fact. Such amendments and
20 findings of fact in support thereof shall be submitted to the appropriate code writing organization
21 for possible amendment of that code.

22 (d) The [council] shall also:

23 (1) hold a public hearing prior to adopting any rule or regulation or amendment thereto,
24 following adequate public notice;

25 (2) make a continual study of the operation of the [State Building Code] and other laws
26 relating to the construction of buildings to ascertain their effect upon the cost of building construc-
27 tion and determine the effectiveness of their provisions;

28 (3) hear appeals pursuant to Section 12 hereof;

29 (4) decide, upon application by a private party or a local enforcement agency, that new tech-
30 nologies, techniques, and materials which have been tested, where necessary, and found to meet the
31 objectives of the [State Building Code], shall be deemed to meet that code. These determinations are
32 binding upon all local enforcement agencies throughout the state.

33 (e) The [council] or the [administrative agency] may also:

34 (1) require or provide for the testing of materials, devices, and methods of construction; and

35 (2) appoint experts, consultants, technical advisers, and advisory committees for assistance

1 and recommendations relative to the formulation of the [State Building Code].

2 SECTION 5. [State Building Code.]

3 (a) The rules and regulations published pursuant to Section 4 hereof shall comprise and collec-
4 tively be known as the [State Building Code].

5 (b) The [State Building Code] shall be designed to achieve the following specific objectives:

6 (1) provide uniform standards and requirements for construction and construction materi-
7 als;

8 (2) to the extent practicable, set forth standards, specifications, and requirements in
9 terms of performance objectives, so as to, *inter alia*, facilitate the use of new technologies, techniques,
10 and materials; preference shall be given to standards reasonably consistent with those of other states.
11 In order to facilitate the use of new materials, the [administrative agency] may establish or certify such
12 testing programs as may be necessary.

13 (c) Subject to the provisions of Section 6 hereof, until [] days after adoption of the [State
14 Building Code] building regulations adopted by a local government shall continue in effect unless
15 repealed. Thereafter, building regulations adopted by a local government shall be void and of no
16 effect, except as reserved to local government in Section 10 of this act. A building permit validly
17 issued pursuant to local building regulations within [] days after adoption of the [State Building
18 Code] is valid thereafter and the construction of a building may be completed pursuant to, and in ac-
19 cordance with, the permit. In areas of the state having no building regulations, or not requiring build-
20 ing permits, the construction of a building started before adoption of the [State Building Code] may be
21 completed without a building permit.

22 (d) Until [] days after adoption of the [State Building Code], building regulations promulgated by
23 any state board, department, commission, or agency shall continue in effect unless repealed. There-
24 after, such building regulations shall be void and of no effect, except that rules and regulations adopted
25 pursuant to the [State Manufactured Building Act] or the [State Mobile Home Act] shall continue in
26 effect.

27 SECTION 6. *Local Exemptions.*

28 (a) A local government which, prior to the adoption of this act, has adopted and is enforcing a
29 nationally recognized model building code as its building ordinance, may apply to the [council] to be
30 allowed to continue to enforce its building ordinance and to be exempted from the provisions of the
31 [State Building Code]. After approval by the [council], or by final decision by the [court of competent
32 jurisdiction] after appeal of a decision by the [council], the ordinance shall be so exempted. The
33 [council] shall support its decisions on such applications with written findings in accordance with the
34 provisions of subsection (b) of this section.

35 (b) The [council] shall grant such an application for exemption if it can be established to the

1 satisfaction of the [council] that:

2 (1) the ordinance is sufficiently consistent with the [State Building Code] so that its appli-
3 cation will not substantially reduce statewide or regional uniformity of building regulations;

4 (2) the ordinance does not discriminate against particular technologies, techniques, or mater-
5 ials;

6 (3) the ordinance does not unnecessarily increase the cost of construction in the jurisdic-
7 tion;

8 (4) the ordinance is the current edition of a nationally recognized model building code; and

9 (5) enforcement of the ordinance, as it may differ from the [State Building Code], is neces-
10 sary to protect the public health, safety, and welfare within the applicable jurisdiction. In deter-
11 mining whether the ordinance meets the above requirements, the [council] shall obtain the advice
12 and counsel of the [administrative agency].

13 (c) Any decision of the [council] approving or disapproving such an application, or failure of the
14 [council] to act within a reasonable time, may be appealed in the [court(s) of competent jurisdiction].

15 (d) If such application is approved, the local government shall thereafter maintain its building
16 ordinance up to date. The local government may do so by adopting, without change, such improve-
17 ments, amendments, and research findings as may be issued by the national model code organiza-
18 tion within one year of the issuance thereof. If the local government wishes to amend the nationally
19 recognized model code in any other manner, it shall submit the proposed amendment, and findings
20 of fact in support thereof, to the [council]. The [council] shall approve the amendment if the local
21 government establishes to the [council's] satisfaction that it meets the five criteria set forth above and
22 is necessary to account for conditions peculiar to the jurisdiction. Should an exempted local govern-
23 ment fail to maintain its code up to date or amend its code in violation of this section, and fail to
24 remedy the situation within a reasonable time after due notice, the [council] shall revoke the local gov-
25 ernment's exemption and the [State Building Code] shall be enforced in that jurisdiction. Any decision
26 of the [council] approving or disapproving such an amendment or revoking a local government's ex-
27 emption shall be final.

28 (e) A local government which has been exempted under this section may upon [] days' public
29 notice repeal its building ordinance and will thereafter be covered by the [State Building Code].

30 SECTION 7. *Local Variations.* A local enforcement agency may propose to the [council] varia-
31 tion(s) in the [State Building Code], for application within its jurisdiction, to cover special local condi-
32 tions requiring special or different building standards. The [council] shall adopt such variation(s)
33 if it is established to the [council's] satisfaction that:

34 (a) the proposed variation is sufficiently consistent with the [State Building Code] so that its
35 application will not substantially reduce statewide uniformity of building regulations;

1 (b) the proposed variation does not discriminate against particular technologies, techniques,
2 or materials;

3 (c) the proposed variation does not unnecessarily increase the cost of construction in the jur-
4 isdiction; and

5 (d) the proposed variation is necessary to protect the public health, safety, and welfare within
6 the jurisdiction.

7 SECTION 8. *Administration.*

8 (a) In areas where local enforcement agencies have jurisdiction, the [*administrative agency*]
9 shall not enforce the [*State Building Code*]. In such areas, the local enforcement agencies are responsi-
10 ble for the examination and approval of disapproval of plans and specifications, the issuance and
11 revocation of building permits, licenses, certificates, and similar documents, and the inspection of
12 buildings pursuant to the provisions of the [*State Building Code*].

13 (b) Local governments shall create, where necessary, within [] days after the adoption of the
14 [*State Building Code*], a local enforcement agency and shall employ and designate a [registered] build-
15 ing official as well as [registered] code enforcement officers deemed necessary to assist the enforcement
16 agency in carrying out its functions under Section 8(a) hereof. The administrative chief of the local
17 enforcement agency shall be called the [*building official*], and any additional local inspectors shall
18 be called [*code enforcement officers*].

19 (c) If a local government is not carrying out the provisions of Section 8 of this act, the [*adminis-*
20 *trative agency*] shall perform those functions in that jurisdiction until the local government has
21 appointed the necessary personnel.

22 (d) Local governments shall appoint local appeals boards to hear appeals brought in accordance
23 with Section 12(b) of this act. Until the boards are established, appeals shall be heard by the [*council*].
24 A sufficient number shall be appointed to allow appeals to be heard promptly by panels of three
25 members, all of whom shall be free of conflicts of interest in the cases before them. A local govern-
26 ment shall be relieved of the duty to appoint local appeals boards if it establishes to the satisfaction
27 of the [*council*] that a sufficient number of qualified people cannot be found in the jurisdiction or
28 through cooperation with neighboring jurisdictions.

29 (e) Two or more local governments may establish a local enforcement agency or a local appeals
30 board to serve their jurisdictions, and in this event they shall share the expenses incurred.

31 (f) The [*administrative agency*] may, upon request, assist a local enforcement agency in such
32 matters as technical assistance, code interpretation, education, training, personnel, and information
33 collection and dissemination.

34 (g) Except as otherwise provided in the [*State Building Code*], the construction of a building
35 shall not begin until a building permit is issued. Upon submission of an application to a local en-

1 enforcement agency, if the building proposed to be erected will comply with this act and the [State
2 Building Code], a permit shall be issued. A local enforcement agency may suspend or revoke a build-
3 ing permit if the building under construction pursuant thereto does not comply with this act or the
4 [State Building Code].

5 (h) A local enforcement agency shall periodically inspect all construction undertaken pursuant
6 to building permits issued by that agency to assure compliance with this act and the [State Build-
7 ing Code]. The applicant for a building permit of a building under construction is deemed to have
8 consented to inspection by a local enforcement agency by the act of applying for a building permit.
9 In addition to other inspections provided for in this act, an inspection may be made of any building
10 at any time if a local enforcement agency has probable cause to believe that a condition hazardous
11 to life or property exists. If a building is found not to comply with the [State Building Code], the
12 local enforcement agency shall notify the permittee in writing to bring the building into compliance
13 with the [State Building Code], or to secure it from entry, or both; if the permittee fails to comply with
14 the notification, the local enforcement agency shall revoke the permit.

15 (i) No building constructed after the effective date of the [State Building Code] shall be used or
16 occupied until a certificate of occupancy has been issued. Upon submission of an application for a
17 certificate of occupancy to a local enforcement agency, a certificate of occupancy shall be issued, if
18 the building to which the application pertains has been constructed in accordance with the building
19 permit, the [State Building Code] and other applicable laws and ordinances.

20 SECTION 9. *Training Programs.*

21 (a) The [administrative agency] may conduct or sponsor pre-entry and in-service education and
22 training programs on the technical, legal, and administrative aspects of building code administration
23 and enforcement. For this purpose it may cooperate and contract with educational institutions, local,
24 regional, state, or national building officials' organizations, and any other appropriate organization.

25 (b) The [administrative agency] may reimburse [code enforcement officers] and other employees
26 of the state and its subdivisions for related expenses incurred by them for attendance at in-service
27 training programs approved by the [administrative agency]

28 (c) In the establishment and administration of education and training programs, the [adminis-
29 trative agency] shall consult and cooperate with the [state code enforcement officers' registration
30 board, or appropriate agency charged with such registration] in order to facilitate the acceptance of
31 these programs as meeting requirements for registration as a [code enforcement officer].

32 SECTION 10. *Reservation of Local Zoning and Related Powers.*

33 (a) Except as provided by, or pursuant to, this act, land use zone requirements, building setback
34 requirements, side and rear yard requirements, site development, and property line requirements
35 are specifically and entirely reserved to local government.

1 (b) The [council] shall establish classifications of fire zones. Local governments shall establish
2 precise boundaries for fire zones within their jurisdictions.

3 SECTION 11. *Fees.*

4 (a) The [council] shall establish a schedule of fees for the functions performed by the [council]
5 and the [administrative agency] in connection with the administration and enforcement of this act
6 and publish it in the [State Building Code]. The amount of the fees shall be based, to the extent
7 reasonable, on the cost of performing functions undertaken pursuant to this act.

8 (b) Each local government may establish a schedule of fees for the functions performed by the
9 local enforcement agency in connection with the enforcement of this act.

10 SECTION 12. *Appeals.*

11 (a) The [council] shall promptly hear and decide appeals brought by any person or party in
12 an individual capacity, or on behalf of a class of persons or parties, affected by any rule, regulation,
13 or decision pursuant to this act. Final decisions by the [council] are reviewable on appeal (or on suc-
14 cessive appeals) in the [courts of competent jurisdiction].

15 (b) Prior to appeal to the [council], appeals of decisions or rulings of a local enforcement agency
16 shall be heard by the appropriate local appeals board. If there is no local appeals board for the juris-
17 diction, appeals shall be taken directly to the [council].

18 SECTION 13. *Injunctive Relief.* The [administrative agency] may obtain injunctive relief from
19 any [court of competent jurisdiction] to enjoin the offering for sale, delivery, use, occupancy, erec-
20 tion, alteration, or installation of any building covered by this act, upon an affidavit of the [adminis-
21 trative agency] specifying the manner in which the building does not conform to the requirements
22 of this act or the [State Building Code].

23 SECTION 14. *Statutory Civil Action.* Notwithstanding any other remedies available, any per-
24 son or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a
25 result of a violation of this act or the [State Building Code], has a cause of action in any [court of
26 competent jurisdiction] against the person or party who committed the violation. An award may in-
27 clude damages and the cost of litigation, including reasonable attorneys' fees. [The cause of action
28 created by this section is subject to the same limitations period applicable in this state for causes of
29 action of similar nature.]

30 [Optional Section.]

31 [SECTION 15. *Criminal Penalties.*

32 (a) Any person who violates any provision of this act or the [State Building Code] is guilty of a
33 misdemeanor, and, upon conviction, shall be fined not more than [\$] or imprisoned for not more
34 than [] for each offense, or both.

35 (b) A separate violation is deemed to have occurred with respect to each building not in compli-

1 ance with the act or the [*State Building Code*]. Each day the violation continues constitutes a separate
2 violation.]

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

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

6.302 MANUFACTURED BUILDING ACT¹

With the growth of a nationwide market for many types of building products, including whole buildings, and regional markets for many others, a uniform and comprehensive approach to regulation of the manufacture and construction of buildings has become highly desirable. The *Manufactured Building Act* and two companion bills, the *Mobile Home Act* and the *State Building Code Act*, respond to this need through state rather than Federal action by promoting intrastate and interstate uniformity of regulation and interstate reciprocal acceptance of manufactured building products. This act represents a synthesis of the previous experience of Federal, state, and local governments in regulating construction to enable the states to better protect the public health, safety, and welfare. The three acts are written in a manner permitting them to be administered by a single state agency and a single building code council if a state enacts any two of them, or all three. If a state enacts but one of them, each act is complete and may be administered independently.

The basic regulatory scheme of the *Manufactured Building Act* is as follows: (a) a manufacturer submits to the state agency (or to an independent third party approved by the state) the plans, specifications, and other necessary documentation for the buildings which he intends to produce; (2) if these are approved as complying with the law, either the state agency or an independent third party approved by the state will inspect the actual buildings or building components as they are being produced; (3) units which comply are so designated by a state approved label attached at the factory; and (4) local enforcement agencies inspect such units upon installation to determine whether they are correctly installed.

The *Manufactured Building Act* was drafted by representatives of the National Conference of States on Building Codes and Standards; the National Association of Building Manufacturers; the International Conference of Building Officials, Inc.; the Building Officials and Code Administrators International, Inc.; and the Southern Building Code Congress, with assistance by the United States Department of Commerce and the United States Department of Housing and Urban Development.

Section 1 sets forth legislative findings relative to a manufactured building act and the legislature's intent in passing such legislation. *Section 2* deals with definitions.

Section 3 provides for the establishment of a building code council. *Section 4* sets out the manner in which rules and regulations for enforcing the act shall be made.

Section 5 provides that the administrative agency charged with administering and enforcing the act shall evaluate building systems and approve those conforming to the provisions of this act, and *Section 6* provides that all manufactured buildings or building components shall be certified by the agency as complying with this act and its rules and regulations.

Section 7 prohibits the sale, delivery, or installation of any manufactured building or building component to a site in any jurisdiction of the state which lacks a building code, unless such building or building component has been certified pursuant to this act. *Section 8* allows for the consideration of special environmental conditions affecting manufactured buildings or building components by the administrative agency in its approval of a building system.

Section 9 provides that this state shall accept manufactured building or building components which have been certified by another state, provided that state's standards for manufacture and inspection of such buildings and building components are acceptable to the state. *Section 10* deals with the authority of the administrative agency to make inspections of persons or firms engaged in producing manufactured buildings and building components.

Section 11 provides for the establishment of a fee schedule for inspections and the enforcement of this act. *Section 12* requires the building code council to hear appeals on any rules, regulations, or decisions pursuant to this act. *Section 13* provides for injunctive relief, in any court of jurisdiction, against the sale,

¹Derived from: Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform*, Report A-28 (Washington, D.C.: U.S. Government Printing Office, January, 1966).

delivery, or installation of manufactured building or building components that do not conform to the requirements of this act. *Section 14* allows an aggrieved person(s) to bring a civil action against any person(s) violating this act, and *Section 15* provides for criminal penalties for violations of the act.

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

Suggested Legislation

[AN ACT RELATING TO ESTABLISHING STATE STANDARDS FOR
MANUFACTURED BUILDING CONSTRUCTION]¹

(Be it enacted, etc.)

1 SECTION 1. *Legislative Findings and Intent.* [Each state should write its own legislative findings
2 to meet its individual conditions. The following are suggested possibilities.]

3 (a) Conditions exist in this state which create a shortage of decent, safe, and sanitary housing
4 and buildings, such as schools, hospitals, and other public facilities, at prices which residents and
5 political subdivisions of this state can afford. This shortage contributes to an increase in community
6 tension, crime, and blight and constitutes a menace to the health, safety, and welfare of the residents
7 of this state. Increasing the available supply of housing and other buildings at prices which residents
8 and political subdivisions of this state can afford will alleviate community tension and blight, reduce
9 crime, increase the building inventory subject to property taxes, increase employment, attract new
10 industries, and materially improve the health, safety, and welfare of the residents of this state. The
11 production and utilization of manufactured buildings and building components and the use of
12 new and improved technologies, techniques, and materials will increase the available supply of hous-
13 ing and other buildings at prices which most residents and political subdivisions of this state can
14 afford.

15 (b) Uniformity of building codes governing manufactured buildings and building components
16 and uniformity in procedures for enforcing codes throughout the nation and the state are matters
17 of nationwide and statewide interest and concern in that uniformity would increase the efficiency
18 of the manufactured building industry and further assure the safety of its products.

19 (c) The production and utilization of manufactured buildings and building components and the
20 use of new technologies, techniques, and materials are enhanced by the utilization and application of
21 uniform building codes and uniform procedures for enforcing building codes within this state, and
22 would be further enhanced by widespread reliance upon uniform and reasonable material specifica-
23 tions and the use of performance criteria.

24 (d) Manufactured buildings and building components, because of the manner of their construc-
25 tion, assembly, and use, like other finished products with concealed vital parts, may present hazards
26 to health and safety unless properly manufactured. Also, manufactured buildings and building
27 components may contain hazardous defects not readily ascertainable when inspected by purchasers
28 or by local enforcement agencies. The [legislature] intends, by this act, to provide protection to the

¹Suggested short title: *Manufactured Building Act.*

1 public against these possible hazards.

2 (e) The [legislature] intends, by this act, to create conditions in this state which will facilitate the
3 production and use of manufactured buildings and building components and the use of new technol-
4 ogies, techniques, and materials consistent with the requirements of health, safety, and welfare.

5 (f) The [legislature] intends that the administration and enforcement of this act shall be within
6 the jurisdiction of a single administrative agency.

7 SECTION 2. *Definitions.* Wherever used or referred to in this act, the terms defined herein have
8 the meanings assigned to them unless a different meaning is clearly indicated by the context.

9 (a) "[Administrative agency]" means the [agency] which is charged with the administration and
10 enforcement of this act.

11 (b) "Approved" means approved by the [administrative agency].

12 (c) "Building component" means any subsystem, subassembly, or other system designed for use
13 in or as part of a structure, which may include structural, electrical, mechanical, plumbing, and
14 fire protection systems and other systems affecting health and safety.

15 (d) "Building system" means plans, specifications, and documentation for a system of manu-
16 factured buildings or for a type or a system of building components, which may include structural,
17 electrical, mechanical, plumbing, and fire protection systems, and other systems affecting health and
18 safety, including variations which are submitted as part of the building system.

19 (e) "Closed construction" means any building, building component, assembly, or system manu-
20 factured in such a manner that all concealed parts or processes of manufacture cannot be inspected
21 before installation at the building site without disassembly, damage, or destruction.

22 (f) "Compliance assurance program" means the system, documentation, and methods for assur-
23 ing that manufactured buildings and building components including their manufacture, storage,
24 transportation, assembly, handling, and installation conform with this act and the rules and regula-
25 tions promulgated pursuant thereto.

26 (g) "Evaluation agency" means an approved person or organization, private or public, includ-
27 ing a governmental agency, determined by the [administrative agency] to be qualified by reason of facil-
28 ities, personnel, experience, and demonstrated reliability and independence of judgment to investigate,
29 evaluate, and approve building systems or compliance assurance programs, and to issue labels.

30 (h) "Independence of judgment" means not being affiliated with, or influenced or controlled by,
31 building manufacturers or by producers, suppliers, or vendors of products or equipment used in
32 manufactured buildings and building components, in a manner likely to affect capacity to render
33 reports and findings objectively and without bias.

34 (i) "Inspection agency" means an approved person or organization, private or public, including
35 a governmental agency, determined by the [administrative agency] to be qualified by reason of facili-

1 ties, personnel, experience, and demonstrated reliability and independence of judgment to conduct or
2 supervise compliance assurance programs, certify manufactured buildings and building components,
3 and issue and attach labels.

4 (j) "Installation" means the process of affixing, or assembling and affixing, manufactured build-
5 ings or building components on the building site, or to an existing building.

6 (k) "Label" means an approved device or seal evidencing certification in accordance with this act
7 and the rules and regulations promulgated pursuant thereto.

8 (l) "Local enforcement agency" means the agency or agencies of local government with authority
9 to make inspections of buildings and to enforce the laws, ordinances, and regulations enacted by
10 the state and by the local government which establish standards and requirements applicable to the
11 construction, alteration, repair, occupancy, or demolition of buildings.

12 (m) "Local government" means any county, city, municipal corporation, town, or other political
13 subdivision of this state with authority to establish standards and requirements applicable to the
14 construction, alteration, repair, occupancy, or demolition of buildings.

15 (n) "Manufactured building" means any building which is of closed construction and which is
16 made or assembled in manufacturing facilities, on or off the building site, for installation, or
17 assembly and installation, on the building site. "Manufactured building" also means any building
18 of open construction for which certification under this act is sought by the manufacturer and which
19 is made or assembled in manufacturing facilities away from the building site for installation, or
20 assembly and installation, on the building site. "Manufactured building" does not mean "mobile
21 home."

22 (o) "Mobile home" means a factory assembled, movable dwelling designed and constructed to
23 be towed on its own chassis, comprised of frame and wheels, to be used without a permanent founda-
24 tion, and distinguishable from other types of dwellings in that the standards to which it is built
25 include provisions for its mobility on that chassis as a vehicle.

26 (p) "Open construction" means any building, building component, assembly, or system manu-
27 factured in such a manner that all portions can be readily inspected at the building site without
28 disassembly, damage, or destruction.

29 SECTION 3. [*Building Code Council.*]

30 (a) A [*building code council or such other name as may be designated for this function, herein-*
31 *after called the "council"*] is created. The [*council*] shall consist of 12 qualified persons: the [*chief*
32 *executive officer of the administrative agency*] (non-voting), a representative of the general public,
33 one registered architect, one registered professional engineer (structural), one registered professional
34 engineer (mechanical), one registered professional engineer (electrical), one licensed general con-
35 tractor, one representative of the building trades, one homebuilder, one building code enforcement

1 officer from local government, one mobile home manufacturer, and one building manufacturer.

2 (b) Members of the [council], except the [chief executive officer of the administrative agency], shall
3 be appointed by the governor for four year terms of office and serve until qualified successors are
4 appointed, except that the governor, for the first appointments to the [council], shall appoint three
5 members for terms of four years, three members for terms of three years, three members for terms of
6 two years, and two members for terms of one year. Three or more consecutive failures by a member to
7 attend meetings of the [council], without reasonable cause, constitutes cause for removal of the mem-
8 ber from the [council] by the governor, or by the chairman with concurrence by a majority of the
9 [council]. The governor shall appoint a new member when a vacancy occurs. When a vacancy occurs, a
10 majority of the remaining members of the [council] may appoint an interim member to fill the vacancy
11 for the remainder of the term or until the governor appoints a permanent member.

12 (c) Members of the [council] shall receive an allowance of [\$] per day or part of a day actually
13 spent attending to the business of the [council] and be compensated for traveling expenses as pro-
14 vided in [appropriate statutory reference].

15 (d) The [council] shall meet at the written request of the [chief executive officer of the administra-
16 tive agency] or of three or more members of the [council]; but the [council] shall meet no fewer than
17 [] times per year.

18 (e) The [council] shall establish rules and regulations and bylaws for its internal operation.

19 (f) The [council] shall be part of the [administrative agency] and exercise its powers, duties, and
20 functions independently of the [administrative agency], except that all budgeting, procurement, and
21 related functions shall be under the direction and supervision of the [chief executive officer of the
22 administrative agency].

23 (g) No member may act as a member of the [council] or vote as such in connection with any mat-
24 ter in which he has a private interest.

25 (h) The [council] may employ an executive secretary. The [administrative agency] shall assign
26 personnel to assist the [council] in the performance of its functions.

27 SECTION 4. Rules and Regulations.

28 (a) The [administrative agency] shall, and any other interested party may, propose rules and
29 regulations and amendments thereto. The [council] shall adopt and may amend or repeal rules and
30 regulations. After adoption by the [council], the [administrative agency] shall publish, administer,
31 and enforce the rules and regulations.

32 (b) The rules and regulations shall establish standards, specifications, and requirements for
33 manufactured buildings and building components; they also shall establish requirements for building
34 systems and compliance assurance programs. To the extent practicable, the standards, specifications,
35 and requirements shall be set forth in terms of performance objectives, so as to, *inter alia*, facilitate

1 the use of new technology, techniques, and materials. Preference shall be given to performance
2 standards reasonably consistent with those of other states.

3 (c) The [administrative agency] shall consider and may propose, and the [council] shall consider
4 and may adopt the codes, standards, and requirements which apply or could be applied to manufac-
5 tured buildings and building components and are promulgated by such organizations as the Building
6 Officials and Code Administrators International, Inc., International Conference of Building Offi-
7 cials, Southern Building Code Congress, Council of American Building Officials, and other nationally
8 recognized organizations, including governmental agencies. The [council] shall endeavor to maintain
9 the rules and regulations current with the state of the art.

10 (d) In adopting codes, standards, and requirements, no changes or modifications may be made
11 therein without express findings setting forth reasonable cause for the changes or modifications.
12 Any changes or modifications adopted by the [council] shall be submitted with the reasons therefor,
13 for consideration by the appropriate organization for amendment of the code, standard or
14 requirement.

15 (e) The [council] shall provide for a public hearing prior to adopting any rule or regulation or
16 amendment thereto, following adequate public notice.

17 (f) The [chief executive officer of the administrative agency] shall establish a position of [building
18 official], establish minimum qualifications for the position, and appoint a qualified person to fill
19 the position. The [building official] shall assist the [chief executive officer of the administrative agency]
20 in the administration and enforcement of all provisions of this act and the rules and regulations prom-
21 ulgated pursuant thereto.

22 (g) Except as provided by or pursuant to this act, land use zone requirements, fire zone bounda-
23 ries, building setback requirements, side and rear yard requirements, property line requirements, and
24 onsite development construction installation and inspection are specifically and entirely reserved to
25 local government.

26 SECTION 5. *Approval.*

27 (a) The [administrative agency] shall evaluate building systems and approve those which it
28 determines to be in compliance with this act and the rules and regulations. The [administrative
29 agency] may utilize the results of approved tests to determine if a building system meets the require-
30 ments of this act and the rules and regulations, if that determination cannot be made from evalua-
31 tion of plans, specifications, and documentation alone.

32 (b) The [administrative agency] shall evaluate manufacturers' compliance assurance programs and
33 approve those which it determines to be in compliance with this act and the rules and regulations.

34 (c) A building system, a compliance assurance program, or an amendment thereto, which has
35 been approved, shall not be varied in any way without authorization by the [administrative agency]

1 in accordance with the rules and regulations.

2 (d) The [administrative agency] may authorize evaluation agencies to evaluate and approve build-
3 ing systems or compliance assurance programs and to issue labels. The [administrative agency] may
4 suspend or revoke such authorization for cause.

5 (e) The [administrative agency] shall periodically monitor the entire process of building system
6 approval and compliance assurance program approval of each evaluation agency in order to verify
7 its reliability.

8 (f) The [administrative agency] may suspend or revoke, or cause to be suspended or revoked, the
9 approval of any building system or any compliance assurance program whenever the approval was
10 issued in error, or on the basis of incorrect information, or in violation of this act or of any rule or
11 regulation. If the [administrative agency] determines that buildings or building components manu-
12 factured pursuant to an approved building system do not comply with this act or the rules and regula-
13 tions, and the manufacturer fails to comply with a corrective order, the [administrative agency] shall
14 suspend or revoke, or cause to be suspended or revoked, the approval of the manufacturer's compli-
15 ance assurance program. Notice of suspension or revocation of an approval shall be in writing with
16 the reasons for suspension or revocation set forth therein. Appeals from suspensions or revocations
17 shall receive timely review pursuant to Section 12 thereof.

18 SECTION 6. *Certification.*

19 (a) Manufactured buildings or building components shall be certified by the [administrative
20 agency] as complying with this act and the rules and regulations, if they have been manufactured
21 in accordance with an approved building system and passed inspection in accordance with an ap-
22 proved compliance assurance program. Certification shall be evidenced by the attachment to each
23 manufactured building or building component (or group of components) of a label issued by the
24 [administrative agency]. Certified manufactured buildings or building components shall not be altered
25 in any way prior to the issuance of [occupancy permits, certificates of occupancy, or whatever
26 similar device is used] without resubmission for approval of the alteration and of the unit which in-
27 cludes the alteration.

28 (b) The [administrative agency] may authorize inspection agencies to perform all or part of the
29 inspection and certification of manufactured buildings or building components, including either
30 or both the issuance and the attachment of labels thereto. The [administrative agency] may suspend
31 or revoke such authorization for cause.

32 (c) Notwithstanding the provisions of any other law, manufactured buildings and building com-
33 ponents certified pursuant to this act shall be deemed to comply with the requirements of all laws,
34 ordinances, and regulations of this state or of local governments which govern the matters within

1 the scope of the approval and certification applicable to manufactured buildings or building compo-
2 nents, including those bearing upon technologies, techniques, and materials, or the safety of buildings
3 or building components. Local enforcement agencies shall issue building permits for certified manu-
4 factured buildings prior to installation, and issue [certificates of occupancy] for certified manufactured
5 buildings after they have been installed and inspected pursuant to Section 10 of this act. Any manu-
6 factured building or building component found not to comply with this act shall be brought into
7 compliance with this act before the [certificate of occupancy] is issued.

8 (d) The [administrative agency] shall suspend or revoke, or cause to be suspended or revoked, the
9 certification of any manufactured building or building component which the [administrative agency]
10 finds not to comply with this act or the rules and regulations, or which has been manufactured pur-
11 suant to a building system or compliance assurance program as to which approval has been sus-
12 pended or revoked, or which has been altered after certification. If the manufacturer fails to comply
13 with a corrective order, labels of certification shall be removed from any such manufactured building
14 or building component until it is brought into compliance with this act and the rules and regulations.
15 Notice of suspension or revocation of certification shall be in writing with the reasons for suspension
16 or revocation set forth therein. Appeals from suspensions or revocations shall receive timely review
17 pursuant to Section 12 hereof.

18 SECTION 7. *Limitation on Use.* No manufactured building or building component, manufactured
19 after [] shall be sold for, delivered to, or installed on a building site located in any jurisdiction of
20 this state which lacks a building code, unless such building or building component has been certified
21 pursuant to this act, except that any onsite inspection required pursuant to this act shall not apply.
22 In jurisdictions with building codes, the manufacturer shall be permitted, in lieu of obtaining approval
23 and certification by the [administrative agency], to apply for approval in accordance with the building
24 code of general applicability, and in that event shall comply with such code.

25 SECTION 8. *Exception for Special Environmental Conditions.*

26 (a) The [administrative agency] shall limit an approval of a building system by requiring each
27 manufacturer to list on each manufactured building or building component (or group of components)
28 manufactured pursuant to that building system, the environmental conditions which the manufac-
29 tured building or building component meets. No manufactured building or building component shall
30 be installed on a site or occupied in an area of this state where special environmental conditions
31 including, but not limited to, snow, wind, seismic conditions, temperature, and humidity require
32 special or different standards, unless the manufactured building or building component meets the
33 standards. If a manufactured building or building component is to be altered from the approved
34 building system to meet the special environmental conditions, an amended building system shall be
35 submitted for approval.

1 (b) In jurisdictions having building codes, the local government shall prescribe requirements for
2 special environmental conditions requiring special or different building standards for those parts of
3 the site development, foundation, and other work reserved to local enforcement agencies. Such re-
4 quirements shall be based on express findings setting forth reasonable cause therefor, and shall be
5 subject to the [local appeals procedure].

6 (c) A local enforcement agency may propose special environmental requirements for adoption
7 pursuant to Section 4 of this act, and unless the [council] disapproves the proposal within 60 days
8 of the date of its submission, or at the next meeting of the [council], whichever is sooner, the proposal
9 shall be deemed adopted.

10 SECTION 9. *Reciprocity.*

11 (a) If the [administrative agency] finds that the standards for the manufacture and inspection of
12 manufactured buildings or building components prescribed by statute or rules and regulations
13 of another state, or other governmental agency, meet the objectives of this act and the rules and
14 regulations and are enforced satisfactorily by the other state, or other governmental agency, or by
15 their agents, the [administrative agency] shall accept manufactured buildings or building components
16 which have been certified by the other state or governmental agency, and assure that the appropri-
17 ate label is attached thereto. The standards of another state shall not be deemed to be satisfactorily
18 enforced unless such other state provides for notification to the [administrative agency] of suspensions
19 or revocations of approvals issued by that other state, in a manner satisfactory to the [adminis-
20 trative agency], and so notifies the [administrative agency].

21 (b) The [administrative agency] shall suspend or revoke, or cause to be suspended or revoked,
22 its acceptance or certification, or both, of certified manufactured buildings or building components
23 if it determines that the standards for the manufacture and inspection of such manufactured build-
24 ings or building components of another state or other governmental agency do not meet the objec-
25 tives of this act and the rules and regulations, or that the standards are not being enforced to the
26 satisfaction of the [administrative agency]. Notice of the suspension or revocation shall be in writing
27 with the reasons set forth therein. Appeals from suspension or revocations shall receive timely
28 review pursuant to Section 12 hereof.

29 (c) If another state or governmental agency, or its agent, suspends or revokes its approval or
30 certification, the acceptance or certification, or both, granted under this section shall be suspended
31 or revoked accordingly.

32 (d) In order to encourage reciprocity, the [administrative agency] and the [council] shall cooperate
33 with similar authorities in other jurisdictions and with nationally recognized codes and standards
34 organizations in developing mutually acceptable methods and procedures for testing, evaluating,
35 approving, and inspecting manufactured buildings or building components, and otherwise encour-

1 aging their production and acceptance.

2 SECTION 10. *Inspection.*

3 (a) Any person or firm manufacturing buildings or building components, and desiring certifi-
4 cation, shall agree in writing that the [administrative agency] has the right to conduct unannounced
5 inspections at any reasonable time.

6 (1) The [administrative agency] shall periodically make, or cause to be made, inspections
7 of the entire process of manufacture and certification of buildings and building components produced
8 under approved building systems, and of buildings and building components already certified, in order
9 to verify the reliability of each compliance assurance program and inspection agency.

10 (2) In addition to other onsite inspection provided for in subsection (d) of this section, the
11 [administrative agency] shall inspect, or cause to be inspected, certified manufactured buildings or
12 building components it determines sufficiently damaged after certification to warrant such inspec-
13 tion, and to take action with regard to these buildings or building components as authorized under
14 Section 6(d) hereof, or as otherwise necessary to eliminate dangerous conditions.

15 (3) No inspection entailing disassembly, damage to, or destruction of certified manufactured
16 buildings or building components may be conducted except to implement Sections 6(d) or 10(a)(1) and
17 (2) hereof.

18 (b) The [administrative agency] shall authorize inspectors and other representatives to travel
19 within or without the state for any purpose directly related to the administration and enforcement
20 of this act.

21 (c) The [administrative agency] may authorize inspection agencies to perform all or part of its in-
22 spection functions under this section. The [administrative agency] may suspend or revoke such auth-
23 orization for cause.

24 (d) In jurisdictions having building codes, local enforcement agencies shall inspect all manufac-
25 tured buildings or building components upon, or promptly after, installation at the building site
26 to determine if all applicable instructions or requirements have been followed. This inspection may
27 include tests for tightness of plumbing and mechanical systems, for malfunctions in the electrical
28 system, and a visual inspection for obvious violations of the rules and regulations. Destructive dis-
29 assembly of certified buildings or building components shall not be performed in order to conduct
30 such tests or inspections, nor shall standards more stringent than those promulgated pursuant to
31 this act be imposed. Non-destructive disassembly may be performed only in accordance with the
32 rules and regulations. Local enforcement agencies shall cause the disposition of non-complying
33 manufactured buildings and building components in accordance with [applicable law] and with the
34 rules and regulations.

35 (e) In jurisdictions having building codes, local enforcement agencies shall inspect site prepara-

1 tion work, including foundations, for compliance with [applicable law].

2 SECTION 11. Fees.

3 (a) The [administrative agency] shall establish a schedule of fees in connection with the admin-
4 istration and enforcement of this act and publish it in the rules and regulations. The amount of the
5 fees shall be based on the cost of performing functions undertaken pursuant to this act. The effects
6 of the fees upon the cost of buildings to residents and political subdivisions of this state shall be
7 considered by the [administrative agency] in setting and approving its own fees as well as the fees
8 charged by evaluation and inspection agencies under contract to it.

9 (b) Fees charged by local enforcement agencies for activities conducted under this act or the
10 rules and regulations shall be consistent with fees charged by them for other types of buildings
11 regulated by local government.

12 SECTION 12. Appeals. The [council] shall promptly hear and decide appeals brought by any
13 person or party in an individual capacity, or on behalf of a class of persons or parties, affected by
14 any rule, regulation, or decision pursuant to this act. Final decisions by the [council] are reviewable
15 on appeal (or on successive appeals) in the [courts of competent jurisdiction].

16 SECTION 13. Injunctive Relief. The [administrative agency] may obtain injunctive relief from
17 any [court of competent jurisdiction] to enjoin the sale, delivery, or installation of manufactured
18 buildings or building components, or of buildings utilizing such components, for which certification
19 is required under this act, upon an affidavit of the [administrative agency] specifying the manner in
20 which the manufactured buildings or building components do not conform to the requirements of this
21 act or the rules and regulations.

22 SECTION 14. Statutory Civil Action. Notwithstanding any other remedies available, any person
23 or party, in an individual capacity, or on behalf of a class of persons or parties, damaged as a
24 result of a violation of this act or the rules and regulations, has a cause of action in any [court of
25 competent jurisdiction] against the person or party to whom the label evidencing certification has
26 been issued with respect to the pertinent manufactured building(s) or building component(s), or, if it
27 is not certified against the manufacturer of the pertinent manufactured building(s) or building
28 component(s). An award may include damages and the cost of litigation, including reasonable
29 attorneys' fees. [The cause of action created by this section is subject to the same limitations
30 period applicable in this state for causes of action of similar nature.]

31 [Optional section.]

32 [SECTION 15. Criminal Penalties.

33 (a) Any person who violates any provision of this act, or of the rules and regulations, is
34 guilty of a misdemeanor, and, upon conviction, shall be fined not more than [\$] or imprisoned for
35 not more than [] for each offense, or both.

1 (b) A separate violation is deemed to have occurred with respect to each building or building
2 component not in compliance with the act or the rules and regulations. Each day the violation con-
3 tinues constitutes a separate violation.

4 (c) Any person who counterfeits or alters one or more labels, or who makes fraudulent or mis-
5 representative use of one or more labels, or any person who knowingly makes use of one or more
6 counterfeit or altered labels, is guilty of a felony and, upon conviction, shall be fined not less than
7 [\$] nor more than [\$] or imprisoned for not more than [] years for each offense, or both.]

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

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

6.303 MOBILE HOME ACT¹

With the growth of a nationwide market for many types of housing products, including mobile homes, and regional markets for others, a uniform and comprehensive approach to regulation of such products has become highly desirable. The *Mobile Home Act* and two companion bills, the *Manufactured Building Act* and the *State Building Code Act*, respond to this need through state rather than Federal action by promoting intrastate and interstate uniformity of regulation and interstate reciprocal acceptance of building products. This act represents a synthesis of the experience of Federal, state, and local governments in regulating construction to enable the states to better protect the public health, safety, and welfare. The three acts are written in a manner permitting them to be administered by a single state agency and a single building code council if a state enacts any two of them, or all three. If a state enacts but one of them, each act is complete and may be administered independently.

The basic regulatory scheme of the *Mobile Home Act* is as follows: (1) a manufacturer submits to the state agency or to an independent third party approved by the state the plans, specifications, and other necessary documentation for the mobile homes which he intends to produce; (2) if these are approved as complying with the law, either the state agency or an independent third party approved by the state will inspect the actual mobile homes as they are being produced; (3) the compliance of a mobile home with the law is indicated by a state approved label attached at the factory; and (4) local enforcement agencies inspect such units upon installation to determine whether they are correctly installed.

The *Mobile Home Act* was drafted by representatives of the National Conference of States on Building Codes and Standards; the Mobile Home Industry; and International Conference of Building Officials, Inc.; Building Officials and Code Administrators International, Inc.; and the Southern Building Code Congress, with assistance by the United States Department of Housing and Urban Development.

Section 1 sets forth legislative findings relative to a mobile home act and the legislature's intent in passing such legislation. *Section 2* deals with definitions.

Section 3 provides for the establishment of a building code council and *Section 4* sets out the manner in which rules and regulations for enforcing the act shall be made.

Section 5 provides that the administrative agency charged with administering and enforcing the act shall evaluate mobile home systems and approve those conforming to the provisions of this act, and *Section 6* provides that all mobile homes shall be certified by the agency as complying with this act and its rules and regulations.

Section 7 prohibits, after a date to be determined, the offering for sale, sale, delivery, or installation of any mobile home on any site in the state unless it has been certified pursuant to this act. In addition, no mobile homes shall be attached to any permanent building or structure unless the combined structure complies with the applicable requirements for permanent buildings. *Section 8* allows for the consideration of special environmental conditions affecting mobile homes by the administrative agency in its approval of a mobile home system.

Section 9 provides that this state shall accept mobile homes which have been certified by another state, provided that states' standards for manufacture and inspection of such mobile homes are acceptable to this state. *Section 10* deals with the authority of the administrative agency to make inspections of persons or firms engaged in producing mobile homes.

Section 11 provides for the establishment of a fee schedule for inspections and the enforcement of this act. *Section 12* requires the building code council to hear appeals on any rules, regulations, or decisions pursuant to this act. *Section 13* provides for injunctive relief, in any court of jurisdiction, against the sale, delivery, or installation of mobile homes that do not conform to the requirements of this act. *Section 14* allows an aggrieved person(s) to bring a civil action against any person(s) violating this act, and *Section 15* provides for criminal penalties for violations of the act.

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform*, Report A-28 (Washington, D.C.: U.S. Government Printing Office, January, 1966).

Suggested Legislation

[AN ACT RELATING TO ESTABLISHING STATE STANDARDS FOR MOBILE HOME CONSTRUCTION]¹

(Be it enacted, etc.)

1 SECTION 1. *Legislative Findings and Intent.* [Each state should write its own legislative findings
2 to meet the individual conditions. The following are suggested possibilities.]

3 (a) Conditions exist in this state which create a shortage of decent, safe, and sanitary housing.
4 The production and utilization of mobile homes and the use of new and improved technologies, tech-
5 niques, and materials will increase the available supply of housing at prices which most residents of
6 this state can afford.

7 (b) Uniformity of standards governing mobile homes and uniformity in procedures for enforcing
8 standards throughout the nation and the state are matters of nationwide and statewide interest and
9 concern in that uniformity would increase the efficiency of the mobile home industry and further
10 assure the safety of its products. The necessity for uniformity is increased because mobile homes may
11 be moved from jurisdiction-to-jurisdiction.

12 (c) The production and utilization of mobile homes and the use of new technologies, techniques,
13 and materials are enhanced by the utilization and application of uniform standards and uniform pro-
14 cedures for enforcing the standards within this state, and would be further enhanced by widespread
15 reliance upon uniform and reasonable material specifications and the use of performance criteria.

16 (d) Mobile homes, because of the manner of their construction, assembly, and use, like other
17 finished products with concealed vital parts, may present hazards to health and safety unless properly
18 manufactured. Also, mobile homes may contain hazardous defects not readily ascertainable when
19 inspected by purchasers or by local enforcement agencies. The [legislature] intends, by this act, to pro-
20 vide protection to the public against these possible hazards.

21 (e) The [legislature] intends, by this act, to create conditions in this state which will facilitate the
22 production and use of mobile homes and the use of new technologies, techniques, and materials con-
23 sistent with the requirements of health, safety, and welfare.

24 (f) The [legislature] intends that the administration and enforcement of this act shall be within
25 the jurisdiction of a single administrative agency.

26 SECTION 2. *Definitions.* Wherever used or referred to in this act, the terms defined herein have
27 the meanings assigned to them unless a different meaning is clearly indicated by the context.

28 (a) "[Administrative agency]" means the [agency] which is charged with the administration and en-

¹Suggested short title: *Mobile Home Act.*

1 enforcement of this act.

2 (b) "Approved" means approved by the [*administrative agency*].

3 (c) "Compliance assurance program" means the system, documentation, and methods for assur-
4 ing that mobile homes, including their manufacture, storage, transportation, assembly, handling,
5 and installation conform with this act and the rules and regulations promulgated pursuant thereto.

6 (d) "Evaluation agency" means an approved person or organization, private or public, includ-
7 ing a governmental agency, determined by the [*administrative agency*] to be qualified by reason of
8 facilities, personnel, experience, and demonstrated reliability and independence of judgment, to in-
9 vestigate, evaluate, and approve mobile home systems, or compliance assurance programs, and to
10 issue labels.

11 (e) "Independence of judgment" means not being affiliated with or influenced or controlled
12 by mobile home manufacturers or by producers, suppliers, or vendors of products or equipment
13 used in mobile homes, in a manner likely to affect capacity to render reports and findings objectively
14 and without bias.

15 (f) "Inspection agency" means an approved person or organization, private or public, including
16 a governmental agency, determined by the [*administrative agency*] to be qualified by reason of facili-
17 ties, personnel, experience, and demonstrated reliability and independence of judgment, to conduct or
18 supervise compliance assurance programs, certify mobile homes, and issue and attach labels.

19 (g) "Installation" means the process of placing a mobile home on a site and connecting it to
20 utilities. Installation also may mean the connecting of two or more mobile home units designed and
21 approved to be connected for use as a dwelling.

22 (h) "Label" means an approved device or seal evidencing certification in accordance with this
23 act and the rules and regulations promulgated pursuant thereto.

24 (i) "Local enforcement agency" means the agency or agencies of local government with authority
25 to make inspections of buildings [including mobile homes] and to enforce the laws, ordinances, and
26 regulations enacted by the state and by the local government which establish standards and require-
27 ments applicable to the construction, alteration, repair, occupancy, or demolition of buildings
28 [including mobile homes].

29 (j) "Local government" means any county, city, municipal corporation, town, or other political
30 subdivision of this state with authority to establish standards and requirements applicable to the
31 construction, alteration, repair, occupancy, or demolition of buildings [including mobile homes].

32 (k) "Mobile home" means a factory assembled, movable dwelling designed and constructed to be
33 towed on its own chassis, comprised of frame and wheels, to be used without a permanent founda-
34 tion, and distinguishable from other types of dwellings in that the standards to which it is built
35 include provisions for its mobility on that chassis as a vehicle.

1 (l) "Mobile home system" means plans, specifications, and documentation for a system of mobile
2 homes, which may include structural, electrical, mechanical, plumbing, and fire protection systems
3 and other systems affecting health and safety, including variations which are submitted as part of the
4 mobile home system.

5 SECTION 3. [*Building Code Council.*]

6 (a) A [*building code council or such other name as may be designated for this function, herein-*
7 *after called the "council"*] is created. The [*council*] shall consist of 12 qualified persons: the [*chief*
8 *executive officer of the administrative agency*] (non-voting), a representative of the general public,
9 one registered architect, one registered professional engineer (structural), one registered professional
10 engineer (mechanical), one registered professional engineer (electrical), one licensed general contractor,
11 one representative of the building trades, one homebuilder, one building code enforcement officer
12 from local government, one mobile home manufacturer, and one building manufacturer.

13 (b) Members of the [*council*], except the [*chief executive officer of the administrative agency*], shall
14 be appointed by the governor for four year terms of office and serve until qualified successors are
15 appointed, except that the governor, for the first appointments to the [*council*], shall appoint three
16 members for terms of four years, three members for terms of three years, three members for terms of
17 two years, and two members for terms of one year. Three or more consecutive failures by a member to
18 attend meetings of the [*council*], without reasonable cause, constitutes cause for removal of the mem-
19 ber from the [*council*] by the governor, or by the chairman with concurrence by a majority of the [*coun-*
20 *cil*]. The governor shall appoint a new member when a vacancy occurs. When a vacancy occurs, a ma-
21 jority of the remaining members of the [*council*] may appoint an interim member to fill the vacancy for
22 the remainder of the term or until the governor appoints a permanent member.

23 (c) Members of the [*council*] shall receive an allowance of [\$] per day or part of a day actually
24 spent attending to the business of the [*council*] and be compensated for traveling expenses as pro-
25 vided in [*appropriate statutory reference*].

26 (d) The [*council*] shall meet at the written request of the [*chief executive officer of the administra-*
27 *tive agency*] or of three or more members of the [*council*]; but the [*council*] shall meet no fewer than
28 [] times per year.

29 (e) The [*council*] shall establish rules and regulations and bylaws for its internal operation.

30 (f) The [*council*] shall be part of the [*administrative agency*] and exercise its powers, duties, and
31 functions independently of the [*administrative agency*] except that all budgeting, procurement,
32 and related functions shall be under the direction and supervision of the [*chief executive officer of*
33 *the administrative agency*].

34 (g) No member may act as a member of the [*council*] or vote as such in connection with any mat-
35 ter in which he has a private interest.

1 (h) The [council] may employ an executive secretary. The [administrative agency] shall assign per-
2 sonnel to assist the [council] in the performance of its functions.

3 SECTION 4. *Rules and Regulations.*

4 (a) The [administrative agency] shall and any other interested party may propose rules and regula-
5 tions and amendments thereto. The [council] shall adopt and may amend or repeal rules and regula-
6 tions. After adoption by the [council], the [administrative agency] shall publish, administer, and enforce
7 the rules and regulations.

8 (b) The rules and regulations shall establish standards, specifications, and requirements for
9 mobile homes; they also shall establish requirements for mobile home systems and compliance
10 assurance programs. To the extent practicable, the standards, specifications, and requirements shall
11 be set forth in terms of performance objectives, so as to, *inter alia*, facilitate the use of new tech-
12 nology, techniques, and materials. Preference shall be given to performance standards reasonably con-
13 sistent with those of other states.

14 (c) The [administrative agency] shall consider and may propose, and the [council] shall consider
15 and may adopt the codes, standards, and requirements which apply to mobile homes and are promul-
16 gated by such organizations as the American National Standards Institute and other nationally
17 recognized organizations, including governmental agencies. The [council] shall endeavor to maintain
18 the rules and regulations current with the state of the art.

19 (d) In adopting codes, standards, and requirements, no changes or modifications may be made
20 therein without express findings setting forth reasonable cause of the changes or modifications.
21 Any changes or modifications adopted by the [council] shall be submitted, with the reasons therefor,
22 for consideration by the appropriate organization for amendment of the code, standard, or
23 requirements.

24 (e) The [council] shall provide for a public hearing prior to adopting any rule or regulation or
25 amendment thereto, following adequate public notice.

26 (f) The [chief executive officer of the administrative agency] shall establish a position of [build-
27 ing official], establish minimum qualifications for the position, and appoint a qualified person to
28 fill the position. The [building official] shall assist the [chief executive officer of the administrative
29 agency] in the administration and enforcement of all provisions of this act and the rules and regula-
30 tions promulgated pursuant thereto.

31 (g) Except as provided by or pursuant to this act (or any mobile home park law of this state),
32 land use zone requirements, fire zone boundaries, building setback requirements, side and rear yard
33 requirements, property line requirements, and onsite development, construction, installation, and in-
34 spection are specifically and entirely reserved to local government.

1 SECTION 5. *Approval.*

2 (a) The [administrative agency] shall evaluate mobile home systems and approve those which it
3 determines to be in compliance with this act and the rules and regulations. The [administrative
4 agency] may utilize the results of approved tests to determine if a mobile home system meets the re-
5 quirements of this act and the rules and regulations, if that determination cannot be made from
6 evaluation of plans, specifications, and documentation alone.

7 (b) The [administrative agency] shall evaluate manufacturers' compliance assurance programs
8 and approve those which it determines to be in compliance with this act and the rules and regulations.

9 (c) A mobile home system, a compliance assurance program, or an amendment thereto, which
10 has been approved, shall not be varied in any way without authorization by the [administrative
11 agency] in accordance with the rules and regulations.

12 (d) The [administrative agency] may authorize evaluation agencies to evaluate and approve mobile
13 home systems and compliance assurance programs and to issue labels. The [administrative agency]
14 may suspend or revoke such authorization for cause.

15 (e) The [administrative agency] shall periodically monitor the entire process of mobile home
16 system approval and compliance assurance program approval of each evaluation agency in order to
17 verify its reliability.

18 (f) The [administrative agency] may suspend or revoke, or cause to be suspended or revoked, the
19 approval of any mobile home system or any compliance assurance program whenever the approval
20 was issued in error, or on the basis of incorrect information, or in violation of this act or of any rule or
21 regulation. If the [administrative agency] determines that mobile homes manufactured pursuant to an
22 approved mobile home system do not comply with this act or the rules and regulations, and the
23 manufacturer fails to comply with a corrective order, the [administrative agency] shall suspend or
24 revoke, or cause to be suspended or revoked, the approval of the manufacturer's compliance assur-
25 ance program. Notice of suspension or revocation of an approval shall be in writing with the
26 reasons for suspension or revocation set forth therein. Appeals from suspensions or revocations shall
27 receive timely review pursuant to Section 12 hereof.

28 SECTION 6. *Certification.*

29 (a) Mobile homes shall be certified by the [administrative agency] as complying with this act and
30 the rules and regulations, if they have been manufactured in accordance with an approved mobile
31 home system and passed inspection in accordance with an approved compliance assurance program.
32 Certification shall be evidenced by the attachment to each mobile home of a label issued by the [ad-
33 ministrative agency]. Certified mobile homes shall not be altered in any way prior to the issuance
34 or [registration or title by the [department of motor vehicles, or other appropriate agency]] or [applicable
35 occupancy permits, certificates of occupancy or whatever similar device is used] without resubmission

1 for approval of the alteration and of the unit which includes the alteration.

2 (b) The [administrative agency] may authorize inspection agencies to perform all or part of the
3 inspection and certification of mobile homes, including either or both the issuance and the attach-
4 ment of labels thereto. The [administrative agency] may suspend or revoke such authorization for
5 cause.

6 (c) Notwithstanding the provisions of any other law, mobile homes certified pursuant to this act
7 shall be deemed to comply with the requirements of all laws, ordinances, and regulations of this state
8 or of local governments which govern the matters within the scope of the approval and certification
9 applicable to mobile homes, including those bearing upon technologies, techniques, and materials, or
10 the safety of mobile homes. [Local enforcement agencies shall issue [whatever permit or certificate is
11 required] for certified mobile homes prior to installation and issue [certificates of occupancy] for
12 certified mobile homes after they have been installed and inspected pursuant to Section 10 of this
13 act; any mobile home found not to comply with this act shall be brought into compliance with this
14 act before the [certificate of occupancy] is issued.

15 (d) The [administrative agency] shall suspend or revoke, or cause to be suspended or revoked,
16 the certification of any mobile home which the [administrative agency] finds not to comply with this
17 act or the rules and regulations, or which has been manufactured pursuant to a mobile home system
18 or compliance assurance program as to which approval has been suspended or revoked, or which has
19 been altered after certification. Notices prohibiting sale or installation shall be posted on, and, if
20 the manufacturer fails to comply with a corrective order labels of certification shall be removed from
21 any such mobile home until it is brought into compliance with this act and the rules and regulations.
22 Notice of suspension or revocation of certification shall be in writing with the reasons for suspension
23 or revocation set forth therein. Appeals from suspensions or revocations shall receive timely review
24 pursuant to Section 12 hereof.

25 SECTION 7. *Limitation on Use.*

26 (a) No mobile home manufactured after [] shall be offered for sale for, sold for, delivered to, or
27 installed on any site located in this state unless such mobile home has been certified pursuant to
28 this act. In jurisdictions with building codes, the manufacturer shall be permitted, in lieu of obtain-
29 ing approval and certification by the [administrative agency], to apply for approval in accordance with
30 the [building code of general applicability], and in that event shall comply with such [code].

31 (b) No mobile home shall be structurally attached to any permanent building or structure unless
32 the resulting combined structure complies with the applicable requirements for permanent buildings.

33 SECTION 8. *Exception for Special Environmental Conditions.*

34 (a) The [administrative agency] shall limit an approval of a mobile home system by requiring each
35 manufacturer to list on each mobile home manufactured pursuant to that mobile home system the

1 environmental conditions which the mobile home meets. No mobile home shall be installed on a site
2 or occupied in an area of this state where special environmental conditions including, but not limited
3 to, snow, wind, seismic conditions, or temperature require special or different standards, unless
4 the mobile home meets the standards. If a mobile home is to be altered from the approved mobile
5 home system to meet the special environmental conditions, an amended mobile home system shall
6 be submitted for approval.

7 (b) In jurisdictions having building codes, the local government shall prescribe requirements
8 for special environmental conditions requiring special or different building standards for those
9 parts of the site development and other work reserved to local enforcement agencies. Such require-
10 ments shall be based on express findings setting forth reasonable cause therefor, and shall be
11 subject to the [local appeals procedure].

12 (c) A local enforcement agency may propose special local environmental requirements for adop-
13 tion pursuant to Section 4 of this act, and unless the [council] disapproves the proposal within 60 days
14 of the date of its submission, or at the next meeting of the [council], whichever is sooner, the proposal
15 shall be deemed adopted.

16 SECTION 9. *Reciprocity.*

17 (a) If the [administrative agency] finds that the standards for the manufacture and inspection of
18 mobile homes prescribed by statute or rules and regulations of another state, or other governmental
19 agency, meet the objectives of this act and the rules and regulations, and are enforced satisfactorily
20 by the other state, or governmental agency, or by their agents, the [administrative agency] shall accept
21 mobile homes which have been certified by the other state or governmental agency, and assure that
22 the appropriate label is attached thereto. The standards of another state shall not be deemed to be
23 satisfactorily enforced unless the other state provides for notification to the [administrative agency]
24 of suspensions or revocations of approvals issued by that other state, in a manner satisfactory to the
25 [administrative agency], and so notifies the [administrative agency].

26 (b) The [administrative agency] shall suspend or revoke, or cause to be suspended or revoked,
27 its acceptance or certification, or both, of certified mobile homes if it determines that the standards
28 for the manufacture and inspection of such mobile homes of another state or other governmental
29 agency do not meet the objectives of this act and the rules and regulations, or that the standards are
30 not being enforced to the satisfaction of the [administrative agency]. Notice of the suspension or revo-
31 cation shall be in writing with the reasons set forth therein. Appeals from suspensions or revocations
32 shall receive timely review pursuant to Section 12 hereof.

33 (c) If another state or governmental agency, or its agent, suspends or revokes its approval or
34 certification, the acceptance or certification, or both, granted under this section shall be suspended
35 or revoked accordingly.

1 (d) In order to encourage reciprocity, the [administrative agency] and the [council] shall cooperate
2 with similar authorities in other jurisdictions and with nationally recognized codes and standards
3 organizations in developing mutually acceptable methods and procedures for testing, evaluating,
4 approving, and inspecting mobile homes, and otherwise encouraging their production and acceptance.

5 SECTION 10. *Inspection.*

6 (a) Any person or firm manufacturing mobile homes, and desiring certification, shall agree in
7 writing that the [administrative agency] has the right to conduct unannounced inspections at any
8 reasonable time.

9 (1) The [administrative agency] shall periodically make, or cause to be made inspections of
10 the entire process of manufacture and certification of mobile homes produced under approved
11 mobile home systems, and of mobile homes already certified, in order to verify the reliability of
12 each compliance assurance program and inspection agency.

13 (2) In addition to other onsite inspection provided for in subsection (d) of this section, the
14 [administrative agency] shall inspect, or cause to be inspected, certified mobile homes it determines
15 sufficiently damaged after certification to warrant such inspection, and to take action with regard
16 to these mobile homes as authorized under Section 6(d) hereof, or as otherwise necessary to eliminate
17 dangerous conditions.

18 (3) No inspection entailing disassembly, damage to, or destruction of certified mobile homes
19 may be conducted except to implement Sections 6(d) or 10(a)(1) and (2) hereof.

20 (b) The [administrative agency] shall authorize inspectors and other representatives to travel
21 within or without the state for any purpose directly related to the administration and enforcement of
22 this act.

23 (c) The [administrative agency] may authorize inspection agencies to perform all or part of its
24 inspection functions under this section. The [administrative agency] may suspend or revoke such
25 authorization for cause.

26 (d) In jurisdictions having building codes, local enforcement agencies shall inspect all mobile
27 homes upon, or promptly after, installation at the site to determine if all applicable requirements
28 and installation instructions have been followed. This inspection may include tests permitted by the
29 rules and regulations and a visual inspection for obvious violations of the rules and regulations.
30 Destructive disassembly of certified mobile homes shall not be performed in order to conduct such
31 tests or inspections, nor standards more stringent than those promulgated pursuant to this act be
32 imposed. Non-destructive disassembly may be performed only in accordance with the rules and
33 regulations. Local enforcement agencies shall cause the disposition of non-complying mobile homes
34 in accordance with applicable law and with the rules and regulations.

35 (e) In jurisdictions lacking building codes, the [administrative agency] may inspect mobile homes

1 upon, or promptly after, installation in the manner prescribed in subsection (d) of this section, and
2 may perform the other functions prescribed or permitted therein.

3 SECTION 11. *Fees.*

4 (a) The [administrative agency] shall establish a schedule of fees in connection with the admin-
5 istration and enforcement of this act and published in the rules and regulations. The amount of the
6 fees shall be based on the cost of performing functions undertaken pursuant to this act. The effects
7 of the fees upon the cost of mobile homes to residents of this state shall be considered by the [admin-
8 istrative agency] in setting and approving its own fees as well as the fees charged by evaluation and
9 inspection agencies under contract to it.

10 (b) Fees charged by local enforcement agencies for activities conducted under this act or the
11 rules and regulations shall be based on the cost of performing such functions.

12 SECTION 12. *Appeals.* The [council] shall promptly hear and decide appeals brought by any
13 person or party in an individual capacity, or on behalf of a class of persons or parties, affected by
14 any rule, regulation, or decision pursuant to this act. Final decisions by the [council] are reviewable on
15 appeal (or on successive appeals) in the [courts of competent jurisdiction].

16 SECTION 13. *Injunctive Relief.* The [administrative agency] may obtain injunctive relief from
17 any [court of competent jurisdiction] to enjoin the offering for sale, sale, delivery, or installation of
18 mobile homes, for which certification is required under this act, upon an affidavit of the [administra-
19 tive agency] specifying the manner in which the mobile homes do not conform to the requirements
20 of this act or the rules and regulations.

21 SECTION 14. *Statutory Civil Action.* Notwithstanding any other remedies available, any person
22 or party, in an individual capacity, or on behalf of a class of persons or parties, damaged as a
23 result of a violation of this act or the rules and regulations, has a cause of action in any [court of
24 competent jurisdiction] against the person or party to whom the label evidencing certification has
25 been issued with respect to the pertinent mobile home(s), or, if it is not certified, against the
26 manufacturer of the pertinent mobile home(s). An award may include damages and the cost of liti-
27 gation, including reasonable attorneys' fees. [The cause of action created by this section is subject to
28 the same limitations period applicable in this state for causes of action of similar nature.]

29 [Optional Section.]

30 [SECTION 15. *Criminal Penalties.*

31 (a) Any person who violates any provision of this act, or of the rules and regulations, is guilty
32 of a misdemeanor, and, upon conviction, shall be fined not more than [\$] or imprisoned for not
33 more than [] for each offense, or both.

34 (b) A separate violation is deemed to have occurred with respect to each mobile home not in com-
35 pliance with the act or the rules and regulations. Each day the violation continues constitutes a

1 separate violation.

2 (c) Any person who counterfeits or alters one or more labels, or who makes fraudulent or mis-
3 representative use of one or more labels, or any person who knowingly makes use of one or more
4 counterfeit or altered labels is guilty of a felony, and, upon conviction, shall be fined not less than
5 [\$] nor more than [\$] or imprisoned for not more than [] years for each offense, or both.]

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

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

6.304 STATE ASSISTANCE TO LOCAL GOVERNMENTS FOR BUILDING INSPECTION¹

The states have a significant responsibility to provide the framework and machinery within which the objectives of modernization and uniformity of building codes can be realized. The adoption of modern, up to date local building codes and competent administration and enforcement of such codes are matters of statewide concern in the protection of the health and safety of its citizens.

The report of the Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform*, indicates those building regulatory practices of a governmental nature that tend to inhibit the advancement of housing and building technology. Among the several recommendations for Federal, state, and local action are those to improve the quality of administration and personnel at the local level. ACIR's draft bill, *State Model Building Code*, would encourage uniformity of building codes through local adoption of a statewide model code and establishment of a state level appeals and review agency for interpretation of local building codes decisions. To professionalize building inspection, a draft bill, *Registration of Building Code Enforcement Officers*, is also provided by the Commission.

The following suggested act gives the state a positive role in upgrading and improving the quality of local building code administration. It includes five assistance programs that could be undertaken by state government. The state is authorized to: provide technical and advisory assistance on the adoption, administration, and enforcement of building codes; provide financial assistance to supplement salaries of local building inspectors; provide inspection services by the state to local governments on a reimbursable basis; establish minimum staffing requirements for local building inspection services; and conduct training programs for building officials.

Section 1 sets forth, briefly, the purpose of the act and *Section 2* deals with definitions.

Section 3 authorizes establishment of technical and financial assistance to local governments. *Subsection (b)* empowers the state agency to provide technical assistance, on request, to local governing bodies. Such assistance could include: serving as a clearinghouse of information for the benefit of local government about the problems of building code administration and enforcement; reviewing proposed local building regulations; promoting the use of up to date methods for sound building inspection programs; studying the problems affecting building code programs of local government and recommending to the governor and legislature such changes as may seem necessary to strengthen local government building inspection practices.

Subsection (c) authorizes the state agency to supplement salaries of local building inspectors. Grants may be made to individual local governments for expenditures incurred for salaries of building inspectors. Recent examples of state salary supplement programs, in addition to long standing salary supplement programs in the education system, can be cited for tax assessors in Florida and Maryland and for sewage treatment plant operators in New York who meet the state technical qualifications. The availability of state money for this program could be related to minimum staffing requirements as suggested in *Section 5* of the draft act. The eligibility criteria to qualify for the supplement program are based on local financial resources, including income from permit fees, number of building permits issued, and dollar value of construction.

Section 4 of this act authorizes the state agency to provide building inspection services on a reimbursable basis to those local governments unable to maintain satisfactory performance either because of inadequate staff, or fiscal resources, or both. Then, the state agency bills the local government for the cost of providing inspection services. This program may be used to assure continuance of local inspection programs in cases where local governments did not meet state mandated minimum staffing requirements as established pursuant to *Section 5*.

To advance the level of competence of local inspection practices, *Section 5* authorizes the state agency to establish minimum staffing requirements for all local governments. Such requirements may lead to

¹Derived from: Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform*, Report A-28 (Washington, D.C.: U.S. Government Printing Office, January, 1966).

some difficulties for the smaller jurisdictions if they are required to employ full-time officials. There are, however, several alternative ways in which this difficulty can be overcome. Two or more small municipalities may jointly employ a single inspector or enter into an agreement with the county for part-time employment of an inspector, or they might employ a professional consultant, or join with several other jurisdictions for the purpose of building code administration. The salary supplement program, authorized in *Section 3*, could be utilized in some instances, to help local governments meet the state's minimum staffing requirements by making employment more attractive to qualified persons.

Section 6 authorizes the state to conduct training and educational programs on building inspection. The state agency is authorized to cooperate with associations of public officials, professional building officials organizations, university faculties, and others in formulating and administering such programs. Pre-entry and in-service training of building inspectors is an indispensable prerequisite for code enforcement programs. Competent, knowledgeable inspectors with an established reputation for honesty and sound judgement are a priceless asset and should be considered the precondition for the ideal development of building code enforcement programs. Extension courses, correspondence courses, and seminars conducted by universities have been undertaken in a few states, such as Connecticut, New Jersey, New York, North Carolina, and Pennsylvania. These courses usually have been joint undertakings of a college or university and one of the national or state building officials organizations. Finally, in those states establishing a licensing program for building inspectors, the state licensing board and the state agency responsible for training, should cooperatively develop training programs designed to qualify candidates for an inspector's license.

Sections 7 and 8 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT PROVIDING ASSISTANCE TO LOCAL GOVERNMENTS FOR BUILDING INSPECTION]¹

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is hereby declared to be the public policy of this state to protect the
2 health and safety of its citizens through improved administration and enforcement of building codes.
3 Recent advances in building technology demand increasingly expert knowledge by building officials
4 of a wide variety of building practices and materials and place additional demands on the capabilities
5 and resources of local governments in maintaining adequate building inspection services. It is the
6 purpose of this act to aid local governments in the performance of their responsibilities in administer-
7 ing and enforcing building codes by providing state assistance, including: technical and advisory
8 assistance in the adoption, administration, and enforcement of building codes; financial assistance to
9 supplement salaries of local building inspectors; provision of state inspection services to local
10 governments on a reimbursable basis; and provision of training courses in building inspection for
11 local and state building officials. It is also the purpose of this act to assure adequate performance of
12 building inspection services by establishing minimum staffing requirements for local government
13 building inspection.

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

15 (a) “[Agency]” means [insert name of the appropriate state agency or state government].¹

16 (b) “Building code” means building regulations heretofore or hereafter enacted or adopted
17 pursuant to [cite appropriate statutes enabling local governments to adopt and enforce building codes].

18 (c) “Certified inspector” means a person licensed to engage in the inspection of workmanship,
19 materials, and manner of construction of buildings and structures to determine whether prescribed
20 standards are met.²

21 SECTION 3. *State Technical and Financial Assistance.*

22 (a) *Purpose.* It is the intent of this section to provide technical assistance to local governments in
23 drafting, adopting, administering, and enforcing building codes and financial assistance in the
24 form of grants to supplement salaries of local building inspection personnel.

25 (b) *Authorization of State Technical Assistance.* The [agency] is authorized and directed to pro-
26 vide technical and advisory assistance regarding the adoption, administration, and enforcement of

¹Suggested short title: *State Building Inspection Assistance Act.*

¹The agency charged with this function will vary from state-to-state. Normally, it would be located in one of the functions assigned to an existing agency responsible for building codes, local affairs, or local planning and development assistance.

²See draft legislation entitled *Registration of Building Code Enforcement Officers.*

1 building codes to local governments on request. In providing this assistance the [agency] is authorized
2 and directed:

3 (1) to serve as a clearinghouse, for the benefit of local governments, of information concern-
4 ing the problems of building code administration and enforcement;

5 (2) to provide, on request, advisory review of proposed local building regulations, including
6 technical and legal evaluation;

7 (3) to promote the use, by local governments, of such methods for sound building inspec-
8 tion programs as modern performance type codes and regulations, competent staffing, and in-service
9 training;

10 (4) to study problems that affect building code programs of local government and to recom-
11 mend to the governor and the [legislature] such changes as may seem necessary to maintain and
12 strengthen local government building inspection practices;

13 (5) to supply, when requested, information, advice, and assistance to governmental and civic
14 groups which are studying problems of local government inspection practices; and

15 (6) to consult and cooperate with other state agencies, with local governments and officials,
16 and with Federal agencies and officials, in carrying out the purposes of this subsection.

17 (c) *Salary Supplements for Local Building Code Inspectors.*¹

18 (1) The [agency] is hereby authorized to make grants to local governments to supplement sal-
19 aries of local building inspectors who are certified (licensed) by the state. Such grants shall be ap-
20 portioned from appropriations made by the [legislature]. The [agency] is authorized in its discretion to
21 make advances in anticipation of state reimbursement provided for in this subsection.

22 (2) Grants to individual local governments shall not exceed [20] percent of that amount ap-
23 proved by the [agency] as having been duly expended by the local government for the salaries of
24 licensed professional building inspectors. Such state assistance shall be paid on account of such
25 salary expenditures after the termination of the fiscal year of the local government and after the
26 [agency] shall have determined, in accordance with this subsection that:

27 (i) the total of such expenditures is properly attributable to salaries, and

28 (ii) the application for funds complies with the qualifications for state assistance.

29 (3) Subject to the grant limitations established in paragraph (2) of this subsection, the
30 [agency] shall, in accordance with its rules and regulations, establish criteria to determine need for
31 and amount of such state assistance. Such criteria shall be based on measurements reflecting the
32 added salary costs in recruitment of licensed building inspectors and meeting minimum staffing re-

¹This section is primarily intended for use by states requiring local governments to employ licensed professional inspectors because of anticipated higher salary requirements resulting from a state licensing program or from state minimum staffing requirements as provided in Section 5 of this act.

1 requirements established by the state.

2 (4) All payments of such state assistance shall be made to the local government from the
3 state [*treasury*] upon the audit and warrant of the [*insert title of appropriate state official*].

4 (5) A local government applying for state assistance pursuant to this subsection shall sub-
5 mit to the [agency] within [60] days after the termination of the fiscal year of the local government an
6 application in such form and containing such information as the [agency] shall require in order to
7 effectuate the provisions of this subsection.

8 SECTION 4. *Inspection Services on a Reimbursable Basis.*

9 (a) *Purpose.* It is the intent of this section to provide state building inspection services to those
10 local governments unable to maintain satisfactory building inspection services because of the unavail-
11 ability of adequate staff resources or because of the greater expense of maintaining services of cer-
12 tain local governments.

13 (b) *Authorization.* The [agency] is hereby authorized within its discretion and upon written re-
14 quest from a local government, to provide inspection services upon payment by the local government
15 making the request, of the cost of such services. The [agency] may employ or contract for the services
16 of personnel necessary to carry out the provisions of this section, subject to limitations of [*cite*
17 *appropriate statute*].

18 (c) *Reimbursement of Appropriation.* All moneys received by the [agency] in payment for fur-
19 nishing inspection services authorized under this section shall be deposited to the credit of the appro-
20 priation or appropriations from which the cost of providing inspection services had been paid or is to
21 be charged.¹

22 (d) *Reports.* The [agency] shall furnish annually to the governor [and the [*legislature*]] a report
23 on the scope of the services so provides.

24 SECTION 5. *Minimum Staffing Requirements for Local Building Departments.*

25 (a) *Purpose.* The intent of this section is to establish minimum staffing requirements for build-
26 ing departments of all local governments within this state with respect to enforcement and adminis-
27 tration of building codes adopted pursuant to [*cite appropriate statutes enabling local governments*
28 *to adopt and enforce building code regulations*] in order to assure that code enforcing jurisdictions
29 are properly carrying out their responsibilities in the interest of public health, safety, and welfare in
30 administering and enforcing building codes.

31 (b) *Authorizations.* The [agency] is hereby authorized to make and publish rules and regulations
32 prescribing standards with respect to the number and qualifications of personnel engaged in inspect-
33 ing the workmanship, materials, and manner of construction of buildings and structures, or portions
34 of buildings and structures, for municipal and county building departments within the state. Such

¹This subsection may require adjustment to comply with state constitutional requirements.

1 standards shall be based on, but not be limited to:

2 (1) the volume, dollar value, and type of building construction activity and number of per-
3 mits issued within the code enforcing jurisdiction; and

4 (2) the budget and staffing, including work load, training, and experience, of the local
5 building department.

6 (c) *Certification and Hearings.* The [agency] shall certify those local government building depart-
7 ments satisfactorily meeting such standards as provided in subsection (b). The [agency] may revoke
8 or suspend local certification on its own motion. Hearings shall be held and appeals permitted on any
9 such proceedings for certification or revocation of certification as provided [cite state administrative
10 procedures act].

11 (d) *Failure to Meet Certification.* If the local government has not corrected those acts or omis-
12 sions for which certification was refused, revoked, or suspended, the [agency] may, at its discretion,
13 provide such staff services as may be necessary to carry out the purposes of this section. The [agency]
14 shall bill the local government for such inspection services until such time as it is fully satisfied that
15 all conditions imposed by the decisions of refusal of certification, revocation, or suspension shall
16 have been complied with. All moneys received by the [agency] in payment for providing inspection
17 services as may be required under this subsection shall be deposited to the credit of the appropriation
18 or appropriations from which the cost of providing inspection services has been charged.

19 SECTION 6. *Training Programs.*

20 (a) *Purpose.* It is the intent of this section to authorize state participation and support of training
21 programs to maintain and strengthen the competence of building code officials by keeping building
22 officials abreast of increasing complex advances in building technology.

23 (b) *Authorization.* The [agency] is hereby authorized to conduct or sponsor in-service and pre-
24 entry training programs on the technical, legal, and administrative aspects of building code adminis-
25 tration and enforcement. For this purpose it may cooperate with educational institutions; local,
26 regional, state, or national building officials organizations; and with any other appropriate profes-
27 sional organizations. The [agency] may contract for services with such institutions, governmental
28 jurisdictions, and organizations as may be necessary in carrying out the purposes of this section.

29 (c) *[Agency] Approval of Training Program.* The [agency] shall approve those training programs in
30 which state building officials and other employees participate under the provisions of this section.

31 (d) *Reimbursement of Participation Expenses.*¹ The [agency] may reimburse the participation ex-
32 penses incurred by building officials and other employees of the state and its subdivisions whose
33 attendance at in-service training programs is approved by the [agency]. Participants shall retain

¹If general statutes do not provide adequate protection for state officials attending training programs, special provisions may be necessary.

1 their [seniority, sick leave, tenure, insurance, retirement, and other fringe benefits] while in attendance
2 at in-service training programs approved by the [agency].

3 (e) *Authorizing Leave With Pay For Training Programs.* The [administrative head] of any agency
4 of this state with building code regulatory responsibilities is authorized to grant leave with pay
5 for attendance at in-service training programs approved by the [agency] for short periods not to exceed
6 [] weeks; for longer periods up to [] leave with pay shall be authorized by the [administrative
7 head] with the approval of the [governor, state personnel agency, state budget officer].

8 SECTION 7. *Separability.* [Insert separability clause.]

9 SECTION 8. *Effective Date.* [Insert effective date.]

6.305 REGISTRATION OF BUILDING CODE ENFORCEMENT OFFICERS¹

Realistically, the field of building code enforcement is a specialized area of law enforcement which requires competency in a variety of technical areas. Fortunately, the technology in each of the technical areas involved in code enforcement is such that a satisfactory level of competency can be attained by almost any individual who has a moderate level of dedication and perseverance. A highly qualified and successful code enforcement person need not, though he may, possess either the education of an engineer or the skill of a craftsman. Unfortunately, the specific tasks performed by code enforcement personnel are not always systematically analyzed and organized in a manner that would aid the logical development of job qualification criteria. Until this is done, attempts at developing either meaningful job qualification criteria or educational curricula for code enforcement personnel is, at best, a trial and error process.

Section 1 sets out the legislature's findings relative to the desirability of uniformity of building codes and their interpretation and enforcement throughout the nation and the states; and states the legislative intent in passing legislation to aid the code enforcement profession in the furtherance of its duties, by assisting it in the areas of professionalization, employment mobility, and improving performance abilities.

Section 2 is concerned with definitions.

Section 3 establishes a state building code enforcement officers registration board and provides for its membership, and *Section 4* outlines the powers of the board.

Section 5 provides that one year after the effective date of this act, it is unlawful for any person not possessing a valid registration to engage in building code enforcement in the state, or to use the title of registered building code enforcement officer. *Section 6* provides for the method by which persons shall be issued certificates of registration as a registered building code enforcement officer. *Section 7* makes provisions for special exceptions to the requirements set forth in *Section 6*. *Section 8* deals with education and training programs for building code enforcement officers, and *Section 9* grants the code enforcement officers registration board the authority, exercising due process, to discipline code enforcement officers.

Section 10 deals with the administration of this act. *Section 11* grants appellate powers to the code enforcement officers registration board. *Section 12* provides for a schedule of fees to be used in the administration and enforcement of this act.

Section 13 allows the state to register, as a code enforcement officer, a person from another state or agency of the Federal government, provided the board is satisfied that the involved state or Federal agency's rules and regulations or code enforcement meet the intent and rules and regulations of this act. This section also allows the board to waive any or all examinations (and qualifications) requirements established under this act in issuing a certificate of registration to the prospective code enforcement officer.

Section 14 provides that any person knowingly violating provisions of this act is guilty of a misdemeanor and shall be fined accordingly.

Sections 15 and 16, respectively, provide for separability and effective date clauses.

This bill should be carefully tailored to be compatible with the state approach as recommended in the Commission's other suggested building regulation acts (*State Building Code Act*, *Manufactured Building Act*, *Mobile Home Act*, and *State Assistance to Local Governments for Building Inspection*). The use of single registration and lack of trainee status, coupled with the possible lack of qualified personnel in a "new" statewide program, should be considered in using terms of education and experience in qualifications. The adoption of this bill, and qualifications required thereunder, should be coupled with the development of optimum job qualification criteria based upon job tasks which have been systematically identified and operationally defined.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Building Codes: A Program for Intergovernmental Reform*, Report A-28 (Washington, D.C.: U.S. Government Printing Office, January, 1966).

Suggested Legislation

[AN ACT RELATING TO REGISTRATION OF CODE ENFORCEMENT OFFICERS]¹

(Be it enacted, etc.)

1

2 SECTION 1. *Legislative Findings and Intent.* [Each state should write its own legislative findings
3 to meet the individual conditions. The following are suggested possibilities.]

4 (a) Uniformity of building codes and uniformity in the interpretation and enforcement of the
5 codes throughout the nation and the states are matters of nationwide and statewide concern and
6 interest in that uniformity would increase the efficiency of the building industry and further assure
7 the safety of its products.

8 (b) Manufactured buildings, building components, and mobile homes, because of the manner
9 of their construction, assembly, and use, like other finished products with concealed vital parts, may
10 present hazards to health and safety unless properly manufactured. Likewise, manufactured buildings
11 and components and mobile homes may contain hazardous defects not readily ascertainable when in-
12 spected by purchasers or local enforcement agencies. With the increasing national trend for inspection
13 of these buildings at their point of manufacture, and with the nature of the buildings for movement
14 across interjurisdictional boundaries, assurances to the state and its citizens are necessary that proper
15 and adequate inspections have been made on these units by qualified personnel at their point of
16 manufacture. The [legislature] intends, by this act, to assure the availability and mutual acceptance of
17 the inspection personnel.

18 (c) The building officials and code enforcement personnel of this state are to be commended on
19 their outstanding performances in protecting the health, safety, and welfare of the citizens of this
20 state. It is the intent of the [legislature], by this act, to aid the building code enforcement profession
21 in furtherance of its duties, by assisting it in the areas of professionalization, [education], [training],
22 employment mobility, and improved abilities to perform its duties.

23 SECTION 2. *Definitions.* Whenever used or referred to in this act, the terms defined herein have
24 the meanings assigned to them unless a different meaning is clearly indicated by the context.

25 (a) "[Administrative agency]" means [name of agency] which is charged with the administration
26 of this act.

27 (b) "[Board]" means the [[state] Building Code Enforcement Officers Registration Board].¹

28 (c) "Code" means the building related regulations heretofore or hereafter enacted or adopted

¹Suggested short title: *Building Code Enforcement Officer Registration Act.*

¹A state building code established under draft legislation entitled *State Building Code Act* is an alternative to this section.

1 pursuant to [appropriate citation enabling local governments to adopt and enforce building codes]
2 [cite state construction standards act or other state law].

3 (d) "Code enforcement" means the agency or agencies of local government with authority to
4 make inspections of buildings and to enforce the laws, ordinances, and regulations enacted by the
5 state and the local government which establish standards and requirements applicable to the construc-
6 tion, alteration, repair, or demolition of buildings.

7 (e) "Local enforcement agency" means the agency or agencies of local government with author-
8 ity to make inspections of buildings and to enforce the laws, ordinances, regulations enacted by
9 the state and the local government which establish standards and requirements applicable to the con-
10 struction, alteration, repair, or demolition of buildings.

11 (f) "Local government" means any county, city, municipal corporation, town, or other political
12 subdivision of this state with authority to establish standards and requirements applicable to the
13 construction, alteration, repair, or demolition of buildings.

14 (g) "Registered code enforcement officer" means a person registered under this act to engage
15 in the practice of code enforcement.

16 SECTION 3. [Building Code Enforcement Officers Registration Board.]¹

17 (a) A [[state] Building Code Enforcement Officers Registration Board] is established in the
18 [administrative agency].

19 (b) The membership of the [board] consists of one registered architect, one registered professional
20 engineer, two code enforcement officers, and one building contractor. All members shall be generally
21 familiar with construction, and with code enforcement practices. The [secretary or appropriate title]
22 of the [administrative agency], or his designee also shall serve as a non-voting member of the [board].
23 The [administrative agency] shall furnish personnel to assist the [board] in carrying out its duties
24 and to administer this act.

25 (c) The term of office for the membership of the [board] is four years, except that the governor
26 shall initially appoint three members for two year terms and two members for four year terms. The
27 governor shall appoint all members to fill new terms and all vacancies on the [board]. Each member
28 of the [board] shall serve until his successor has been duly appointed and qualified.

29 (d) Any member of the [board] may be removed by the governor for cause, after being given a
30 written statement of the charges and an opportunity to be heard thereon. Vacancies shall be filled
31 for an unexpired term in the same manner as appointments are made.

32 (e) The governor shall appoint a temporary chairman of the [board] for the purposes of con-
33 vening the first meeting. The [board] shall elect its own chairman and any other officers deemed neces-

¹A state building code established under draft legislation entitled *State Building Code Act* may be designated as an alternative to this section.

1 sary for the functioning of the [board]. The [board] shall meet at the request of the chairman of the
2 [board], or the [secretary or appropriate title] of the [administrative agency], or [the secretary's] desig-
3 nee, or at the written request of at least two members. The [board] shall meet not less than once
4 every six months.

5 (f) In appointing the membership of the first [board], the governor shall appoint one of the code
6 enforcement officers to a term of two years, and one to a term of four years. On the completion of
7 these terms of office, these seats on the [board] shall be filled by the appointment of a registered code
8 enforcement officer.

9 (g) The members of the [board] shall serve with compensation as prescribed by [citation]. Each
10 member shall receive necessary *per diem*, travel, and other expenses incurred in the actual per-
11 formance of his duties.

12 (h) The [secretary or appropriate title] of the [administrative agency], or his designee, shall serve
13 as secretary to the [board] and appoint personnel and provide staff services adequate for the opera-
14 tion of the [board] to carry out the provisions of this act. The secretary shall keep an accurate record
15 of all proceedings of the [board], which is open to inspection by the public.

16 (i) The governor shall constitute the [board] and appoint its membership within six (6) months
17 of the effective date of this act.

18 SECTION 4. Powers of The [Board].

19 (a) The [board] shall, within one year of the effective date of this act:

20 (1) formulate, propose, adopt, promulgate, and amend all rules and regulations necessary
21 to govern the examination, evaluation, and registration of applicants seeking registration as code
22 enforcement officers;

23 (2) adopt all other rules and regulations [and bylaws] necessary for the [board] to carry out
24 the duties assigned to it under this act, and otherwise prescribed by law;

25 (3) develop, administer, and score examinations for applicants seeking registration as code
26 enforcement officers;

27 (4) establish the required performance levels, and examination (and test scores) performance
28 necessary for the registration of code enforcement officers;

29 (5) establish additional qualifications and criteria deemed necessary for registration, which
30 may include individual background, experience, education, training, and employment;

31 (6) issue certificates of registration to individuals meeting all requirements established by
32 the [board];

33 (7) establish the duration of registration and propose, promulgate, adopt, and amend rules
34 and regulations necessary to the continuance of registration; and,

35 (8) propose, adopt, promulgate, and amend rules and regulations for the suspension or

1 revocation of registration as required under Section 9 of this act.

2 (b) The [board] may:

3 (1) enter into a contract or agreement with other agencies, private corporations, or individual
4 to develop or administer or score examinations;

5 (2) establish various types and classes of registration deemed necessary by the [board]; and

6 (3) have a seal and alter it; have perpetual succession; make and execute contracts and other
7 instruments necessary or convenient to the exercise of powers of the [board]; and make and, from time-
8 to-time, amend and repeal bylaws.

9 SECTION 5. *Application of This Act.*

10 (a) One year after the effective date of this act, it is unlawful for any person not possessing
11 a valid registration to engage in code enforcement in [state].

12 (b) One year after the effective date of this act, it is unlawful for any person not possessing
13 valid registration to use the title or terms "registered building code enforcement officer," or any
14 similar or related title, nor may any individual not possessing valid registration sign, approve, validate
15 or issue any certificate of compliance or non-compliance with the applicable codes.

16 SECTION 6. *Issuance of Certificates of Registration.*

17 (a) An applicant for registration shall file an application with the secretary of the [board] and
18 pay the application and examination fees as established by the [board].

19 (b) The [board] shall ascertain by written examination and the evaluation and review of qualifica-
20 tions if an applicant is qualified for a registration of the type for which he has applied. If the appli-
21 cant's examination (and/or qualifications) meet the minimum requirements, the [board] shall issue
22 a certificate of registration to the applicant affixed with the [appropriate seal], showing that the
23 person named therein is entitled to practice as a registered building code enforcement officer in
24 [state] in accordance with the provisions and rules and regulations of this act. The certificate of regis-
25 tration shall bear the signatures of the chairman and secretary of the [board].

26 [Optional Subsection.]

27 [(c) The [board] shall issue registration without written examination as a building code enforce-
28 ment officer to registered professional engineers and architects registered in this state, upon examina-
29 tion of qualifications and the submission of evidence of familiarity with code enforcement practices
30 within this state.]

31 (d) The [board] may deny registration to an applicant upon proof of the commission by the
32 applicant of any act or omission which would constitute grounds for disciplinary action under this
33 act.

34 (e) The [board] shall keep a record of the names and addresses of all registered building code
35 enforcement officers and additional personal data as the [board] requires. Each certificate shall

1 contain identifying information as the [board] requires. The [board] annually shall publish a list of all
2 currently registered code enforcement officers.

3 (f) A duplicate certificate to practice as a registered building code enforcement officer in place
4 of one which has been lost, destroyed, or mutilated, shall be issued and proper application upon pay-
5 ment of the required fee, subject to the rules and regulations of the [board].

6 [Optional Section.]

7 [SECTION 7. *Special Exceptions.* All persons who have been engaged in the practice of build-
8 ing code enforcement in this state for the ten years preceding the effective date of this act may make
9 application for registration to the [board] within one year after the effective date of this act, and be
10 so registered. One year after the effective date of this act, this provision of this law shall be removed
11 from this statute.]

12 SECTION 8. *Education and Training Programs.* The [board] may approve education and training
13 programs or portions thereof, in which candidates for registration have participated as meeting some
14 of the requirements for the issuance of registration as a building code enforcement officer.

15 SECTION 9. *Discipline.*

16 (a) The [board] may, upon the verified complaint in writing of any person, investigate the
17 actions of any registered building code enforcement officer, and may suspend or revoke the registra-
18 tion of any registered building code enforcement officer found guilty of any one or more of the acts
19 or omissions constituting grounds for disciplinary actions under this act.

20 (b) The [board] shall establish, after public hearing, rules and regulations necessary to establish
21 procedures and due process for suspension or revocation of registration. Such rules also shall in-
22 clude provisions for the removal of suspensions, the reissuance of registration, and the conditions
23 for these actions. The proceedings for the suspension or revocation of registration under this act
24 shall be conducted in accordance with the rules and regulations.

25 (c) A registration may be suspended or revoked if the [board] determines that the holder:

26 (1) is practicing in violation of the provisions of this act;

27 (2) has obtained the registration by fraud or misrepresentation, or the person named in the
28 registration has obtained it by fraud or misrepresentation;

29 (3) has knowingly aided or abetted any person practicing contrary to the provisions of this
30 act;

31 (4) has been found guilty of fraud or malpractice as a registered building code enforcement
32 officer;

33 (5) has been guilty of negligence or willful misconduct constituting grounds for disciplinary
34 action in practice as a registered building code enforcement officer;

35 (6) has been guilty of gross negligence, negligence, or incompetence; or

1 (7) has affixed his signature to a report of inspection or other instrument of service if no
2 inspection has been made by him or under his immediate and responsible direction, or has permitted
3 his name to be used for the purpose of assisting any person to evade the provisions of this act.

4 (d) The conviction of a felony, in connection with the practice as a registered building code
5 enforcement officer, may constitute grounds for revocation or suspension of a certificate.

6 SECTION 10. *Administration.*

7 (a) The [*administrative agency*] shall administer and enforce all provisions of this act, and all
8 rules and regulations promulgated pursuant to this act, subject to the direction of the [*board*], except
9 as delegated by this act to local governing bodies, other state agencies, corporations, or individuals.

10 (b) Prior to the adoption of any rules and regulations pursuant to this act, the [*board*] shall give
11 adequate notice and hold public hearings on them. [Any additions, amendments, or modifications
12 to these rules and regulations are subject to existing applicable state law or administrative proced-
13 ures.]

14 (c) The [*board*] shall have printed copies of this act and all rules and regulations pursuant thereto.
15 The copies shall be available to the public at a price determined by the [*board*].

16 (d) A certified copy of this act and all rules and regulations pursuant thereto shall be filed
17 with the [*office of the secretary of state*].

18 SECTION 11. *Appeals.* The [*board*] shall promptly hear and decide appeals brought by any
19 person or party in an individual capacity, or on behalf of a class of persons or parties, affected by any
20 rule, regulation, or decision pursuant to this act. Final decisions by the [*board*] are reviewable on
21 appeal [or on successive appeals] in the [*courts of competent jurisdiction*].

22 SECTION 12. *Fees.*

23 (a) The [*board*] may establish a schedule of fees for the administration and enforcement of this
24 act. The fee schedule established under this section shall be part of the administrative regulations
25 issued by the [*board*] and be available at the time of public hearings required under Section 9 of this
26 act.

27 (b) Funds received by the [*board*] in the administration and enforcement of this act shall be main-
28 tained in a special fund available to the [*board*] and the [*administrative agency*] for carrying out the
29 purposes of this act.

30 SECTION 13. *Comity.*

31 (a) If the [*board*] finds that the standards for registration of building code enforcement officers
32 prescribed by statute or rules and regulations of another state or any agency of the Federal govern-
33 ment meet the intent of this act and the rules and regulations issued pursuant thereto, the [*board*]
34 may provide by rule or regulation that the person holding a certificate of registration may be regis-
35 tered in [*state*] and may waive any or all examinations (and qualifications) requirements established

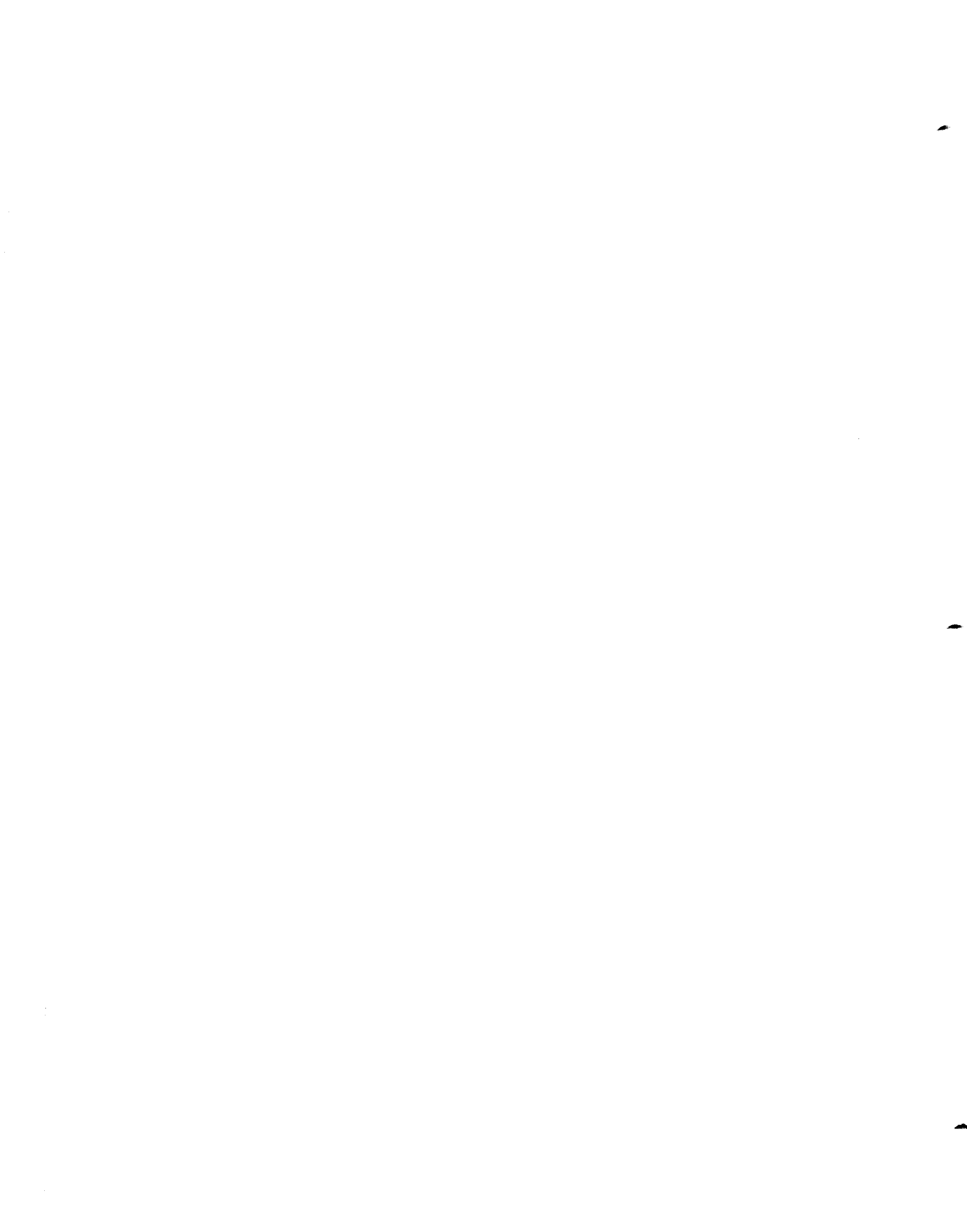
1 under this act, or in rules and regulations issued pursuant thereto.

2 SECTION 14. *Violations and Penalties.* Any person who knowingly violates any provision of
3 this act, or any rule or regulation pursuant thereto, is guilty of a misdemeanor and, upon conviction
4 for each offense, shall be fined not more than [\$].

5 SECTION 15. *Separability.* [*Insert separability clause.*]

6 SECTION 16. *Effective Date.* [*Insert effective date.*]





COMMISSION MEMBERS

PRIVATE CITIZENS

Robert E. Merriam, Chairman, Chicago, Illinois

Robert H. Finch, Los Angeles, California

John H. Altorfer, Peoria, Illinois

MEMBERS OF THE UNITED STATES SENATE

Ernest F. Hollings, South Carolina

Edmund S. Muskie, Maine

William V. Roth, Delaware

MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES

L. H. Fountain, North Carolina

Clarence J. Brown, Jr., Ohio

James C. Corman, California

OFFICERS OF THE EXECUTIVE BRANCH, FEDERAL GOVERNMENT

James M. Cannon, Assistant to the President for Domestic Affairs

James T. Lynn, Office of Management and Budget

Vacancy

GOVERNORS

Richard F. Kneip, South Dakota

Daniel J. Evans, Washington

Robert D. Ray, Iowa

Philip W. Noel, Rhode Island

MAYORS

Richard G. Lugar, Vice Chairman, Indianapolis, Indiana

Jack D. Maltester, San Leandro, California

John H. Poelker, St. Louis, Missouri

Vacancy

STATE LEGISLATIVE LEADERS

John H. Briscoe, Speaker, Maryland House of Delegates

Robert P. Knowles, Senator, Wisconsin

Charles F. Kurfess, Minority Leader, Ohio House of Representatives

ELECTED COUNTY OFFICIALS

Conrad M. Fowler, Shelby County, Alabama

John H. Brewer, Kent County, Michigan

William E. Dunn, Salt Lake County, Utah

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.

