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FOREWORD

The Council of State Governments is pleased to publish this 49th volume of *Suggested State Legislation*, the latest in a long and valued series of compilations of draft legislation on topics of current interest and importance to the states. The draft legislation found in this volume represents thousands of hours of work by legislators and legislative staff across the country—both in the states of origin of the bills, and in the Council’s Committee on Suggested State Legislation.

These draft items were selected from hundreds of submissions, and most are based on existing state statutes. Neither the Council nor the Committee seeks to influence the enactment of state legislation; throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these proposals are presented.

August 1989
Lexington, Kentucky

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Executive Director
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INTRODUCTION

"A single state’s experience in a new field frequently leads to the adoption of similar action in other states, if the problem is general, the approach is well conceived, and other states can be made aware of the action."

That statement is a simple one, but it remains as true today as it did when it first appeared 21 years ago in the introduction to the 28th volume of *Suggested State Legislation*.

For nearly 50 years, The Council of State Governments' Suggested State Legislation program has informed state policymakers on a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype of interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to internal security. The result was a program of suggested state legislation published as *A Legislative Program for Defense*. The Committee reconvened following the nation's entry into World War II in order to develop a general program of state war legislation. By 1946, the volumes of *Suggested State War Legislation* and *Suggested State Post-War Legislation* gave way to a volume simply titled *Suggested State Legislation*, an annual volume of draft legislation on topics of major governmental interest.

Today, SSL Committee members represent all regions of the country and many of the major functional areas of state government. They include legislators, legislative staff and other state governmental officials who contribute their time and efforts to assisting the states in the identification of timely and innovative state legislation.

The items in this, the 49th compilation of *Suggested State Legislation*, represent the culmination of a year-long process in which legislation submitted by state officials from all over the country was received and reviewed by members of the SSL Committee.

During this process, members of the SSL Subcommittee on Scope and Agenda met on two separate occasions: first, in December 1988 in Kansas City, Missouri, and again, in April 1989 in Lake Buena Vista, Florida, to screen and recommend legislation for final consideration by the full SSL Committee. At their annual meeting in July 1989 in Chicago, Illinois, the members of the full Committee examined the proposals referred by the Subcommittee on Scope and Agenda and selected the items that appear in this volume.

Although these items are published here as suggested legislation, neither The Council of State Governments nor the SSL Committee are in the position of advocating their enactment. Instead, the entries are offered as an aid to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.

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In fact, throughout the SSL solicitation, review and selection processes, members of the Committee employ a specific set of criteria to determine which items will appear in the volume:

- Is the issue a significant one currently facing state governments?
- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill represent a practical approach to the problem?
- Does the bill represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill logically consistent?
- Are the language and style of the bill clear and unambiguous?

All items selected for publication in the annual volume are presented in a standard format as shown in the Suggested State Legislation Style Manual and Sample Act which follow on pages xv and xvi. Revisions in the headings and numbering and other modifications may be necessary in order to conform to local practices, and decisions must be made regarding optional sections and provisions.

A “Statement,” in lieu of a draft act, may appear in a volume when the SSL Committee has reviewed and approved a piece of legislation, but its length and/or complexity preclude its publication in whole or in the standard SSL format. “Notes” also may be used when the Committee is particularly interested in highlighting and summarizing a variety of legislative actions undertaken by the states in a particular area. In this volume, for example, there is a note on recent state legislative activity in the area of housing.

Although a formal solicitation of the states is conducted annually to gather legislation for consideration by the SSL Committee, state officials are encouraged to submit — at any time — legislation which is likely to be of interest and relevance to other states. In order to facilitate the selection process and review of the items, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.


Deborah A. Gona
Director, CSG Policy Analysis Services
Suggested State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. This means that style is arbitrary. The style used in *Suggested State Legislation* produces an internally consistent publication, expressing ideas concisely and clearly. A sample act follows the discussion below.

Introductory Matter

The first item in a draft proposal is its name. This is to be followed with a brief description stating why such an act is necessary, summarizing the contents of the act, and the person or group which drafted the act.

Next is the title, enacting clause, etc. This should not be expanded since there is diversity among the states as to what must be contained in these elements.

Standardized Sections

Section 1 is the "Short Title" and states how the act may be cited, and Section 2 usually concerns itself with definitions, if necessary.

At the end of the act there are usually three sections: "Severability" (if needed), "Repealer," and "Effective Date."

Form

Every line of the act is numbered. The line numbers begin anew with each section. Most sections have a title, in brackets, which pinpoints the subject of the section.

One significant item which has many variations is the enumeration of paragraphs within a section. If there is only one subsection to a section, it runs into the section heading and is not enumerated. If there are two or more subsections, each subsection begins on a new line and is enumerated. The enumerations for subsections, in order, are (a), (b), (c), etc., while the enumerations for paragraphs within a subsection, in order, are (1), (i), and (A).

Often it is necessary in draft legislation to indicate a state alternative to the name of an agency, the number of members on a committee, punishment for an offense, etc. In these cases brackets are used instead of parentheses.

To avoid an abundance of capitalization, which can prove distracting, most words are lower cased. For example, "director," "commissioner" and "agency" are not capitalized.

"Comment" sections are used instead of footnotes.
Sample Act
Criminal Rehabilitation Research Act

This draft act enables a state to facilitate research, including controlled experiments, in criminal sentencing and rehabilitation methods in order to determine the most effective and humane means of deterring crime and rehabilitating delinquent and criminal offenders . . . .

The criminal justice system neither deters nor rehabilitates as effectively as possible. Sentencing and treatment decisions continue to be handicapped by lack of scientific experience. New treatment programs are developed haphazardly, if at all, and their relative effectiveness is rarely evaluated. The results are wasted lives, needless public expenditures, and increased crime. Dissatisfaction with existing correctional institutions has increased and the demand for reform has intensified, but reform to be meaningful must be based on facts . . . .

This draft legislation was developed by the Criminal Sentencing Project of Yale Legislative Services. A comprehensive report on Criminal Rehabilitation, including a detailed commentary to the suggested legislation, can be obtained from Yale Legislative Services, Yale Law School, New Haven, Connecticut 06520.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the [state] Criminal Rehabilitation Research Act.

2 Section 2. [Definitions.] As used in this act:

   (1) “Commission” means the [rehabilitation research commission].

   (2) “Commissioner” means a member of the [rehabilitation research commission].

   (3) “Offender” means a person adjudicated delinquent or convicted of a criminal offense under the laws and ordinances of the state and its political subdivisions.

   * * *

1 Section 4. [Rehabilitation Research Commission.]

   (a) A [rehabilitation research commission] is established to review, approve, and facilitate research directed at the rehabilitation of delinquent and criminal offenders and to disseminate the results of that research to correctional officials and other interested individuals and agencies.

   (b) The commission shall consist of [10] members appointed by the governor [with the advice and consent of the senate].

COMMENT: It is suggested that some commission members be ex-offenders.
Housing Legislation (Note)

States are facing a range of problems in the area of housing, not the least of which involves a substantial homeless population and growing "at-risk" group. Depending on the source, nationwide estimates of the homeless run from nearly a quarter of a million all the way up to 3 million people. The immediacy of the problem requires a stock of temporary shelters; the depth of the problem, however, requires that governments attempt to provide permanent, lower-cost housing. At the same time, states are trying to cope with other housing-related problems including, the deterioration of public housing; high construction and rehabilitation costs; conversions of public housing units to private units and condominiums; and the inability of local governments to finance large projects without help from state governments.

The decrease in federal efforts in the area of public housing, coupled with an increasing demand, has exacerbated the shortage problem. Between 1981 and 1987, for example, the annual budget of the U.S. Department of Housing and Urban Development was reduced from $31 billion to $7 billion, while the number of housing units built each year was slashed from 200,000 to 25,000. As early as 1983, the unfulfilled demand for low-income housing was estimated at 5.5 million units.

Over the last few years, in response to these problems, states have developed various approaches to fulfilling the need for more low- and moderate-income housing including, state-financed housing trust funds; tax incentives to encourage corporate investment in public or private housing development; partnerships between state and local governments; and shared equity programs. Examples of those efforts are described in this note.

Housing Trust Funds

Several states have established "housing trust funds," which may be defined as a pool of funds derived from appropriations or dedicated revenues. These funds may be earmarked for specific purposes, such as the financing, construction, acquisition or rehabilitation of housing for low- and moderate-income households. Some trust funds have been established by legislation, while others have been established through the administrative action of public agencies.

New York (Private Housing Finance Law, Art. 3, Sec. 45A) and Vermont (Ch. 15, Secs. 301-325) provide only appropriations and surplus revenues for their housing trust funds. States that use both appropriations and dedicated revenues to supply funding for their housing trusts include Delaware (Ch. 86, Title 29, Ch. 40, Title 3), Florida (Ch. 420.603), New Jersey (NJSA 40:37A-119), North Carolina (GS122E) and Washington (Ch. 43.185.030). California supports its housing trust fund with annual appropriations from the state's Tidelands Oil Fund (Sec. 50841 of the Health and Safety Code).

In 1988, Minnesota and Rhode Island enacted legislation establishing their housing trust funds. Minnesota (Ch. 654) requires real estate
trust accounts to accumulate interest at the highest current passbook savings account rate, and each broker to maintain a pooled interest-bearing account for client funds. The legislation provides that unless otherwise specified, the accruing interest, minus transaction costs, must be paid quarterly to the state treasurer by the financial institution for deposit in the Low Income Housing Trust Fund Account within the Housing Development Fund. In turn, the state Housing Finance Agency may use these moneys for loans and grants for the development, construction, acquisition, preservation or rehabilitation of low-income rental and limited equity cooperative housing units.

**Rhode Island** (P.L. 88-617, Title 42, Ch. 55) created a trust fund to encourage and fund mutual housing associations and non-profit development corporations in their efforts to save existing housing units and build new affordable housing. The fund is administered by the state's Housing and Mortgage Finance Corporation.

**Tax Credits**

In 1988, **Connecticut** enacted legislation (P.A. 88-264, Sec. 8-395) authorizing the state housing commissioner to establish a system of tax credit vouchers for businesses making contributions to low- and moderate-income housing programs developed, sponsored or managed by non-profit firms. It allows vouchers to be used as a credit against any of the taxes to which business firms are subject. **Arizona** (ARS 35-726) and **West Virginia** (Ch. 11, Sec. 13D-3(G)) also use tax credits to encourage private investments in housing.

**State-Local Government Partnerships**

Some states have developed programs whereby state governments combine their resources with local governments to develop housing programs for low- and moderate-income individuals and families. State and local governments have been forced to harness their resources in an effort to fill the void left by the withdrawal of federal involvement at various levels.

In 1988, **Maine** (Ch. 820) enacted legislation creating a partnership between the Maine State Housing Authority (MSHA), municipal housing authorities and municipalities to develop comprehensive plans, coordinate programs and share the resources of these organizations to make affordable housing available to low- and moderate-income households. The law allows the authorities to offer low-interest or interest-free loans to contractors who agree to construct, purchase or maintain low- and moderate-income housing, enables housing authorities to purchase land or buildings and to utilize surplus state property to provide affordable housing and allows the state housing authority to suspend down payment requirements and create the Housing Mortgage Insurance Fund. MSHA is comprised of programs such as the Housing Opportunities for Maine (HOME) Fund, which allocates loans and grants for several programs. The HOME Fund receives its revenues from real estate transfer taxes.
Connecticut enacted a statute directing the state housing commissioner to initiate and administer a program which will foster the formation of local housing partnerships (P.A. 88-305; Statute Secs. 8-336, 7-131, 22-a478). It established a process whereby locally-formed housing partnerships and the towns in which they operate may receive priority for particular state funds. The law enables the state housing commissioner to administer the process and assist partnerships in the development of policies, plans and regulations.

Florida's State Housing Incentive Partnership Act (Ch. 88-376) expanded the state's role in the production of affordable housing through the creation of partnerships between the federal, state and local governments and the public and private sectors. The legislation establishes a State Housing Trust Fund and several housing programs, including the State Apartment Incentive Loan Program, the Homeownership Assistance Program, the Affordable Housing Loan Program, the Housing Predevelopment Trust Fund, the Neighborhood Housing Services Grant Fund and the Maintenance of Housing for the Elderly Program.

To encourage the production of affordable new housing for low- and moderate-income individuals and the preservation of existing housing, Tennessee empowered its state Housing Development Agency to fund matching grants to local government housing programs and private nonprofit corporations (TCA Title 13, Ch. 23, Sec. 403). These entities, in turn, may use the funds for the provision or rehabilitation of low- and moderate-income housing.

**Acquisition of Low-Income Housing**

Under federal contracts signed during the 1960s and 1970s, owners of hundreds of thousands of low-rent apartments will soon be able to pay off their federally-subsidized mortgages and convert projects to more profitable uses, such as condominium complexes or deluxe apartments. Such cases can result in tenants being forced to pay more in rent, move or possibly become homeless.

A Maine law (Ch. 785) gives the Maine State Housing Authority and municipal housing authorities the right of first refusal to purchase low-income housing properties constructed with federal assistance and which are no longer subject to low-income housing requirements. (See entry on page 6.) The legislation enables MSHA and local housing authorities to continue to provide and maintain such properties for low- and moderate-income households. If the owner and housing authority cannot agree on a purchase price, the authority may take the property by eminent domain and the price could be determined in court.

New Hampshire (Ch. 204-D) legislation allows surplus state-owned real estate to be used to build affordable housing for low- and moderate-income citizens. Under the law (RSA 126-A), the governor may transfer surplus state property to the state housing authority for use as sites for low- and moderate-income housing.
Suggested State Legislation

Subsidies

States have established programs that provide subsidies to low- and moderate-income individuals for the acquisition of housing and that subsidize businesses to provide low- and moderate-income housing.

Maryland, in 1988, enacted a rental allowance program of financial assistance to or on behalf of certain lower income households in need of rental housing assistance. The legislation restricts rental allowance payments to homeless persons who are not eligible for other housing programs and can maintain independent living quarters; it also assists households with critical and emergency housing needs that cannot be served by other programs (Article 83B of the Annotated Code of Maryland, 1988, 2-501 through 2-510).

Massachusetts' "707" program supplements state-funded public housing programs by providing subsidies for individuals and families who qualify for public housing but cannot be accommodated in existing projects (Ch. 121B, Secs. 42-44). The program allows local housing authorities to place individuals in privately-owned moderate rental units and to pay rental expenses in excess of what the cost would have been in a public facility. California (Secs. 50680 to 50690 of the Health and Safety Code), Rhode Island (P.L. 88-579, Title 42, Ch. 11) and New York (Private Housing Finance Law, Article 17A, Secs. 1020-1025) also provide rental subsidies for low-income individuals. Oregon provides a tax rebate to low-income individuals who live in rental units as well as to those who own their homes (ORS 310.630 and ORS 310.690). Massachusetts appropriates funds to provide grants to fund repairs and preliminary rehabilitation to prevent abandonment of houses (Ch. 121B, Secs. 58-59).

Connecticut has established a rental subsidy pilot program to encourage the inclusion of units reserved for low-income families in newly constructed, privately-owned rental projects. The legislation expands a rental assistance voucher program and acts as a replacement for certain federal subsidies; it also expands the time commitment used by the state so that developers have more time to seek appropriate financing (P.A. 88-187; Statute Sec. 8-346).

Minnesota law (Ch. 689) permits the state Housing Finance Agency to establish a grant program providing funds to eligible mortgagors for the purchase, rehabilitation and construction of residential housing units for homeless families and individuals and other very low-income families and persons. Maryland provides low-interest, deferred loans to non-profit organizations and local governments to rehabilitate existing structures as low-cost housing for low-income households (Article 83B of the Annotated Code of Maryland, 1988, 2-301 through 2-313).

Connecticut also has established two shared equity programs. The state has enacted a program for limited equity housing cooperatives and mutual housing associations to develop low- and moderate-income housing (P.A. 87-417; Statute Secs. 8-169 and 8-214). The program allows the state housing commissioner to make loans and grants to a mutual housing association which may use the funds for the acquisition or develop-
ment of housing sites. The act also allows the commissioner to finance the development of limited equity cooperatives by providing funds to non-profit housing developers who are forming cooperatives. It enables the commissioner to provide grants and loans or a combination of both for acquiring housing sites or to cover the expense of forming a cooperative.

The state’s Private Rental Investment Mortgage and Equity (PRIME) is a hybrid program which combines several different types of housing subsidies into a single program designed to stimulate the construction of larger, mixed-income apartment houses (P.A. 88-261; Statute Secs. 8-400 through 8-406). It requires that the state receive an equity interest in the projects constructed, in return for the state’s investment.

In 1984, New Jersey enacted a homelessness prevention law whereby the state may pay a limited number of rental or mortgage payments for families who are in danger of becoming homeless (New Jersey Code 52: 27D-280). Families or individuals applying for assistance must demonstrate that they could sustain themselves after back-rent, security deposits or mortgage payments are paid. A maximum of three rental or mortgage payments may be covered under the program. To be eligible for assistance, a family must have an income no higher than 80 percent of the median income for its county of residence and be unable to meet housing costs because of factors beyond its control.
Preservation of Moderate- and Low-Income Housing Act

As indicated in the Housing Legislation Note (see page 1), the housing shortage in the states may soon be intensified by the conversion of moderate- and low-income rental housing units into housing for higher-income persons and families — this as a result of a situation created by federal contracts with low-income housing developers and owners approximately 20 years ago. Under these agreements, owners of low-income housing constructed with assistance from the U.S. Department of Housing and Urban Development (HUD) and the Farmers Home Loan Administration (and subject to accelerated depreciation), were allowed to prepay 40-year mortgages at the end of 20 years. In turn, following complete repayment, the housing would no longer be subject to federal low-income housing requirements. This act, based on 1988 Maine legislation, is an attempt to preserve as much of this housing as possible at affordable costs.

The act gives the state housing authority and municipal housing authorities the right of first refusal to purchase these moderate- and low-income housing properties constructed with that federal assistance, and allows the authorities to continue to provide and maintain such properties for moderate- and low-income households. The act requires the owner to give 30-days notice prior to entering into any contract for the sale of such housing. If the owner and housing authority cannot agree on a purchase price, the authority may take the property by eminent domain, and the price would be determined by the courts.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Preservation of Moderate- and Low-Income Housing Act.

Section 2. [Purpose] [State] is experiencing severe shortages of affordable housing in various parts of the state. The affordable housing shortage is contributing to an ever-increasing class of working poor people and creating severe hardships for a significant number of [state] citizens. The housing shortage problem may soon be intensified by the conversion of moderate-income and low-income rental housing units into housing for higher-income persons and families. Many moderate-income and low-income rental housing units were constructed with federal assistance nearly 20 years ago with an agreement that the mortgagee may pay the mortgage after 20 years and not be subject to any of the restrictions in the initial agreement. As the mortgagees pay the mortgages, it is essential for the state to preserve as much of this housing as possible at affordable costs for its citizens.
Section 3. [Definition] As used in this act, “Low-income rental housing” means residential housing projects in which a majority of the units are subject to federal income eligibility restrictions and the rents within the projects are controlled by a federal agency pursuant to a regulatory or rental assistance agreement.

Section 4. [Notification of Intent to Sell] Any person, firm or organization which has a controlling interest in any low-income housing shall not sell, transfer title or take other action in regard to the property which would result in the termination of financial assistance designed to make a rental unit affordable to low-income or moderate-income people, without providing notice, as outlined in paragraph (1), to the [state housing authority] and the [municipal housing authority], if any, in the region in which the property is located, as provided in this section.

(1) The notice shall be made to the [state housing authority] and the [local housing authority] serving the area, if any, when the owner enters into a contract for the sale or transfer or takes other action in regard to the property. This notice shall include a copy of any contract of sale.

(2) The [state housing authority] has the right of first refusal to purchase the property. The [authority] shall hold the right of first refusal for a period of not more than [30] days from the receipt of the notice required in this act. Failure to respond to the notice of first refusal in [30] days shall constitute waiver of that right of first refusal by the [authority]. By stating in writing its intention to pursue its right of first refusal during the [30]-day period, the [authority] shall have an additional [60] days, commencing upon the date of the termination of the first refusal period, to buy or to produce a buyer for the property. This additional [60]-day period may be extended by mutual agreement between the [authority] and the owner of the property.

(i) Nothing in this section may preclude an owner of the property from withdrawing the property from the market and revoking the notice as provided by paragraph (1) at any time before the expiration of the [90]-day period or until the [authority] provides its notice of taking by eminent domain. The withdrawal or revocation shall extinguish any right of first refusal held by the [state housing authority].

(3) The [state housing authority] shall not possess any right of first refusal when a bona fide buyer, by contract with the seller, agrees to maintain the property as low income housing. The notice provisions of this act shall apply to this paragraph.

Section 5. [Purchase Property; Construct Housing] The [state housing authority] or any [municipal housing authority] may purchase or acquire property to preserve or provide affordable housing to moderate-income and low-income people and provide for the management and maintenance of this property.

(1) The [state housing authority] or any [municipal housing authority] may construct or reconstruct housing for moderate-income and low-income households.

(2) The [state housing authority] or any [municipal housing authority]...
Suggested State Legislation

Section 6. [Provision of Financing] The [state housing authority] or any [municipal housing authority] may provide low interest or no interest financing to any person, firm or organization that agrees to construct, reconstruct, rehabilitate or purchase property to provide housing for moderate-income and low-income households.

Section 7. [Conversion of Property] Any owner of low-income rental housing who prepays the mortgage and any person who purchases low-income housing as defined in this act and who intends to convert the facility from low-income housing to any other use, including other residential uses, shall allow the current tenants to remain in the units for [six] months from the date of prepayment or transfer of title, at the rents charged to the tenants prior to mortgage prepayment or transfer of title or at the rents provided under the assistance program to which the housing is subject if such assistance is not terminated, or the owner may relocate the tenants to comparable units with comparable rents in accordance with the procedure established by rules of the [state housing authority].

The [state housing authority], pursuant to the [state Administrative Procedure Act] shall adopt rules with respect to relocation standards to be applied pursuant to this section. These standards shall include, but not be limited to, assistance with moving expenses and rental assistance payments necessary to maintain comparable rents for the displaced tenants.

Section 8. [Penalty] Any person, firm or organization that fails to give notice as provided in this act shall be deemed to have committed a civil violation for which a penalty of not less than [insert amount] dollars may be adjudged.

Section 9. [Effective Date] [Insert effective date.]
Comprehensive Planning and Land Use Regulation Act

This act, based on 1988 Maine legislation, establishes a system of local comprehensive planning with state goals and guidelines. It is designed to build on an existing system of local land use and control, adding state financial and technical assistance. The act establishes 10 basic goals designed to protect resources and interests which are of statewide significance. The resolution of these issues, which are strictly of local significance, is left to the discretion of the individual towns. The act also creates a mechanism for state review and comment on local planning efforts to encourage the incorporation of the state's goals and to coordinate regional needs and issues. It further requires every city and town to develop a comprehensive plan by 1996.

In the northeast, as in many other areas of the county, the issue of balancing growth with quality of life has been hotly debated in recent years. Conservationists have confronted developers and state and local officials have struggled over how to manage growth without imposing more government. As growth and development have become more of an issue, however, support has developed for increased government planning. Another New England state, Rhode Island, also enacted similar comprehensive planning legislation in 1988 (H 9734, P.L. 88-601) that readers might be interested in reviewing. The Rhode Island act requires that each city and town adopt a comprehensive land use plan and that all plans and amendments be subject to state review and approval. The legislation further creates a comprehensive plan appeals board to hear appeals by municipalities concerning the disapproval of any comprehensive plan or amendment to a comprehensive plan.

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Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Comprehensive Planning and Land Use Regulation Act.

1 Section 2. [Legislative Findings, Purpose and Goals.]

(a) The legislature finds that:

(1) The natural resources of the state, including its forests, agricultural lands, wetlands, waters, fisheries, wildlife, minerals and other related resources, are the underpinnings of the state's economy;

(2) These same natural resources and traditional patterns of development have defined the quality of life which the citizens of the state treasure and seek to protect;

(3) The pace of land speculation and development has accelerated and outstripped the capacity of the state and municipalities to manage this
growth under existing state and local laws;

(4) This unplanned growth threatens the integrity of the state's natural resource base, the ability of local and state government to provide necessary public services, the affordability of decent housing, the long-term economic viability of the state's economy and the quality of life presently enjoyed by [state]s citizens;

(5) The most effective land use planning can only occur at the local level of government and comprehensive plans and land use ordinances developed and implemented at the local level are the key in planning for [state]s future;

(6) Continued application of the current reactive, case-by-case system of land use regulation is detrimental to the public health, safety and welfare;

(7) The state must take appropriate measures to protect and manage certain areas and natural resources which are of statewide significance and concern; and

(8) The state has a vital interest in ensuring that a comprehensive system of land use planning and growth management is established as quickly as possible which, while building on the strong foundation of local land use planning, also protects unique aspects of the state's heritage and environment, encourages appropriate uses of the state natural resources, guides sound economic development and ensures prosperity for [state]s citizens in all regions of the state.

(b) The legislature declares that it is the purpose of this act to:

(1) Establish, in each municipality of the state, local comprehensive planning and land use management according to the schedule contained in this act and consistent with the goals and policies of the state;

(2) Provide municipalities with the tools and resources to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility;

(3) Encourage, through state and regional technical and financial assistance and review, local land use ordinances, tools and policies that are based on local comprehensive plans that are prospective and inclusive of all matters determined by the legislature to be in the best interests of the state;

(4) Incorporate regional considerations into local planning and decision-making so as to ensure consideration of regional needs and the regional impact of development;

(5) Create a strong partnership between state government and local government, while clarifying the respective roles of each, to improve land use planning and management;

(6) Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests;

(7) Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities and reviewed by the state have had the benefit of citizen input; and
Planning and Land Use Regulation Act

(8) Assure predictable, timely and cost-effective land use decision-making that is coordinated and consistent between state government and local governments and that minimizes unnecessary duplication.

(c) The legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the state, it is in the best interests of the state to achieve the following goals:

1. To encourage orderly growth and development in appropriate areas of each community, while protecting the state’s rural character, making efficient use of public services and preventing development sprawl;
2. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;
3. To promote an economic climate which increases job opportunities and overall economic well-being;
4. To encourage and promote affordable, decent housing opportunities for all [state] citizens;
5. To protect the quality and manage the quantity of the state’s water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas;
6. To protect the state’s other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas;
7. To protect the state’s marine resources industry, ports and harbors, from incompatible development and to promote access to the shore for commercial fishermen and the public;
8. To safeguard the state’s agricultural and forest resources from development which threatens those resources;
9. To preserve the state’s historic and archaeological resources; and,
10. To promote and protect the availability of outdoor recreation opportunities for all [state] citizens, including access to surface waters.

(d) The provisions of this section shall not be construed to grant any separate regulatory authority to any state agency beyond that necessary to implement this act.

Section 3. [Definitions.] As used in this act, unless otherwise indicated:

1. “Affordable housing” means decent, safe and sanitary dwellings, apartments or other living accommodations for households making the full range of incomes at or below [80] percent of the median household income as determined by the [department of economic and community development]. Affordable housing includes, but is not limited to, government-assisted housing, housing for low-income and moderate-income families, manufactured housing, multi-family housing and group and foster care facilities.

2. “Coastal areas” means all municipalities and unorganized town-
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ships contiguous with tidal waters and all coastal islands. The inland
boundary of the coastal area is the inland line of any coastal town line.

(3) "Comprehensive plan" means a document or interrelated doc-
ments containing the elements established under Section 4(d)(1) through
(4) including the strategies for an implementation program which are
consistent with the goals and guidelines established under this act.

(4) "Development" means a change in land use involving alteration
of the land, water, vegetation or the addition or alteration of structures
or other construction not naturally occurring.

(5) "Implementation program" means that component of a local growth
management program which includes the policies and ordinances or oth-
er land use regulations which carry out the purposes and general poli-
cy statements and strategies of the comprehensive plan in a manner con-
sistent with the goals and guidelines of this act.

(6) "Land use ordinance" means a rule or law of general application
adopted by the municipal legislative body which controls, directs or
delineates allowable uses of land and the standards for such uses.

(7) "Local growth management program" means a document contain-
ing the components described in Section 4(d), including the implement-
ation program, which is consistent with the goals and guidelines es-
ablished by this act.

(8) "Local planning committee" means the committee established by
the municipal officers of a municipality or combination of municipali-
ties which has the general responsibility established under Section 4.

(9) "Moratorium" means a land use ordinance or other regulation ap-
proved by a municipal legislative body which temporarily defers or de-
lays development by withholding any authorization or approval neces-
sary for development.

(10) "Municipal reviewing authority" means the municipal planning
board, agency or office, or if none, the municipal officers.

(11) "Office" means the [office of comprehensive land use planning]
in the [department of economic and community development].

(12) "Person" means an individual, corporation, governmental agen-
cy, municipality, trust, estate, partnership, association, two or more per-
sons having a joint or common interest or any other legal entity.

(13) "Regional council" means a regional planning commission or a
council of governments established under [insert appropriate state
statute].

(14) "Zoning" means the division of a municipality into districts and
the prescription and reasonable application of different regulations in
each district.

Section 4. [Local Comprehensive Planning]

(a) Through exercise of power and responsibility under its home rule
authority and subject to the express limitations and requirements of this
act, each municipality shall:

(1) Plan for its future development and growth;

(2) Adopt and amend local growth management programs, includ-
ing comprehensive plans and implementation programs consistent with
the provisions of this act; and

(3) Do all other things necessary to carry out the purposes of this act.

(b) A municipality's responsibility for the preparation or amendment of its local growth management program is governed by the provisions of this subsection. Where procedures for local adoption of comprehensive plans and ordinances are governed by other provisions of [insert other appropriate state statutes] or municipal charter or ordinance, the municipality may modify the procedural requirements of this subsection as long as a broad range of opportunity for public comment and review is preserved.

(1) Pursuant to the schedule established under this act, each municipality shall prepare a local growth management program which is consistent with the goals, guidelines and other provisions of this act, or shall amend its existing comprehensive plan and existing land use ordinances to conform with the requirements of this act.

(2) Each municipality shall submit its proposed comprehensive plan and zoning ordinance or its amended, existing comprehensive plan and existing zoning ordinance, to the [office] according to the schedule established by this act for review.

(3) Each municipality shall submit any comprehensive plan and zoning ordinance amended pursuant to subsection (e) of this section to the [office] for review.

(4) The municipal officers of a municipality or combination of municipalities shall designate and establish a local planning committee which shall have the general responsibility for the development and maintenance of a comprehensive plan and for the initial development of a proposed zoning ordinance or initial revision of an existing zoning ordinance, including:

(i) Conduct of public hearings and any other methods to solicit and strongly encourage citizen input; and

(ii) Preparation of the comprehensive plan, proposed zoning ordinance and recommendations to the municipal reviewing authority and municipal legislative body regarding the adoption and implementation of the program or amended program.

The municipal officers may designate any planning board or district as the local planning committee, which board or district was established under [insert appropriate state statute] or a former similar provision. Planning boards established under [insert appropriate state statute], shall continue to be governed by those provisions until they are superseded by municipal charter or ordinance.

(5) In order to encourage citizen participation in the development of a local growth management program, municipalities are directed to adopt local growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this paragraph is to provide for broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments.

(6) The local planning committee shall conduct all of its meetings
in open, public session with prior notice posted in [one] or more conspic-
uous places designed to provide public notice. The local planning com-
mittee shall hold at least [one] public hearing on its proposed compre-
hensive plan. Notice of any public hearing shall be published in a news-
paper of general circulation in the municipality at least [twice] with the
date of the first publication to be at least [30] days prior to the hearing.
A copy of the proposed comprehensive plan shall be made available for
public inspection at the municipal [office] or other convenient location
with regular public hours at least [30] days prior to the hearing.
(7) At least [60] days prior to any public hearing required in para-
graph (6) of this section, the local planning committee shall forward its
proposed comprehensive plan, to the [office] and to the applicable region-
al council for review and comment.
(8) At least [60] days prior to the initial adoption of any zoning or-
dinance or revision pursuant to subsection (e) of this section, the local
planning committee or municipal reviewing authority, as appropriate,
shall forward its proposed ordinance to the [office] and to the applicable
regional council for review and comment. Notice, hearing and other pro-
cedural requirements for adoption shall be governed by applicable pro-
visions of this [insert other appropriate state statutes], municipal or-
dinance or charter.
(9) Any comments and suggested revisions received from the [office]
within the time limits established by this act shall be considered by the
local planning committee or municipal reviewing authority, as appropri-
ate, and may be adopted. The comments and suggested revisions received
from the [office] shall be made available for public inspection with the
proposed comprehensive plan or land use ordinance as required in this
subsection. The notices required in this subsection shall also contain a
statement to the effect that the comments have been received from the
[office] and will be available for distribution prior to and for discussion
at the public hearing.
(10) The [office] shall submit its comments and suggested revisions
within [60] days of the municipality’s submission of the proposed com-
prehensive plan or land use ordinance.
(11) A comprehensive plan or land use ordinance shall be considered
to have been adopted as part of a local growth management program
when it has been accepted by the municipal legislative body of the
municipality.
(12) Municipalities within the jurisdiction of the [state land use regu-
lation commission] are not subject to the requirements of this section
and Section 6(c).
(c) Cooperative local growth management efforts conducted by [two]
or more municipalities shall comply with the provisions of this subsec-
thon.
(1) A municipality shall exercise its land use planning and manage-
ment authority over the total land area within its jurisdiction.
(2) Any combination of contiguous municipalities may conduct joint
planning and regulatory programs to fulfill the responsibilities estab-
lished under this act upon adoption of a written comprehensive plan-
ning and enforcement agreement by the municipal legislative bodies involved. The municipalities shall agree:

(i) On procedures for joint action in the preparation and adoption of comprehensive plans and land use regulations;

(ii) On the manner of representation on any such joint land use body; and

(iii) On the amount of contribution from each municipality for any costs incurred in the development, implementation and enforcement of the plan and land use ordinances.

(3) The agreement shall be in writing, approved by the municipal legislative bodies and forwarded to the [office].

(d) A local growth management program shall include, without limitation, a comprehensive plan, as described in paragraphs (1) to (4), and an implementation program as described in paragraph (5). A municipality shall develop and adopt a comprehensive plan which shall be consistent with the goals established under this act and subsequently implement the plan.

(1) A comprehensive plan shall include an inventory and analysis section addressing state goals under this act and issues of regional or local significance that the municipality considers important. The inventory shall be based on information provided by the state, regional councils and other relevant local sources. The analysis shall include [10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.]

The inventory and analysis section shall include, but not be limited to:

(i) Economic and demographic data describing the municipality and the region within which it is located;

(ii) Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and where applicable their vulnerability to degradation;

(iii) Significant or critical natural resources, such as wetlands, wildlife and fisheries habitat, significant plant habitat, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under [insert appropriate state statute] and unique natural areas;

(iv) Marine-related resources and facilities such as ports, harbors, commercial mooring, commercial docking facilities and related parking, and shellfishing and worming areas;

(v) Commercial forestry and agricultural land;

(vi) Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality;

(vii) Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;

(viii) Residential housing stock, including affordable housing;

(ix) Historical and archaeological resources;

(x) Land use information which describes current and projected development patterns; and
Suggested State Legislation

(xi) An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.
(2) A comprehensive plan shall include a policy development section which relates the findings contained in the inventory and analysis section to the state goals. The policies shall:
(i) Promote the state goals under this act;
(ii) Address any conflicts between state goals under this act;
(iii) Address any conflicts between regional and local issues; and
(iv) Address the state's coastal policies.
(3) A comprehensive plan shall include an implementation strategy section which contains a timetable for the implementation program, including land use ordinances, that ensures that the goals established under this act are met. These implementation strategies shall be consistent with state laws and shall actively promote policies developed during the planning process. The timetable shall identify significant ordinances to be included in the implementation program. Those ordinances shall be adopted within [one] year of the plan. The strategies shall guide the subsequent adoption of policies, programs and land use ordinances. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality shall employ the following guidelines consistent with the goals of this act:
(i) Identify and designate at least [two] basic types of geographic areas:
(A) Growth areas are those areas suitable for orderly residential, commercial and industrial development forecast over the next [10] years. Each municipality shall: establish standards for such developments; establish timely permitting procedures; ensure that needed public services are available within the growth area; and prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.
(B) Rural areas are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall adopt land use policies and ordinances to discourage incompatible development. These policies and ordinances may include, without limitation, density limits; cluster or special zoning; acquisition of land or development rights; or performance standards;
(ii) Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development;
(iii) Protect, maintain and, where warranted, improve the water quality of each water body pursuant to [insert appropriate state statute];
(iv) Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality may adopt ordinances more stringent than applicable state law;
(v) Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related park-
Planning and Land Use Regulation Act

[Text continues as a natural representation of the page content]
the provisions of this section and ensuring that the objectives of this act are achieved.

(2) The [office] shall prepare a [biennial] progress report on local and state growth management efforts. The report shall be submitted to the [committee of the legislature] having jurisdiction over appropriations and financial affairs and the [committee of the legislature] having jurisdiction over natural resources for their review. The first report shall be submitted on or before [insert date]; the second report on [insert date]; and [biennially] thereafter on or before [insert date].

In preparing the report, the [office] shall survey the state agencies and municipalities for growth management activities conducted pursuant to this act. The [office] shall provide data describing the level of comprehensive planning activity at the state, regional and local level, the implementation of local growth management programs, including both regulatory and nonregulatory approaches, and the costs incurred by the state and municipalities in the conduct of these efforts.

The [office] shall include in the report a summary of experience to date in the technical and financial assistance program, the review and comment program and the voluntary certification program. This summary shall include a quantitative and qualitative analysis of these programs.

The [office] shall also include in the report any recommendations it may have for statutory changes in this act or other relevant areas of law.

The [office] shall also include in its recommendations a proposal for the appropriations needed over the following [one]-year, [two]-year and [five]-year periods to accomplish the objectives of this act.

(3) There is established a planning advisory council composed of [seven] members. The [office] shall consult with the council on the development of all rules, guidelines and reports for the implementation of this act.

(i) Members of the council shall be appointed by the governor.

(ii) Members shall be selected on the basis of their knowledge of planning, local government, land conservation and land development.

(iii) Members shall serve for staggered [four]-year terms. Initial members shall have terms as follows: [three] members for [two]-year terms; [three] members for [three]-year terms; and [one] member for a [four]-year term. A member may serve no more than [two] consecutive [four]-year terms.

(iv) Members shall not be compensated but shall be reimbursed for all expenses directly related to their participation in council business.

(v) [Four] members shall constitute a quorum for the conduct of business by the council.

(vi) The council shall elect a chairman from among its members.

(vii) The council shall report by [insert date], and every [two] years thereafter to the governor and the legislature on any changes that may be required to accomplish the purposes of this act.

Section 6. [State Planning Review Program.]

(a) Each state agency with regulatory or other authority affecting the goals established in this act shall submit to the [office] prior to [insert
a written report which addresses how each agency has incorporated the goals of this act into its planned activities. This report shall be revised as necessary but in no case less than once every [two] years. After [insert date], these agencies shall conduct their respective activities in a manner consistent with the goals established under this act. Without limiting the application of this subsection to other state agencies, the following agencies shall comply with the provisions of this section:

(1) [Department of conservation];
(2) [Department of economic and community development];
(3) [Department of environmental protection];
(4) [Department of agriculture, food and rural resources];
(5) [Department of inland fisheries and wildlife];
(6) [Department of marine resources];
(7) [Department of transportation];
(8) [State finance authority]; and
(9) [State housing authority].

(b) The [office] shall develop and supply to all municipalities available natural resources and other planning information for use in the preparation of local growth management programs. The [office] shall make maximum use of existing information available from other state agencies including, without limitation, the [department of conservation], the [department of inland fisheries and wildlife], the [department of marine resources], the [department of environmental protection], the [state planning office] and the [department of economic and community development]. The [office] may contract with regional councils to develop the necessary planning information at a regional level and with other state agencies as necessary to provide support for local planning efforts. By [insert date], the [office] shall complete an inventory of the state’s natural resources sufficient to ensure adequate identification and protection of critical natural resources of statewide significance.

(c) Subject to the provisions of this subsection and the availability of state assistance as established pursuant to Section 7 of this act, municipalities shall submit their comprehensive plans to the [office] according to the following schedule:

(1) By [insert date], those municipalities which have experienced population growth of [10] percent or more between [insert year] and [insert year], and which have total populations in excess of [500] persons, based on population estimates provided by the [state planning office];

(2) By [insert date], those municipalities which have experienced population growth of [5] percent or more between [insert year] and [insert year], based on population estimates provided by the [state planning office]; and

(3) All other municipalities by [insert date].

The [office] shall revise the schedule deadlines under this subsection for a municipality based on the availability of state assistance and the municipality’s rank in the priorities set forth in Section 7(1). Nothing in this subsection may bar a municipality from submitting its plan or other program component in advance of this schedule.
Each municipality shall submit for review a zoning ordinance proposed as part of its implementation program within [one] year of its submission of its comprehensive plan under this subsection. Other components of the municipality's implementation program not submitted for review shall be adopted in accordance with the timetable provided in the municipality's comprehensive plan.

(d) The [office] shall review any comprehensive plan and zoning ordinance submitted to it for consistency with the goals and guidelines established in this act.

(1) The [office] shall solicit written comments on any proposed comprehensive plan or zoning ordinance from regional councils, state agencies, all municipalities contiguous to the municipality submitting a comprehensive plan or zoning ordinance and any interested residents of the municipality or of contiguous municipalities. The comment period shall extend for [45] days after the [office]'s receipt of the proposal. Each state agency reviewing the proposal shall designate a person or persons responsible for coordinating the agency's review of the proposal.

(2) Each regional council shall review and submit written comments on the proposal of any municipality within its defined planning region. The comments shall be submitted to the [office] and shall contain an analysis of how the proposal addresses identified regional needs and whether the proposal is consistent with those of other municipalities which may be affected.

(3) The [office] shall prepare all written comments from all sources in a form to be forwarded to the municipality.

(4) The [office] shall submit the comments on the proposal to the municipality within [60] days of receipt of the proposal. The [office] shall also forward its comments and suggested revisions to the applicable regional council.

(5) If warranted, the [office] shall issue findings specifically describing the deficiencies in the submitted plan or ordinance and the recommended measures for remedying the deficiencies.

(e) Each municipality shall submit any amended comprehensive plans and zoning ordinances, revised pursuant to Section 4(e) to the [office] for review in the same manner as provided for review of new programs. The [office] shall provide an expedited review procedure for those submissions which represent amendments to local growth management programs reviewed by it after [insert date]. After the initial review, municipalities shall file copies of any amendment to a zoning ordinance with the [office] within [30] days of adoption.

(f) Any municipality may at any time request a certificate of consistency for its local growth management program. The [office], upon request, shall review the program and base its certification decision on the program's consistency with the goals and guidelines established in this act.

(1) The [office] shall solicit written comments on any proposed local growth management program from regional and state agencies, all municipalities contiguous to the municipality submitting the proposed program and any interested residents of the municipality or contiguous municipalities.
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(2) Any regional council commenting on a proposed program or program component shall determine whether the proposed program or program component is compatible with those of other municipalities which may be affected and with regional needs identified by the regional council.

(3) Within [90] days of the municipal request, the [office] shall issue a certificate of consistency or request revisions to the proposed program. In the event that the same local growth management program or program component has been previously reviewed by the [office] pursuant to subsection (d) of this section denial of certification or requested revisions must be based on written comments received or prepared by the [office] at that time.

(4) In the event of a request for revisions, the [office] shall provide the municipality with findings specifically describing the deficiencies in the submitted program or portion of the program and the recommended measures for remedying the deficiencies.

(5) The [office] shall provide ample opportunity for the municipality submitting a local growth management program to respond to and correct any identified deficiencies in the program.

(6) Upon issuance of a certificate of consistency, the municipality shall be eligible for all benefits and incentives conditioned on the certification of a local growth management program.

(7) The [office] shall provide an expedited review and certification procedure for those submissions which represent minor amendments to local growth management programs certified by it after [insert date].

(g) The [office] is authorized to adopt rules, with the advice of the planning advisory council, necessary to carry out the purposes of this act subject to the provisions of [insert appropriate state statute].

(b) The [office]'s decision on certification constitutes final agency action.

(i) Except as otherwise provided in this subsection, any comprehensive plan or land use regulation or ordinance adopted or amended by a municipality before the applicable date established under subsection (c) of this section shall remain in effect until amended or repealed subject to this act.

Any zoning, subdivision, site review or impact fee regulation or ordinance adopted or amended before the applicable date established under subsection (c) of this section and not consistent with a comprehensive plan adopted according to this act shall be without force one year after the applicable date established under subsection (c) of this section.

Any other land use regulation or ordinance adopted or amended before the applicable date established under subsection (c) of this section and not consistent with a local growth management program adopted according to this act shall be without force after [insert date].

Any property or use existing in violation of a land use ordinance or regulation is a nuisance.

Section 7. [State Technical and Financial Assistance] There is established a program of technical and financial assistance and incentives
to regional councils and municipalities to encourage and facilitate the
adoption and implementation of local growth management programs
throughout the state. The program shall be administered by the [office].

(1) With assistance from regional councils and municipalities, the [office]
shall develop a priority list and establish funding levels for plan-
ing and technical assistance grants to municipalities. Priority for as-
sistance shall be based on a municipality’s:

(i) Scheduled comprehensive plan development under Section 6(c);

and

(ii) Population growth rates, seasonal population estimates, com-
mercial and industrial development rates, the existence and quality of a com-
prehensive plan and other relevant factors.

The [office] shall submit [biennial] budget requests for this section
sufficient to meet the statutory schedule established under Section 6(c).

(2) The [office] shall develop and administer a grants program to pro-
vide direct financial assistance to municipalities in the preparation of
comprehensive plans pursuant to this act. The [office] shall establish pro-
visions for municipal matching funds, not to exceed [25] percent to con-
duct activities under this section. Grants may be expended for any pur-
pose directly related to the preparation of a municipal comprehensive
plan as the municipality and the [office] may agree, including, without
limitation, the conduct of surveys, inventories and other data gather-
ing activities, the hiring of planning and other technical staff, the reten-
tion of planning consultants, contracts with regional councils for plan-
ning and related services and other related purposes.

(3) The [office] shall establish a program of technical assistance utilizing
its own staff, the staff of other state agencies and the resources of
regional councils to help municipalities in the development of local
growth management programs. No later than [insert date], the [office]
shall develop a set of model land use ordinances and other mechanisms
consistent with the goals and guidelines of this act.

(4) The [office] shall develop and administer a matching grants pro-
gram to provide direct financial and technical assistance to municipal-
ities for the implementation and administration of those local growth
management programs that have been certified under this act. The max-
imum municipal cost share may not exceed [25] percent. The grants may
be expended for any purpose directly related to the implementation of
a local growth management program and the administration and en-
forcement of related land use ordinances adopted as part of a certified
growth management program. Eligible activities include, without limi-
tation, assistance in the development of ordinances, retention of tech-
nical and legal expertise for permitting activities and the updating of
local growth management programs or components of the program.

(5) The [office] shall develop and administer a program to develop
regional education and training programs, regional policies to address
state goals and regional assessments. These assessments may include,
but not be limited to, public infrastructure, inventories of agricultural
and commercial forest lands, housing needs, recreation and open space
needs, and projections of regional growth and economic development.
The [office] shall establish guidelines to ensure methodological consistency among the state's regional councils. The [office] shall also develop and administer a series of contracts with regional councils to support the involvement of the regional councils in the review of local growth management programs by the [office].

(6) The [office] shall administer a program of training and financial assistance for municipal code enforcement officers. For a period not to exceed [12] months for any municipal code enforcement officer, the program shall provide funding for educational expenses leading to certification under Section 9 and salary reimbursement while in training.

(7) The [office] shall develop and administer a municipal legal defense fund to assist municipalities with legal expenses related to the enforcement and defense of land use ordinances adopted as part of a certified local growth management program in accordance with this act. Grants shall be targeted to cases of statewide significance.

(8) After the applicable deadline data established in Section 6(c), a state agency responsible for administering any grant and assistance program described in paragraph (9) of this section shall award funds to a municipality only when the municipality has adopted and implemented a certified local growth management program or has, at a minimum, adopted a certified comprehensive plan and implemented certified components of the implementation program that are directly related to the purposes for which the grant or assistance is provided.

(9) State grants and assistance in the following areas are subject to the provisions of paragraph (8) of this section:

(i) Assistance in the enforcement of local growth management programs including the municipal legal defense fund and technical and financial assistance in the administration and enforcement of local land use ordinances;

(ii) Assistance in the acquisition of land by the municipality for conservation, natural resource protection, open space or recreational facilities under [insert appropriate state statute]; and

(iii) Multi-purpose community development block grants.

(10) Except for the programs specified in paragraph (9), state agencies responsible for administering grant and direct or indirect financial assistance programs to municipalities designed to accommodate or encourage additional growth and development, to improve, expand or construct public facilities; to acquire land for conservation, recreation or resource protection; or to assist in planning or managing for specific economic and natural resource concerns shall allocate funds only to a municipality with an adopted comprehensive plan and implementation program which includes statements of policy or program guidelines directly related to the purposes for which the grant or financial assistance is provided. The content of the plan, policies and guidelines shall be considered by state agencies in awarding financial assistance to a municipality.

Section 8. [Land Use Regulation.] The provisions of this section constitute express limitations on the home rule powers granted to all
municipalities under home rule authority.
(1) The following requirements apply to all zoning ordinances and
amendments to zoning ordinances adopted by municipalities pursuant
to home rule powers.
(i) In the preparation of a zoning ordinance, the public shall be giv-
en an adequate opportunity to be heard.
(ii) The ordinance must be pursuant to and consistent with a com-
prehensive plan adopted by the municipality’s legislative body.
(iii) A zoning map describing each zone established or modified must
be adopted as part of the zoning ordinance or incorporated therein. Any
conflict between the zoning map and a description by metes and bounds
shall be resolved in favor of the description by metes and bounds.
(iv) Real estate used or to be used by a public service corporation shall
be wholly or partially exempted from an ordinance only when on peti-
tion, notice and public hearing the [public utilities commission] has de-
termined that such exemption is reasonably necessary for public wel-
fare and convenience.
(v) County and municipal governments, and districts shall be
governed by the provisions of any zoning ordinance.
(vi) Any zoning ordinance shall be advisory with respect to the state.
(vii) Any property or use existing in violation of any zoning ordinance
is a nuisance.
(viii) Any zoning ordinance may provide that, when a person peti-
tions for rezoning of an area for the purpose of development in accordance
with an architect’s plan, the area shall not be rezoned unless the peti-
tioner posts a performance bond equal to at least [25] percent of the es-
imated cost of the development. The bond shall become payable to the
municipality if the petitioner fails to begin construction in a substan-
tial manner and in accordance with the plan within [one] year of the ef-
fective date of the rezoning.
(ix) Any zoning ordinance may include provisions for conditional or
contract zoning or any other form of zoning consistent with this act. For
the purposes of this act, “conditional zoning” means the process by which
the municipal legislative body may rezone property to permit the use
of that property subject to conditions not generally applicable to other
properties similarly zoned. “Contract zoning” means the process by
which the property owner, in consideration of the rezoning of the own-
er’s property, agrees to the imposition of certain conditions or restric-
tions not imposed on other similarly zoned properties. All rezoning un-
der this paragraph shall:
(A) Be consistent with the local growth management program
adopted according to this act;
(B) Establish rezoned areas which are consistent with the exist-
ing and permitted uses within the original zones; and
(C) Only include conditions and restrictions which relate to the
physical development or operation of the property.
The municipal reviewing authority, as defined in [insert appropri-
ate state statute], shall conduct a public hearing prior to any property
being rezoned under this paragraph. Notice of this hearing shall be
posted in the municipal office at least [14] days prior to the hearing and
shall be published in a newspaper of general circulation within the
municipality at least [two] times, the date of the first publication to be
at least [seven] days prior to the hearing. Notice shall also be sent to the
owners of all property abutting the property to be rezoned at their last
known addresses. This notice shall contain a copy of the proposed con-
ditions and restrictions, with a map indicating the property to be re-
zonated.

(2) The municipality shall establish a board of appeals which is sub-
ject to the provisions of this paragraph.

(i) A board of appeals shall be established in any municipality which
adopts a zoning ordinance. The board of appeals shall hear appeals from
actions or failure to act of the official or board charged with the enforce-
ment of the zoning ordinance, unless only a direct appeal to [insert ap-
propriate court] has been provided by municipal ordinance. That board
of appeals shall be governed by [insert appropriate state statutel.}

(ii) In deciding any appeal:

(A) The board may interpret the provisions of the ordinance which
are called into question;

(B) The board may approve the issuance of a special exception per-
mit or conditional use permit in strict compliance with the ordinance;
and provided that, if the municipality has authorized the planning
board, agency or office to issue these permits, an appeal from the grant-
ing or denial of such a permit may be taken directly to [insert appropri-
ate court] if required by local ordinance; and

(C) The board may grant a variance in strict compliance with sub-
paragraph (iii).

(iii) A variance may be granted by the board only when strict appli-
cation of the ordinance, or a provision of the ordinance, to the petition-
er and the petitioner’s property would cause undue hardship. The term
“undue hardship” as used in this paragraph means:

(A) The land in question cannot yield a reasonable return unless
a variance is granted;

(B) The need for a variance is due to the unique circumstances of
the property and not to the general conditions in the neighborhood;

(C) The granting of a variance will not alter the essential charac-
ter of the locality; and

(D) The hardship is not the result of action taken by the applicant
or a prior owner.

A municipality may, in a zoning ordinance, adopt additional limi-
tations on the granting of a variance, including, but not limited to, a pro-
vision that a variance may only be granted for a use permitted in a par-
ticular zone. In addition, whenever the board grants a variance under
this paragraph, a certificate indicating the name of the current prop-
erty owner, identifying the property by reference to the last recorded deed
in its chain of title, and indicating the fact that a variance, including
any conditions on the variance, has been granted and the date of the
granting, shall be prepared in recordable form and shall be recorded in
the local registry of deeds within [30] days of final approval of the vari-
Suggested State Legislation

 ance or the variance shall be invalid. No rights may accrue to the vari-
ance recipient or the recipient's heirs, successors or assigns unless and
until the recording is made within [30] days.

(iv) The board shall reasonably notify any hearing the petitioner,
the planning board, agency or office and the municipal officers and such
persons shall be made parties to the action. All interested persons shall
be given a reasonable opportunity to have their views expressed at any
hearing.

(3) A municipality may require, by ordinance, the construction of off-
site capital improvements or may require payment of impact fees in lieu
of construction. After the applicable deadlines established under Sec-
tion 6(c), any impact fee ordinance must have been adopted as part of
a certified local growth management program.

(i) Such requirements may include construction of or impact fees in
lieu of capital improvements, including the expansion or replacement
of existing infrastructure facilities and the construction of new infra-
structure facilities.

(A) Infrastructure facilities include, but are not limited to, waste
water collection and treatment facilities, municipal water facilities, solid
waste facilities, fire protection facilities, roads and traffic control devices
parks and other open space or recreational areas.

(ii) Any ordinance which imposes or provides for the imposition of
impact fees must meet the following requirements.

(A) The amount of the fee must be reasonably related to the de-
velopment's share of the cost of infrastructure improvements necessi-
tated by the development.

(B) Funds received from impact fees must be segregated from the
municipality's general revenues. The municipality shall expend the
funds solely for the purposes for which they were collected.

(C) The ordinance must establish a reasonable schedule under
which the municipality is obliged to use the funds in a manner consis-
tent with the capital investment component of the comprehensive plan.

(D) The ordinance must establish a mechanism by which the
municipality may refund impact fees, or a portion of impact fees, actu-
ally paid which exceed the municipality's actual costs or which were not
expended according to the schedule under this subparagraph.

(E) The ordinance must be adopted as part of and consistent with
a local growth management program, including the component regard-
ing capital investment, meeting the requirements of this act.

(4) Any application fee charged by a municipality for an application
for any land use permit issued by the municipality may not exceed the
reasonable cost of processing and review of the application by the municip-
ality and its consultants and the administration of any requirement
for a certificate of compliance with any permit conditions.

(5) Any moratorium adopted by a municipality on the processing or
issuance of development permits or licenses must meet the following re-
quirements.

(i) The moratorium must be needed:

(A) To prevent a shortage or overburdening of public facilities which
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would otherwise occur during the effective period of the moratorium or
which is reasonably foreseeable as a result of any proposed or anticipated
development; or
(B) Because the application of existing comprehensive plans, land
use ordinances or regulations or other applicable laws, if any, is inade-
quate to prevent serious public harm from residential, commercial or
industrial development in the affected geographic area.
(ii) The moratorium must be of a definite term, not to exceed [180]
days, except that the moratorium may be extended for additional [180-]
day periods provided that the municipality adopting the moratorium:
(A) Finds that the problem giving rise to the need for the morato-
rium still exists; and
(B) Finds that reasonable progress is being made to alleviate the
problem giving rise to the need for the moratorium.
(iii) In municipalities where the municipal legislative body is the
town meeting, the municipal officers are authorized to extend the
moratorium as provided for and in compliance with subparagraph (ii)
after notice and hearing.

Section 9. [Training and Certification for Code Enforcement Officers.]
(a) Beginning [insert date], it shall be unlawful for a municipality to
employ any person to perform the duties of a code enforcement officer
who is not certified by the [office], except that the person shall have [12]
months from the date of employment to be trained and certified in ac-
cordance with this section.
(b) The [office] may grant a waiver from the requirements of subsec-
tion (a) of this section for a period not exceeding [one] year in the event
that the certification requirements cannot be met without imposing a
hardship on the municipality employing the person.
(c) Any municipality that violates this section commits a civil viola-
tion for which a forfeiture of not more than [100] dollars may be adjudged.
Each day in violation constitutes a separate offense.
(d) The [office] shall certify persons as to their competency to success-
fully enforce ordinances and other land use regulations and permits
granted under those ordinances and regulations. Such certification shall
be valid for a period of [five] years.
(e) In cooperation with the [vocational-technical institute system] and
the [department of human services], the [office] shall establish a continu-
ing education program for people engaged in code enforcement. This pro-
gram shall provide basic and advanced training in the technical and le-
gal aspects of code enforcement necessary for certification, including,
but not limited to, plumbing inspection, soils and site evaluation, electric-
ical inspection, state and federal environmental requirements, zoning
ordinances, court techniques and other enforcement information.
(f) The [office] shall hold at least [on each] examination each year for the
purpose of examining candidates for certification or re-certification at
a time and place designated by it. Additional examination dates may
be held by the [office] to carry out the purposes of this act.
(g) The [office] shall establish by rule the qualifications, conditions and
licensing standards and procedures for the certification and re-
certification of individuals to act as code enforcement officers. A code
enforcement officer need only be certified in the areas of actual job
responsibilities. The rules established by the [office] under this subsec-
tion shall identify standards for each of the areas of training under sub-
section (e) of this section, in addition to general standards that apply
to all code enforcement officers.

(h) The [office] shall issue certificates attesting to the competency of
individuals to act as code enforcement officers. Certificates are valid for
a period of [five] years unless revoked by the [insert appropriate court].

(1) The [insert appropriate court] may revoke the certificate of a code
enforcement officer, in accordance with [insert appropriate state stat-
ute], when it finds that the code enforcement officer has practiced fraud
or deception; that reasonable care, judgment or the application of a duly
trained and knowledgeable code enforcement officer's ability was not
used in the performance of the duties of the [office]; or that the code en-
forcement officer is incompetent or unable to perform properly the duties
of the [office].

(2) Code enforcement officers whose certificates are invalidated un-
der this subsection may be issued new certificates provided that they
are newly certified as provided in this section.

(3) This act shall not be construed to affect or prevent the practice
of any other legally recognized profession.

Section 10. [Effective Date.] [Insert effective date.]
Ocean Resources Management Planning Act

This act, based on 1988 Oregon legislation, mandates comprehensive planning for the state's ocean resources. It gives priority to the conservation and development of renewable resources over the development of non-renewable resources. The act establishes an ocean resources management task force and gives primary responsibility for coordinating and planning ocean and coastal resource development to the state's department of land conservation and development.

Elements of this legislation resulted from the work of the Council of State Governments' Western Legislative Conference in the area of ocean resources.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [state] Ocean Resources Management Act.

Section 2. [Legislative Findings and Declarations.] The [legislative body] finds that:

(1) The ocean and its many resources are of environmental, economic, aesthetic, recreational, social and historic importance to the people of this state.

(2) Exploration, development and production of ocean resources likely to result from both federal agency programs in federal waters of the outer continental shelf and initiatives of private companies within state waters will increase the chance of conflicting demands on ocean resources for food, energy and minerals, as well as waste disposal and assimilation, and may jeopardize ocean resources and values of importance to this state.

(3) There are many state agencies with particular regulatory or program interests in the ocean, its resources and uses but no comprehensive management plan or process to insure that state interests are protected and promoted both within state waters and beyond.

(4) The fluid, dynamic nature of the ocean and the migration of many of its living resources beyond state boundaries extend the ocean management interests of this state beyond the three geographic mile territorial sea currently managed by the state pursuant to the federal Submerged Lands Act.

(5) Existing federal laws, the Coastal Zone Management Act of 1972, the Magnuson Fisheries Management and Conservation Act of 1976, and the Outer Continental Shelf Lands Act of 1978, recognize the interests of coastal states in management of ocean resources in federal
waters and provide for state participation in ocean resources manage-
ment decisions.

(6) The 1983 Proclamation of the 200-mile United States Exclusive Eco-
nomic Zone has created an opportunity for all coastal states to more fully
exercise and assert their responsibilities pertaining to the protection,
conservation and development of ocean resources under United States
jurisdiction.

(7) It is important that the state of [state] develop and maintain a pro-
gram of ocean resources management to promote and insure coordinat-
ed management of living and nonliving marine resources within state
jurisdiction and with adjacent states, to insure effective participation
in federal agency planning and management of ocean resources and uses
which may affect this state, and to coordinate state agency management
of ocean resources with local government management of coastal
shorelands and resources.

(8) While much is known about the ocean, its composition, characteris-
tics and resources, additional study and research is required to gain in-
formation and understanding necessary for sound ocean planning and
management.

(9) New and innovative technologies are needed to insure future de-
velopment of ocean resources in an environmentally responsible manner.

Section 3. [Definitions.] As used in this act, unless otherwise indicated:

(1) “Exclusive Economic Zone” has the meaning set forth in Proc. 5030
whereby the United States proclaimed jurisdiction over the resources
of the ocean within 200 miles of the coastline.

(2) “Plan” means the [state] ocean resources management plan adopted
as set forth in Sections 12 and 17 of this act.

(3) “Task force” means the [state] ocean resources management task
force as described in Section 6(a) of this act.

(4) “Territorial sea” means the waters and seabed extending three geo-
igraphical miles seaward from the coastline in conformance with fed-
eral law.

Section 4. [Establishment of Ocean Resources Management Program.]
To assure the conservation and development of ocean resources affect-
ing [state] consistent with the purposes of this act, a coordinated pro-
gram of ocean resource planning and management is established. This
program shall be known as the [state] ocean resources management pro-
gram and is an improvement of [state]’s coastal management program.
The [state] ocean resources management program consists of:

(1) Applicable elements of the existing [state] coastal management pro-
gram as subsequently amended pursuant to the Coastal Zone Manage-
ment Act of 1972, including statutes, programs and policies of state agen-
cies which apply to coastal and ocean resources, those elements of ac-
nowledged local comprehensive plans of jurisdictions within [state]’s
coastal zone as defined in the existing [state] coastal management pro-
gram which may be affected by activities or use of resources within the
ocean, and those statewide planning goals which relate to the conser-
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(2) The task force as act forth in Section 6 of this act, any successor to the task force and any cooperative agreements entered into by the task force or its successor;

(3) The [state] ocean resources management plan as prepared and adopted pursuant to this act; and

(4) State agency coordination requirements of [insert appropriate state statute] as provided in Section 15 of this act.

Section 5. [Designation of Coordinating Agency.]
(a) The [department of land conservation and development] is designated the primary agency for coordination of ocean resources planning activities and the [state coastal management agency] for purposes of carrying out and responding to the Coastal Zone Management Act of 1972.
(b) After consultation with the task force, the [land conservation and development commission] shall adopt rules that implement any ocean resources goal by [insert date].
(c) The provisions of this act do not change statutorily and constitutionally mandated responsibilities of other state agencies.
(d) This act does not provide the [commission] with authority to adopt specific regulation of ocean resources or ocean uses.

Section 6. [ Establishment of Ocean Resources Management Task Force.]
(a) A [state] ocean resources management task force is established and shall be composed of:
(1) The governor or the governor’s designee as chair;
(2) The [director] or the [director’s] designee of the following agencies:
(i) [Department of energy];
(ii) [Department of environmental quality];
(iii) [Department of fish and wildlife];
(iv) [Department of geology and mineral industries];
(v) [Department of land conservation and development];
(vi) [Division of state lands]; and
(vii) [Parks and recreation division].
(3) A [county commissioner] of a county bordering the territorial sea to be appointed by the governor;
(4) The [director] or the [director’s designee of the] [state coastal zone management association];
(5) A representative of each of the following ocean interests, to be appointed by the governor:
(i) Commercial ocean fisheries;
(ii) Charter, sport or recreational ocean fisheries;
(iii) Marine navigation and transportation;
(iv) Nonenergy mineral development; and
(v) Oil and gas development; and
(6) [Three] representatives of the public to be appointed by the governor.
(b) The task force members shall consult and coordinate, on a regular basis, with their respective [commission], [board] or governing body.
(c) The task force shall develop procedures to conduct its business to carry out the purposes of this act.

Section 7. [Establishment of Scientific and Technical Advisory Committee]
(a) A scientific and technical advisory committee to the task force is established and is composed of:
(1) The [dean] or [director] or the designee of the [dean] or [director] of the following academic programs related to ocean resources:
(i) [insert university name], [Sea Grant College];
(ii) [insert university name], [College of Oceanography];
(iii) [insert university name], [Ocean and Coastal Law Center]; and
(iv) [insert university name], [Institute of Marine Biology];
(2) Such members with expertise in marine science, law or technology appointed by the task force chairman;
(3) State agency technical staff designated by the directors of the agencies represented on the task force; and
(4) The [planning director] of a county bordering the territorial sea to be appointed by the chairman of the task force.
(b) The scientific and technical advisory committee shall provide advice to the task force and the [department] on scientific and technical research related to all programs and activities in the Exclusive Economic Zone.
(c) The chairman of the advisory committee shall be appointed by the chairman of the task force.

Section 8. [Federal Liaison to Task Force] To insure that the [state] ocean resources management plan is coordinated with federal agency programs for coastal and ocean resources, the task force shall invite federal agencies with responsibility for the study and management of ocean resources or regulation of ocean activities to designate a liaison to the task force to attend task force meetings, respond to task force requests for technical and policy information and review draft plan materials prepared by the task force.

Section 9. [Compatibility with Comprehensive Plans of Adjacent Coastal Counties]
(a) The plan shall be compatible with acknowledged comprehensive plans of adjacent coastal counties.
(b) To insure that the plan is compatible with the comprehensive plans of adjacent coastal counties, the task force shall work with the [department] and the [state coastal zone management association] to meet and consult with local government officials, distribute draft materials and working papers for review and solicit comment on task force materials.
Ocean Resources Management Planning Act

Section 10. [Public Involvement.] The task force shall involve citizens and interested groups and organizations in development of the plan. The task force shall:

(1) Provide citizens, coastal and ocean interest groups, organizations, and ocean resource users:
   (i) The task force planning schedule;
   (ii) Opportunities for involvement; and
   (iii) Opportunities for comment on issues and topics which should be addressed;
(2) Conduct at least [three] public workshops, including [two] in coastal locations, to solicit ideas, opinions and facts to be considered in developing the proposed plan;
(3) Distribute the proposed plan to all public libraries statewide, upon request to interested individuals and groups and all coastal cities, counties, port districts and the [state coastal zone management association]; and
(4) Conduct at least [one] public hearing on the draft proposed plan prior to submittal to the committee.

Section 11. The task force shall consult with appropriate agencies and programs in [insert appropriate neighboring states] and with appropriate interstate organizations.

Section 12. [Task Force Preparation of Proposed Plan.]
(a) The task force shall prepare a proposed [state] ocean resources management plan as set forth in Section 17 of this act.
(b)(1) The proposed plan shall be submitted to the [insert appropriate legislative committee and legislative leadership] by [insert date].
(2) The task force shall send the proposed plan for review and comment to the [board] or [commission] of the agencies and groups represented on the task force and all coastal cities, counties and port districts.
(c) The task force shall present the proposed plan and the comments received under subsection (b) of this section to the [commission] by [insert date]. The [commission] shall conduct [three] public hearings in counties which are adjacent to the territorial sea and [one] public hearing in another location in this state in a manner consistent with the requirements of [insert appropriate state statute].
(d) The [commission] shall consider the recommendations and comments received from the public hearings conducted pursuant to subsection (c) of this section and the agency and program comments received under paragraph (2) of subsection (b) of this section.
(e) The [commission] shall review the plan and make findings that the plan:
   (1) Carries out the policies of this act;
   (2) Is consistent with applicable statewide planning goals; and
   (3) Is compatible with adjacent county local comprehensive plans.
(f) If the [commission] does not make the findings required by subsection (e) of this section, the [commission] shall return the plan to the task force for revision.
Suggested State Legislation

(g) After making the findings required by subsection (e) of this section, the [commission] shall adopt the proposed plan as part of the [state] coastal management program.

(h) The [commission] shall present the plan to the [insert appropriate legislative committee and legislative leadership] by [insert date].

(i) The [committee], in its sole discretion, may alter the dates set in this section.

Section 13. [Plan for Management of Submerged and Submersible Lands.]

(a) By [insert date], the [state land board] shall adopt a plan for management of the resources and uses of the submerged and submersible lands of the state territorial sea consistent with the purposes of this act and the policies and recommendations of the [state] ocean resources management plan.

(b) The [state land board] shall submit the territorial sea plan to the [commission] for certification of consistency with the statewide planning goals.

(c) This plan shall be the basis for rules to be adopted by the [division of state lands] for administering activities and uses within the territorial sea.

Section 14. [Interim Plan.] The task force shall prepare an interim plan and deliver it to the [committee] by [insert date]. The interim plan shall include:

1. A summary of task force actions to involve citizens of this state and coordinate with local governments, adjacent states and federal agencies in development of the plan;
2. An inventory of the existing state laws and agency rules, authorities and programs which pertain to ocean resources;
3. An inventory of federal laws, regulations and agency programs which pertain to ocean resources management within or directly affecting [state]'s territorial sea;
4. A preliminary analysis of state laws, rules, authorities or programs which conflict with one another, that need to be modified or eliminated, and rules or programs which may need to be enacted in order to provide for coordinated, comprehensive management of ocean resources;
5. A preliminary survey of existing and potential uses and activities in the ocean off the coast of [state], an analysis of potential impacts to ocean and coastal resources and coastal communities from these activities and an evaluation of state agency ability to manage those uses consistent with this act;
6. Maps of existing ocean conditions, uses and resources of the coastline, territorial sea, continental shelf and Exclusive Economic Zone. These maps shall be compiled from the best available information, entered into a computer format and shall be accompanied, where possible, by computerized information about the mapped resources or features. The maps shall allow integration with existing computer maps of coastal and estuarine features and shall be organized to enable both broad and detailed views of coastal and ocean areas;
(7)(i) Specific recommendations to develop or improve state agency programs to manage ocean resources and activities consistent with this act. These recommendations shall be the basis for agency or legislative action; and

(ii) The recommendations of paragraph (i) of this subsection shall address at least the following:

(A) Areas within the territorial sea and the Exclusive Economic Zone which should be included or excluded from oil, gas or nonenergy mineral development, or for which special precautions must be taken;

(B) Water and air quality related to nonenergy mineral, oil or gas development;

(C) A program of environmental and other scientific research required to make management decisions about ocean resources with emphasis on the information requirements of the statewide planning goals for ocean and coastal resources in relation to the oil, gas and mineral development activities of the federal government in the Exclusive Economic Zone off [state]; and

(D) Regulations or statutes for mineral exploration, development or recovery;

(8) A summary of state-federal issues of ocean resource management and jurisdiction, including recommendations to the [state] congressional delegation for changes in federal law or agency programs and to adjacent states for coordinated program development and action;

(9) Identification of issues which affect local government planning programs and an analysis of additional work which may be needed to fully address those issues in the local plans; and

(10) A status report on federal agency programs affecting ocean uses or resources off [state] and any recommendations to the committee to address unforeseen concerns or issues revealed during the interim planning period.

Section 15. [State Agency Incorporation of Plan.]

(a) If a state agency incorporates the [state] ocean resources management plan by reference in its coordination program and, upon a finding by the [commission] that the agency has amended its rules, procedures and standards to conform with the objectives and requirements of the plan, the state agency shall satisfy the requirements of state agency planning and coordination required by [insert appropriate state statute] for ocean planning.

(b) If a state agency does not incorporate the plan in its coordination program, the agency shall be subject to the state agency coordination requirements of [insert appropriate state statute] for state agency programs, procedures and standards that in any way affect ocean resources. State agency programs or rules for management of ocean resources or ocean uses shall be consistent with the [state] ocean resources management plan.

Section 16. The [department] shall provide technical, clerical and other necessary support services for the task force.
Section 17. [Ocean Resources Management Plan.] The [state] ocean resources management plan shall include:

(1) An inventory of the existing state laws and agency rules, authorities and programs which pertain to ocean resources.
(2) An inventory of federal laws, regulations and agency programs which pertain to ocean resources management within or directly affecting [state]'s territorial sea.
(3) An analysis of state laws, rules, authorities or programs which conflict with one another, that need to be modified or eliminated, as well as laws, rules or programs which may need to be enacted in order to provide for coordinated, comprehensive management of ocean resources.
(4) An inventory of existing and potential uses and activities in the ocean off the coast of [state], an analysis of potential impacts to ocean and coastal resources and coastal communities from these activities and an evaluation of state agency ability to manage those uses consistent with this act.
(5) Maps of existing ocean conditions, uses and resources of the coastline, territorial sea, continental shelf and Exclusive Economic Zone. These maps shall be compiled from the best available information, entered into a computer format to allow ease of data analysis and shall be accompanied, where possible, by computerized information about the mapped resources or features. The maps shall allow integration with existing computer maps of coastal and estuarine features and shall be organized to enable both broad and detailed views of coastal and ocean areas.
(6)(i) Specific recommendations to develop or improve state agency programs to manage ocean resources and activities consistent with this act. These recommendations shall be the basis for agency or legislative action and shall contain:
(A) A brief statement of the issues or need requiring the recommended action;
(B) A description of how the recommendation will address the issues or meet the identified need;
(C) Policies and objectives;
(D) A brief work program describing the actions necessary to carry out the recommendation;
(E) A list of state agencies or programs to be affected by the recommendation;
(F) An estimate of the time and costs required to carry out the recommendation; and
(G) Any change in state law which may be needed.
(ii) The recommendations of paragraph (i) of this subsection shall address the following:
(A) Coastal oil spill response, cleanup, damage assessment and compensation;
(B) Siting of pipelines or onshore facilities resulting from mineral mining or offshore oil and gas operations, including coordination with local government comprehensive plans;
(C) Marine water quality, including ocean outfalls from municipal
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and industrial wastes, toxic and hazardous chemicals, water quality
standards and monitoring and research programs to insure marine wa-
ter quality;
(D) Air quality related to offshore industrial activities and impacts
on onshore communities and resources;
(E) Areas within the territorial sea and the Exclusive Economic
Zone which should be excluded from oil and gas or nonenergy mineral
development, or for which special precautions must be taken;
(F) Environmental or other scientific research required to make
management decisions about ocean resources with emphasis on the in-
formation requirements of the statewide planning goals for ocean and
coastal resources in relation to the oil, gas and mineral development ac-
tivities of the federal government in the Exclusive Economic Zone off
[state];
(G) Programs to encourage and facilitate research and development
into technologies for the exploration and development of ocean resources;
(H) Strategies to promote private investment in [state] into respons-
sible research, exploration and development of ocean resources; and
(I) Recommendations for alternative dispute resolution techniques
to resolve conflicts among competing interests.
(7) Recommendations for a permanent ocean resources planning and
management process, including:
(i) Options for an advisory coordinating body to succeed the task
force;
(ii) Advisory committees;
(iii) The role of the governor, state agencies, federal agencies, local
governments, citizens, interest groups and ocean users; and
(iv) A process for plan update and amendment including integration
of new information, adoption and incorporation of plan amendments.
(8) A summary of state-federal issues of ocean resource management
and jurisdiction, including recommendations to the [state] congressional
delegation for changes in federal law or agency programs and to adja-
cent states for coordinated program development and action.
(9) Identification of issues which affect local government planning pro-
grams and an analysis of additional work which may be needed to fully
address those issues in the local plans.

Section 18. [Workshops and Public Information Programs.]
(a) In preparation of the plan, the task force shall hold at least [three]
public workshops, including [two] in coastal locations, to solicit ideas,
opinions and facts to be considered in developing the proposed plan.
(b) The [department], in conjunction with educational institutions,
shall conduct public information programs including workshops and
symposia and prepare and disseminate publications.

Section 19. [Distribution of Proposed Plan.] The [department] shall sup-
ply copies of the proposed plan to public libraries statewide and shall
make copies available by request. The [department] may charge a small
fee to recover the costs of mailing. The [department] shall supply copies,
without charge, to the governor, the [legislative body], all affected state
agencies, the [land conservation and development commission] and lo-
cal governments in the coastal zone.

Section 20. [Appropriations] [Insert appropriation amounts.]

Section 21. [Effective Date] [Insert effective date.]
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This model act is the result of a Council of State Governments (CSG) Task Force created with the assistance of the U.S. Environmental Protection Agency and the commonwealth of Kentucky. The project was conducted with the assistance of the staff of the Council's Committee on Suggested State Legislation.

The purpose of the Task Force was to research state options and legislation on reducing the amounts of hazardous wastes and to prepare legislation. This model act, therefore, is a combination of acts from several states, chiefly Kentucky (HB 722), New York (Ch. 619, laws of 1988), Minnesota (Sec. 116.12), North Carolina (SB 952) and Oregon (HB 2334). To provide continuity, prevent duplication and limit the subject matter, only parts of these acts were used.

The Task Force has identified three major actions for states to take to reduce the amounts of hazardous wastes produced within the state: requiring waste reduction plans from generators; establishing a technical assistance center; and assessing fees on hazardous waste generators as a method to pay for such programs.

The primary intent of these recommendations is to reduce the amounts of hazardous wastes generated in a state. A secondary intent is to minimize the effect of the hazardous wastes that are produced. This model act is intended to provide explicit statutory authority for (1) the agencies listed herein to assist businesses and other generators of hazardous wastes in reducing and minimizing their wastes; (2) to require hazardous waste generators to prepare and submit waste reduction plans; and (3) to collect fees on hazardous wastes.

Chapter 1
General Provisions

Section 1. [Short Title.] This act may be cited as the [state] Hazardous Waste Reduction Act of [year].

Section 2. [Purpose, Goals and Intent.] The [legislative body] finds that the timely development of a comprehensive hazardous waste reduction plan for the prevention and reduction of hazardous waste is essential to determine the scope and need for an off-site hazardous waste treatment facility.

The [legislative body] further finds that it is essential to ensure that the state fulfills its responsibilities under SARA, the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1013, as amended, to provide for the availability of adequate capacity for the management of hazardous waste by putting in place a comprehensive hazardous waste reduction plan. This plan should encourage source reduction and on-site treatment of hazardous waste and should reduce reliance on treatment and disposal facilities. Hazardous waste that is gener-
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14  ated should be minimized, treated on-site, stored and disposed of so as
15  to protect human health and the environment. The state should aid in-
16  dustry in meeting the goals and policies of this act through technical
17  assistance.
18  It is the intent of the [legislative body] that the Capacity Assurance
19  Plan (CAP), as required under SARA, should reflect the state’s prima-
20  ry commitment to waste reduction and minimization through a combi-
21  nation of technical assistance, economic incentives, education and man-
22  datory waste reduction regulations.
23  The [legislative body] declares it to be the policy of the state that, when-
24  ever feasible, the generation of hazardous waste is to be prevented or
25  reduced as expeditiously as possible.
26  It is the purpose of this act to prevent and reduce the generation of haz-
27  ardous waste in the state. The state’s goal is to reduce the generation
28  and toxicity of waste that is generated within [state] by [insert percent]
29  during the next [insert number] years.

COMMENT: The original legislation’s purpose was to reduce the volume
of hazardous waste and permitted air and water discharges by 30 percent.
No time frame was designated.

1  Section 3. [Definitions.] As used in this act:
2  (1) “Audit” or “waste audit” means an evaluation process at a facili-
3  ty, which examines the opportunities and potentials for implementing
4  process modifications, materials substitutions or more efficient manage-
5  ment practices with respect to particular waste streams generated within
6  the facility.
7  (2) “Generator” means any individual, business, government agency
8  or any other organization that generates hazardous waste as follows:
9  (i) “Fully regulated generator” means a generator who generates
10  2.2 pounds of acute hazardous waste as defined by 40 C.F.R. 261, or 2,200
11  pounds or more of hazardous waste in one month.
12  (ii) “Small quantity generator” means any generator who generates
13  between 220 and 2200 pounds of hazardous waste in one month.
14  (3) “Source reduction” or “waste reduction” means the elimination of
15  waste at the source, usually within a process, including process modifi-
16  cations, feedstock substitutions, improvements in feedstock purity,
17  housekeeping and management practices, increases in the efficiency of
18  machinery and on-site, closed-loop recycling, or any action that reduces
19  the amount and toxicity of the waste exiting the production process.
20  (4) “Waste” or “hazardous waste” means any hazardous waste as de-
21  fined in [insert appropriate state statutes], even though the waste may
22  be within permitted or licensed limits.

1  Section 4. [Waste Hierarchy Policy.] It is the policy of [state] to adhere
2  to the following hierarchy of waste prevention and management:
3  (1) Reduce waste production at the source;
4  (2) Recover and reuse resources (wastes);
5  (3) Recycle on-site, or if that is not feasible, off-site;
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(4) Treat wastes to reduce volume and toxicity (including incineration);
(5) Store wastes; and,
(6) As a last resort, dispose of any remaining wastes in a manner which
serves to protect the quality of air, water and land resources.

Chapter 2
State Waste Reduction Technical Assistance Program

Section 1. [Establishment of Center for Waste Reduction.] [State hereby enters a center for hazardous waste reduction at [insert university or appropriate state agency] for the purpose of assisting generators of hazardous waste to reduce the amounts, toxicity and adverse public health effects of waste produced. The center shall provide the services outlined in Section 2 of this Chapter.

COMMENT: The originating state established the center at a university.

Section 2. [Powers and Duties of Center.] The center shall have the following powers and duties:
(1) Compile, organize and make available for distribution information on hazardous waste reduction technologies and procedures;
(2) Compile, and make available for distribution to business and industry, a list of expert private consultants on hazardous waste reduction technologies and procedures, and a list of researchers at state universities that could provide assistance in waste reduction activities;
(3) Sponsor and conduct conferences and individualized workshops on hazardous waste reduction for specific classes of business or industry;
(4) Conduct feasibility analyses for innovative hazardous waste reduction technologies and procedures;
(5) Facilitate and promote the transfer of hazardous waste reduction technologies and procedures between businesses and industries;
(6) Develop, where appropriate, and distribute for voluntary implementation, hazardous waste reduction plans for the major classes of business or industry that generate and subsequently treat, store or dispose of hazardous waste in the state;
(7) Develop, and make available for distribution, recommended hazardous waste audit procedures or protocols for utilization by business and industry in conducting internal hazardous waste audits;
(8) Provide on-site assistance upon request to business and industry for the purpose of identifying potential techniques for waste reduction and assisting in conducting internal hazardous waste audits;

COMMENT: This paragraph is not compatible with Alternative Chapter 3 and will have to be deleted or re-written if Alternative Chapter 3 is selected for use.

(9) Administer loan, loan guarantee, interest subsidy, or grant programs which may be established pursuant to this act for the purpose of providing moneys to a business or industry to subsidize the costs of con-
ducting hazardous waste audits or waste reduction studies, or developing or purchasing, and implementing, hazardous waste reduction technologies and procedures, or for other similar purposes;

**COMMENT:** This paragraph is not compatible with Alternative Chapter 3 and will have to be deleted or re-written if Alternative Chapter 3 is selected for use.

(10) Provide moneys, from such funds as may be appropriated or otherwise made available, to academic institutions, businesses or industries, government agencies or private organizations located in the state to conduct demonstration or pilot programs utilizing innovative hazardous waste reduction technologies or procedures for specific categories of industry or business;

(11) Provide moneys, from such funds as may be appropriated or otherwise made available, to academic institutions or private organizations located in the state for basic or applied research on hazardous waste reduction;

(12) Compile, and make available for distribution, information on available tax benefits for the implementation of hazardous waste reduction technologies and procedures by an industry or business;

(13) Establish goals for voluntary hazardous waste reduction within the state, including the identification of key industries and businesses which should receive priority assistance from the center;

**COMMENT:** Those states adopting Section 2 of Chapter 1 should revise the above language to conform to the amount of the goal established.

(14) Identify governmental and nongovernmental impediments to hazardous waste reduction;

(15) Develop the necessary information base and data collection programs to assist in establishing program priorities and evaluating the progress of reducing hazardous wastes;

(16) Develop training programs and materials for state and local regulatory personnel and private industry designed to inform them about waste reduction practices and their applicability to industry;

(17) Produce a biennial report on the center's activities, achievements, problems identified and future goals, including a biennial work plan;

(18) Participate in existing state, federal and industrial networks of individuals and groups actively involved in waste reduction activities;

(19) Seek outstanding examples of success in reducing hazardous wastes and recommend to the governor nominees for awards in waste reduction; and,

(20) Publicize to business and industry, and participate in and support, waste exchange programs.
Section 1. [Guidelines for Generator Waste Reduction Plans.]

(a) Not later than [insert date], the [insert appropriate regulatory authority, hereinafter referred to as "department"] shall establish guidelines for hazardous waste reduction plans to be prepared by generators. At a minimum, the guidelines should include:

1. A written policy articulating upper management and corporate support for the generator's hazardous waste reduction plan and a commitment to implement plan goals;
2. Plan scope and objectives, including the evaluation of technologies, procedures and personnel training programs to insure unnecessary waste is not generated. In addition to the goals required in subsection (b) of this section, specific goals may be set for hazardous waste reduction, based on the department's assessment of what is technically and economically practical;
3. Internal analysis of hazardous waste streams, with periodic hazardous waste reduction assessments, to review individual processes or facilities and other activities where waste may be generated and identify opportunities to reduce or eliminate waste generation. Such assessments shall evaluate data on the types, amount and hazardous constituents of waste generated, where and why that waste was generated within the production process or other operations, and potential hazardous waste reduction and recycling techniques applicable to those wastes;
4. Hazardous waste accounting systems that identify waste management costs and factor in liability, compliance and oversight costs to the extent technically and economically practical;
5. Employee awareness and training programs, to involve employees in hazardous waste reduction planning and implementation to the maximum extent feasible;
6. Institutionalization of the plan to insure an ongoing effort as demonstrated by incorporation of the plan into management practices and procedures;
7. Implementation of technically and economically practical hazardous waste reduction options, including a plan for implementation. This shall include a description of options considered and an explanation of why options considered were not implemented.

(b) As part of each plan developed under Section 2 of this Chapter, a generator shall establish specific performance goals for the reduction of waste; namely, for fully regulated generators, any waste representing 10 percent or more by weight of the cumulative waste stream generated per year.

(c) Wherever technically and economically practical, the specific performance goals established under subsection (b) of this section shall be expressed in numeric terms. If the establishment of numeric performance goals is not practical, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as practical.
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(d) Each generator shall explain the rationale for each performance goal. The rationale for a particular performance goal shall address any impediments to hazardous waste reduction, including but not limited to the following:

(1) The availability of technically practical hazardous waste reduction methods, including any anticipated changes in the future;
(2) Previously implemented reductions of waste;
(3) The economic practicability of available hazardous waste reduction methods, including any anticipated changes in the future. Examples of situations where hazardous waste reduction may not be economically practical include but are not limited to:
   (i) For valid reasons of prioritization, a particular company has chosen first to address other more serious hazardous waste reduction concerns;
   (ii) Necessary steps to reduce hazardous waste are likely to have significant adverse impacts on product quality; or
   (iii) Legal or contractual obligations interfere with the necessary step that would lead to hazardous waste reduction.

(e) All generators shall complete annually a hazardous waste reduction progress report which shall:

(1) Analyze and quantify progress made, if any, in hazardous waste reduction, relative to each performance goal established under subsection (b) of this section; and
(2) Set forth amendments to the hazardous waste reduction plan and explain the need for the amendments.

(f) The [department], by rule, may provide for modifications for small quantity generators related to the kind of information to be included in the plan.

Section 2. [Waste Reduction Plan.]

(a) All large users and fully regulated generators shall complete a hazardous waste reduction plan on or before [insert date] and all small-quantity generators shall complete a hazardous waste reduction plan on or before [insert date]. Upon completion of a plan, the user shall notify the [department] in writing on a form supplied by the [department].

COMMENT: The original legislation called for large users and fully regulated generators to complete a plan within three years; small-quantity generators were given four years.

(b) A facility required to complete a hazardous waste reduction plan under subsection (a) of this section may include as a preface to its initial plan:

(1) An explanation and documentation regarding hazardous waste reduction efforts completed or in progress before the first reporting date; and
(2) An explanation and documentation regarding impediments to hazardous waste reduction specific to the individual facility.

(c) The [department] shall consider information provided under sub-
section (b) of this section in any review of a facility plan under Section 3 of this Chapter.
(d) Except as provided in Section 3 of this Chapter, a hazardous waste reduction plan developed under this section shall be retained at the facility and shall not be considered a public record under [insert appropriate statute].
(e) For the purposes of this section and Section 3 of this Chapter, a generator shall permit the director or any designated employee of the director to inspect the hazardous waste reduction plan.
(f) A facility shall determine whether it is required to complete a plan under subsection (a) of this section based on whether its waste generation results in the facility meeting the definition of generator as defined in Chapter 1 of this act for the calendar year ending December 31 of the year immediately preceding the reporting deadline as defined in this section.

Section 3. [Review and Approval of Plan.]
(a) The [department] may review a plan or an annual progress report to determine whether the plan or progress report is adequate according to the guidelines established under Section 1 of this Chapter. If a generator fails to complete an adequate plan or annual progress report as required under this act, the [department] may notify the user of the inadequacy, identifying the specific deficiencies. The [department] also may specify a reasonable time frame, of not less than 90 days, within which the generator shall submit a modified plan or progress report addressing the specified deficiencies. The [department] shall, upon request, make technical assistance available to aid the generator in modifying its plan or progress report.
(b) If the [department] determines that a modified plan or progress report submitted pursuant to subsection (a) of this section is inadequate, the [department] may, within its discretion, either require further modification or issue an administrative order pursuant to subsection (c) of this section.
(c) If after having received a list of specified deficiencies from the [department], a generator fails to develop an adequate plan or progress report with a time frame specified pursuant to subsection (a) or (b) of this section, the [department] may order such generator to submit an adequate plan or progress report within a reasonable time frame of not less than 90 days. If the generator fails to develop an adequate plan or progress report within the time frame specified, the [department] shall conduct a hearing on the plan or progress report. Except as provided under Section 8 of this Chapter, in any hearing under this section, the relevant plan or progress report shall be considered a public record as defined in [insert appropriate statute].
(d) In reviewing the adequacy of any plan or progress report, the [department] shall base its determination solely on whether the plan or progress report is complete and prepared in accordance with Section 1 of this Chapter.
(e) The [department] shall maintain a log of each plan or progress report...
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Section 4. [Annual Generator Report.]
(a) From each annual progress report, the generator shall report to the
[department] the quantities of hazardous wastes generated that are with-
in the categories set forth in Section 1(b) of this Chapter.
(b) The report shall include a narrative summary explaining the data.
The narrative summary may include:
(1) A description of goals and progress made in reducing the gener-
ation of hazardous waste; and
(2) A description of any impediments to reducing the generation of
hazardous waste.
(c) The [department], by rule, shall develop uniform reporting require-
ments for the data required under subsection (a) of this section.
(d) Except for the information reported to the [department] under this
section, the annual progress report shall be retained at the facility and
shall not be considered a public record under [insert appropriate stat-
ute]. However, the generator shall permit any officer, employee or
representative of the [department] at all reasonable times to have ac-
cess to the annual progress report.

Section 5. [Report Due Dates.] Fully regulated generators shall com-
plete the first annual progress report required under Section 1 of this
Chapter on or before [insert date]. Small-quantity generators shall com-
plete the first annual progress report required under Section 1 of this
Chapter on or before [above date, plus one year].

Section 6. [Coordination with Technical Assistance Center.] Subject to
available funding, the [department] shall contract with the technical in-
formation center to assist the [department] in carrying out the provi-
sions of this act. The assistance shall emphasize strategies to encourage
hazardous waste reduction and shall provide assistance to facilities un-
der this act.

Section 7. [Advisory Committee.]
(a) In order to assist in establishing rules related to hazardous waste
reduction, the [department] shall establish an advisory committee. The
advisory committee shall consist of representatives of the public and af-
fected industries.
(b) The advisory committee shall act in an advisory capacity to the
[department] in any matter related to hazardous waste reduction. The
advisory committee may provide comments regarding data collection,
plan format and content. In addition, the committee shall identify any
additional data necessary to improve the technical assistance process,
to develop plans and to aid in enforcement of plans.
(c) The committee also may identify specific chemicals that present
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13 the greatest hazard to the public health and safety and to the envi-
14 ronment in order that the [department] may focus technical assistance, re-
15 search and development efforts to facilitate accelerated reduction in the
16 generation of such waste chemicals.
17 (d) The committee shall make recommendations to the [department]
18 to facilitate the coordination of requirements of all state and federal haz-
19 ardous waste programs, including but not limited to the Clean Air Act;
20 the Federal Water Pollution Control Act; the Toxic Substances Control
21 Act; the Resource Conservation and Recovery Act; the Comprehensive
22 Environmental Response, Compensation, and Liability Act, and any
23 amendments thereto; Title III of the Superfund Amendments and
24 Reauthorization Act of 1986 and amendments thereto, and the [state]
25 Community Right-to-Know and Protection Act of [insert date].
26 (e) The committee shall make recommendations under this section on
27 or before [insert date].

COMMENT: In the original legislation, one and one-half years was provided.

Section 8. [Confidentiality.]

(a) Upon a showing satisfactory to the [director] by any person that a
plan or annual progress report developed under this act, or any portion
thereof, if made public, would divulge methods, processes or other in-
formation entitled to protection as trade secrets, as defined under [in-
sert appropriate statute], of such person, the [director] shall classify as
confidential such plan or annual progress report, or portion thereof.
(b) To the extent that any plan or annual progress report under sub-
section (a) of this section, or any portion thereof, would otherwise qualify
as a trade secret under [insert appropriate statute], no action taken by
the [director] or any authorized employee of the [department] in inspect-
ing or reviewing such information shall affect its status as a trade secret.
(c) Any information classified by the [director] as confidential under
subsection (a) of this section shall not be made a part of any public rec-
cord, used in any public hearing or disclosed to any party outside of the
[department] unless a [circuit court] determines that evidence is neces-
sary to the determination of an issue or issues being decided at the public
hearing.

Section 9. [Report to the Legislature.] On or before [insert date], the
[department] shall report to the [legislative body] on the status of im-
plementing this act. This report shall include information regarding:
(1) The status of the technical assistance program;
(2) Progress toward reducing the quantities of hazardous wastes gener-
ated in [state]; and
(3) An analysis and recommendations for changes to the program in-
cluding but not limited to the need for any additional enforcement pro-
visions.
Alternative Chapter 3
Small Quantity Generator Hazardous Waste Audit Program

COMMENT: This alternative is provided for those states wishing to establish a more limited program for waste reduction plans than described in Chapter 3 above. The focus of this program is on small quantity generators.

Section 1. [Creation of Small Quantity Generator Hazardous Waste Audit Program.] The [department] shall establish and be responsible for a small quantity generator hazardous waste audit program. To carry out such program, the [department] is authorized to obtain the services, as necessary, of waste management specialists to conduct waste audits at the facilities of hazardous waste generators that have produced less than one thousand kilograms of hazardous waste in each of the past 12 calendar months. The purpose of such audits shall be to provide on-site technical assistance to aid such generators in complying with the state’s hazardous waste regulations and to identify and evaluate the potential for reducing the amount and/or toxicity of hazardous waste generated at such facilities.

Section 2. [Scope of Waste Audits.] Waste audits conducted pursuant to this section may include, but need not be limited to:
(1) Identification of all hazardous wastes generated at the facility;
(2) Identification of the regulatory requirements associated with the storage, treatment or disposal of all hazardous wastes generated at the facility;
(3) Identification of any methodologies, processes, equipment or production changes which could be utilized by the facility to reduce the amount or toxicity of hazardous wastes generated at the facility;
(4) Identification of any on-site recycling or waste treatment technologies which could be utilized to reduce the amount or toxicity of hazardous wastes disposed of by the facility; and
(5) Identification of any potential markets for hazardous waste generated by the facility, including the use of waste exchange markets.

Section 3. [Fee Schedule.] The [department] shall establish by rule and regulation, upon consultation with the [director of the budget], a sliding fee schedule to offset the costs of conducting on-site audits. The fee schedule established pursuant to this section shall be intended to provide revenues sufficient to meet solely the costs incurred by the [department] in performing such audits, provided that the [department] may use technical assistance grants it receives from the federal government, private foundations or other institutions to reduce or eliminate fees charged generators for performing such audits, and further provided that moneys appropriated to the [department] to carry out the purposes of this section shall not be used to provide financial assistance to waste generators for the purchase of manufacturing plants or equipment, property, real or otherwise, engineering or legal services, or any other cost incident to the actual implementation of a waste reduction or manage-
Section 4. [Corrections Plan.] Any person receiving audit services pursuant to this Chapter shall, within 90 days of the completion of such audit, submit to the [department] a description of the steps it will take, if any, to implement any recommended waste reduction, recycling or treatment strategies identified in such audit.

Section 5. [Authorization.] In implementing the small quantity generator hazardous waste audit program, the [department] is authorized to:

1. Hire or contract with an appropriate number of hazardous waste management specialists to conduct on-site waste audits;
2. Employ such public information methods as are appropriate to identify and inform eligible hazardous waste generators of the existence of the waste audit program;
3. Establish a small quantity generator hazardous waste audit program application consistent with the policies and goals of this act; and
4. Establish by rule and regulation a small quantity generator hazardous waste audit program application evaluation procedure consistent with the policies and goals of this act.

Chapter 4
Hazardous Waste Fees

Section 1. [Fee Schedules.]
(a) The [department] shall establish the fees provided in Sections 2 and 3 of this Chapter in the manner provided in [insert other state statutory references concerning establishment of fees] to cover the amount appropriated in [department appropriation statute] to the [department] for permitting, monitoring, inspection, enforcement, waste reduction plan activities and technical assistance center expenses of the [department].
(b) The [legislative body] may appropriate additional amounts from the general fund that need not be covered by the fees, in order to assure adequate funding for the regulatory and enforcement functions of the [department] related to hazardous waste. All fees collected by the [department] under this section shall be deposited in the [indicate type] fund.

Section 2. [Hazardous Waste Generator Fee]
(a) Each generator of hazardous waste shall pay a fee on the hazardous waste which it generates. The [department] shall compute the amount of the fee due based on the hazardous waste disclosures submitted by the generators and other information available to the [department]. The [department] shall annually prepare a statement of the amount of the fee due from each generator. The fee shall be paid annually commencing with the first day of the calendar quarter after the day of the statement.
(b) The [department] may exempt generators of small quantities of
hazardous wastes otherwise subject to the fee if it finds that the cost of
administering a fee on those generators is excessive relative to the pro-
ceeds of the fee. The fee shall consist of a minimum fee for each genera-
tor not exempted by the [department] and an additional fee based on the
quantity of wastes generated by the generator.
(c) If any metropolitan counties recover the costs of administering coun-
ty hazardous waste regulations by charging fees, the fees charged by the
[department] outside of those counties shall not exceed the fees charged
by those counties. The [department] shall not charge a fee in any
metropolitan county which charges such a fee. The [department] shall
impose a fee calculated as a surcharge on the fees charged by the
metropolitan counties and by the [department] to reflect the [depart-
ment]'s expenses in carrying out its statewide hazardous waste regula-
tory responsibilities. The surcharge imposed on the fees charged by the
metropolitan counties shall be collected by the metropolitan counties
in the manner in which the counties collect their generator fees.
Metropolitan counties shall remit the proceeds of the surcharge to the
[department] by the last day of the month following the month in which
they were collected.

Section 3. [Facility Fees.] The [department] shall charge an original per-
mit fee, a reissuance fee and an annual operator's fee for any hazardous
waste facility regulated by the [department]. The [department] may in-
clude reasonable and necessary costs of any environmental review re-
quired under [insert appropriate statute] in the original permit fee for
any hazardous waste facility.

Section 4. [Approval.] Fees for accounts for which appropriations are
made may not be established or adjusted without the approval of the
[director]. If the fee or fee adjustment is required by law to be fixed by
rule, the [director]'s approval must be in the statement of need and
reasonableness. These fees must be reviewed each fiscal year. Unless the
[director] determines that the fee must be lower, fees must be set or fee
adjustments must be made so the total fees nearly equal the sum of the
appropriation for the accounts plus the [department]'s general support
costs, statewide indirect costs and [attorney general] costs attributable
to the fee function.
Plastic Container Coding System Act

This act, based on 1988 California legislation, represents the adoption of a plastic container coding system developed by the Society of the Plastics Industry, Inc., to assist recyclers in sorting plastic containers by resin composition and to provide a uniform identification for the consumer to foster source separation programs.

The act, as shown here, requires that all rigid plastic containers and plastic bottles (as defined), sold on or after a given date, be labeled with the code to indicate their resin composition. It also requires the state's division of recycling to maintain a list of the code abbreviations used in those labels and to provide a copy of the list to any person upon request. An example of one of the coding symbols is shown here:

![Recycling Symbol] HDPE

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Plastic Container Coding System Act.

Section 2. [Definitions] As used in this act:
(1) "Rigid plastic container" means any formed or molded article comprised predominantly of plastic resin and having a relatively inflexible finite shape or form intended primarily as a single service container with a capacity of eight ounces or more and less than five gallons.
(2) "Rigid plastic bottle" means any rigid plastic container with a neck that is smaller than the container body with a capacity of 16 ounces or more and less than five gallons.
(3) "Label" means a code label, as described in Section 3 of this act, molded into the bottom of the plastic product.

Section 3. [Code Label Defined.]
(a) All rigid plastic bottles and rigid plastic containers sold in [state] on and after [insert date] shall be labeled with a code which indicates the resin used to produce the rigid plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels and basecups
of a different material shall be coded by their basic material. The code shall consist of a number placed inside a triangle, and letters placed below the triangle. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

1 = PET (polyethylene terephthalate)
2 = HDPE (high density polyethylene)
3 = V (vinyl)
4 = LDPE (low density polyethylene)
5 = PP (polypropylene)
6 = PS (polystyrene)
7 = OTHER (includes multilayer)

(b) A “?” shall appear below the resin abbreviation when the bottle or container is composed of more than one layer of that resin.

(c) On and after [insert date], the [division of recycling of the department of conservation] shall maintain a list of abbreviations used on labels pursuant to subsection (a) and shall provide a copy of that list to any person upon request.

Section 4. [Penalty for Violation.] On and after [insert date], it is unlawful to manufacture for use in this state any rigid plastic container which is not labeled in accordance with Section 3 of this act. A violation of this act is a crime punishable by a fine of [insert amount] dollars.

Section 5. [Effective Date.] [Insert effective date.]
Promotion of Paper Bag Usage Act

This act, based on a 1988 Rhode Island law, prohibits, after a given date, the sale by retail establishments of goods or food in plastic bags unless the retailer makes paper bags available as an option to the consumer at no greater charge than the plastic bags offered.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Promotion of Paper Bag Usage Act.

Section 2. [Legislative Findings and Intent] The [legislative body] finds that discarded packaging constitutes a significant category of waste within the state's waste system and is, therefore, a necessary focus of any effort to preserve the capacity of the [state's landfills], as well as to reduce economic and environmental costs of waste management for the citizens of this state.

In furtherance of state source reduction and recycling policies, it is the intent of this legislation to promote the use of paper bags as a preferred alternative to plastic bags. Paper bags are frequently made from recycled paper fiber, are recyclable and degradable, and minimize the use of non-renewable resources, including natural gas and petroleum.

The [legislative body] has determined that certain retail establishments within the state are points of origin for a substantial volume of plastic bags and, therefore, are particularly susceptible to actions which have significant potential for simplifying the chemical composition of this portion of the state's waste stream, thereby improving solid waste management within this state.

Section 3. [Definitions] As used in this act:

(1) "Goods" means all chattels personal, other than things in action or money, sold by a retail establishment for other than a commercial or business use or for purposes of resale, including clothes that have been cleaned or pressed or otherwise serviced at a retailing laundry and cleaning establishment.

(2) "Paper bags" means bags made from recycled paper fiber or from renewable resources, which bags are recyclable and biodegradable.

(3) "Plastic bags" means bags or coverings made from plastic resins or derived from non-renewable, petroleum-based feedstocks, including coverings for clothes that have been cleaned or pressed or otherwise serviced at a laundry and cleaning establishments.

(4) "Retail establishments" means all sales outlets, stores, shops or other places of business located within the state of [state], which operate primarily to sell or convey goods, foods, or goods which have been
the subject matter of the rendering of personal services thereon, directly to the ultimate consumer which are predominantly contained, wrapped or held in or on packaging.

Section 4. [Prohibited Practices.] No retail establishment located and doing business within the state of [state] shall sell or convey goods, food or goods which have been the subject matter of the rendering of personal services thereon, directly to the ultimate consumers within the state of [state] in plastic bags, unless such retailer makes available to each consumer a paper bag as an option at no greater charge than the plastic bag. The retailer must advertise clearly the availability of this option. Any retailer who chooses to transfer purchases in paper bags only, need not make other optional bags available.

Section 5. [Regulations.] The [insert appropriate state agency] shall promulgate rules and regulations as may be necessary to implement and carry out the provisions of this act.

Section 6. [Penalties.] Willful failure to comply with Section 4 of this act shall constitute a violation punishable by a fine not to exceed [insert amount] dollars for each occurrence.

Section 7. [Severability.] [Insert severability clause]

Section 8. [Effective Date.] [Insert effective date.]
One-Call System
("Call Before You Dig")

The prior notification act presented here is based on a 1986 Pennsylvania amendment to its underground utility line protection statute. The legislation establishes a one-call system in the state with a single telephone number for contractors, designers or others designated in the act to call and notify users of underground lines, facilities and pipes of the callers' intent to use power equipment for excavating, tunneling, demolition or similar work.

The legislation requires mandatory utility membership in and mandatory contractor use of the one-call system, provides statewide one-call system coverage and limited liability for those contractors who use the system and includes a method of enforcement with penalties for violations. Although many states have legislation providing for one-call systems, fewer than 10 incorporate all of the aforementioned components.

In 1988, federal amendments to the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 called for the issuance of regulations establishing federal requirements for one-call notification systems adopted by the states (P.L. 100-561, October 31, 1988). The provisions apply only to underground pipeline facilities; however, there has been similar discussion at the federal level regarding the protection of underground telephone communications cables.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the [Underground Utility Line Protection Act, incorporating One-Call System].

1 Section 2. [Definitions.] As used in this act:
2 (1) "Communications expenses" means the direct telecommunications costs incurred by a one-call system in notifying a user of a potential excavation, including any costs billed directly to a user by a telecommunications company other than a one-call system.
3 (2) "Contractor" means any person who or which performs excavation or demolition work for himself or for another person.
4 (3) "Demolition work" means the use of powered equipment or explosives to destroy or raze any structure.
5 (4) "Designer" means any architect, engineer or other person who or which prepares a drawing for a construction or other project which requires excavation or demolition work as herein defined.
6 (5) "Emergency" means any condition constituting a clear and present danger to life or property by reason of excavating gas, exposed wires or other similar and serious breaks or defects in a user's lines.
Suggested State Legislation

(6) "Excavation work" means the use of powered equipment or explosives in the movement of earth, rock or other material, and includes but is not limited to anchoring, auguring, backfilling, blasting, digging, ditching, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling; but shall not include such use in agricultural operations nor operations necessary or incidental to the purposes of finding or extracting natural resources including all well site operations and shall not include work within a state highway right-of-way, performed by employees of the state acting within the scope of their employment, which does not extend more than [24] inches beneath the existing surface or political subdivisions performing minor routine maintenance within the right-of-way of roads within their jurisdiction.

(7) "Line" means an underground conductor or underground facility used in providing electric or communication service, or an underground pipe used in carrying or providing gas, oil or oil product delivery, sewage, water or other service to one or more consumers or customers of such service and the appurtenances thereto. The term does not include storm drainage facilities which are located within a public highway right-of-way. The term shall not include oil and gas production and gathering pipeline systems designed principally to collect oil or gas production from wells located in this state provided such systems are marked or staked where they cross a public highway right-of-way.

(8) "Minor routine maintenance" means shaping or adding dust palliative to unpaved roads, patching of the surface or base of flexible base, rigid base or rigid surface roads by either manual or mechanized method to the extent of the existing exposed base material, crack and joint sealing, adding dust palliative to road shoulders, patching of shoulders and shoulder bases by either manual or mechanized methods to the extent of the existing exposed base, and cleaning of inlets and drainage pipes and ditches.

(9) "One-call system" means a communication system established within this state to provide a single telephone number for contractors or designers or any other person covered by this act to call to notify users of underground lines and pipe of the caller's intent to use powered equipment for excavating, tunneling, demolition or similar work. A one-call system shall be incorporated and operated as a non-profit corporation pursuant to [insert statute relating to not-for-profit corporations].

(10) "Operator" means any individual in physical control of powered equipment or explosives when being used to perform excavation or demolition work.

(11) "Owner" means any person who or which engages a contractor for a construction or other project which requires excavation or demolition work as herein defined.

(12) "Person" means an individual, partnership, corporation, political subdivision, a municipal authority, the state and its agencies and instrumentalities, or any other entity.

(13) "Powered equipment" means any equipment energized by an engine or motor and used in excavation or demolition work.

(14) "Site" means the specific place or places where excavation or demo-
Section 3. [Duties of Users.] It shall be the duty of each user:
1. To give written notice to the [recorder of deeds] of each county in
   which its lines are located, which notice shall state:
   (i) The name of the user;
   (ii) The names of the county’s municipalities, down to and including
   [insert areas covered], in which its lines are located;
   (iii) The user’s office address (by street, number and political subdi-
   vision), and the telephone number to which inquiries may be directed
   as to the location of such lines.
2. To give like written notice within [five] working days after any of
   the matters stated in the last previous notice shall have changed.
3. To accompany each such written notice with a filing fee of [five] dol-
   lars payable to and for the use of the county.
4. Not more than [10] working days after receipt of a request therefor
   from a designer who identifies the site of excavation or demolition work
   for which he is preparing a drawing, to initially respond to his request,
   orally or by mail, for information as to the position and type of the user’s
   lines at such site based on the information currently in the user’s pos-
   session. If there are no lines at the site, the user shall so advise the per-
   son making the request; if there are lines at the site, the user shall fol-
   low up such initial response. In either instance, such response shall be
   in writing when requested by the designer.
5. Not more than [two] working days after receipt of a timely request
   therefor from a contractor or operator who identifies the site of excava-
   tion or demolition work he intends to perform:
   (i) To mark, stake, locate or otherwise provide the position of the
   user’s underground lines at the site within [18] inches horizontally from
   the outside wall of such line in a manner so as to enable the contractor,
   where appropriate, to employ prudent techniques, which may include
   hand-dug test holes, to determine the precise position of the underground
   user’s lines. This shall be done to the extent such information is avail-
   able in the user’s records or by use of standard location techniques other
   than excavation.
   (ii) A user, at its option, timely may elect to excavate around its fa-
   cilities in fulfillment of this subparagraph.
   (iii) In marking the approximate position of underground utilities,
   the user shall follow the color coding described herein:

<table>
<thead>
<tr>
<th>Utility and Type of Product</th>
<th>Specific Group Identifying Color</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electric Power Distribution and Transmission</td>
<td>Safety Red</td>
</tr>
</tbody>
</table>
Suggested State Legislation

41 Municipal Electric Systems
42 Gas Distribution and Transmission
43 Oil Distribution and Transmission
44 Dangerous Materials, Product Lines,
45 Steam Lines
46 Telephone and Telecommunications
47 Police and Fire Communications
48 Cable Television
49 Water Systems
50 Slurry Systems
51 Sewer Lines
52 Safety Red
53 High Visibility Safety
54 Yellow
55 Safety Alert Orange
56 Safety Alert Orange
57 Safety Precaution Blue
58 Safety Precaution Blue
59 Safety Green
60
61 (iv) If there are no lines at the site, make a reasonable effort to so advise the person making the request, providing the request is made in the time frame set forth in Section 6(3) or notify the one-call system to which it belongs.
62 (6) Upon receipt of a request pursuant to paragraphs (4) or (5) of this section, to assign such request a serial number, inform the requestor of such number and to maintain a register showing the name, address and telephone number of the requestor, the site to which the request pertains, and the assigned serial number.
63 (7) The one-call system shall perform the obligations, as set forth under this section, on behalf of the user and under circumstances as established by the [board of directors] of the one-call system.

Section 4. [Recorder of Deeds; Duties.] It shall be the duty of the [recorder of deeds] of each county:
1 (1) To ascertain from the notices received pursuant to Section 3(1), the identity of all users having lines in each municipality, including areas as indicated in Section 3(1)(ii), and to maintain, for each municipality, a list containing the information as required to be submitted by the user. Such list shall be updated as revised information is received from the users.
2 (2) To make such lists available for public inspection without charge, and to provide a copy of the list pertaining to any municipality to any- one who requests it for a copy fee of [one] dollar per page payable to and for the use of the county. A maximum copy fee of no more than [25] dollars may be charged per list. Each recorder shall provide a copy of such list and revisions thereto, at no charge, to any one-call system servicing any portion of such recorder’s county.

Section 5. [Designers; Duties.] It shall be the duty of each designer preparing a drawing requiring excavation or demolition work within the state:
1 (1) To inspect or obtain copy of the list of users prescribed by Section 4.
2 (2) To request the information prescribed by Section 3(4) from each user’s office designated on such list, not less than [10] nor more than [90]
working days before final design is to be completed. This paragraph is not intended to prohibit designers from obtaining such information more than [90] days before final design is to be completed.

(3) To show upon the drawing the position and type of each line, as derived pursuant to the request made as required by paragraph (2) of this section, and the name of the user, and the user’s designated office address and telephone number as shown on the list referred to in paragraph (1) of this section.

(4) Make a reasonable effort to prepare the construction drawings to avoid damage to and minimize interference with a user’s facilities in the construction area.

(5) A designer shall be deemed to have met the obligations of paragraphs (1) and (2) of this section if he calls a one-call system serving the location where the excavation is to be performed.

Section 6. [Contractors; Duties] It shall be the duty of each contractor who intends to perform excavation or demolition work within this state:

(1) To ascertain types of users’ lines at such site, either by inspection of the designer’s drawing made pursuant to Section 5 or, if there be no such drawing, then by the same manner as that prescribed for a designer in paragraphs (1) and (2) of Section 5.

(2) To secure all necessary municipal permits relating to road occupancy prior to commencing excavation.

(3) Not less than [three] nor more than [10] working days prior to the day of beginning such work, to notify each user of the contractor’s intent to perform such work at its site or sites, and to request the information prescribed by Section 3(b), from each such user’s office designated on the designer’s drawing or on the list of users obtained pursuant to Section 5(1). If a contractor intends to perform work at multiple sites or over a large area, he shall take reasonable steps to work with users so that they may locate their facilities at a time reasonably in advance of the actual start of excavation or demolition work at each site. A contractor shall be deemed to have given the notice described in this paragraph if he calls a one-call system serving the location where the excavation is to be performed.

(4) To exercise due care; and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all lines where positions have been provided to the contractor by the users pursuant to Section 3(b). If insufficient information is available pursuant to Section 3(b), the contractor shall employ prudent techniques, which may include hand-dug test holes, to ascertain the precise position of such facilities, which shall be paid for by the owner pursuant to Section 8(e).

(5) If the user fails to respond to the contractor’s timely request within the [two] work days as provided under Section 3(b) or the user notifies the contractor that the line cannot be marked within the time frame and a mutually agreeable date for marking cannot be arrived at, the contractor may proceed with excavation, providing he exercises due care in his endeavors, subject to the limitations contained in paragraph (6).

(6) To inform each operator employed by him at the location of such
work of the information obtained by him pursuant to paragraphs (1), (3) and (4) of this section, and the contractor and operator shall:

(i) Plan the excavation or demolition to avoid damage to or minimize interference with a user's facilities in the construction area. Excavation or demolition work which requires temporary or permanent interruption of a user's service shall be coordinated with the affected user in all cases.

(ii) After consulting with a user, provide such support for known user's lines in the construction area, including during backfilling operations, as may be reasonably necessary for the protection of such utilities.

(7) To report immediately to the user any break or leak on its lines, or any dent, gouge, groove or other damage to such lines or to their coatings or cathodic protection, made or discovered in the course of the excavation or demolition work.

(8) To alert immediately the occupants of premises as to any emergency that such person may create or discover at or near such premises.

(9) The time requirements of paragraph (3) shall not apply to a user or contractor performing excavation or demolition work in an emergency, as defined in Section 2; nonetheless, all users must be notified as soon as possible before or after excavation or demolition, depending upon the circumstances.

(10) A contractor or operator should give such notices as are called for above through a one-call system, as available.

(11) A contractor may use the color white to mark a proposed excavation site.

(12) The following standards shall be applied in determining whether a contractor or designer shall incur any obligation or be subject to liability as a result of a contractor's demolition or excavation work damaging a user's facilities:

(i) Neither a contractor nor a designer who has complied with the terms of this act and who was not otherwise negligent shall be subject to liability or incur any obligation to users, operators, owners or other persons who sustain injury to person or property as a result of the contractor's excavation or demolition work damaging a user's facilities.

(ii) Where a contractor or designer has failed to comply with the terms of this act or was otherwise negligent, and the user has misidentified, mislocated or failed to identify its facilities pursuant to this act, then in computing the amount of reimbursement to which the user is entitled, the cost of repairing or replacing its facilities shall be diminished in the same proportion that the user's misidentification, mislocation or failure to identify its facilities contributed to the damage. Should the user not have misidentified, mislocated or failed to identify its facilities pursuant to this act, there shall be no diminution of the user's right of recovery.

(iii) Where a contractor or designer has failed to comply with the terms of this act or was otherwise negligent, and the user has misidentified, mislocated or failed to identify its facilities pursuant to this act, then in computing the amount of damages to which the contractor or
designer is entitled from the user, the contractor's or designer's total
damages shall be diminished in the same proportion that the contrac-
tor's or designer's failure to comply with the terms of this act and/or other
negligence contributed to the damages. Should the contractor or design-
er not have failed to comply with the terms of this act or been otherwise
negligent, there shall be no diminution of the contractor's or designer's
right of recovery.

Section 7. [Effect on Existing Laws and Ordinances.] This act shall not
be deemed to amend or repeal any other law, state regulation or any lo-
cal ordinance enacted pursuant to law concerning the same subject mat-
ter, it being the legislative intent that any such other law or local or-
dinance shall have full force and effect where not inconsistent with this
act.

Section 8. [One-Call Systems.]
(a) All users shall be required to be members of a one-call system. Oper-
ation costs for a one-call system shall be shared, in an equitable man-
er for services received, by user members. Political subdivisions with
a population of less than [2,000] persons or municipal authorities hav-
ing an aggregate population in the area served by the municipal author-
ity of less than [5,000] persons shall be exempt from payment of any serv-
ices fee other than for actual communications to the political subdivision.
(b) A one-call system shall be governed by a [board of directors], to be
chosen by the users. No less than [20] percent of the seats on the board
shall be held by municipalities or municipal authorities, including the
state.
(c) The [auditor general], for the purposes set forth in this subsection,
and any contractor, user or member of a one-call system shall have the
right at any time to inspect and copy any record, book, account, docu-
ment or any other information relating to the provision of one-call serv-
ces by the one-call system or by a person with whom the one-call sys-
tem contracts for the provision of such services in [state].
The [auditor general] shall conduct an annual performance and finan-
cial audit of each one-call system. If a one-call system does not provide
the actual one-call services, the [auditor general] shall also conduct such
an audit of the person with whom the one-call system contracts for pro-
vision of one-call services in [state]. A copy of any audit conducted by
the [auditor general] under this subsection shall be submitted to the
[legislative body] no later than [60] days following the end of the fiscal
year of the one-call system or person being audited.
Each one-call system shall submit an annual report to its users and
members, and a copy of the report shall be submitted to the [legislative
body].
(d) If a user fails to become a member of a one-call system in violation
of this act and a line or lines of such non-member user are damaged by
a contractor by reason of the contractor's failure to notify the user be-
cause the user was not a member of a one-call system serving the loca-
tion where the damage occurred, such user shall have no right of recovery.
from the contractor of any costs associated with the damage to its lines.

The right herein granted shall not be in limitation of any other rights of the contractor.

(e) When the information required from the user under Section 3 cannot be provided or it is reasonably necessary for the contractor to ascertain the location of any line by prudent techniques, which may include hand-dug test holes, the contractor shall promptly notify the owner or the owner’s representative, either orally or in writing. After giving such notice, the contractor shall be entitled to compensation from the owner for this additional work on the basis as provided in the [insert appropriate source of specifications for extra work performed on a force account basis], if the owner is the state or a political subdivision or municipal authority or public utility. Otherwise, payment will be made as provided in the contract between the parties. The provisions of this subsection shall not be deemed to limit any other rights which the contractor has under its contract with the owner or otherwise.

(f) No user shall be liable for any costs or expenses of a one-call system which were incurred prior to such user becoming a member, unless such costs were incurred on the user’s behalf in anticipation of the user’s membership.

(g) Any contractor, designer or operator who proposes to commence excavation or demolition work and requests information of the one-call system shall be charged a fee for the service received from the one-call system. Such fee shall be used to offset the operation cost levied on the political subdivision and municipal authority members.

Section 9. [Violations; Penalties; Injunction; Effect on Civil Remedies.]

Any person violating any of the provisions of this act, except Section 8, shall, upon conviction in a summary proceeding, be sentenced to pay a fine of not less than [500] dollars nor more than [2,500] dollars or undergo imprisonment for not more than [90] days, or both. A violation of Section 8 shall be a civil offense punishable by a fine of not more than [500] dollars per day for each day of the offense. The [attorney general] or any district attorney may enforce the provisions of this act in any court of competent jurisdiction and shall act upon the petition of any user. A user may petition any court of competent jurisdiction to enjoin any excavation or demolition work conducted in violation of this act. This act does not affect any civil remedies for personal injury or property damage except as otherwise specifically provided for in this act.

Section 10. [Effective Date] [Insert effective date.]
Unsolicited Telefacsimile Advertising Act

Facsimile or "fax" machines are rapidly becoming a favorite method of communication. These machines tend to be turned on and hooked up to dedicated phone lines 24 hours a day and receive any document that is sent to them. As a result, they are open to potential misuse and to the receipt of unsolicited advertising or transmissions which have come to be known as "junk fax."

This act, based on 1989 New York legislation, prohibits the unsolicited transmission of such advertising messages, with certain exceptions. It does not apply to such advertising transmitted between persons who have a previous business relationship; nor does it apply to transmissions of five pages or less received between the hours of 9:00 P.M. and 6:00 A.M. The act does, however, prohibit sending such messages to recipients who have previously sent written or telex facsimile notice to the initiators clearly indicating they do not want to receive these advertisements. Persons receiving such transmissions in violation of the act may bring action to recover actual damages or $100, whichever is greater.

Several states have considered other proposals. In considering other approaches to the issue, the reader may wish to consult legislation enacted in 1989 by the states of Connecticut (HB 5396, P.A. 89-103) and Maryland (HB 1319, Ch. 825). The Connecticut act allows a fine of $200 for violators of its provision prohibiting the transmission of unsolicited advertising material and declares a person guilty of harassment when that person transmits a facsimile in a manner likely to cause annoyance or alarm. The Maryland legislation also prohibits transmittals for commercial solicitation; violation of the provision could initiate civil action by the state attorney general, with a penalty not to exceed $1,000 per violation.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Unsolicited Telefacsimile Advertising Act.

Section 2. [Unsolicited Telefacsimile Advertising.] It shall be unlawful for a person, corporation, partnership or association to initiate the unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient of such messages. For purposes of this act, "telefacsimile" shall mean every process in which electronic signals are transmitted by telephone lines for conversion into written text. This act shall not apply to telefacsimile messages sent to a recipient with whom the initiator has had a prior contractual or business rela-
tionship nor shall it apply to transmissions not exceeding [five] pages
received between the hours of [9:00 P.M.] and [6:00 A.M.] local time. Not-
withstanding the above, it shall be unlawful to initiate any telefacsimile
message to a recipient who has previously sent a written or telefacsimile
message to the initiator clearly indicating that the recipient does
not want to receive telefacsimile messages from the initiator.

Section 3. [Penalty.] Any person who has received a telefacsimile trans-
mission in violation of this act may bring an action in his own name to
recover his actual damages or [100] hundred dollars, whichever is
greater.

Section 4. [Effective Date] [Insert effective date.]
Telephone Recorded Message Services Act

Since 1983, when the first one began, the growth in telephone pay access lines or dial-it services has been phenomenal. Annual revenue from “900” line services has been estimated at about $330 million nationwide. Recently, however, these services have come under attack from a variety of groups—unsuspecting parents whose children have run up hundreds of dollars worth of these phone calls; opponents who have argued that the services, especially dial-a-porn services, may not be protected by the First Amendment; along with consumers who have complained about the misleading nature of the vendors’ advertising techniques. The states have jurisdiction over those services that are intrastate, and several have passed measures restricting “900” lines in their respective states.

This act, based on 1988 Pennsylvania legislation, requires that any telephone message service that provides a commercial, informational, public service or other message for a specific charge billed to the caller by a local phone company, must warn the caller—prior to the presentation of the message—that the cost will be charged to and itemized on the caller’s telephone bill. It also requires that the warning inform callers of a message that contains explicit sexual material.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Telephone Recorded Message Services Act.

Section 2. [Notice] Any telephone message service that provides a commercial, informational, public service or other message for a specific charge billed to the caller by a local phone company, prior to the presentation of the message, shall warn the caller that the cost of the call will be charged and that the charge will be itemized on the caller’s telephone bill. In the event the message requested contains explicit sexual material, the warning preceding the message shall also inform the caller the message contains explicit sexual material.

Section 3. [Intrastate Services] Before any call can be completed to any telephone message service containing explicit sexual material, the caller shall have first obtained an access code number or other personal identification number consisting of not less than nine digits from the telephone message service through written application to the telephone message service. This access code number or personal identification number must be presented to the telephone message service after the
warning message and in order to complete the call.

Section 4. [Dissemination to Minors.] Access codes or personal identification numbers obtained to complete calls containing explicit sexual material as defined in [insert appropriate state statute relating to obscene and other sexual materials] shall not be issued to a minor. Telephone message services shall exercise all reasonable methods to ascertain that the applicant is not a minor.

Section 5. [Telephone Company Duties.] Every local telephone company and competitive interexchange telephone service shall list all telephone message service calls on the customer telephone bill and shall designate the type or title of message obtained. In addition, the telephone company shall provide, upon request, at no cost to the customer, the name and address of any telephone service provider. All telephone companies shall include in their telephone message service tariffs, whether provided through the 976 exchange or otherwise, or in any contract with such telephone message service sponsor, a clause requiring compliance with this act as a condition for continuation of the service.

Section 6. [Costs of Service.] (a) All costs relating to this act shall be borne solely by the telephone message service. (b) All telephone message services shall provide, in writing, to all telephone companies and competitive interexchange telephone companies providing service in this state, their complete telephone number or numbers, including area codes and type or title of service provided. This information shall be provided at the time of newly established service, change in service and annually.

Section 7. [Blocking Access.] Every telephone company shall, except to the extent that written authorization is required by a customer for availability of access to all or certain types of telephone message services, provide to customers the option of having access to such telephone message services blocked. The telephone company may not charge the customer any fee or other cost for blocking access to availability of telephone message services unless such telephone company has already provided such blocking to the customer without fee.

Section 8. [Enforcement.] (a) The [public utility commission] shall promulgate rules or regulations to ensure the compliance of telephone companies providing messages covered by this act. (b) The failure of a telephone company to comply with this act shall be a violation of this act and the telephone company shall be subject to enforcement proceedings pursuant to [insert appropriate state statute]. (c) Failure of a telephone message service to comply with this act shall be a violation of the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law, and [in-
Telephone Recorded Message Services Act

11 sect appropriate state statute relating to theft and related offenses.

1 Section 9. [Effective Date] [Insert effective date.]
Child Day Care Acts

In recent years, the growing number and influence of working mothers has heightened social awareness about the availability, affordability and quality of child day care. But child care has become much more than a "family issue." It has been transformed into an economic- and workforce-related issue.

In the absence of federal legislation, the states have taken the lead in addressing child care issues. The three acts presented here—based on legislation from Connecticut, Utah and Massachusetts—represent some of the approaches states have adopted or are currently considering in the area of child day care.

Comprehensive Child Day Care Management System Act

This act, based on 1986 Connecticut legislation, authorizes the state department of human resources to provide financial assistance in the form of state grants-in-aid for the development of additional day care and neighborhood facilities. It further establishes a tax-credit program for businesses that subsidize employee day care purchases, and a three-year pilot program providing grants to municipalities to encourage the use of school facilities for the provision of before- and after-school child care services by private entities.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the Comprehensive Child Day Care Management System Act.

1 Section 2. [Definitions.] As used in this act:

1 (1) "Business firm" means any business entity authorized to do business in the state and subject to the corporation business tax imposed under [insert appropriate state statute] or any insurance company, hospital or medical services corporation subject to the insurance companies, hospital and medical services corporations tax imposed under [insert appropriate state statute], or any air carrier subject to the air carriers tax imposed under [insert appropriate state statute], or any railroad company subject to the railroad companies tax imposed under [insert appropriate state statute], or any express, telegraph, telephone, cable or community antenna television company subject to the express, telegraph, telephone, cable and community antenna television companies tax imposed under [insert appropriate state statute], or any utility com-
pany subject to the utility companies tax imposed under [insert appropriate state statute], or any public service company subject to the public service companies tax imposed under [insert appropriate state statute].

(2) "Child day care services" means:

(i) A "child day care center" which offers or provides a program of supplementary care to more than [12] related or unrelated children outside their own homes on a regular basis for a part of the 24 hours in [one or more] days in the week;

(ii) A "group day care home" which offers or provides a program of supplementary care to not less than [seven] nor more than [12] related or unrelated children on a regular basis for a part of the 24 hours in [one or more] days in the week;

(iii) A "family day care home" which consists of a private family home caring for not more than [six] children, including the provider's own children not in school full time, where the children are cared for not less than [three] nor more than [12] hours during a 24-hour period and where care is given on a regularly recurring basis.

(3) For registration and licensing requirement purposes, "Child day care services" does not mean such services which are:

(i) Administered by a public or private school system which is in compliance with [insert appropriate state statute];

(ii) Recreation operations such as but not limited to boys' and girls' clubs, church related activities, scouting, camping or community youth programs;

(iii) Informal arrangement among neighbors or relatives in their own homes; or

(iv) Drop-in supplementary child care operations where parents are on the premises for educational or recreational purposes and the child receives such care infrequently.

(4) "Commissioner" means the [commissioner of human resources].

(5) "Department" means the [department of human resources].

Section 3. [Lead Agency for Child Care Services; Duties.] The [department of human resources] shall be the lead agency for child day care services in [state]. The department shall:

1. Identify, annually, existing child day care services and maintain an inventory of all available services;

2. Provide technical assistance to corporations and private agencies in the development and expansion of child day care services for families at all income levels, including families of their employees and clients;

3. Study and identify funding sources available for child day care including federal funds and tax benefits;

4. Study the cost and availability of liability insurance for child day care providers;

5. Provide, in conjunction with the [department of education], on-going training for child day care providers including preparing videotaped workshops and distributing them to cable stations for broadcast on public access stations, and seek private donations to fund such training;

6. Develop for recommendation to the governor and the legislature
measures to provide incentives for the private sector to develop and support expanded child day care services;

(7) Provide, within available funds and in conjunction with the [WIN incentive program] as defined in [insert appropriate state statute], child day care to public assistance recipients; and

(8) Report annually to the governor and the legislature on the status of child day care in [state].

Section 4. [State Financial Assistance to Projects.]

(a) The state, acting by and in the discretion of the [commissioner of human resources], may enter into a contract with a municipality or a human resource development agency, as defined in [insert appropriate state statute], for state financial assistance for a project of development of child day care facilities and neighborhood facilities for carrying out programs of health, recreational, social or similar community services in the form of a state grant-in-aid equal to:

(1) [Two-thirds] of the net cost of the project as approved by the [commissioner], or

(2) Where the project is assisted by the federal Department of Housing and Urban Development, under the federal Housing and Urban Development Act of 1965, as amended, [one-half] of the amount by which the net cost of the project, as approved by the [commissioner], exceeds the federal grant-in-aid thereof.

(b) The state, acting by and in the discretion of the [commissioner of human resources], may enter into a contract with a municipality or a human resource development agency for state financial assistance in developing and operating child day care centers for children disadvantaged by reasons of economic, social or environmental conditions, provided no such financial assistance shall be available for the operating costs of any such day care center unless it has been licensed by the [commissioner of health services] pursuant to this act, such financial assistance shall be available for a program of a municipality or of a human resource development agency which may provide for personnel, equipment, supplies, activities, program materials and renovation and remodeling of physical facilities of such day care centers. Such contract shall provide for state financial assistance, within available appropriations, in the form of a state grant-in-aid

(1) For a portion of the cost of such program as determined by the [commissioner of human resources], if not federally assisted; or

(2) Equal to [one-half] of the amount by which the net cost of such program as approved by the [commissioner] exceeds the federal grant-in-aid thereof.

(c) The state, acting by and in the discretion of the [commissioner] may enter into a contract with a municipality or a human resource development agency for state financial assistance for a project of renovation of any child day care facility receiving assistance pursuant to the provisions of this section, to make such facility accessible to the physically disabled, in the form of a state grant-in-aid equal to

(1) The total net cost of the project as approved by the [commissioner-
er]; or

(2) The total amount by which the net cost of the project as approved by the [commissioner] exceeds the federal grant-in-aid thereof.

d) Any municipality or human resource development agency which enters into a contract pursuant to this section for state financial assistance for a day care facility shall have sole responsibility for the development of the budget of the day care program, including, but not limited to personnel costs, purchases of equipment, supplies, activities and program materials, within the resources provided by the state under said contract. Upon local determination of a change in the type of day care service required in the area, a municipality or human resource development agency may, within the limits of its annual budget and subject to the provisions of this act, change its day care service. An application to change the type of day care service provided shall be submitted to the [commissioner of human resources]. Within [45] days of his receipt of the application, the [commissioner] shall advise the municipality or human resource development agency of his approval, denial or approval with modifications of the application. If the [commissioner] fails to act on the application within [45] days of its submittal, the application shall be deemed approved.

e) The [commissioner of human resources] may in his discretion with the approval of the [secretary of the office of policy and management] authorize the expenditure of such funds for the purpose of this section as shall enable the [commissioner of human resources] to apply for, qualify for and provide the state’s share of a federally assisted day care program.

(f) Whenever a contract is entered into pursuant to subsection (a) of this section for state financial assistance for a project of development of a child day care facility or a neighborhood facility or, pursuant to subsection (b) of this section, for state financial assistance in developing a child day care center, the [commissioner of human resources] shall require assurances from the municipality or the human resource development agency that such facility or center shall continue to be used as a child day care facility or neighborhood facility and to assure that state funds are equitably recouped by the state upon termination of the use of such facility or center as a day care facility or neighborhood facility. In determining the amount of recoupment, the [commissioner] shall take into consideration the nature and cost of improvements and the length of time the facility or center is used as a child day care facility or neighborhood facility. The contract shall include the time within which the state shall require such recoupment.

Section 5. [Purchase of Services.] The [commissioner of human resources] may, in his discretion, purchase services from licensed day care centers, licensed group day care homes, registered family day care homes, providers giving day care in the child’s home and a relative. The purchase of such services shall be contracted only for the benefit of those children who, in the determination of the [commissioner], are disadvantaged by reason of economic, social or environmental conditions. The cost
of the purchase of such services shall not exceed the average prevailing
cost per child in state-funded day care centers. The [commissioner] shall
adopt regulations in accordance with the provisions of [insert appropriate
state statute] to establish the standard of eligibility and the level
of payment for such services. On or after [insert date], the [commissioner]
shall pay the same amount for each child in the same family.

Section 6. [Tax Credit for Child Care Subsidies]
(a) Any business firm which desires to provide subsidies to its em-
ployees for child day care from registered or licensed providers, approved
by the [commissioner of human resources] pursuant to this section, may
apply to the [commissioner of human resources] for an allocation for a
tax credit in an amount as provided in subsection (d) of this section. The
application for such credit shall set forth the cost of the day care provid-
ed to the employees; the salary of each employee to whom such subsidy
is provided; the number of the employees' children who benefit from the
subsidy; the name and address of the licensed or registered day care pro-
vider caring for the employees' children; and the weeks in which such
children will be under the care of such provider. Such proposals shall
be submitted to the [commissioner] on or before [insert month] of the year
before such expenditures are to be made. The [commissioner] shall ap-
prove or disapprove each proposal within [60] days of its submission to
the [commissioner] based on:

(1) The compliance of such proposal with the provisions of this sec-
tion;
(2) Regulations adopted pursuant to subsection (f) of this section; and
(3) The amount of tax credits remaining in the annual allotment
provided in this section for the year involved. The [commissioner] shall
approve proposals in the order in which they are received in his office.
If the [commissioner] approves the proposal of the business firm and if
the limit for tax credit for that year has not yet been allocated, the [com-
missoner] shall allocate and commit to such business firm an amount
of tax credits equal to the estimated amount which will be expended dur-
ing that year by such firm on such proposal. Any business firm receiv-
ing such an allocation shall, within [30] days of the end of the year, sub-
mit a report on its actual expenditures under this section for such year.

(b) Any tax credit not used in the period the investment was made may
be carried forward or backward for the [five] immediately succeeding or
preceding calendar or fiscal years until the full credit has been allowed.

(c) In no event shall the total amount of all tax credits allowed to all
business firms pursuant to the provisions of this section exceed [250,000]
dollars in any one fiscal year.

(d) The [commissioner of revenue services] shall grant a credit against
any tax due under the provisions of [insert appropriate state statute] in
an amount not to exceed [50] percent of the total amount invested dur-
ing the taxable year by the business firm in programs operated or created
pursuant to proposals approved in accordance with subsection (a).

(e) The decision of the [commissioner of human resources] to approve
or disapprove a proposal pursuant to the provisions of subsection (a) of
this section shall be in writing, and, if he approves the proposal, he shall
state the maximum credit allowable to the business firm. A copy of such
decision shall be attached to the tax return of the business firm upon
which the tax credit granted pursuant to such section is claimed.
(f) The [commissioner of human resources], in consultation with the
[office of policy and management] shall adopt regulations in accordance
with the provisions of [insert appropriate state statute] to implement
the provisions of this section.
(g) The [commissioner of human resources] shall report [annually], to
the [legislative committees] having cognizance of matters relating to hu-
man services and on finance, revenue and bonding, on the operation of
the program established in this section.

Section 7. [Family Day Care Home Services; Registration.]
(a) No person, group of persons, association, organization, corporation,
institution or agency, public or private, shall maintain a family day care
home, as defined in this act, without a registration issued by the [com-
missioner of human resources]. Registration forms shall be obtained
from the [department of human resources] which may purchase services
pursuant to Section 5 of this act. Applications for registration shall be
made to the [commissioner of human resources] on forms provided by
him and shall contain the information required by regulations adopted
under this section. The registration and application forms shall contain
a notice that false statements made therein are punishable in accordance
with [insert appropriate state statute]. Applicants shall state, in writ-
ing, that they are in compliance with the regulations adopted by the
[commissioner of human resources] pursuant to subsection (b) of this sec-
tion. Before a family day care home registration is granted, the [depart-
ment] shall make an inquiry and investigation which may include a visit
and inspection of the premises for which the registration is requested.
The [commissioner] shall not require an annual inspection for homes
seeking registration or registered homes except that the [commission-
er] shall make unannounced visits, during customary business hours,
to at least [10] percent of the registered family day care homes each year.
(b) The [commissioner of human resources] shall adopt regulations, in
accordance with the provisions of [insert appropriate state statute], to
assure that family day care homes shall meet the health, educational
and social needs of children utilizing such homes.
(c) Each registration issued under this section shall be for a term of
[one] year. The [commissioner] shall collect a fee of [10] dollars for such
registration.

Section 8. [Family Day Care Home Services; Penalty for Violation.]
(a) Any person or officer of an association, organization or corporation
who shall establish, conduct, maintain or operate a family day care
home, as defined in this act, without a current and valid registration or
in violation of the regulations adopted under [insert appropriate state
statute] and Section 7 of this act, shall be fined not more than [100] dol-

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lars a day for each day that such home is operated without a registration or in violation of the regulations.

(b) The [commissioner of human resources] may request the [attorney general] to bring an action, in the [insert appropriate court] for the judicial district in which such home is located, to enjoin any person, group of persons, association, organization, corporation, institution or agency, public or private, from maintaining a family day care home, as defined in this act, without a registration or in violation of regulations adopted under [insert appropriate state statute] and Section 7 of this act, and satisfactory proof of the lack of a registration or the violation of the regulations without more shall entitle the [commissioner] to injunctive relief.

Section 9. [Family Day Care Home Services; Refusal, Suspension, Revo- 
cation of Registration.]
(a) The [commissioner of human resources] shall have the discretion to refuse to register under [insert appropriate state statute] and Section 7 of this act, a person to conduct, operate or maintain a family day care home, as defined in this act, or to suspend or revoke the registration, if the person who owns, conducts, maintains or operates the home or a person employed therein in a position connected with the provision of care to a child receiving child day care services, has been convicted of a felony as defined in [insert appropriate state statute], or has a criminal record that the [commissioner] reasonably believes renders the person unsuitable to own, conduct, operate or maintain or be employed by a family day care home, or if such persons or a person residing in the household has been convicted of cruelty to persons under [insert appropriate state statute], injury or risk of injury to or impairing morals of children under [insert appropriate state statute], abandonment of children under the age of six years under [insert appropriate state statute], sexual assault in the fourth degree under [insert appropriate state statute], illegal manufacture, distribution, sale, prescription, dispensing or administration under [insert appropriate state statute], or illegal possession under [insert appropriate state statute]. However, no refusal of a registration or license shall be rendered except in accordance with the provisions of [insert appropriate state statute].

(b) Any person who is registered to conduct, operate or maintain a family day care home shall notify the [commissioner] of any conviction of the owner, conductor, operator or maintainer of the family day care home or of any person residing in the household or any person employed therein in a position connected with the provision of care to a child receiving child day care services, of a crime which affects the [commissioner]'s discretion under subsection (a) of this section, immediately upon obtaining knowledge of such conviction. Failure to comply with the notification requirement may result in the suspension or revocation of the registration and shall subject the registrant to a fine of not more than [100] dollars per day for each day after the person obtained knowledge of the conviction.

(c) It shall be a [class A misdemeanor] for any person seeking employ-
Section 10. [Establishment of Pilot Program for Before and After School Child Care Services.] The [commissioner of human resources] shall establish a three year pilot program to provide grants to municipalities to encourage the use of school facilities for the provision of child day care services before and after school by private entities. In order to qualify for a grant, a municipality shall guarantee the availability of a school site which meets the standards set by the [department of health services] in regulations adopted under [insert appropriate state statute] and this act, and shall agree to provide liability insurance coverage for the program. Grant funds shall be used by the municipality for maintenance and utility costs directly attributable to the use of the school facility for the day care program and for the portion of the municipality liability insurance cost directly attributable to the day care program. The municipality shall contract with a child day care provider for the program after a competitive bidding process. The contract shall limit the amount the provider may charge under the program to the provider’s base cost per capita plus a percentage of the base cost. The [commissioner of human resources] may adopt regulations, in accordance with the provisions of [insert appropriate state statute], for purposes of this section.

Section 11. On or before [insert date], the [commissioner of human resources] shall investigate joining a public and private partnership to establish a comprehensive child care network linked to employment in the [insert area of state] and report any findings and recommendations to the legislature.

Section 12. [Appropriation.] [Insert appropriation amount.]

Section 13. [Repealer.] [Insert repealer clause.]

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

Day Care Centers in Public Schools Act

This act, based on 1989 Utah legislation, provides that local school boards may authorize the use of school buildings as places to provide day care services for preschool and school-aged children. It allows the school board to charge a commercially reasonable fee for the use of the school building as a child day care center so that the district does not incur an
Suggested State Legislation

expense. The act states that the day care service may be provided by governmental agencies (other than school districts), nonprofit community service groups or private providers. Centers established within a public school building are to make their services available to all children regardless of where the children reside; however, if space and resources are limited, first priority would be given to those who reside within the school boundaries where the center is located.

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Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Day Care Centers
2 in Public Schools Act.

1 Section 2. [Authorization.]
2 (a) Upon receiving a request from a community group such as a community council, local PTA, or parent/student organization, a local school board may authorize the use of a part of any school building in the district to provide child care services for preschool and school-aged children.
3 (b) Establishment of a child care center in a public school building is contingent upon the local school board determining that the center will not interfere with the building's use for regular school purposes. The board may authorize the use of part of a school building for a child care center only if the school is in compliance with [insert appropriate state statute]. The child care center may not include more than [5] percent of the total available classroom space in the school building. Such decision shall be made at the sole discretion of the school board. A school board may withdraw its approval to operate a day care center at any time if it determines that such use interferes with the operation or interest of the school. The school district and its employees and agents are immune from any liability that might otherwise result from a withdrawal of approval if the withdrawal was made in good faith.
4 (c) The board shall charge a commercially reasonable fee for the use of a school building as a child care center so that the district does not incur an expense. The fee shall include but not be limited to costs for utility, building maintenance, and administrative services supplied by the school that are related to the operation of the child care center.
5 (d) Child care service may be provided by governmental agencies other than school districts, nonprofit community service groups or private providers. It is intended that these programs function at the local community level with minimal state and district involvement as set out in subsection (e).
6 (e) It is the intent of the legislature that providers not be required to go through a complex procedure in order to obtain approval for providing the service.
7 (f) Child care centers within a public school building shall make their
services available to all children regardless of where the children reside. If space and resources are limited, first priority shall be given to those who reside within the school boundaries where the center is located, and to the children of teachers and other employees of the school where the child care center is located. Second priority shall be given to those who reside within the school district boundaries where the center is located.

(g) The school board shall require proof of liability insurance which is adequate in the opinion of the school board for use of school property as a child day care center.

(h) Child day care centers established under this section shall operate in compliance with state and local laws and regulations, including zoning and licensing requirements and applicable school rules.

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

Child Care Linkage Act

This act is based on legislation that was pending in Massachusetts at the time of publication. It requires developers, with certain exceptions, who construct or renovate a project of at least 50,000 square feet to provide for the construction of an on-site or near-site child care center or to contribute to a child care linkage fund. The act provides that the child care center be made available to a licensed child care provider without charge for rent and other building services. It further provides that developers will not be granted a building permit until a plan for fulfilling the child care linkage requirements has been submitted to the local building inspector. The act also allows domestic or foreign corporations a tax deduction for the additional expenses incurred for the construction, renovation, erection or improvement of child care facilities resulting in an increase in the number of children served.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Child Care Linkage Act.

Section 2. [Legislative Findings and Declarations.] The legislature finds and declares that a serious emergency exists with respect to the shortage of quality and affordable child care in the state, especially for low- and moderate-income households. The legislature further finds that it is improbable that factors inhibiting the supply of child care will be mitigated by the marketplace without general governmental intervention.

It is hereby declared the lack of child care is a serious and growing prob-
Suggested State Legislation

Suggested State Legislation

Suggested State Legislation

lom, injurious and inimical to the safety, health and welfare of the resi-
dents of the state. The problem constitutes an economic and social lia-
ability, and substantially impairs and arrests sound growth of cities and
towns. The economic and social interdependence of different communi-
ties and of different areas within a single community necessitates that
the problem be addressed by a comprehensive plan in order to achieve
a permanent solution.

Section 3. [Definitions] As used in this act, unless otherwise indicated:
(1) "Child care linkage advisory board" or "advisory board" means the
statewide board established pursuant to this act to advise the [execu-
tive office of communities and development] on all matters related to im-
plementation of this act.
(2) "Child care linkage fee" means a fee equal to [2] percent of the rental
fee in the development project multiplied by the total square footage of
the development project and paid into the child care linkage fund each
year for [10] years.
(3) "Child care linkage fund" means the total child care linkage fees
collected by a municipality and maintained in a revolving fund, as
provided in Section 9 for disbursement through the child care linkage
grant program.
(4) "Child care linkage grants" means the grants to be issued by the
local linkage board to grant applicants for the expansion of child care
services and for a sliding fee scale to help low- or moderate-income fam-
ilies utilize such additional services or capacity.
(5) "Child care provider" means a person or nonprofit organization that
meets applicable [office for children] licensing standards required to es-
tablish and maintain a child care center.
(6) "Community" means the city or town in which a development pro-
ject occurs; provided, however, that if said city or town contains less than
[50,000] residents, "community" may also include cities and towns con-
tiguous to said city or town, at the discretion of the child care linkage
advisory board.
(7) "Developer" means an applicant seeking a building permit for a
development project and such applicant's successors and assigns.
(8) "Development project" means any new construction of a commer-
cial or industrial building or any addition, extension, conversion, en-
largement or combination thereof made to an existing commercial or
industrial building or any conversion to a commercial or industrial build-
ing except for those projects described in Section 15. For the purposes
of this definition, "building" means a building as defined in [insert ap-
propriate state statute] and "commercial or industrial" means commer-
cial or industrial property as defined in [insert appropriate state statute].
(9) "Local linkage board" means the local board established in a munici-
pality to advise the municipality on all matters related to the implementa-
tion of this act and responsible for the disbursement of the monies in
the child care linkage fund in accordance with the provisions of Section
14.
(10) "Low- or moderate-income" means families or persons whose gross
monthly income is equal to or less than [115] percent of the state median income, as determined by the United States census bureau and adjusted annually by a percentage amount equal to the percentage rise in the United States consumer price index.

(11) "Near-site" means a location in the same community as and in reasonable proximity to the development project.

(12) "On-site" means a location on the premises of the development project.

(13) "Rental fee" means the average collected rent per square foot per year as determined by the [board of assessors] in a municipality based on the actual or assumed market rent of the development project, whichever is greater.

Section 4. [Development Projects to Include Child Care Center.] Any developer of a commercial or industrial development project who applies for a building permit to construct or change the use of a development project of at least [50,000] square feet or to construct on a development project an addition of at least [50,000] square feet or to renovate an area of at least [50,000] square feet in a development project shall:

(1) Provide for the construction of an on-site or near-site child care center in accordance with the provisions of this act;

(2) Provide for the construction of an on-site or near-site child care center in consortium with one or more other developers in accordance with Section 7;

(3) Provide for the contribution of a fee to a child care linkage fund in accordance with Section 9;

(4) Provide for a combination of contributing to the construction of a child care center and paying a partial fee in accordance with Section 10; or

(5) Obtain an exemption in accordance with Section 15.

Section 5. [Child Care Center Requirements.] (a) A child care center constructed pursuant to this act shall:

(1) Have a minimum gross floor area of [2] percent of the total new, additional or renovated square feet of floor area or in the event of a change in use, [2] percent of the total square feet of floor area for which the use has been changed;

(2) Be provided to a licensed nonprofit child care provider without charge for rent, utilities, property taxes, building services or any other charges relating to the physical structure or space; provided, however, that the child care provider shall be responsible for other operating costs of the child care center, including, but not limited to, salaries, supplies and liability insurance not related to the physical structure or space of the building; and provided, further, that if, a nonprofit child care provider cannot be contracted with, the center shall be provided to a licensed for profit child care provider;

(3) Be provided for [10] years commencing with the opening of the child care center for use by children, or until the developer demonstrates that there is no longer a need for the child care center; and
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(4) Comply with all applicable licensing requirements of the [office for children] for any such facility.

(b) Enrollment priority for the child care center shall be granted in the following order to:

(1) Low- and moderate-income employees working at the development project;

(2) Other employees working at the development project;

(3) Low- and moderate-income families of the community;

(4) Other families of the community.

Section 6. [Granting Building Permit; Certificate of Occupancy.]

(a) A developer shall indicate his intention to comply with this act and the manner of such compliance at the time of application for a building permit. No developer shall be granted a building permit until a plan for fulfilling the child care linkage requirements has been submitted to the local building inspector.

(b) All developers subject to the requirements of this act shall record in the [registry of deeds or land registration office] where the land lies a covenant upon the title deed obligating the developer to fulfill the selected linkage requirement prior to receiving a certificate of occupancy. The municipality shall not issue a certificate of occupancy unless a copy of the covenant has been provided to the building inspector and the advisory board.

(c) A developer choosing to provide an on-site child care center whether by himself or in consortium, shall indicate such center on all the plans of the development project. No developer choosing to provide an on-site child care center shall be granted a certificate of occupancy until such center has been completed in accordance with all applicable [office for children] regulations.

Section 7. [Consortium.] For developers choosing to participate in a consortium, the following shall apply: two or more developers may elect to provide a single child care center on the premises of one of the development projects, to be known as an on-site consortium, or in a location within reasonable proximity to all of the development projects, but not on the same site as any one such project, subject to approval of the local linkage board, to be known as a near-site consortium.

Section 8. [Posting Bond.]

(a) A developer choosing to construct a near-site child care center, whether by himself or in consortium, to contribute to the linkage fund, or to combine a near-site child care center with a contribution, shall post a bond with the municipal tax collector prior to the issuance of a building permit. The bond shall be for the estimated full amount of the child care linkage fee over a [10-] year period as estimated by the local board of assessor based upon the projected average rental fee of the building, using buildings of similar use and location as a guide. Upon completion of the linkage requirement for each year, the municipal tax collector shall partially release the bond posted by the developer in an amount
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equal to the imputed value for that year as derived in the original cal-
culation of the linkage fee. A developer who fails to open or mainta-
ain a complying child care center within [two] years after receiving a cer-
tificate of occupancy for the development project shall forfeit that por-
tion of the bond equal to that year's child care linkage fee payment and
for each year he continues to fail to meet his linkage obligations. Said
forfeited portion of the bond shall be deposited in the child care linkage
fund, established in Section 9 and shall be treated as if it were the child
care linkage fee payment.
(b) To meet the requirements of this act, a municipality may expend
annually up to [10] percent of the actual child care linkage fees for the
current calendar year for administration of the linkage program.

Section 9. [Child Care Linkage Fund.]
(a) For developers choosing to contribute to the child care linkage fund,
the following shall apply: on [insert date] of each year, the municipal tax
collector shall collect the annual child care linkage fee payment from
the developer. A developer shall make [10] such payments; provided, how-
ever, that the first such payment shall be at least [one] year after the
granting of the certificate of occupancy to the developer. All such pay-
ments shall be deposited in the child care linkage fund.
(b) A developer who fails to make the linkage fund contribution pay-
ment within [30] days of the payment due date shall forfeit that portion
of the bond equal to that year's payment and for each year he continues
to fail to meet said fee requirements. Said forfeited portion of the bond
shall be deposited in the child care linkage fund and shall be treated
as if it were the child care linkage fee payment.
(c) Notwithstanding the provisions of [insert appropriate state statute],
a municipality shall establish in the city or town treasury a revolving
fund to be known as the child care linkage fund which shall be kept sep-
arate and apart from all other monies by the treasurer and in which shall
be deposited all receipts received in connection with the child care link-
age fee program, established under this act. The principal and interest
thereon shall be expended at the direction of the local linkage board,
without further appropriation, for the purpose of child care linkage
grants as provided in this act.

Section 10. [Combination of Center and Fee.] For developers choosing
to combine a child care center with a fee, the following shall apply: a child
care center shall have a minimum gross floor area of [2,000] square feet
and meet the other requirements of centers as listed in Section 5. The
child care linkage advisory board shall determine a formula for calculat-
ing the amount of the fee to be paid under this section into the child care
linkage fund in lieu of providing space.

Section 11. [Implementation.] The [executive office of communities and
development] is hereby charged with the overall implementation and
administration of this act. Its responsibilities shall include, but not be
limited to, developing forms required for implementation of this act, ad-
vising municipalities of this act's requirements, providing support staff
to the child care linkage advisory board and promulgating rules and
regulations in consultation with the child care linkage advisory board.
Said rules and regulations shall include, but not be limited to, criteria
for the collection, maintenance and disbursement of monies collected
through the child care linkage fund and criteria for discretionary exemp-
tions to be provided under the provisions of Section 15. Said rules and
regulations shall be forwarded to the local linkage boards.

Section 12. [Child Care Linkage Advisory Board.]
(a) There shall be within the [executive office of communities and de-
velopment], but not subject to its control, a child care linkage advisory
board. The advisory board shall consist of [16] members, as follows: the
[secretary of the executive office of communities and development], the
[secretary of the executive office of human services], the [secretary of the
executive office of labor], the [commissioner of the office for children],
the [commissioner of the department of social services] or their design-
ees; the following persons to be appointed by the governor: [four] mem-
bers of the public experienced in the field of child care, no [two] of whom
shall reside in the same social service region as defined by the [depart-
ment of social service] and one of whom shall be a representative of or-
ganized labor; [four] members of the business community, [two] of whom
represent the developers of properties covered by this act and [two] of
whom represent business interests not directly related to the develop-
ment of property; and [two] representatives of municipal government.
(b) The terms of each appointive member shall be for [two] years;
provided, however, that upon creation of the advisory board, the first
term shall be for [three] years for [two] of the members representing the
child care community, [one] member representing developers of commer-
cial or industrial properties, [one] member representing the business in-
terest not directly related to the development of property, and [one] of
the representatives of municipal government. None of the appointive
members shall serve more than [two] consecutive full terms.
(c) The advisory board shall elect a chairperson who may vote only in
the event of a tie, and other officers as it considers appropriate.
(d) The advisory board shall meet at least [six] times a year. Said board
shall, among other responsibilities, advise the [secretary of the execu-
tive office of communities and development] on matters of policy, shall
be consulted by said [secretary] prior to the issuance of rules and regu-
lations, shall grant exemptions to developers under criteria described
in Section 15, and shall perform such other duties as said [secretary] may
request. The advisory board shall establish by-laws for its operation.
(e) The appointive members of the advisory board shall receive [50] dol-
ars for each day or portion thereof spent in the discharge of their offi-
cial duties and shall be reimbursed for their necessary expenses incurred
in the discharge of their official duties.

Section 13. [Local Linkage Board.] There shall be established a local
linkage board in each municipality in which a development project
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occurs subject to the provisions of this act. Said board shall be responsible for the disbursement of monies in the child care linkage fund to expand child care services in the local community. Said board shall be appointed by the chief executive office of the municipality in which the development project is located and shall consist of [two] members of the public experienced in the field of child care, [one] developer of commercial or industrial property, [one] member of the business community not directly related to the development of property, and [one] representative from each municipality in a community to be chosen by the chief executive office of each such municipality. The terms of each member shall be for [two] years; provided, however, that upon creation of the local linkage board the first term shall be for [three] years for [one] member of the child care community, [one] member who represents either the developers or business persons not involved in development and [one] municipal representative. Said board shall elect one member as chairperson and shall establish bylaws to ensure the timely disbursement of said monies and the efficient working of said board.

Section 14. [Criteria for Disbursement of Funds.]
(a) The criteria to disburse child care linkage funds by the local linkage boards in consultation with the municipality and consistent with regulations promulgated by the [executive office of communities and development] shall include, but not be limited to, the following:

1. In every municipality where a child care linkage fund has been established, the local linkage board shall issue a request for proposals to all state licensed child care center providers based in the community in which the development project is located. Copies of such request for proposals shall also be made available through the [child care resource and referral agency] and local councils for children serving the community in which the development occurs.

2. Only projects, programs or capital improvements that will aid in the creation of a new child care center, or increase the number of children served at an existing center, or establish a sliding scale to help low- or moderate-income families utilize the additional capacity created shall be considered eligible for funding.

3. Direct subsidies for salaries of providers or employees of child care centers are not permissible through this grant program.

4. The local linkage board may, when reviewing grant proposals, seek the nonbinding recommendations of the developer.

5. The local linkage board may issue a request for proposals more than [one] time per year as long as monies are available in the fund.

(b) For [10] years following the creation of any additional child care center capacity through funding provided pursuant to this act, the additional capacity created shall be provided according to the following order of priority:

1. Low- and moderate-income employees working at the development project;

2. Other employees working at the development project;

3. Low- and moderate-income families from the community;
Section 15. [Exemptions.]

(a) The following development projects shall be exempt from the provisions of this act:

(1) Development projects of the government of the United States and any instrumentality, authority or agency thereof, and the state and any instrumentality, authority, agency, or political subdivisions thereof;

(2) Development of houses of religious worship owned by, or in trust for the exclusive benefit and use of any religious organization;

(3) Development projects which are constructed, installed, or placed in operation, in whole or in part for the purpose of eliminating industrial waste or reducing such waste to a level of toxicity that is not harmful to fish, fowl, animal life or aquatic vegetation and thereby abating or preventing the pollution to the waters of the state; provided, however, that this exemption shall apply to facilities for the treatment, neutralization or stabilization of industrial waste or industrial air pollution from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal;

(4) Development projects for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, if such development is to be actually used and occupied by such organization; and

(5) Any development for a regiment, corps, company or other organized unit of the volunteer militia and used exclusively for military purposes.

(b) A developer may be granted an exemption from this act if the advisory board determines that the development project does not create a need for new child care services in the community. Exemptions shall be granted in the following circumstances:

(1) The developer demonstrates that the development project will employ fewer than [20] individuals during any single eight-hour working shift and will continue to do so for the reasonably foreseeable future;

(2) The developer demonstrates that the development project already is served by an on-site or near-site child care center that has sufficient capacity to serve the child care needs of all additional employees working in the new development project;

(3) The developer demonstrates that sufficient excess child care capacity exists in the community presently, and will continue to exist for the reasonably foreseeable future, to meet the additional demand for child care created by the development project.

(c) A developer may also be granted an exemption pursuant to regulations promulgated by the [executive office of communities and development].

(d) A developer shall apply in writing to the advisory board for said exemptions. The board may request additional documentation from the developer, and may seek data or other information from other community services, including but not limited to, the local linkage board, the [area council for children] and the [child care resource and referral agen-
Section 16. [Penalty.] In addition to any other remedies provided herein, any developer who fails to comply with the provisions of this act shall be punished by a fine of [200] dollars per violation per day payable into the child care linkage fund of the applicable municipality. If [60] days have elapsed from the date said fine begins to accumulate and the developer has failed to remedy the violation or to pay the fine, the [attorney general] shall initiate proceedings in [insert appropriate court] against the developer on behalf of the state to restrain further violations, to enforce the fine and to enforce any other provisions of this act.

Section 17. [Tax Deductions.]
(a) In determining the net income subject to tax, a domestic or foreign business corporation, at its election may deduct the additional expenses incurred for the construction, reconstruction, erection, or improvement of a child care facility in the state that results in an increase in the number of children served. Any taxpayer entitled to this deduction for any taxable year in accordance with the provisions of this subsection, may carry over and apply to its income taxable in [state] for any one or more of the next succeeding [two] taxable years, the portion, as reduced from year to year, of its deduction which exceeds its income taxable in [state].
(b) Such deduction shall be allowed only on the condition that such facilities have been licensed by the [office for children], the net income for the taxable year and all succeeding years has been computed without any exemption, credit or deduction for such expenditures or for depreciation of the property other than the deduction allowed by this section.
(c) If expenditures with respect to child care facilities have been deducted as provided herein and if within [10] years from the end of the taxable year in which such deduction was allowed such facility is used for any other purpose than child care, the corporation shall report such change of use in its return for the first taxable year during which it occurs, and the [tax commissioner] may recompute the tax for the year or years for which such deduction was allowed and may assess any additional tax resulting from such recomputation within the period of assessment applicable to such return.
(d) Provided, however, if the linkage board determines that there is no longer a need for child care, a tax shall not be recomputed.

Section 18. The [executive office of communities and development] shall file a report with the legislature detailing the status of compliance with the provisions of this act, the effectiveness of this act in mitigating the state's shortage of child care facilities, the impact of this act on the amount of child care facilities available to low- and moderate-income households, the need for continuation of the requirements of this act, and any recommendations for legislation which may effectuate the policies of this act, on the [insert dates].

Section 19. [Effective Date.] [Insert effective date.]
Family Education and Resource Center Acts

The two acts presented here—one based on Kentucky legislation; the other, Connecticut—establish programs designed to provide basic educational and support services to parents and their children.

Parenthood and Child Education Program Act

This act, based on 1986 Kentucky legislation, authorizes the state board for elementary and secondary education to provide local school districts in areas of greatest educational and economic need with grants for developing and providing model programs of instruction for preschool children and their parents. It provides that parents be instructed in basic academic skills, while their preschoolers work on developmental skills with child care specialists. Only parents who do not possess a high school diploma or high school equivalency certificate and have children ages three or four are eligible for the program.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Parenthood and Child Education Program Act.

Section 2. [Development of Model Instruction Programs for Preschool Children and Their Parents; Eligibility of Local Agencies; Grant Proposals.]

(a) The [state board for elementary and secondary education] shall authorize grants to selected local school districts in areas of greatest educational and economic need, for developing and providing model programs of instruction for preschool children and their parents.

(b) Parents participating shall be instructed in basic academic skills, while their preschoolers work with an early childhood specialist on developmental skills.

(c) Parenting skills and other planned, structured activities involving parents and children shall be a part of the curriculum.

(d) Only those parents who have a [three] or [four] year old child and do not possess a high school diploma or high school equivalency certificate shall be eligible.

(e) Local education agencies shall be eligible for funds if the percentage of adults not graduating from high school exceeds [50] percent in the
Family Education and Resource Center Acts

county or district. Selection for grant awards shall be based on the educa-
tional need of the adult population and the incidence of unemployment
in the county or district.
(1) Each grant proposal shall include a plan for providing the following:
(1) Identification and recruitment of eligible participants;
(2) Screening and preparation of parents and children for participa-
tion to include testing, referral to necessary counseling and related serv-
ices;
(3) Transportation, lunch and free general education development
testing for program participants;
(4) Instructional programs that promote adult basic academic skills,
equip parents to provide the needed support for the education and growth
of their children, and prepare children for success in regular programs;
and
(5) Certification of the eligibility and enrollment of a minimum of

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

Family Resource Center Program Act

This act, based on 1988 Connecticut legislation, requires the state's
department of human resources, in conjunction with the department of
education, to establish demonstration family resource centers in three
public schools: one urban; one suburban; and one rural. These resource
centers must provide: all-day child care for children of ages three to five;
before and after school care for children up to age 12; support services
for parents of all infants; support and educational services to parents;
day care training and referral services; and teenage pregnancy preven-
tion services emphasizing responsible decision-making and communica-
tion skills.

The act specifies that these centers must serve AFDC recipients and
others who need such services. It further stipulates that support and
educational services may be given to parents only if they are interested
in receiving a high school diploma, or its equivalent, and their children
are receiving child care from the center.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Family Resource
Center Act.

Section 2. [Establishment of Family Resource Centers.]
Suggested State Legislation

(a) The [department of human resources], in conjunction with the [department of education], shall establish and coordinate a demonstration family resource center program to provide comprehensive child care services, remedial educational and literacy services and supportive services to parents who are recipients of aid to families with dependent children and other parents in need of such services.

(b) The family resource centers shall be located in at least three public schools, one located in an urban area, one in a suburban area and one in a rural area. The [commissioner of human resources] shall determine the manner in which the grant recipients of such program, such as municipalities, boards of education and child care providers shall be selected.

(c) The family resource center shall provide:

1. Quality full-day child care for children age three and older who are not enrolled in school and child care for children enrolled in school up to the age of twelve for before and after regular school hours and on a full-day basis during school holidays and school vacation, in compliance with all state statutes and regulations governing child day care;

2. Support services to parents of newborn infants to ascertain their needs and provide them with referrals to other services and organizations and, if necessary, education in parenting skills to such parents;

3. Support and educational services to parents whose children are participants of the child care services of the program and who are interested in obtaining a high school diploma or its equivalent. Parents and their preschool age children may attend classes in parenting and child learning skills together so as to promote the mutual pursuit of education and enhance parent-child interaction;

4. Training, technical assistance and other support by the staff of the center to family day care providers in the community and serve as an information and referral system for other child care needs in the community or coordinate with such systems as may already exist in the community; and

5. A sliding scale of payment for day care services at the center. The center shall also provide a teen pregnancy prevention program for adolescents emphasizing responsible decision-making and communication skills.

(d) The [commissioner of human resources] may provide grants to municipalities, boards of education and child care providers to carry out the purposes of this act. Each family resource center shall have a program administrator who has at least [two] years of experience in child care or early childhood education and a [master's] degree in child development or early childhood education.

Section 3. [Effective Date] [Insert effective date.]
Liberty Scholarship Program Act

This act, based on 1988 New York legislation, establishes the liberty scholarship and liberty partnership programs to guarantee students from low-income families the opportunity to attend a college or university in the state. Under the liberty scholarship program, these students will receive annual awards in the amount of their full non-tuition costs of attendance (as defined by statute) at a public college or university. If attending a private college or university, the student will receive an amount based on the average cost of attendance at the State University of New York.

The act also establishes a liberty partnership program designed to award grants to institutions of higher education—in cooperation with public and non-public schools and not-for-profit community based organizations—for the provision of counseling and support services to students at high risk of dropping out of school. As enacted in New York, the legislation also increased the amount of assistance available under its Tuition Assistance Program.

For another approach to encouraging students from lower income families to stay in school and receive a postsecondary education, the reader may wish to consult recently-enacted legislation from the state of Louisiana (SB 280, Act 789). In 1989, the state established a plan which guarantees the costs of tuition and required fees for first-time freshman at any public institution of higher education. Eligibility is based on a complex formula that takes into account financial need and academic achievement.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title.] This act may be cited as the Liberty Scholarship Program Act.

2. Section 2. [Legislative Findings and Declarations.] The legislature hereby finds that the failure of many young [state residents] to complete their secondary education limits their opportunity for a life of fulfillment, prevents them from advancing into postsecondary education and hinders the state's efforts to provide a well-trained work force for business and industry in [state].

The legislature further finds that failure of students to complete their secondary education can result in great costs to the state from lost tax revenues and from the costs of dealing with crime, drug addiction and other social ills that often correlate with lack of education.

The legislature further finds that programs that encourage young people to complete their secondary education and assure that limited family income will not be a barrier to seeking a postsecondary education.
Section 3. [Liberty Scholarships; Establishment; Eligibility; Application; Amount]

(a) The [president] of the [higher education services corporation] shall award liberty scholarships for payment annually beginning with the [insert year] academic year, and in each academic year thereafter, to students eligible pursuant to subsection (b) of this section. In administering this program, the [president] is hereby authorized to exercise all powers and duties authorized under [insert appropriate statutory citations].

(b) Liberty scholarships shall be awarded to persons:

(1) Who have applied for such scholarship;

(2) Who have graduated from a secondary school located within [state] or have received a high school equivalency diploma from [state];

(3) Who have not attained the age of [22] as of [insert date] prior to the academic year for which the initial award is received and who are undergraduate students receiving aid under this act for the first time during [insert academic year];

(4) Who have enrolled in an approved program in a degree-granting institution located in [state] within [24] months of the date that the recipient graduated from secondary school or received a high school equivalency diploma, provided that those students who are temporarily unable to avail themselves of the award due to illness, military service or other causes in accordance with rules of the [board of regents] prior to receipt of the first payment of an award may be granted a leave of absence pursuant to regulations of the [trustees of the higher education services corporation];

(5) Who satisfy the requirements of [insert other statutory citations];

(6) Who retain good academic standing as defined by the [commissioner of education]; and

(7) Who qualify for a scholarship pursuant to subsection (f) of this section.

(c) Application for payment of a liberty scholarship shall be made in conjunction with an application for tuition assistance in accordance with rules of the [board].

(d) A student enrolled in a program of full-time study shall not be entitled to receive a scholarship unless the recipient:

(1) Receives a tuition assistance award or supplemental tuition assistance award pursuant to [see COMMENT following Section 5]; and

(2) Receives a Pell grant award pursuant to Section 1070-a of Title XX of the United States code.

A recipient enrolled in a program of part-time study shall not be entitled to receive a scholarship unless the recipient receives a Pell grant award pursuant to Section 1070-a of Title XX of the United States code.
Subject to the requirements of subsection (b) of this section, a recipient shall be entitled to an annual scholarship for not more than:

1. Four academic years of full time undergraduate study or the equivalent thereof of part-time study; or
2. Five academic years, or the equivalent thereof of part-time study, if the program of study normally requires five years, as defined by the [commissioner] pursuant to [insert appropriate statutory citations].

For purposes of this subsection and [insert other appropriate statutory citations], the term "part-time study" means enrollment for at least [six] but less than [twelve] semester hours, or the equivalent, per semester or at least [four] but less than [eight] semester hours per quarter in an approved undergraduate program.

Any semester, quarter or term of attendance during which a student receives an award for part-time study pursuant to this section shall be counted as one-half of a semester, quarter or term, as the case may be, toward the maximum term of eligibility for tuition assistance awards pursuant to [insert appropriate statutory citations].

(b) The [president] shall grant annual scholarships in the following amounts:

1. If the recipient attends [insert appropriate institutions], the annual scholarship award shall be an amount equal to the non-tuition cost of attendance at such institution or college reduced by:
   i. The amount of a Pell grant; and
   ii. The amount of such other state and federal scholarships and grants, other than tuition assistance or supplemental tuition assistance received under this act, which do not require repayment, awarded to the recipient for the cost of attendance at the institution being attended, as reported to the [president]; provided, however, that such scholarship shall be reduced [one] dollar for every [three] dollars of income in excess of [18,000] dollars of income; or
2. If the recipient attends any other degree-granting institution within [state] and enrolls in a program approved by the [commissioner], the annual scholarship award shall be based upon an amount equal to the average non-tuition cost of attendance, as determined by the [commissioner] in consultation with the [president] and as approved by the [director of the budget], for a student at the [insert appropriate institution] or actual non-tuition cost of attendance at such institution, which ever is less, reduced by:
   i. The amount of a Pell grant the recipient would have been entitled to had the recipient attended the [insert appropriate institution]; and
   ii. The amount of such other state and federal scholarships and grants, other than tuition assistance or supplemental tuition assistance received under this act, which do not require repayment, awarded to the recipient for the cost of attendance at the institution being attended, as reported to the [president]; provided, however, that such scholarships shall be reduced [one] dollar for every [three] dollars of income in excess of [18,000] dollars of income.
3. Scholarships and grants that reduce the cost of attendance for pur-
poses of determining the amount of a scholarship award shall not include
supplemental financial assistance provided on a last dollar basis pur-
suant to the provisions of [insert appropriate statutory citations].
(4) "Non-tuition cost of attendance," as used in this section, means:
(i) the actual amount charged by the institution for room and board;
and
(ii) an allowance for transportation, books and supplies as deter-
mined by the [commissioner] in consultation with the [president] and
as approved by the [director of the budget], provided that such determi-
nation shall be made no later than [insert date] of each year for use in
the succeeding academic year.
In the event a student does not incur room or board charges at the
institution, "non-tuition cost of attendance" shall mean an allowance
for room and board as determined by the [commissioner] in consultation
with the [president] and approved by the [director of the budget]. In de-
termining allowances pursuant to this section, the [commissioner] may
take into consideration the allowances provided for in the Pell grant pro-
gram.
For the purposes of determining annual scholarships, the term "in-
come" shall be determined in accordance with the provisions of [insert
appropriate statutory citations], except that in making such determi-
nation, adjusted gross income, as defined in regulations of the [trustees
of the corporation], shall be used instead of [state] net taxable income.
In no event shall the combination of all student financial aid received
by a student exceed the recipient's total cost of attendance at the insti-
tution being attended.
(g) Ineligibility for a tuition assistance, supplemental tuition as-
sistance or Pell grant award in a particular academic year shall not pre-
vent a recipient from receiving a liberty scholarship award in any sub-
sequent year in which such recipient shall become eligible for a tuition
assistance, supplemental tuition assistance or Pell grant award, provid-
ed, however, the [insert number of years] period referred to in [insert ap-
propriate statutory citations], or an [eight-] year period for part-time
study, shall not have elapsed.
(h) Liberty scholarship recipients who qualify for admission to the
[educational opportunity programs] established in [insert appropriate
statutory citations] shall in no way be precluded from participation in
such programs as a result of their status as liberty scholarship recipients.
Recipients who qualify and are selected for participation in the [oppor-
tunity programs] shall be eligible to receive the same tutoring and coun-
seling services provided to other [educational opportunity programs] stu-
dents, and shall be eligible to receive supplemental financial assistance
through the [educational opportunity programs] for any approved costs
not otherwise funded under such scholarship.
(i) The [superintendent of schools] or other chief school officer of each
public school district and the chief school officer of non-public secondary
schools shall take steps to inform students and parents about the liber-
ty scholarship program and various types of student financial aid that
are available for their college educations. The [corporation], in coopera-
tion with the [commissioner], shall assist such efforts by making available to school districts, non-public secondary schools and students information relating to such programs and aid. In addition, the [commissioner], in cooperation with the [president] and school officials shall also provide such other information as is appropriate to encourage students to complete high school and to assist students in preparing to attend college.

(j) All regulations of the [commissioner] or regulations of the [trustees of the corporation] to implement the provisions of this act shall be subject to the approval of the [director of the budget].

Section 4. [Liberty Scholarship Advisory Committee.] There is hereby created a liberty scholarship advisory committee, which shall consist of [11] persons appointed by the governor, [two] of whom shall be upon the recommendation of the [insert appropriate legislative leadership] and [two] of whom shall be upon the recommendation of the [insert appropriate legislative leadership]. Such members shall serve at the pleasure of the governor, except that those recommended by other authorities shall serve at the pleasure of such recommending authorities, and shall include, but not be limited to, representatives of secondary schools, business and industry, labor and nonprofit or voluntary organizations.

In addition to such [11] members, the [president of the higher education services corporation], the [commissioner of education], the [insert appropriate chancellors] and [insert other appropriate officials] shall serve on the committee as ex-officio members. The governor shall designate one member to serve as chairperson of the committee. No later than [insert date], such committee shall prepare a plan that:

(1) Identifies counseling and support services for students available from institutions of higher education, secondary schools, government agencies, business and industry, labor, nonprofit organizations and volunteers; and

(2) Proposes ways in which such counseling and support services can be coordinated to promote continuity of counseling and support.

In addition, the advisory committee shall make recommendations to the implementation of such plan and shall periodically report on the degree to which such plan has been successfully implemented. The [president], [commissioner] and the [chancellors of the public universities] shall make available personnel to act as staff for the committee. The members of the committee shall receive no compensation for their services, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties.

Section 5. [Liberty Partnerships.]

(a) The [commissioner] shall award grants for the purpose of providing support services to students enrolled in public and non-public schools who are identified as having a high risk of dropping out of school. Such awards shall be made on a competitive basis to degree-granting institutions of higher education or consortia of degree-granting higher education institutions in cooperation with school districts and not-for-profit
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community-based organizations. In addition, in areas of the state where
no degree-granting institution or consortium of degree-granting insti-
tutions of higher education can provide appropriate services to students,
the [commissioner] may award grants to not-for-profit community-based
organizations in cooperation with school districts.

(1) All grant applications shall contain the following program ele-
ments:
(i) a program for identifying students who are at-risk of dropping
out as measured by academic performance, attendance, discipline prob-
lems, and other factors affecting school performance including but not
limited to teenage pregnancy or parenting, residence in a homeless shel-
ter or temporary living arrangement, substance abuse, child abuse or
neglect or limited English proficiency;
(ii) a program for encouraging the use of volunteers and facilitat-
ing parental involvement where possible and involvement of current or
former liberty scholarship recipients as peer or mentor counselors in pro-
grams; and
(iii) a program to provide for continuity of services throughout a
student’s progression through secondary school.

(2) In awarding such grants, the [commissioner] shall give priority
to applications that:
(i) provide services to school districts receiving an apportionment
under [insert appropriate statutory citations];
(ii) provide services to schools identified by the [commissioner] as
in need of assistance pursuant to the comprehensive assessment report;
(iii) provide services to rural schools with students at risk;
(iv) replicate model programs of demonstrated effectiveness, includ-
ing models that provide for small group partnerships with low student-
staff ratios. The [commissioner] shall identify model programs with
proven effectiveness and shall make such models available to grant ap-
plicants;
(v) demonstrate a high level of institutional commitment to pro-
grams in fields relevant to counseling and mentoring, including but not
limited to education, social work, psychology and sociology and the ex-
tent to which such institution shall involve faculty members and gradu-
ate/professional students from such degree programs;
(vi) the need for such services in the area the institution proposes
to serve; and
(vii) the degree to which the institution proposes to cooperate with
school districts and not-for-profit community based organizations to pro-
vide services and insure continuity of such services until such students
graduate from high school or receive a high school equivalency diploma.

(3) Services for non-public school students shall be provided at sites
other than sectarian non-public schools.
(b) Funds available under this section shall be used for compensatory
and support services to students who are identified as being at risk of
dropping out of school. Services to be provided under this section may
include skills assessment, tutoring, academic and personal counseling,
family counseling and home visits, staff development activities for per-
sonnel with direct responsibility for such students and mentoring pro-
grams.

(c) Allowable costs under this program shall include, but not be limit-
ed to: salaries of program personnel, including graduate student sti-
pends; transportation costs for students and program personnel; instruc-
tional materials; reimbursement to school districts for release time
granted to employees while participating in the planning and develop-
ment of activities funded pursuant to this section; training of program
personnel; costs related directly to program provisions, including sum-
mer and weekend activities; and administrative costs directly attribu-
table to the program.

(d) For school years commencing in [insert academic year] and there-
after, the amount that shall be made available for funding liberty part-
nership grants shall be equal to [4] percent of the base year enrollment
of children in public and non-public schools in [state] in grades seven
through 12, as computed in accordance with regulations of the commis-
sioner, multiplied by [750] dollars, provided, however, that notwithstanding
the foregoing, the amount that shall be made available for funding
liberty partnership grants for the [insert academic years] shall be [25]
percent, [50] percent, and [75] percent, respectively, of the amount to be
provided pursuant to this subsection.

A grant to a recipient of an award under this section shall not exceed
the amount of [300,000] dollars for any grant year, provided that a re-
cipient may receive a grant in excess of such amount at the rate of [1,250]
dollars for each student, in excess of [240] students, who is provided com-
pensatory and support services by the recipient during such grant year.

The grant recipients shall provide students at public and non-public
schools the opportunity to receive compensatory and support services
in an equitable manner consistent with the number and need of the chil-
dren in such schools.

(e) The commissioner shall adopt regulations for the implementation
of this section.

(f) The commissioner shall prepare an annual report evaluating the
programs funded under this section and making appropriate recommend-
dations. The report shall be submitted no later than [insert date] and,
annually thereafter by [insert date] to the governor and [insert appro-
priate legislative leadership].

COMMENT: The New York legislation, on which this draft is based, also
amended the state's Tuition Assistance Program (enacted in 1974) to increase
the amount of assistance available under the program.

1 Section 6. [Severability] [Insert severability clause.]

1 Section 7. [Effective Date] [Insert effective date]
Adult Day Care Center Program Act

This act, based on 1988 New Jersey legislation, creates an adult day care center program for victims of Alzheimer’s disease and related disorders, offering an alternative for families providing care for such patients at home on a 24-hour basis.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Adult Day Care Center Program Act.

Section 2. [Legislative Findings and Declarations] The legislature finds and declares that there is a critical need to establish specialized programs for clients suffering from Alzheimer’s disease and related disorders. Alzheimer’s disease is an organic, progressive brain disorder which may result in its final stages in the complete mental and physical disability of a client.

There are few services specifically designed to meet the unique needs of Alzheimer’s clients and their families, and it is imperative that these services be developed as soon as possible.

There is a further need to develop training programs for professionals and other persons providing care for Alzheimer’s clients. Specialized programs for an Alzheimer’s client population will provide an optimum setting for developing and implementing these training programs.

Section 3. [Definitions] As used in this act:

(1) “Adult day care” means a community-based group program designed to meet the needs of functionally or cognitively impaired adults through an individual plan of care structured to provide a variety of health, social and related support services in a protective setting during any part of a day but less than 24 hours.

(2) “Alzheimer’s disease and related disorders” means forms of dementia characterized by a general loss of intellectual abilities of sufficient severity to interfere with social or occupational functioning.

(3) “Care needs or behavioral problems” means the manifestations of dementia which may include, but need not be limited to, progressive memory loss, confusion, inability to communicate, extreme personality change and eventual inability to perform the most basic tasks.

(4) “Commissioner” means the [commissioner of the state department of health].

(5) “Department” means the [state department of health].

(6) “Grantee” means a public agency or private nonprofit agency selected by the [department] to establish an adult day care program for participants pursuant to this act.
(7) "Participant" means an individual with Alzheimer's disease or a related disorder, particularly those in the moderate to severe stages. To be eligible for services, a participant shall have documentation from a physician that the participant has Alzheimer's disease or a related disorder.

Section 4. [Grants.] The [commissioner] shall establish a program for participants in specialized adult day care centers, for which purpose the [department] shall award grants to qualified applicants in an amount to be determined by the [commissioner]. A grantee shall be required to match not less than [25] percent of the amount granted, either in cash or in kind contributions, or both, and the in kind contributions may include the value of staffing or volunteer services, or both. The use of the grantee's matching funds shall be limited to meeting the expenses of administration, staffing, operation expenses and the costs of necessary safety renovations.

Section 5. [ Applicant Qualifications; Requirements.]
(a) In order to be eligible to receive a grant from the [department] pursuant to Section 4 of this act, an applicant shall apply in a manner which the [commissioner] shall prescribe and shall possess all of the following qualifications:

(1) The applicant shall be able to identify the special care needs or behavioral problems of participants, and the applicant's program shall be designed to meet those needs.

(2) The applicant shall demonstrate to the satisfaction of the [department] that the applicant's program has adequate and appropriate staffing to meet the nursing, psychosocial and recreational needs of participants.

(3) The applicant shall provide an outline of the design of the applicant's physical facilities, and of the safeguards which shall be used to protect the participants' safety.

(4) The applicant shall submit a plan for assisting individuals who cannot afford the entire cost of the program. This may include, but need not be limited to, utilizing additional funding sources to provide supplemental aid and allowing family members to serve as volunteers at the applicant's facility.

(5) The applicant shall identify potential sources of funding for the applicant's facility and shall outline plans to seek additional funding to remain solvent. This may include private donations and foundation grants, Medicare reimbursement for specific services and the use of adult education and public health services.

(b) Each grantee shall also satisfy all of the following requirements:

(1) Establish family support groups;

(2) Encourage family members to provide transportation for participants to and from the applicant's facility;

(3) Concentrate on participants in moderate to severe ranges of disability;

(4) Provide appropriate nutrition to participants, which the grantee
Suggested State Legislation

may arrange to have provided by an organization organized for the purpose of providing meals to the elderly or to those who are needy;
(5) Establish contact with local educational programs, including nursing and other disciplines offering gerontology programs, to provide on-site training to students; and
(6) Provide services to assist family members, including counseling and referral to other resources.

Section 6. [Training Program] The [department] shall develop a training program which includes information on the symptoms and progress of the disease and appropriate techniques for dealing with the psychosocial, health and physical needs of the participants. The training program shall be developed and provided as on-going, on-site training for adult day care centers funded under this act and shall be available to other community based providers who serve this client population.

Section 7. The [commissioner] shall report to the governor and the legislature [one] year after the effective date of this act on the grant programs established pursuant to this act. The report shall include, but not be limited to:
(1) A description of the progress made in implementing the programs;
(2) The number of grantees who have established adult day care programs pursuant to this act;
(3) The number and characteristics of participants served by the programs;
(4) An evaluation of the usefulness of the programs in delaying the placement of the participants in institutions;
(5) An evaluation of the programs; and
(6) An evaluation of the potential for reimbursement for care in these adult day care centers by funding sources such as Medicaid or Medicare.

Section 8. The [commissioner] shall, pursuant to the [state administrative procedure act], adopt rules and regulations necessary to implement the provisions of this act.

Section 9. [Effective Date] [Insert effective date.]
Batterers Pilot Program Act

This act, based on 1988 New York legislation, establishes a three-year pilot project of five batterers programs throughout the state, under the supervision of the state's division of probation and correctional alternatives. The batterers programs are to include: educational instruction and group discussion to provide information about domestic violence; a long-term group whose goal is to help end the violent behavior of its participants; and formal linkages to the local criminal justice system and to area domestic violence programs.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Batterers Pilot Program Act.

Section 2. [Legislative Findings and Intent.] The legislature hereby finds and declares that establishment of programs designed to help batterers end their violent behavior is essential in the effort to end domestic violence and that the establishment of such programs is in the public interest and to the benefit of all persons in this state.

The legislature further declares that batterers should be held accountable for their violent behavior, and that programs designed to stop the cycle of family violence and teach more appropriate behaviors should be viewed as a vital component of a community's response to domestic violence.

A three-year pilot project should therefore be established, the goal of which is to create programs in several communities in such manner as to assure that batterers programs are part of a community continuum of services that responds to local needs. Such continuum of services should include approved residential programs for victims of domestic violence, community coalitions to facilitate coordination and cooperation between agencies and services addressing domestic violence, education and outreach efforts on domestic violence, an established and viable referral system for victims of domestic violence and batterers, and an established and viable system of accountability to the judiciary and to the state concerning efforts to help batterers end their violent behavior.

To advance these goals, the legislature hereby establishes a three-year pilot project under the supervision of the division of probation and correctional alternatives which shall consult with others as may be appropriate having interest or expertise in the development of such programs. The intent of such pilot project is to evaluate the effectiveness of batterers programs as one option available to the criminal justice system in dealing with violence in a family setting.
Section 3. [Definitions.] As used in this act:

(1) "Batterers program" means a program approved as provided here- in which is operated by a public or not-for-profit organization for the pur- pose of providing battering prevention and educational services whose goal is to help clients end abusive behaviors. Components of such pro- grams shall include but not be limited to: an educational instruction and group discussion model to provide information about domestic violence including the illegality of domestic violence, and the responsibility for and the alternative choices to abusive behavior; a long term group whose goal is to help end the violent behavior of its participants; and formal and established linkages to the local criminal justice system and to area domestic violence programs.

(2) "Client" means a person referred to a batterers program by an or- der of the family or criminal court, by a state, local or private agency, or a person who is self-referred, and who is accepted by the batterers pro- gram.

(3) "Domestic violence program" means residential programs defined in [insert appropriate state statute].

(4) "Domestic violence" means acts as referred to in and qualified by [insert appropriate state statute].

(5) "Division" means the [division of probation and correctional alter- natives].

Section 4. [Establishment of Batterers Programs; Authorization.]

(a) The [division] is hereby authorized to contract, from amounts ap- propriated specifically therefor, for the provision of not less than five bat- terers programs in counties as provided herein. No single contract for such a program shall exceed the sum of [50,000] dollars per annum.

(b) In approving contracts pursuant to this act, the [division] shall seek to establish a meaningful balance between rural, urban and suburban counties.

(c) The [division] shall not approve contracts for establishment of pro- grams in counties that have no access to domestic violence programs.

(d) In implementing the pilot project authorized by this act and in car- rying out its responsibilities hereunder, the [division] shall consult with such other persons and organizations with expertise in the field of domestic violence as may be necessary or appropriate to assure the suc- cess of the pilot project.

Section 5. [Establishment of Batterers Programs; Eligibility.] Prior to approving contracts authorized by this act, the [division] shall solicit ap- plications from public or not-for-profit organizations which shall address the following:

(1) A description of the components of the proposed program, includ- ing but not limited to:

(i) The population to be served;

(ii) The program objectives;

(iii) The implementation plan for the prevention and educational services to be provided, including the educational instruction and group
Batterers Pilot Program Act

discussion model and the long-term group;
(iv) The reporting procedures designed to advise the referring court
or agency of the client's attendance and participation in the program;
(v) The proposed annual budget of the program, including, in the case
of any already established program, an assurance that funds received
pursuant to this act will not serve to substitute for any other funds or-
dinary and customarily received by such organization for the provision
of the program;
(vi) The formal and established or proposed linkages to area domes-
tic violence programs and to the local criminal justice system, includ-
ing the judiciary, probation and police departments, and the district att-
torney;
(vii) The existing or proposed community education component of
the program;
(viii) Any other services proposed to be provided; and
(ix) Any other information requested by the [division].
(2) Assurance of planning, cooperation and coordination with, and sup-
port by, the domestic violence program, the criminal justice system, and
other appropriate officials and services.
(3) Assurance that the program will not provide couple counseling or
mediation, as such terms shall be defined by the [division].
(4) Assurance that the batterers program shall have policies regarding:
   (i) Referrals for whom batterers programs are not appropriate;
   (ii) Suicide and homicide threats by clients; and
   (iii) Confidentiality, in accordance with standards promulgated by
the [division].
(5) Assurance that the batterers program will participate in the desig-
nated training program and evaluation process to be provided as re-
quired herein by the [division].

Section 6. [Establishment of Batterers Programs; Approval.] In appro-
vizing any program for inclusion in the pilot project authorized by this act,
the [division] shall consider the following:
(1) Whether in the county in which the proposed batterers program
is to operate there exists or can be established a coordinated criminal
justice response to domestic violence, including the development and
coordination of judicial, law enforcement, probation and prosecutorial
policies;
(2) Whether the establishment of a batterers program has the support
of the judiciary, which shall be provided or assured in such manner and
form as is acceptable to the [division];
(3) Whether the organization proposing to contract for such batterers
program has the capacity to plan for and operate such program;
(4) Whether the organization proposing to contract for such batterers
program has the ability and intention to work cooperatively with the
[division] in operating and evaluating the effectiveness of such program;
and
(5) Such other factors as may be deemed necessary or appropriate by
the [division] to implement the provisions of this act.

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Section 7. [Training and Technical Assistance.]
(a) The [division] shall, within amounts available by appropriation therefor, provide or arrange to be provided technical assistance and training as requested or necessary to programs approved pursuant to this act to develop appropriate services and train staff, improve coordination with the domestic violence program, other appropriate support services, the criminal justice system, including the judiciary, the police, the district attorney and other appropriate officials and services.
(b) The [division] shall, within amounts available by appropriation therefor, provide any requested or necessary assistance to local departments of probation to assist in the development of local plans, policies and procedures for case referral, coordination and monitoring of clients with appropriate agencies and persons.

Section 8. [Evaluation and Reports.]
(a) The [division] shall evaluate the pilot project. In implementing its responsibilities under this act, the [division] shall consult with such other persons and organizations with expertise in the field of domestic violence as may be necessary or appropriate to assure the success of the evaluation. The evaluation shall measure program operation and effectiveness.
(1) The evaluation of program implementation and operation shall examine the following factors:
(i) Pertinent and appropriate factors concerning clients including but not limited to age, education, income, employment status, marital status, number of children and their ages, alcohol or substance use and personal history of family violence;
(ii) The total number of clients referred to the program, identified by referral source;
(iii) The total number of persons determined to be inappropriate for services, and the reasons therefor;
(iv) The number of clients enrolled in the program, the number completing the program, the number failing to complete and the reasons therefor;
(v) The number of classes or group meetings; and
(vi) Such other factors as the [division] may deem necessary and appropriate.
(2) The evaluation of program outcome shall include but not be limited to:
(i) Unofficial, self-reported incidence of domestic violence prior to referral to the program, during program participation, and following program completion at time intervals deemed appropriate during the evaluation process; and
(ii) Such other factors as shall be deemed significant in measuring outcome.
(b) The [division] shall develop standardized data collection tools, procedures for data collection and guidelines for confidentiality of the information collected for the evaluation specified in subsection (a) of this section. The [division] shall consult with and consider the comments of such
other persons and organizations with expertise in the field of domestic
violence as may be necessary to assure the appropriateness of such tools,
procedures and guidelines.

(c) The [division] shall report to the governor and [insert appropriate
legislative leadership] not later than [insert date] regarding the im-
plementation, operation and evaluation of the pilot project. Such reports
shall include data on each of the factors specified in subsection (a) of this
section, and any recommendations for change or improvement of the pro-
gram. In making and preparing such report, the [division] shall consult
with and consider the comments of such other persons and organizations
with expertise in the field of domestic violence as may be necessary or
appropriate to assure the completeness of the report.

(d) Not later than [insert date], the [division] shall prepare and sub-
mit to the governor and [insert appropriate legislative leadership], a fi-
nal evaluation report analyzing the effectiveness of the programs com-
prising the pilot project and shall include recommendations regarding
the continuation of the programs, based on such evaluation.

Section 9. In administering the provisions of this act, the [division] may
perform such other and further acts and issue such guidelines or promul-
gate such regulations as it deems necessary to carry out the purpose of
this act and not otherwise inconsistent with the other provisions of this
act or any other provisions of law.

Section 10. The [division] may request and shall receive from any state
agency or political subdivision of the state, and any state agency or po-
itical subdivision of the state is authorized to provide, such assistance
and information as will enable the [division] to carry out its purposes
and duties hereunder.

Section 11. [Appropriations.] [Insert appropriation amounts.]

Section 12. [Effective Date] [Insert effective date]
Self-Sufficiency Trust Fund Act

The concept of a self-sufficiency trust is to provide a mutually beneficial public-private working relationship between families of disabled individuals, the state and the community-based human service network. Coupled with existing development disability legislation, the trust offers a financing mechanism which operates through individualized programs to arrange for supplemental services from existing provider networks. The existing service delivery system is thus supplemented and expanded for the need-specific benefit of individuals with disabilities. The trust has been viewed as a major development in non-traditional estate planning and future care for the disabled.

In 1986, Illinois established the first such trust in the nation; a year later, Maine adopted similar legislation. At the time of publication, both states reported that their programs were not fully implemented.

The act presented here, based on the Illinois legislation, provides a financing mechanism to facilitate the coordination and integration of private family financing for individuals with disabilities, while maintaining eligibility for government entitlement funding. It establishes the state treasurer as the ex-officio custodian of the trust fund and allows the state comptroller to direct payments from the fund upon presentation of properly certified vouchers approved by the director of the department of mental health and developmental disabilities (DMH-DD). The other special fund created in the act, the fund for the developmentally disabled (DD), allows monies to be used to provide care and treatment for low-income DD persons or persons otherwise eligible for DMH-DD services.

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title] This act may be cited as the Self-Sufficiency Trust Fund Act.

2. Section 2. [Definitions] As used in this act, "Self-sufficiency trust" means a trust created by a not-for-profit corporation which is a 501-C-3 organization under the federal Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 1 et seq.) and which was organized under the General Non Profit Corporation Act (Ch. 32, Sec. 163a et seq.) for the purpose of providing for the care, support or treatment of one or more developmentally disabled persons or persons otherwise eligible for [department] services.

3. Section 3. [Establishment of Trust Fund] There is hereby created the self-sufficiency trust fund. The [state treasurer], ex officio, shall be custodian of the trust fund, and the [comptroller] shall direct payments from
the trust fund upon vouchers properly certified by the [director of mental
health and developmental disabilities]. The [treasurer] shall credit
interest on the trust fund to the trust fund, and the [director] shall allo-
cate such interest pro rata to the respective accounts of the named
beneficiaries of the trust fund.

Section 4. [Accounts.] The [department of mental health and develop-
mental disabilities] may accept moneys from a self-sufficiency trust for
deposit in the trust fund pursuant to an agreement with the trust nam-
ing one or more beneficiaries who are developmentally disabled persons
or persons otherwise eligible for [department] services residing in this
state and specifying the care, support or treatment to be provided for
them. The [department] shall maintain a separate account in the trust
fund for each named beneficiary. The moneys in such accounts shall be
spent by the [department], pursuant to its rules, only to provide care, sup-
port and treatment for the named beneficiaries in accordance with the
terms of the agreement. In the event that the [director] determines that
the moneys in the account of a named beneficiary cannot be used for the
care, support or treatment of that beneficiary in a manner consistent
with the rules of the [department] and the agreement, or upon request
of the self-sufficiency trust, the remaining moneys in such account, to-
gether with any accumulated interest thereon, shall be promptly
returned to the self-sufficiency trust which deposited such moneys in the
trust fund.

Section 5. [Adoption of Rules.] The [department] shall adopt such rules
and procedures as may be necessary or useful for the administration of
the trust fund.

Section 6. [Prohibition of Reduction in Entitled Benefits.] The receipt
by a beneficiary of money from the trust fund, or of care, treatment or
support provided with such money, shall not in any way reduce, impair
or diminish the benefits to which such beneficiary is otherwise entitled
by law.

Section 7. [Creation of Fund for the Developmentally Disabled.] The
fund for the developmentally disabled is hereby created as a special fund
in the state treasury. The [director] may accept moneys from any source
for deposit into the fund. The moneys in the fund shall be used by the
[department], subject to appropriation, for the purpose of providing for
the care, support and treatment of low-income developmentally disabled
persons, or low-income persons otherwise eligible for [department] serv-
ices, as defined by the [department].

Section 8. [Effective Date.] [Insert effective date.]
Nursing Profession Acts

The U.S. Department of Health and Human Services projected a shortage of approximately 380,000 baccalaureate degree nurses by 1990. Although this is not the first time in this decade that the nation has experienced a nursing shortage, the earlier lag had been largely eliminated with incremental salary adjustments. However, changes occurring simultaneously in the health care delivery system and the demography of the national population are creating a shortage with the potential of dramatically reducing the quality of health care. States are scoping out various approaches to solving a problem that, in some parts of the country, already has reached crisis proportions.

The following acts—two based on legislation from Washington and one from New York—respectively, offer various approaches to offering incentives for individuals in the nursing profession and expanding health care service delivery.

Educational Assistance for Nurses Act

This act, based on 1988 Washington state legislation, establishes a loan forgiveness conditional scholarship for students in nursing programs leading to licensure as a licensed practical nurse or in a program leading to an associate, baccalaureate or higher degree in nursing. Participants in the scholarship program incur an obligation to repay the scholarship with interest, unless they serve for five years in a nurse shortage area of the state.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Educational Assistance for Nurses Act.

Section 2. [Legislative Findings.] The legislature finds that significant changes occurring simultaneously in the health care delivery system and the demography of the national population are resulting in a shortage of qualified nursing personnel which has the potential of dramatically reducing the quality of health care in the state, particularly in long-term care and critical emergent care. One of the more important contributors to this shortage is the fall in enrollment of students wishing to pursue nursing as a career. In today's complex health care environment, a more integrated approach to the delivery of nursing care may provide comprehensive answers to the problem. The legislature finds that encouraging qualified individuals to enter the nursing profession is of paramount importance to the state in reducing this shortage. The
legislature urges the health professions, industry and philanthropic com-
community organizations to join with state government in assuring the suc-
cess of this program.

Section 3. [Definitions.] As used in this act, unless otherwise indicated:
(1) "Conditional scholarship" means a loan that is forgiven in whole
or in part if the recipient renders nursing services in a nurse shortage
area, as defined by the [state health coordinating council].
(2) "Board" means the [higher education coordinating board].
(3) "Eligible student" means a student who has been accepted into a
program leading to eligibility for licensure as a licensed practical nurse,
or into a program leading to an associate degree in nursing or continues
satisfactory progress within the program; and has a declared intention
to serve in a nurse shortage area upon completion of the educational pro-
gram.
(4) "Nursing shortage area" means an area where nurses are in short
supply as a result of geographic maldistribution where vacancies exist
in serious numbers that jeopardize patient care and pose a threat to pub-
lc health and safety. The [state health coordinating council] shall de-
termine nurse shortage areas in the state guided by federal standards
of "health manpower shortage areas."
(5) "Forgiven" or "to forgive" or "forgiveness" means to render nurs-
ing services in a nurse shortage area in the state of [state] in lieu of mon-
tary repayment.
(6) "Satisfied" means paid-in-full.
(7) "Participant" means an eligible student who has received a condi-
tional scholarship under this act.

Section 4. [Program Establishment; Board Powers, Duties.] The nurses
conditional scholarship program is established. The program shall be
administered by the [higher education coordinating board]. In ad-
ministering the program, the [board] shall have the following powers and
duties:
(1) Select students to receive conditional scholarships, with the as-
   sistance of a screening committee;
(2) Adopt rules and guidelines to implement this act;
(3) Publicize the program including the use of existing programs in
   public schools and colleges established for recruitment of minorities;
(4) Collect and manage repayments from students who do not meet
   their nursing obligations under this act;
(5) Solicit and accept grants and donations from public and private
   sources for the program; and
(6) Develop criteria for a contract for service in lieu of the [five-]year
   service in a nurse shortage area where appropriate, that may be a com-
   bination of service and payment.

Section 5. [Planning Committee.] The [higher education coordinating
board] shall establish a planning committee to develop criteria for the
screening and selection of recipients of the conditional scholarships.
Suggested State Legislation

These criteria also may include, for approximately half of the recipients, requirements that those recipients meet the definition of "needy student" under [insert appropriate state statute].

Section 6. [Conditional Scholarships; Amount; Renewal.] The [board] may award conditional scholarships to eligible students from the funds appropriated to the [board] for this purpose, or from any private donations, or any other funds given to the [board] for this program. The amount of the conditional scholarship awarded an individual shall not exceed [3,000] dollars per academic year. Students are eligible to receive conditional scholarships for a maximum of [two] years while continually enrolled in an approved program.

Section 7. [Repayment.]
(a) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they serve for [five] years in nurse shortage areas of the state of [state].
(b) The terms of the repayment, including deferral of the interest, shall be consistent with the terms of the federal guaranteed loan program.
(c) The period for repayment shall be [five] years, with payments accruing [quarterly] commencing [nine] months from the date the participant completes or discontinues the course of study.
(d) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a nurse shortage area until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.
(e) The [board] is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the [state student loan guaranty association] or its successor agency. The [board] is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.
(f) Receipts from the payment of principal or interest or any other subsidies to which the [board] as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the [higher education coordinating board] and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (e) of this section. The [board] shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

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Development of Model for Articulation and Career Mobility Act

This act, also based on 1988 Washington state legislation, requires the state board of nursing to investigate the scope of all nursing education programs in the state, and subsequently, to develop a model for better articulation of the education program for career mobility from one classification to another.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Development of Model for Articulation and Career Mobility Act.

Section 2. [Legislative Findings.] The legislature recognizes the need to increase the pool of available nursing resources to meet new demands on the health care delivery system. The more complex nature of illnesses, constraints on reimbursement pressuring accelerated treatment and earlier patient discharge, the explosion of technology, and the parameters established by third-party payers requiring intense monitoring, may be diverting nurses from the bedside into early burnout, retirement or employment elsewhere.

The state's nursing educational program, encompassing nursing assistants, licensed practical nurses, and licensed (registered) nurses should be better articulated for career mobility in order to make the nursing profession more attractive to individuals and for retaining qualified nurses in the health care delivery system. Barriers to licensure and employment should be eliminated to increase the number of nurses available for patient care.

Section 3. [Model Development.] The [state board of nursing], in consultation with the [state board of practical nursing], the [superintendent of public instruction], vocational education agencies, the [state board for community college education], and the [higher education coordinating board], shall:

1. Investigate current education programs for nurses in all settings, such as high schools, vocational-technical schools, community colleges and universities, to identify the scope of nursing education programs in the state;

2. Develop, for the purpose of approving nursing education programs for applicants for licensure, a model for articulation and career mobility...
Advanced Practice of Nursing by Nurse Practitioners Act

This act, based on 1988 New York legislation, provides for the practice of nurse practitioners to include the diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice—this in collaboration with a licensed physician qualified to collaborate in the specialty involved and provided the services are performed in accordance with a written practice agreement and protocols.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Advanced Practice of Nursing by Nurse Practitioners Act.

Section 2. [Expansion of Practice of Registered Professional Nursing]

(a) The practice of registered professional nursing by a nurse practitioner, certified under Section 3 of this act, may include the diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice, in collaboration with a licensed physician qualified to collaborate in the specialty involved, provided such services are performed in accordance with a written practice agreement and written practice protocols. The written practice agreement shall include explicit provisions for the resolution of any disagreement between the collaborating physician and the nurse practitioner regarding a matter of diagnosis or treatment that is within the
Nursing Profession Acts

12 scope of practice of both. To the extent the practice agreement does not
13 so provide, then the collaborating physician's diagnosis or treatment
14 shall prevail.
15 (b) Prescriptions for drugs, devices and immunizing agents may be is-
16 sued by a nurse practitioner, under this act, in accordance with the prac-
17 tice agreement and practice protocols. The nurse practitioner shall ob-
18 tain a certificate from the [department of education] upon successfully
19 completing a program including an appropriate pharmacology compo-
20 nent, or its equivalent, as established by the [commissioner of educa-
21 tion]'s regulations, prior to prescribing under this act. The certificate
22 issued under Section 3 of this act shall state whether the nurse practi-
23 tioner has successfully completed such a program or equivalent and is
24 authorized to prescribe under this act.
25 (c) Each practice agreement shall provide for patient records review
26 by the collaborating physician in a timely fashion but in no event less
27 often than every [three] months. The names of the nurse practitioner and
28 the collaborating physician shall be clearly posted in the practice set-
29 ting of the nurse practitioner.
30 (d) The practice protocol shall reflect current accepted medical and
31 nursing practice. The protocols shall be filed with the [department] with-
32 in [90] days of the commencement of the practice and may be updated
33 periodically. The [commissioner] shall make regulations establishing the
34 procedure for the review of protocols and the disposition of any issues
35 arising from such review.
36 (e) No physician shall enter into practice agreements with more than
37 [four] nurse practitioners who are not located on the same physical
38 premises as the collaborating physician.
39 (f) Nothing in this section shall be deemed to limit or diminish the prac-
40 tice of the profession of nursing as a registered professional nurse un-
41 der this act or any other law, rule, regulation or certification, nor to deny
42 any registered professional nurse the right to do any act or engage in
43 any practice authorized by this act or any other law, rule, regulation or
44 certification.
45 (g) The provisions of this section shall not apply to any activity autho-
46 rized, pursuant to statute, rule or regulation, to be performed by a reg-
47 istered professional nurse in a hospital as defined in [insert appropri-
48 ate state statute].

1 Section 3. [Certificates for Nurse Practitioner Practice]
2 (a) For issuance of a certificate to practice as a nurse practitioner un-
3 der Section 2 of this act, the applicant shall fulfill the following require-
4 ments:
5 (1) File an application with the [department];
6 (2) Be licensed as a registered professional nurse in the state;
7 (3) Have satisfactorily completed educational preparation for provi-
8 sion of these services in a program registered by the [department] or in
9 a program determined by the [department] to be the equivalent; or sub-
10 mit evidence of current certification by a national certifying body, recog-
11 nized by the [department]; or meet such alternative criteria as estab-
Suggested State Legislation

12 lished by the [commissioner]'s regulations;
13 (4) Pay a fee to the [department] of [50] dollars for each initial cer-
14 tificate authorizing nurse practitioner practice in a specialty area and
15 a [triennial] registration fee of [30] dollars. Registration under this sec-
16 tion shall be coterminal with the nurse practitioner's registration as
17 a professional nurse.
18 (b) Only a person certified under this section shall use the title "nurse
19 practitioner:"
20 (c) The provisions of this section shall not apply to any act or practice
21 authorized by any other law, rule, regulation or certification.
22 (d) The provisions of this section shall not apply to any activity autho-
23 rized, pursuant to statute, rule or regulation, to be performed by a reg-
24 istered professional nurse in a hospital as defined in [insert appropri-
25 ate state statute].
26 (e) The [commissioner] is authorized to promulgate regulations to im-
27 plement the provisions of this section.

Section 4. [Effective Date.] [Insert effective date.]
Open Drug Formulary Act

In an attempt to control the growth rate in Medicaid expenditures, states have considered or implemented a variety of cost containment measures. In that regard, the subject of an "open" or "closed" drug formulary has been one addressed by every state. Medicaid formularies are lists of drugs that will be reimbursed under the program. A Medicaid closed or restricted formulary is one for which the state will reimburse only pharmaceutical agents on an approved list. An open drug formulary, on the other hand, is an unrestricted listing of pharmaceutical agents for which reimbursement will be made. While the argument for a restrictive drug list is that it reduces health care costs, one of the arguments for an open drug list is that the unlimited availability allows doctors to prescribe certain medications that, given early in the course of illness, could ultimately prevent costly hospitalizations and delay nursing home admissions.

Currently, 31 states have an open drug formulary, while 19 have a closed or restricted formulary. Only three states—Louisiana, Oregon and Utah—however, have legislation on the issue; the remainder have dealt with it administratively.

This act, based on 1988 Utah legislation, prohibits the use of a restrictive list of Medicaid reimbursable drugs. It further provides that no state department, division or agency may maintain a formulary that restricts a physician's ability to treat a patient with a drug approved as safe and effective by the federal Food and Drug Administration.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Open Drug Formulary Act.

Section 2. [Definitions.] As used in this act, "Restrictive drug formulary" means a list of legend drugs that are prohibited from dispensation, but are approved by the federal Food and Drug Administration, except for drugs for cosmetic purposes.

Section 3. [Prohibition on Use of Restrictive List.] A practitioner may prescribe legend drugs in accordance with this act that, in his professional judgment and within the lawful scope of his practice, he considers appropriate for the diagnosis and treatment of his patient. No state department, division or agency may maintain a restrictive drug formulary that restricts a physician's ability to treat a patient with a drug that has been approved and designated as safe and effective by the federal Food and Drug Administration, except for drugs for cosmetic purposes.

A state department, division or agency may reimburse for multisource...
Suggested State Legislation

10 legend drugs in the generic form, in accordance with state and federal
11 law, unless an exception has been made by the prescribing practitioner.

Section 4. [Effective Date] [Insert effective date.]
Regulation of Precursors to Controlled Substances Act

This act, based on 1986 California legislation (subsequently amended in 1988), requires chemical manufacturers, wholesalers, retailers or anyone else engaged in the sale, transfer or furnishing of precursors of specified controlled substances to report all such transactions to the state department of justice. It further requires that proper identification (as defined in statute) be obtained from a purchaser and reported prior to a sale.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Regulation of Precursors to Controlled Substances Act.

Section 2. [Substances Subject to Reporting.] Any manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes any of the following substances to any person in this state shall submit a report to the [department of justice] of all of those transactions:

1. Phenyl-2-propanone.
2. Methylamine.
3. Ethylamine.
4. D-lysergic acid.
5. Ergotamine tartrate.
6. Diethyl malonate.
7. Malonic acid.
8. Ethyl malonate.
11. N-acetylanthranilic acid.
12. Pyrrolidine.
13. Phenylacetic acid.
15. Morpholine.
17. Pseudoephedrine.
18. Norpseudoephedrine.
19. Phenylpropanolamine.
20. Propionic anhydride.
22. Safrole.
23. Piperonal.
24. Thionylchloride.
Suggested State Legislation

29 (25) Benzyl cyanide.
30 (26) Ergonovine maleate.
31 (27) N-methylephedrine.
32 (28) N-ethylpseudoephedrine.
33 (29) N-methylpseudoephedrine.
34 (30) N-ethylpseudoephedrine.
35 (31) Chlorpheniramine.
36 (32) Chlorpseudophedrine.
37 (33) Any of the substances listed by the [department of justice] in regu-
38 lations promulgated pursuant to Section 3.

1 Section 3. [Adoption of Rules, Regulations.] The [department of justice]
2 may adopt rules and regulations in accordance with [insert appropriate
3 state statute] that add substances to Section 2 of this act if the substance
4 is a precursor to a controlled substance and delete substances from Sec-
5 tion 2. However, no regulation adding or deleting a substance shall have
6 any effect beyond [insert date] of the year following the calendar year
7 during which the regulation was adopted.

1 Section 4. [Proper Identification.]
2 (a) Any manufacturer, wholesaler, retailer, or other person shall, pri-
3 or to selling, transferring or otherwise furnishing any substance speci-
4 fied in Section 2 of this act to a person in this state, require proper iden-
5 tification from the purchaser.
6 (b) For the purposes of this section, "proper identification" means a
7 motor vehicle operator's license or other official state-issued identifica-
8 tion of the purchaser which contains a photograph of the purchaser, and
9 includes the residential or mailing address of the purchaser, other than
10 a post office box number, the motor vehicle license number of any mo-
11 tor vehicle owned or operated by the purchaser, a letter of authorization
12 from the business for which any substance specified in Section 2 is be-
13 ing furnished, which includes the business license number and address
14 of the business, a full description of how the substance is to be used, and
15 the signature of the purchaser. The person selling, transferring or other-
16 wise furnishing any substance specified in Section 2 shall affix his or
17 her signature as a witness to the signature and identification of the pur-
18 chaser.
19 (c) A violation of this section is a misdemeanor.

1 Section 5. [Report of Transaction.] Any manufacturer, wholesaler,
2 retailer or other person who sells, transfers, or otherwise furnishes a sub-
3 stance specified in Section 2 to a person in this state shall, not less than
4 [21] days prior to delivery of the substance, submit a report of the trans-
5 action, which includes the identification information specified in Sec-
6 tion 4, to the [department of justice]. However, the [department of jus-
7 tice] may authorize the submission of the reports on a monthly basis with
8 respect to repeated, regular transactions between the furnisher and the
9 recipient involving the same substance if the [department of justice] de-
10 termines that either of the following exist:

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Precursors to Controlled Substances Act

(1) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes such substance and the recipient of the substance.

(2) The recipient has established a record of utilization of the substance for lawful purposes.

Section 6. [Exceptions.] This act shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist or veterinarian.

(2) Any physician, dentist, podiatrist or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the [state board of pharmacy] who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist or veterinarian.

(4) Any sale, transfer, furnishing or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine and which is lawfully sold, transferred or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

Section 7. [Penalty.]

(a) Any person specified in Section 5 who does not submit a report as required by that section or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in the [county jail] not exceeding [six] months or by a fine not exceeding [5,000] dollars or by both the fine and imprisonment.

(b) Any person specified in Section 5 who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the [state prison], or by imprisonment in the [county jail] not exceeding [one] year, or by a fine not exceeding [100,000] dollars, or by both the fine and imprisonment.

Section 8. [Effective Date.] [Insert effective date.]
Alcoholism and Drug Addiction
Treatment and Support Act

Public assistance caseloads have been rising and some of the growth
has been the result of a rapid increase in the number of persons needing
drug or alcohol abuse related treatment. The purpose of this act,
based on Washington state legislation enacted in 1997, is to eliminate
the provision of cash welfare grants to recipients who are eligible for
state assistance based on an incapacity due to alcoholism or drug ad-
diction, and replace these grants with a structured treatment or shel-
ter assistance.

The state had found that the direct cash grants enabled alcoholics and
drug addicts to continue their destructive lifestyle by providing the
means to purchase alcohol and drugs. The Alcoholism and Drug Addic-
tion Treatment and Support Act (ADATSA) program instead offers a six-
month program of treatment, coupled with re-employment skills and a
living stipend administered by a "protective payee" to persons who seek
rehabilitation. For those unwilling to undergo treatment, ADATSA offers
a shelter in a dormitory setting or a shelter assistance grant through
a protective payee. Medical assistance is also provided to all recipients.
The original legislation, however, has since been amended to narrow the
admission criteria for the shelter services and to designate that preg-
nant women and parents of young children will receive first priority for
treatment services. The draft presented here reflects those amendments.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Alcoholism and
Drug Addiction Treatment and Support Act.

Section 2. [Legislative Findings.] The legislature finds:
(1) There is a need for reevaluation of state policies and programs
regarding indigent alcoholics and drug addicts;
(2) The practice of providing a cash grant may be causing rapid
caseload growth and attracting transients to the state;
(3) Many chronic public inebriates have been recycled through coun-
try detoxification centers repeatedly without apparent improvement;
(4) The assumption that all individuals will recover through such treat-
ment has not been substantiated;
(5) The state must modify its policies and programs for alcoholics and
drug addicts and redirect its resources in the interests of these individu-
als, the community and the taxpayers; and
(6) Treatment resources should be focused on persons willing to com-
mit to rehabilitation; and

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Section 3. [Legislative Purpose.] The legislature recognizes that alcoholism and drug addiction are treatable diseases and that most persons with this illness can recover. For this reason, this act provides a range of substance abuse treatment services. In addition, the legislature recognizes that when these diseases have progressed to the stage where a person's alcoholism or drug addiction has resulted in physiological or organic damage or cognitive impairment, shelter services may be appropriate. The legislature further recognizes that distinguishing alcoholics and drug addicts from persons incapacitated due to physical disability or mental illness is necessary in order to provide an incentive for alcoholics and drug addicts to seek appropriate treatment and in order to avoid use of programs that are not oriented toward their conditions.

Section 4. [Eligibility for Shelter Services.] A person is eligible for shelter services under this act only if he or she:

1. Meets the financial eligibility requirements contained in [insert appropriate statutory citation];
2. Is incapacitated from gainful employment due to a condition contained in paragraph (3) of this section, which incapacity will likely continue for a minimum of [60] days; and
3. Suffers from active addiction to alcohol or drugs manifested by physiological or organic damage resulting in functional limitation, based on documented evidence from a physician, psychologist or alcohol or drug treatment professional who is determined by the [department of social and health services] to be qualified to make this finding; or
4. Suffers from active addiction to alcohol or drugs to the extent that impairment of the applicant's cognitive ability will not dissipate with sobriety or detoxification, based on documented evidence from a physician, psychologist or alcohol or drug treatment professional who is determined by the [department] to be qualified to make this finding.

Section 5. [Shelter Assistance Program.]

(a) The [department] shall establish a shelter assistance program to provide, within available funds, shelter for persons eligible under this act. "Shelter," "shelter support" or "shelter assistance" means a facility under contract to the [department] providing room and board in a supervised living arrangement, normally in a group or dormitory setting, to eligible recipients under this act. This may include supervised domiciliary facilities operated under the auspices of public or private agencies. No facility under contract to the [department] shall allow the consumption of alcoholic beverages on the premises. The [department] may contract with counties and cities for such shelter services. To the
extent possible, the [department] shall not displace existing emergency shelter beds for use as shelter under this act. In areas of the state in which it is not feasible to develop shelters, due to low numbers of people needing shelter services, or in which sufficient numbers of shelter beds are not available, the [department] may provide shelter through an intensive protective payee program, unless the [department] grants an exception on an individual basis for less intense supervision.

(b) Persons continuously eligible for the general assistance—unemployable program since [insert date], who transfer to the program established by this act, have the option to continue their present living situation, but only through a protective payee.

Section 6. [Client Assessment, Treatment and Support Services].
(a) The [department] shall provide client assessment, treatment and support services. The assessment services shall include diagnostic evaluation and arranging for admission into treatment or supported living programs.
(b) The [department] shall assist clients in making application for supplemental security benefits and in obtaining the necessary documentation required by the federal social security administration for such benefits.

Section 7. [Eligibility for Treatment Services.]
(a) A person shall not be eligible for treatment services under this act unless he or she:
(1) Meets the financial eligibility requirements contained in [insert appropriate statutory citation]; and
(2) Is incapacitated from gainful employment, which incapacity will likely continue for a minimum of [60] days.
(b) First priority for receipt of treatment services shall be given to pregnant women and parents of young children.
(c) In order to rationally allocate treatment services, the [department] may establish by rule caseload ceilings and additional eligibility criteria, including the setting of priorities among classes of persons for the receipt of treatment services. Any such rules shall be consistent with any conditions or limitations contained in any appropriations for treatment services.

Section 8. [Treatment Services.]
(a) The [department] shall establish a treatment program to provide, within available funds, alcohol and drug treatment services for indigent persons eligible under this act. The treatment services may include but are not limited to:
(1) Intensive inpatient treatment services;
(2) Recovery house treatment;
(3) Outpatient treatment and counseling, including assistance in obtaining employment, and including a living allowance while undergoing outpatient treatment. The living allowance may not be used to provide shelter to clients in a dormitory setting that does not require sobri-
ADATSA Program

ety as a condition of residence. The living allowance shall be ad-
ministered on the clients' behalf by the outpatient treatment facility or
other social service agency designated by the [department]. The [depart-
ment] is authorized to pay the facility a fee for administering this al-
lowance.
(b) No individual may receive treatment services under this section
for more than [six] months in any [two-]year period provided that the
[department] may approve additional treatment and/or living allowance
as an exception.
(c) The [department] may require an applicant or recipient selecting
treatment to complete inpatient and recovery house treatment when,
in the judgment of a designated assessment center, such treatment is
necessary prior to providing the outpatient program.

Section 9. [Rules] The [department] by rule may establish procedures
for the administration of the services provided by this act. Any rules shall
be consistent with any conditions or limitations on appropriations
provided for these services. If funds provided for any service under this
act have been fully expended, the [department] shall immediately dis-
continue that service.

Section 10. [County Multipurpose Diagnostic Center or Detention
Center.]
(a) If a county elects to establish a multipurpose diagnostic center or
detention center, the alcoholism and drug addiction assessment serv-
ice under Section 6 of this act may be integrated into the services provid-
ed by such a center.
(b) The center may be financed from funds made available by the
[department] for alcoholism and drug addiction assessments under this
act and funds contained in the [department]'s budget for detoxification,
involuntary detention and involuntary treatment under [insert appropri-
ate statutory citations]. The center may be operated by the county or
pursuant to contract between the county and a qualified organization.

Section 11. [Collection of Data; Monitoring.] The [department of social
and health services] shall:
(1) Collect and maintain relevant demographic data regarding persons
receiving or awaiting treatment services under this act;
(2) Collect and maintain utilization data on inpatient treatment, out-
patient treatment, shelter services and medical services;
(3) Monitor contracted service providers to ensure conformance with
the [omnibus appropriations act] and treatment priorities established
in this act;
(4) Report the results of the data collection and monitoring provided
for in this section to appropriate committees of the legislature on or be-
fore [insert dates].

Section 12. [Severability.] [Insert severability clause.]
Suggested State Legislation

1  Section 13. [Effective Date] [Insert effective date.]
Compact for the Supervision of Parolees and Probationers: An Update

Draft Enabling Legislation from the National Commission to Restructure the Interstate Compact

In 1934, the U.S. Congress granted permission for two or more states to enter into agreements or compacts for mutual assistance and cooperation in the prevention of crime and for other related purposes (Crime Control Consent Act, Title 4, U.S.C. 111). As a result, the Compact for the Supervision of Parolees and Probationers was created by the Interstate Commission on Crime in 1937.

The Compact’s primary goals are: (1) to provide for the movement and continued supervision of adult parolees and probationers to a state of residence and/or a state having a primary support group and/or employment program; and (2) to monitor the community adjustment of the adult parolee or probationer in the receiving state. If a parole/probation violation occurs, the Compact provides for the removal of the violator back to the sending state to face a violation hearing.

All 50 states, the District of Columbia, Puerto Rico and the Virgin Islands are signatory today.

However, various modern programs in parole and probation have surfaced which cannot be readily absorbed by the Compact’s eligibility requirements. For example, pretrial intervention clients are not convicted and, consequently, are ineligible for transfer under the basic Compact. The above is further complicated by various court decisions which expanded client due process rights in the parole/probation violation process. All of that, in addition to conflicting state interpretation in the administration of state statutes across state boundaries and conflicting interpretation of interstate policy, practice and procedure, led the Parole and Probation Compact Administrators’ Association to seek resolution.

In March 1987, a grant was obtained from the National Institute on Corrections, and subsequently, the National Commission to Restructure the Interstate Compact Governing the Control of Parolees and Probationers was formed.

The National Commission is comprised of representatives of the American Probation & Parole Association (APPA); the National Association of Probation Executives (NAPE); the Association of Paroling Authorities-International (APAI); and the Parole and Probation Compact Administrators' Association (PPCAA). The Commission’s primary goals are to: (1) determine the extent to which interstate statute, policy and procedure are successfully complementing the goals and objectives of local, county and state parole and probation systems; (2) seek out innovative solutions to gaps identified in the interstate system; and (3) recommend changes to existent statutes, policy and procedure to better complement modern field systems.

Staff at The Council of State Governments served as consultant to the
project and submitted the products to the National Commission in May 1988. Upon receiving Commission approval, the proposed accreditation standards were submitted to the National Accreditation Commission of the American Correctional Association in August 1988. Twelve of the the 13 standards were formally approved and accepted for implementation. The National Commission's policies and procedures were submitted to and passed by PPCAA at its annual meeting, thus making the Commission's procedural recommendations effective nation-wide.

The following draft enabling legislation was submitted to and approved for publication in this volume by the Committee on Suggested State Legislation in July 1989.

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**Parole/Probation Revocation Hearings Amendments**

These amendments to the basic Compact for the Supervision of Parolees and Probationers provide for two or more states to enter into contracts or agreements for the purpose of holding reciprocal parole or probation revocation hearings. The benefit to the legislation is the speedy disposition of parole or probation violation warrants. Under a recent U.S. Supreme Court decision (*Nash v. Carchman*) parole or probation violation warrants are not disposable under the Interstate Agreement on Detainers, an interstate agreement which permits incarcerated prisoners speedy trial rights to dispose of filed detainers based on outstanding indictments, information or complaints.

Since the Court's ruling in *Nash v. Carchman*, Compact clients who are convicted and incarcerated in the receiving state cannot dispose of parole or probation violation detainers filed by the original sending state. As a result, parole or probation detainers could remain on file undisposed of throughout a term of imprisonment. This action, without finding a violation, produces extreme hardship. Once a detainer is filed, prisoners may not gain access to reduced custody status and hence, certain rehabilitative programs, such as work release and furloughs. This practice is further suspect in that many sending states routinely remove the detainers when the prisoner becomes eligible for release in the receiving state. Many states cite fiscal reasons for removing the detainer and permitting the prisoner's release to the community instead of returning the client for violation proceedings in the sending state. Essentially, the client is paroled to the community directly from maximum security. The release of a client from maximum custody status directly to the community is not in the best interests of community protection or reintegration of the client.
Parole Revocation Hearings Amendment

The following Amendment to [insert citation to the legislation by which the Interstate Compact for the Supervision of Parolees and Probationers was adopted] is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

Section 1. Any hearings, including final revocation hearings, to which a parolee is entitled prior to incarceration or reincarceration for a violation of parole may, at the discretion of the jurisdiction from which the individual was paroled, be held before the appropriate officers of any receiving state to which the individual was transferred under [cite Interstate Compact] prior to the commencement of revocation. In such event, said officers shall act as agents of the sending state for purposes of such hearings. States enacting this amendment may enter into agreements under which the hearings referred to in this amendment may be held, and which may define the terms and conditions of such agency relationship.

Section 2. The finding of any final revocation hearing held by a receiving state regarding a parolee pursuant to Section 1 shall be subject to review and approval by the paroling authorities of the sending state in accordance with their procedures and policies (said officers shall act as agents of the sending state).

Section 3. All provisions of law contrary to this amendment are hereby repealed.

Section 4. This amendment shall take effect when ratified by any two or more states party of the Compact and shall be effective only as to those states which have specifically ratified this amendment.

Section 5. Copies of this act shall, upon its approval, be transmitted to the Governor of each member’s state, the Attorney General and the Administrator of General Services of the United States and to The Council of State Governments.

Section 6. [Insert effective date.]

Probation Revocation Hearings Amendment

The following Amendment to [insert citation to the legislation by which the Interstate Compact for the Supervision of Parolees and Probationers was adopted] is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

Section 7. Any hearings, including final revocation hearings, to which a probationer is entitled prior to incarceration or reincarceration for a violation of probation may, at the discretion of the jurisdiction from which the individual was granted probation, be held before the appropriate officers of any receiving state to which the individual was transferred under [cite Interstate Compact] prior to the commencement of revocation. In such event, said officers shall act as agents of the sending state for purposes of such hearings. States enacting this amendment may enter into agreements under which the hearings referred to in this amendment may be held, and which may define the terms and conditions of such agency relationship.
Suggested State Legislation

tioners was adopted] is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

Section 1. Any hearings, including final revocation hearings, to which a probationer is entitled prior to incarceration or reincarceration for a violation of probation by law may, at the discretion of the courts involved, be held before the appropriate court of the receiving state.

Section 2. The finding or findings of any hearings held under this statute shall be considered recommendations to the sending state court and shall be subject to review and approval in accordance with the policies of the sending state court.

Section 3. All provisions of law contrary to this amendment are hereby repealed.

Section 4. This amendment shall take effect when ratified by any two or more states party of the Compact and shall be effective only as to those states which have specifically ratified this amendment.

Section 5. Copies of this act shall, upon its approval, be transmitted to the Governor of each member's state, the Attorney General and the Administrator of General Services of the United States and to The Council of State Governments.

Section 6. [Insert effective date.]

Uniform Compact Administrators
Warrant Act

This legislation is included in the recommendations of the National Commission to Restructure the Interstate Compact for the use and convenience of those states where warrant issuing authority is deemed desirable and has not already been granted that state under their respective state statutes.

Some states, because of a lack of statutory authority, cannot arrest an out-of-state client under their supervision. As a result, the client may remain free, while the receiving state awaits receipt of the sending state's parole or probation violation warrant. This may consume an inordinate amount of time, leaving the receiving state's community at risk. The Commission proposes this statute to permit warrant issuing power to those compact administrators who don't have state statutory authority to arrest out-of-state clients under their supervision. This permits greater control over violators from out of state through apprehension and detention of the violator pending receipt of the sending state's warrant.
Section 1. [Short Title] This act may be cited as the Uniform Compact Administrators Warrant Act.

Section 2. [Authority] The duly appointed Administrator of the Interstate Compact for the Supervision of Parolees and Probationers for the state shall have the authority to issue warrants for arrest whenever the Administrator has sufficient reason to believe that an offense or violation of parole or probation in a Compact case has been or is being committed.

Section 3. [Effective Date] This act shall take effect immediately upon passage.

Uniform Reciprocal Interstate Supervision of Nonconvicted Clients Act

This is uniform reciprocal legislation which permits signatory states to allow certain unconvicted client groups access to Compact services. These clients, due to their unconvicted status, are not eligible for Compact benefits under the basic Compact. Due to the reciprocal nature of this legislation, only signatory states may transfer unconvicted clients between themselves for parole, probation or court-ordered supervision under this act.

Section 1. [Short Title] This act may be cited as the Uniform Reciprocal Interstate Supervision of Nonconvicted Clients Act.

Section 2. [Authorization] Be it enacted that the [state of _______] hereby authorizes its [department of parole and probation or other appropriate agency]:

1. To enter into agreements with any other state, jurisdiction, or group of states or jurisdictions which are party to the Interstate Compact for the Supervision of Parolees and Probationers for the supervision under the terms of the Compact of individuals who are not convicted of an offense but are subject to supervision by order of a court.

2. The provisions of this section shall not apply to compacting states or jurisdictions which do not give and accept assistance in supervising interstate nonconvicted clients on a reciprocal basis.

Section 3. [Insert effective date.]
College and University Security Information Act

This act, based on 1988 Pennsylvania legislation, requires that the state's institutions of higher education provide students and employees with information relating to crime statistics for the most recent three-year period and information regarding the institution's security policies and procedures. It also requires that similar information be provided to prospective students and employees upon request.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the College and University Security Information Act.

Section 2. [Definitions] As used in this act, unless otherwise indicated:
(1) “Branch campus” means a unit of an institution of higher education which is distinguished by all of the following characteristics:
(i) An academic degree-granting program or organized parts thereof offered on a continuing basis;
(ii) Location separately identifiable from the main campus of the parent institution and providing the services normally associated with the campus, and
(iii) Legal authority for governance, administration and general operation derived from the charter or enabling legislation of the parent institution or of the state system of higher education.
(2) “Community college” means an institution now or hereafter created pursuant to [insert appropriate state statute].
(3) “Independent institution of higher education” means an institution of higher education which is operated not for profit, located in and incorporated or chartered by the state, entitled to confer degrees as set forth in [insert appropriate state statute] and entitled to apply to itself the designation “college” or “university” as provided for by standards and qualifications prescribed by the [state board of education] pursuant to [insert appropriate state statute].
(4) “Institution of higher education” means an independent institution of higher education, a community college, a state-owned institution or a state-related institution, any of which is approved by the [department of education].
(5) “State-owned institutions” means those institutions which are part of the state system of higher education pursuant to [insert appropriate state statute].
(6) “State-related institutions” means [insert names of institutions].
(7) “Student housing” means all residence halls and sorority and
Section 3. [Crime Statistics and Security Policies and Procedures.]

(a) Each institution of higher education shall report to the [state police], on an annual basis, crime statistics for publication in [uniform crime report] on forms and in the format required by the [state police].

(b) Each institution of higher education shall publish and distribute a report which shall be updated annually and which shall include the crime statistics as reported under subsection (a) of this section for the most recent [three-] year period. Crime rates shall also be included in the report. The crime rates reported shall be based on the numbers and categories of crimes reported under subsection (a) of this section and the number of full-time equivalent undergraduate and graduate students (FTES) and full-time equivalent employees at the institution of higher education. Upon request, the institution shall provide the report to every person who submits an application for admission to either a main or branch campus and to each new employee at the time of employment.

In its acknowledgment of receipt of the formal application of admission, the institution shall notify the applicant of the availability of such information. The information shall also be provided on an annual basis to all students and employees. Institutions with more than one campus shall provide the required information on a campus-by-campus basis.

(c) Each institution of higher education shall provide to every person who submits an application for admission to a main or branch campus, to every new employee at the time of employment, and annually to all students and employees information regarding the institution's security policies and procedures. Institutions with a main campus and one or more branch campuses shall provide the information on a campus-by-campus basis. Such information for the most recent school year shall include, but not be limited to, the following:

1. The number of undergraduate and graduate students enrolled.
2. The number of undergraduate and graduate students living in student housing.
3. The total number of nonstudent employees working on the campus.
4. The administrative office responsible for security on the campus.
5. A description of the type and number of security personnel utilized by the institution, including a description of their training.
6. The enforcement authority of security personnel, including their working relationship with state and local police agencies.
7. Policy on reporting criminal incidents to state and local police.
8. Policy regarding access to institutional facilities and programs by students, employees, guests and other individuals.
9. Procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.
10. A statement of policy regarding the possession, use and sale of alcoholic beverages.
Suggested State Legislation

(11) A statement of policy regarding the possession, use and sale of
illegal drugs.
(12) A statement of policy regarding the possession and use of
weapons by security personnel and any other person.
(13) Any policy regarding students or employees with criminal
records.
(14) Security considerations used in the maintenance of campus fa-
cilities, including landscaping, groundskeeping and outdoor lighting.
(15) A description of the communication mediums used to inform the
campus community about security matters as well as the frequency with
which the information is usually provided.
(d) Institutions which maintain student housing facilities shall include
in the information required by subsection (c) of this section the following:
(1) Types of student housing available (on-campus, off-campus; sin-
gle room, double, group; single sex, coed; undergraduate, graduate, mar-
rried; etc.).
(2) Policies on housing assignments and requests by students for as-
signment changes.
(3) Policies concerning the identification and admission of visitors
in student housing facilities.
(4) Measures to secure entrances to student housing facilities.
(5) Standard security features used to secure doors and windows in
students' rooms.
(6) A description of the type and number of employees, including secu-
ritv personnel, assigned to the student housing facilities which shall in-
clude a description of their security training.
(7) The type and frequency of programs designed to inform student
housing residents about housing security and enforcement procedures.
(8) Policy and any special security procedures for housing students
during low-occupancy periods such as holidays and vacation periods.
(9) Policy on the housing of guests and others not assigned to the stu-
dent housing or not regularly associated with the institution of higher
education.

Section 4. [Rules and Regulations.] The [state board of education] may,
in the manner provided by law, promulgate the rules and regulations
necessary to carry out this act.

Section 5. [Enforcement.]
(a) Whenever the [attorney general] has reason to believe that an in-
stitution of higher education is violating this act, the [attorney gener-
al] may bring an action in the name of the state against the institution
to compel compliance.
(b) In any action brought by the [attorney general] to compel compli-
ance with this act, if the court finds that an institution of higher educa-
tion is willfully violating this act or if any institution of higher educa-
tion fails to promptly comply with an order of the court to comply with
this act, the [attorney general], acting in the name of the state, may re-
cover on behalf of the state a civil penalty not to exceed [10,000] dollars.
Section 6. [Effective date] [Insert effective date]
Hate Crime Reporting Act

This act, based on 1988 Minnesota legislation, requires that police report crimes motivated by prejudice or hate because of a person’s gender, sexual orientation, age, religion, national origin, disability or other characteristics. It requires that individual police departments file monthly reports to the state’s department of public safety; these reports must be summarized annually for the state’s department of human rights and the state legislature. The act also requires that the peace officers standards and training board develop bias sensitivity training courses to assist peace officers in identifying and responding to hate crimes. After a given date, all licensed peace officers must receive bias sensitivity training in order to be licensed.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the Hate Crime Reporting Act.

1 Section 2. [Report Requirements] A peace officer must report to the head of the officer’s department every violation of [insert appropriate state statute] or a local criminal ordinance if the officer has reason to believe that the offender was motivated to commit the act by the victim’s race, religion, national origin, sex, age, disability or characteristics identified as sexual orientation. The [superintendent of the bureau of criminal apprehension] shall adopt a reporting form to be used by law enforcement agencies in making the reports required under this act. The reports must include for each incident all of the following:

1 (1) the date of the offense;
1 (2) the location of the offense;
1 (3) whether the target of the incident is a person, private property, or public property;
1 (4) the crime committed;
1 (5) the type of bias and information about the offender and the victim that is relevant to that bias;
1 (6) any organized group involved in the incident;
1 (7) the disposition of the case; and
1 (8) any additional information the [superintendent] deems necessary for the acquisition of accurate and relevant data.

1 Section 3. [Use of Information Collected] The head of a local law enforcement agency or state law enforcement department that employs peace officers licensed under [insert appropriate state statute] must file a monthly report describing crimes reported under this act with the [department of public safety, bureau of criminal apprehension]. The [com-
missioner of public safety] must summarize and analyze the information received and file an annual report with the [department of human rights] and the legislature.

Section 4. [Training Course in Identifying and Responding to Crimes Motivated by Bias.]

(a) The [peace officer standards and training board] must prepare a training course to assist peace officers in identifying and responding to crimes motivated by the victim's race, religion, national origin, sex, age, disability or characteristics identified as sexual orientation. The course must include material to help officers distinguish bias crimes from other crimes, to help officers in understanding and assisting victims of these crimes, and to ensure that bias crimes will be accurately reported as required under Section 2 of this act. The course must be updated periodically as the [board] considers appropriate.

(b) An individual may not be licensed as a peace officer after [insert date], unless the individual has received the training described in subsection (a).

Section 5. [In-Service Training; Board Requirements; Chief Law Enforcement Officer Requirements.]

(a) The [board] must provide to chief law enforcement officers instructional materials patterned after the materials developed by the [board] under Section 4(a). These materials must meet [board] requirements for continuing education credit and be updated periodically as the [board] considers appropriate. The [board] must also seek funding for an educational conference to inform and sensitize chief law enforcement officers and other interested persons to the law enforcement issues associated with bias crimes. If funding is obtained, the [board] may sponsor the educational conference on its own or with other public or private entities.

(b) A chief law enforcement officer must inform all peace officers within the officer's agency of:

1. The requirements of Sections 2 and 3 of this act;
2. The availability of the instructional materials provided by the [board] under subsection (a) of this section; and
3. The availability of continuing education credit for the completion of these materials.

The chief law enforcement officer must also encourage these peace officers to review or complete the materials.

Section 6. [Effective Date] [Insert effective date.]
Cable Subscriber Privacy Protection Act

This act, based on 1988 New Jersey legislation, regulates the collection, use and disclosure of personally identifiable information by cable television companies, without a cable subscriber's consent. It also prohibits the interception of signals sent from a cable subscriber's terminal through a cable system, except as otherwise provided.

The act was designed to protect cable subscribers by prohibiting cable companies from selling lists of subscribers to advertisers without permission. In doing so, it allows companies to reveal aggregate, but not personally identifiable data on subscribers (e.g., who subscribes to what channels). Moreover, it also covers technological advancements of the cable industry: upstream communications channels (the signaling path provided by a company for the transmission of signals over a cable system from subscriber terminals) and interactive cable television programs and services (which involve the collection, reception, aggregation, storage or use of information contained in signals transmitted from subscriber terminals over upstream communications channels).

Suggested Legislation

(Title, enacting clause, etc.)

1. Section 1. [Short Title] This act may be cited as the Cable Subscriber Privacy Protection Act.

2. Section 2. [Definitions] As used in this act:

   1. "Upstream communications channel" means a signaling path provided by a cable television company for the transmission of signals over a cable television system from subscriber terminals;
   2. "Interactive cable television program or service" means a cable television program or service involving the collection, reception, aggregation, storage or use of information contained in signals transmitted from subscriber terminals over upstream communications channels;
   3. "Intercept" means to acquire, at any time from initiation to completion of a signal transmission over a cable television system, the content of the information contained in that signal;
   4. "Personally identifiable information" means any information that identifies any individual as a subscriber to, or user of, a cable television system, or that otherwise provides information about that individual or his use of any service provided by a cable television system; and
   5. "Qualified auxiliary service" means any business activity necessary or incidental to the provision of cable television services performed by a cable television company or other party, and shall include, but not be limited to, billing services, program suppliers, management consult-
Section 3. [Cable Television Company Use of Information Relating to Subscribers.]

(a) A cable television company may, without the subscriber consent required pursuant to subsection (d) of this section or Section 4 of this act, collect, receive, store, aggregate and use only such personally identifiable information relating to any subscriber, subscriber household, or user of a subscriber terminal as is necessary to provide cable television services and qualified auxiliary services, and to detect unauthorized reception of cable television services.

(b) Any actual and, if known, potential use to be made of the information collected, received, stored or aggregated pursuant to subsection (a) of this section shall be described in a written notification of information practices provided by the cable television company to the subscriber. In the case of a subscriber contract entered into on or prior to the effective date of this act, the notification shall be provided not later than [180] days following that date and at least once per year thereafter during the contract period. In the case of a contract entered into after the effective date of this act, the notification shall be provided at the time the contract is entered into and at least once per year thereafter during the contract period. The notification shall clearly and conspicuously set forth:

(1) The nature of the personally identifiable information collected or to be collected, and the nature of the use of that information;

(2) The nature, frequency and purpose of any disclosure of the information which may be reasonably anticipated, including a description of the types of persons to whom disclosure may be made;

(3) The period during which the information will be retained by the cable television company;

(4) The times and places at which the subscriber shall have access to the information pursuant to this act; and

(5) The limitations set forth in this act with respect to the collection and disclosure of personally identifiable information.

The cable television company shall not use personally identifiable information in a manner other than that described in the notification without further written notice to the subscriber and, where appropriate, the consent of the subscriber.

(c) If information is collected by a cable television company from any subscriber pursuant to subsection (a) of this section, after the date on which a notification is required and without that notification, the cable television company shall be subject to a fine of not more than [600] dollars for each subscriber from whom the information is so collected, which fine shall be collected in a summary manner pursuant to [insert appropriate state statute] except that no company shall be subject to a fine if the company proves that its failure to provide notification is the result of a clerical or typographical error.

(d) Except as provided in subsection (a) of this section, no cable television company shall use a cable television system to collect personally identifiable information concerning a subscriber, subscriber household...
Suggested State Legislation

or user of a subscriber terminal without the prior written or electronic
consent of the subscriber concerned. Any information collected without
that consent shall be destroyed immediately upon determination by the
cable television company that it has been so collected, or upon notifica-
tion to the company of such determination by the subscriber, as the case
may be, unless the subscriber consents, in writing, to its retention. Ex-
cept as otherwise provided by law, personally identifiable information
collected pursuant to this subsection shall only be used for the purposes
defined in the subscriber consent.

If information is collected or retained by a cable television company
in violation of this subsection, that company shall be subject to a fine
of not more than [500] dollars for each subscriber from whom the infor-
mination is so collected, which fine shall be collected in a summary man-
ner pursuant to [insert appropriate state statute].

(e) A subscriber may withdraw his consent at any time. This withdraw-
al shall take effect [30] days following a cable television company’s re-
cipt of notification by the subscriber. Within [45] days of receipt of that
request, the company shall advise, in writing, any third party recipient
of personally identifiable information collected pursuant to subsection
(d) of this section that the subscriber’s consent has been withdrawn.

(f) Personally identifiable information acquired pursuant to subsec-
tion (a) of this section shall be destroyed by the cable television com-
pany upon completion of the permissible uses of that information. Person-
ally identifiable information acquired pursuant to subsection (d) of this
section shall be destroyed upon completion of such uses, or upon the with-
drawal of subscriber consent or termination of the contract with a sub-
scriber, whichever comes first, unless the subscriber, at the time of grant-
ing consent to collect or retain the information indicates, electronically
or in writing, as appropriate, that the information may be retained
until completion of the permissible uses thereof. A cable television com-
pany shall notify a subscriber, in writing, when any personally identifi-
cable information concerning the subscriber, his household or a user of
his subscriber terminal is destroyed pursuant to this subsection.

Section 4. [Cable Television Company Disclosure of Information.]

(a) No cable television company shall rent, sell or otherwise release
personally identifiable information, in part or whole, without the prior
written or electronic consent of the subscriber, to any person except to
a person providing qualified auxiliary services to the company, or pur-
suant to law.

(b) A cable television company may disclose the names and addresses
of subscribers to any of its services if:
(1) The company has provided each subscriber with the opportunity
to prohibit the disclosure of his name and address; and
(2) The disclosure does not reveal the nature or extent of the use of
any cable television service or other service by any subscriber, subscriber
household or user of a subscriber terminal.

(c) No person shall be refused any cable television service for prohibit-
ing the inclusion of his name and address on a mailing list provided to
a third party.
(d) Use of personally identifiable information by those receiving the
information from a cable television company pursuant to the provisions
of this act is limited to the purposes for which the disclosure is made.
At the time that personally identifiable information is no longer re-
quired for such purposes, it shall be destroyed. Information acquired pur-
suant to the consent of a subscriber shall be destroyed immediately upon
receipt of notice from the cable television company that the subscriber
consent has been withdrawn or that the contract between the subscriber
and the cable television company has been terminated, except that the
information may be retained until the fulfillment of the purposes for
which it was received, if such retention is permitted by the subscriber
consent granted pursuant to Section 3(f) of this act.
(e) Concurrent with, or prior to, the provision of personally identifi-
able information to others pursuant to the provisions of this act, a cable
television company shall give notice to the person or entity receiving
the information of the provisions of this act. If personally identifiable
information is provided on a continuing basis, notice shall be provided
at the time of or prior to the provision of the first of such information
and once per year thereafter.
(f) A third party which has received personally identifiable informa-
tion pursuant to Section 3 or 4 of this act shall not retain that informa-
tion if no longer needed for the purposes for which it was acquired, nor
shall the party rent, sell or otherwise release that information to any
other person, except as provided by law.

Section 5. [Subscriber’s Right to Review Information Held by Cable Te-
levision Company.]
(a) A cable television company shall disclose to a subscriber all infor-
mation which the company possesses pertaining to that subscriber upon
request of the subscriber.
(b) A subscriber may examine and copy any information in the posses-
sion of a cable television company pertaining to the subscriber, his house-
hold or a user of his terminal upon reasonable notice during regular busi-
ness hours. The information supplied to the subscriber shall be in a legi-
ble format which is easily understood by the subscriber. The subscriber
shall bear all copying or mailing costs occasioned by the examination.
(c) A cable television company shall correct the information upon a
reasonable showing by a subscriber that personally identifiable infor-
mation contained therein is inaccurate. Within [45] days of receiving this
notification from the subscriber, the cable television company shall
transmit a corrected copy of the information to any party which was given
the erroneous information. Copies of all such correspondence shall
be sent to the subscriber.

Section 6. [Restrictions on Interception of Upstream Communications
Channel.]
(a) Except as otherwise provided in this act, no signal of any upstream
communications channel may be transmitted from a subscriber termi-
Suggested State Legislation

6 for the purpose of monitoring individual household viewing patterns
7 or practices except with the written authorization of the subscriber, con-
8 tained in a document separate from any contract entered into by the sub-
9 scriber and a cable television company for non-interactive cable televi-
10 sion services.
11 (b) Except as otherwise provided by law, no person shall intercept a sig-
12 nal of an upstream communications channel transmitted from a sub-
13 scriber terminal except the subscriber and the intended receiver of the
14 signal.
15 (c) Written authorization shall not be required for a cable television
16 company to conduct system-wide or individually addressed monitoring
17 for the purposes of verifying system integrity, controlling return path
18 transmission, or for any purpose for which personally identifiable in-
19 formation may be lawfully acquired pursuant to this act, except that,
20 if not for such purpose, the monitoring shall not result in the creation
21 of personally identifiable information other than the name and address
22 of the subscriber.

1 Section 7. This act shall not prohibit a cable television company from
2 providing individual subscriber data to a proper court or agency for the
3 purposes of collecting a debt owed the company.

1 Section 8. This act shall not prohibit the examination of aggregate data
2 by, or the disclosure of such data to, any third party, provided that the
3 data contain no personally identifiable information concerning any sub-
4 scriber, his household or a user of his terminal.

1 Section 9. [Penalty.] Any person who discloses personally identifiable
2 information in violation of this act or otherwise engages in negligent,
3 willful or reckless conduct in violation of this act shall be subject to a
4 fine of not less than $500 dollars for each disclosure, or for each negli-
5 gent, willful or reckless act or omission, as appropriate. The fine shall
6 be collected in a summary manner, pursuant to [insert appropriate state
7 statute].

1 Section 10. [Effective Date.] [Insert effective date.]
Cashing of State Checks Act

This act, based on 1987 Connecticut legislation, requires state and federally chartered banking institutions to cash state welfare checks for any public assistance recipient with reasonable identification. It forbids the banks from charging recipients for cashing checks, but does not preclude them from requesting a fee from the state. The act further requires the state income maintenance commissioner, in cooperation with the banking commissioner, to issue regulations setting reasonable identification forms and procedures.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Cashing of State Checks Act.

Section 2. [Definitions] As used in this act:
1. "Banking institution" means a state bank and trust company, national banking association, industrial bank, state or federally chartered savings bank, state or federally chartered savings and loan association, state or federally chartered credit union or other state or federally chartered banking institution having an office within this state.
2. "Recipient of public assistance" means any person receiving public assistance under [insert appropriate state statute.]

Section 3. Each banking institution shall cash, at its main office or any of its branch offices within the state, any check drawn by the state of [state] and payable within the state to a recipient of public assistance, if the check is negotiated to the banking institution by the original payee of the check, and if the payee produces reasonable identification as provided for in regulations adopted pursuant to Section 6 of this act. No banking institution shall charge a recipient of public assistance a fee for cashing a check pursuant to this act. Nothing in this act shall preclude a banking institution from requesting a fee from the state of [state] for cashing such checks. The provisions of this act shall apply to a state or federally chartered credit union only if the original payee negotiating the check is a member of such credit union.

Section 4. Nothing in this act shall be interpreted as limiting any rights which the banking institution may have against the payee by contract or at law, with regard to items which are negotiated to it as provided for in this act, which are not paid upon presentment or where such payee breaches a warranty made under [insert appropriate state statute]. This act shall not apply to any check negotiated to a banking institution if such institution has reason to believe that the check will not
Suggested State Legislation

Section 5. No banking institution shall be liable to reimburse the state of [state] for a loss incurred as the result of the wrongful payment of any check cashed pursuant to this act, provided at the time such check was cashed such banking institution employed the identification procedures prescribed in regulations adopted pursuant to Section 6 of this act.

Section 6. The [commissioner of income maintenance], in cooperation with the [banking commissioner], shall adopt regulations in accordance with [insert appropriate state statute] specifying:

(1) The forms of reasonable identification which a banking institution shall accept when cashing a check pursuant to this act; and

(2) The identification procedures such institution shall employ to avoid liability for the wrongful payment of any such check.

Section 7. [Effective Date] [Insert effective date.]
Check Cashing Services Act

This act, based on 1986 Connecticut legislation, regulates check cashing services. With certain exceptions, it prohibits anyone from engaging in the business of cashing checks, drafts or money orders for a fee without a license from the state's commissioner of consumer protection. The act limits licensees' fees to no more than the greater of 1/4 of 1 percent of the face amount of the item plus a handling fee of 10 cents, or a flat 30 cents. It prohibits licensees from cashing items whose face amount is more than $2,500.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Check Cashing Services Act.

Section 2. [Exemptions.] The provisions of this act shall not apply to:
(1) Checks, drafts or money orders cashed without consideration or charge;
(2) Checks, drafts or money orders cashed as an incident to the conduct of any other lawful business where not more than 50 cents is charged for cashing such check, draft or money order; or
(3) Any institution subject to and under the general supervision of any agency of the United States or any entity subject to the general supervision of the commissioner of banking.

Section 3. [Check Cashing Service License; Application.]
(a) Except as provided for in Section 2 of this act, no person, partnership, association or corporation shall engage in the business of cashing checks, drafts or money orders for consideration without obtaining a license from the commissioner of consumer protection. An application for a check cashing service license or renewal of such license shall be in writing, under oath and on a form provided by the commissioner.
(b) The application shall set forth:
(1) The name and address of the applicant;
(2) If the applicant is a firm or partnership, the names and addresses of each member of the firm or partnership;
(3) If the applicant is a corporation, the names and addresses of each officer, director, authorized agent and each stockholder owning 10 percent or more of the outstanding stock of such corporation;
(4) Any other information the commissioner may require.
(c) Upon the filing of the required application and license fee, the commissioner shall investigate the facts and may issue a license if he finds that the applicant is in all respects properly qualified and of good character, that granting such license would not be against the public interest.
and the applicant has available and shall continuously maintain liquid
assets of at least [10,000] dollars for each business location specified in
the application.

Section 4. [License Fee.]  
(a) Each applicant for a license to operate a check cashing service shall
pay to the [commissioner of consumer protection], at the time of applica-
tion, a nonrefundable license fee of [250] dollars. Each license issued
pursuant to Section 3 of this act shall expire at the close of business on
[June 30] of each year unless such license is renewed. Each licensee shall,
on or before [June 20] of each year, pay to the [commissioner] a license
fee of [250] dollars for the succeeding year, commencing [July 1].
(b) Each applicant or licensee shall pay the expenses of any examina-
tion or investigation under this act.
(c) No abatement of the license fee shall be made if the license is sur-
rrendered, canceled, revoked or suspended prior to the expiration of the
period for which it was issued.

Section 5. [Posting License.] Any license issued pursuant to Section 3
of this act, shall be conspicuously posted in each place of business of the
licensee. Such license shall not be transferable or assignable.

Section 6. [Service Charges; Limit on Amount Cashed.]  
(a) A check cashing service, licensed under Section 3 of this act, shall
not charge or collect in fees, charges or otherwise for cashing a check,
draft or money order, drawn on any depository institution, a sum exceed-
ing (1) [three-quarters of one] per cent of the item and a handling fee of
[10] cents per item, or (2) [30] cents, whichever is greater. The licensee
shall conspicuously post and at all times display, at each place of busi-
ness, a schedule of fees permitted under this act.
(b) No check cashing service shall cash an item if the amount exceeds
[2,500] dollars.

Section 7. [Service Recordkeeping; Endorsement.]  
(a) Each check cashing service, licensed under Section 3 of this act,
shall keep and use in the business, in the form satisfactory to the [com-
missioner of consumer protection], such books, records and accounts as
will enable the [commissioner] to determine whether the licensee is com-
plying with the provisions of this act. Each licensee shall retain such
books, records and accounts for not less than the periods of time speci-
fied in regulations adopted by the [commissioner] in accordance with Sec-
tion 9 of this act.
(b) Before a licensee deposits with any financial institution a check,
draft or money order cashed by such licensee, the item shall be endorsed
with the actual name under which the licensee is doing business and
must have the words “licensed check cashing service” legibly written
or stamped immediately after or below such name.

Section 8. [Suspension, Revocation, Nonrenewal of License.]

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(a) The [commissioner of consumer protection] may suspend, revoke or refuse to renew any license, issued pursuant to Section 3 of this act, upon [10] days' notice in writing, forwarded by certified mail to the principal place of business of the licensee, stating the contemplated action and in general the grounds therefor. After allowing the licensee a reasonable opportunity to be heard, the [commissioner] may suspend, revoke or refuse to renew any license for any reason which would be sufficient grounds for the [commissioner] to deny an application for a license under this act or if the [commissioner] finds that the licensee or any owner, director, officer, member, partner, stockholder, trustee, employee or agent of such licensee has done any of the following:

1. Made any material misstatement in the application;
2. Committed any fraud, engaged in dishonest activities or made any misrepresentation;
3. Violated any provision of this act or any regulation promulgated under this act;
4. Demonstrated his incompetency or untrustworthiness to act as a licensed check cashing service.

(b) Whenever it appears to the [commissioner] that any person is violating the provisions of this act, the [commissioner] may:

1. Commence a proceeding under this section; or
2. Bring an action in the [insert appropriate court] to enjoin such person from violating the provisions of this act.

(c) If the [commissioner] determines that any licensee has violated any provision of this act or any regulation adopted under this act, he may, upon [14] days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this act. The notice shall be sent by certified mail to the principal place of business of the licensee and shall state the grounds for the contemplated action. Within [14] days of receipt of the notice, the person or persons named therein may file a written request for a hearing. If a hearing is requested, the [commissioner] shall not issue a cease and desist order until after such hearing is held. Such hearing shall be conducted in accordance with the provisions of [insert appropriate state statute]. The [commissioner] may bring an action in the [insert appropriate court] to enforce compliance with any such order issued under this subsection.

Section 9. The [commissioner] shall adopt, pursuant to [insert appropriate state statute], such regulations as may be necessary to carry out the provisions of this act.

Section 10. [Effective Date] [Insert effective date.]
Replica Firearm Warning Label Act

This act, based on sections of a 1988 Minnesota law, requires that replica firearms and toy guns carry warning labels, either affixed at the time of packaging to the replica or to the package or box containing the replica. The warning label must state the criminal penalties that may arise from the use of the replica or toy gun in the commission of a crime.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title] This act may be cited as the Replica Firearm Warning Label Act.

1 Section 2. [Definition.] As used in this act, “Replica firearm” means a device or object that is not defined as a dangerous weapon, and that is a facsimile or toy version of, and reasonably appears to be a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or any other firearm.

1 Section 3. [Warning Label Required.] A person may not in the regular course of business offer for sale or sell a replica firearm unless it bears a warning label complying with this section. The warning label must be affixed at the time of packaging to the replica firearm, or to the package or box containing the replica firearm, so that it is clearly visible to the buyer.

1 Section 4. [Label Requirements.] The word “warning” must be printed clearly on the label in upper case letters that measure at least one-half inch in size centered over the body copy of the actual warning. The warning label copy must be printed in letters that measure at least 3/32 of an inch in size. The warning label must be printed in ink that strongly contrasts with the background. The warning label must state the criminal penalties under state law that may arise from use of the replica firearm, and describe the prohibited activities.

1 Section 5. [Enforcement.] This act may be enforced by the [attorney general] under [insert appropriate state statute], but a court may not impose a civil penalty of more than [500] dollars for a violation of this act.

1 Section 6. [Effective Date] [Insert effective date.]
Civil Liability for Theft Act

This act, based on 1988 Minnesota legislation, provides that a person who steals personal property from another is civilly liable to the owner for the value of the property when it was stolen, plus punitive damages of either $50 or up to 100 percent of the property's value when it was stolen, whichever is greater. The act further provides that if the stolen property is merchandise from a retail store, its value is the retail price when the theft occurred.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title] This act may be cited as the Civil Liability for Theft Act.

Section 2. [Liability for Theft of Property] A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either [50] dollars or up to [100] percent of its value when stolen, whichever is greater. If the property is merchandise stolen from a retail store, its value is the retail price of the merchandise in the store when the theft occurred.

Section 3. [Notice] In order to recover under Section 2 for the theft of a shopping cart, a store must have posted at the time of the theft a conspicuous notice describing the liability under Section 2.

Section 4. [Liability of Parent or Guardian] The provisions of [insert appropriate state statute] apply to this act.

Section 5. [Criminal Action] The filing of a criminal complaint, conviction, or guilty plea is not a prerequisite to liability under this act. Payment or nonpayment may not be used as evidence in a criminal action.

Section 6. [Recovery of Property] The recovery of stolen property by a person does not affect liability under this act, other than liability for the value of the property.

Section 7. [Right to Demand Payment] A person may make a written demand for payment for the liability imposed by this act before beginning an action, including a copy of this act and a description of the liability contained in this act.

Section 8. [Effective Date] [Insert effective date.]
Cumulative Index, 1971-1990

The following cumulative index covers volumes of *Suggested State Legislation* since 1971 and includes the legislation through this current edition.

This index uses extensive subject headings, sub-headings and cross references ("see" and "see also" entries). Draft legislation is listed by title under appropriate subjects. Individual bills are often included under several headings, if they cover more than one topic.

Specific entries are of two kinds:

1. Titles of bills (as they appeared in SSL volumes with the word "Act" omitted in most cases), followed by the year of the volume in parentheses and the page numbers. To find the text of a draft bill, you should consult the volume for the specific year listed.

2. References are also provided to parts of draft bills, by subject. These references do not list the full title of the draft bill, but cite only the year and the page numbers.

All entries under subject headings are listed in the order in which they were published. An index to volumes before 1971 may be found in Volume 43 (1984).

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