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Juvenile Justice Legislation (Note)

During the early 1990s, increased gang activity and the prevalence of illegal drug use among youths have captured media attention and raised public concern. In response, states have considered and enacted various approaches to juvenile justice issues. The provisions of six states — Colorado, Florida, Illinois, Louisiana, Utah and Washington — are summarized here.

Local Ordinances

Colorado legislation gives counties, and more specifically, boards of county commissioners, the power to adopt ordinances to discourage juvenile delinquency through the imposition of curfews, and restraint and punishment for loitering or for defacement of buildings and other property (SB 93S-9, 1993).

Fines

Colorado also requires each juvenile convicted — as an adult — of a violent crime to pay a surcharge to the clerk of the court in which the conviction occurs (HB 93S-1017, 1993). The amount must be equal to any fine imposed by the court. Five percent of the fine may be retained by the clerk for administrative costs, while the remainder must be transferred to the state treasurer for credit to the youthful offender system surcharge fund established under the act. Monies deposited in the fund are subject to appropriation to support the youthful offender system.

Juvenile Offender System

Several states are employing “boot camp” style prisons to encourage young, first-time offenders to develop discipline and improve their behavior. Most of these programs target offenders between the ages of 18 and 25. In 1993, however, Colorado employed the boot camp concept in legislation targeting juvenile offenders. The legislation establishes a three-phase, regimented juvenile training program under which certain adjudicated juveniles are subject to a controlled environment (HB 93S-1005). The state department of institutions, under contract with a private entity, must establish, maintain and operate the program. Juveniles eligible for participation must be assessed and deemed appropriate by the department. The training program consists of 60 days of military-style physical training and discipline in a secure facility. The act authorizes the state judicial department to administer a community reintegration program for 80 juveniles.

Colorado also allows district judges to sentence juveniles as adults or to suspend a prison sentence and instead sentence the juvenile to the youthful offender system established under the act (SB 93S-9). The system, administered by the state department of corrections, is designed to: teach offenders self-discipline; provide a
daily work regimen involving physical training, self-discipline exercises, educational and work programs; promote the development of socially-accepted attitudes and behaviors; provide instruction concerning problem-solving skills; promote a positive peer influence; and provide the juvenile with the opportunity to gradually reenter the community while demonstrating self-discipline and respect. Under the act's provisions, the state department of corrections may contract with public and private entities to provide facilities and services under the youthful offender system. During any period of incarceration, privileges such as television, radio, smoking and access to snacks must be earned through a merit system. Offenders who cannot complete their sentences to the youthful offender system may be returned to district court for imposition of their original sentences. Juveniles may participate in the program while on probation.

Classification of Juveniles as Adults

**Florida** has enacted legislation (Ch. 94-209, 1994) that provides for 14- or 15-year-olds to be prosecuted as adults when they have been charged with a specified serious felony. Prosecutors are required to prosecute juveniles of any age as adults if they have had three prior felony adjudications and three prior residential commitments. These provisions take effect in 1995.

**Louisiana** also has enacted legislation (Act 15, HB 64, 1994) lowering the age at which juveniles can be tried as adults for certain serious crimes, such as murder and kidnapping, from 15 to 14 years of age. **Louisiana** has also enacted legislation (Act 120, HB 259, 1994) that opens delinquency proceedings to the public when: the alleged act would be a crime of violence under the state's criminal code (an enumerated crime containing the element of the use or threatened use of physical force against a person or property) or the alleged delinquent act would be a second or subsequent felony-grade adjudication.

Like Colorado, **Utah** held a special legislative session in 1993 to address juvenile crime. Two enactments allow juveniles to be classified as adults under certain circumstances. Under SB 4, a juvenile court would be divested of jurisdiction and a juvenile tried as an adult under the following circumstances: if a grand jury returns an indictment or a prosecuting attorney or state attorney general files criminal information on a offense committed by a juvenile aged 16 or older which would be a felony if committed by an adult, and the juvenile has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon which also would have been a felony if committed by an adult.

Under **Utah's** SB 8, when a person aged 16 or older allegedly commits an offense that would be aggravated murder if committed by an adult, the district court must exercise exclusive original jurisdiction over the alleged offense. The juvenile court is divested of jurisdiction if a grand jury returns an indictment or a prosecuting attorney files criminal information on a juvenile aged 16 or older on the charge of murder or use of a dangerous weapon in the commission of criminal homicide.
first degree felony if committed by an adult. The charge must be made and the proceedings conducted as if the juvenile were an adult.

Under Utah’s HB 12, the fingerprints of a child aged 14 or older, who is taken into custody for an alleged offense that would be a felony if the child were an adult, must be sent to the state bureau of criminal identification to be stored on an electronic medium. Under the act, fingerprints may be distributed to individuals or agencies other than state or local law enforcement agencies.

During that same special session, Utah also enacted legislation requiring that, in all cases when a child is required to appear in court, the parents, guardians or other legal custodians must appear with the child unless they are otherwise excused by the judge (HB 1). Under SB 1, the juvenile court must notify local law enforcement agencies and a child’s school of an order of probation for that juvenile. The act also requires that the state division of youth corrections notify local law enforcement agencies and a child’s school of an order of home detention for that youth. Under SB 11, peace officers or any state or local law enforcement officials are authorized to file formal referrals with the juvenile court on an offense that would be no more than a misdemeanor if committed by an adult.

Organized Gangs

In 1989, Florida enacted legislation (SB 1272) authorizing the state department of law enforcement to establish an advisory group of representatives from state law enforcement agencies to develop the foundation and strategy for a statewide database on youth and street gang activity. The act called for the database to include such information as geographic location, population, age, organizational structure, demographic characteristics, degree of mobility, types of illegal activities and dispositional nature. More recent legislation (Ch. 94-209, 1994) authorizes prosecution of criminal street gangs under the state racketeer influenced and corrupt organizations (RICO) statute.

In 1993, Illinois amended existing state statutes to allow the department of state police to establish and maintain a statewide organized criminal gang database (SWORD) (PA 87-932, SB 2154). Information in the database may include, but not be limited to: names, last known addresses, birth dates, physical descriptions (scars, marks, tattoos), officer safety information and organized gang affiliations of individual gang members. The act further authorizes the department to develop, in consultation with the state’s criminal justice information authority, an automated data exchange system to compile, maintain and make available electronically this information for prosecutors and to other law enforcement agencies. In instances where a street gang member testifies on behalf of a public authority in a civil proceeding brought against a gang member, the legislation allows prosecutors to apply to the court to grant that individual immunity from prosecution under the state’s street gang terrorism omnibus prevention act.

A 1996 Washington state statute, the special probation act, enactment allows the
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develop, administer and implement gang risk prevention and intervention pilot programs (Ch. 296, SSB 5830). School districts in counties with populations over 350,000 may request proposals for establishing such programs from either public entities or community organizations. Gang risk prevention programs must include: counseling for targeted at-risk students and families; exposure to sports and cultural activities; job training, including apprentice programs; positive interaction with law enforcement; job search training skills; cultural awareness retreats; use of specified state resources; full services schools; and community service.

Reorganization of Juvenile Justice Services

In 1994, Florida established the state department of juvenile justice. The act (Act 94-209) provided that the governor will appoint a secretary of juvenile justice who, in turn, will appoint a deputy secretary for operations, who will supervise 15 district managers, and an assistant secretary of programming and planning, who will supervise the division of prevention and intervention and the division of detention and commitment programs. The act transfers all programs, personnel and resources administered by the deputy secretary for juvenile justice, together with associated administrative support, from the state department of health and rehabilitative services to the department of juvenile justice. The department has authority over all institutions, detention centers, community-based residential and non-residential commitment programs, as well as prevention, early intervention and diversion programs, services and personnel within the juvenile justice area.
Juvenile Firearms Control Legislation
(Note)

During the early 1990s, increasing rates of violent crimes committed by juveniles, oftentimes involving firearms, gained national attention. Many youngsters brought firearms with them as they attended school. Moreover, many became the victims of accidents involving firearms. In response, a number of states have enacted legislation intended to reduce the incidence of crime — and accidents — involving juveniles and guns. The provisions of ten states — Colorado, Florida, Georgia, Kentucky, Louisiana, Michigan, Minnesota, North Carolina, Oregon and Utah — are summarized here.

Firearm Possession by a Juvenile

In 1993, Colorado enacted legislation making it illegal for persons under the age of 18 to knowingly have handguns in their possession (HB 93S-1001). Possession is a misdemeanor for the first offense and a felony for subsequent offenses. The act also bars persons from providing handguns to minors and requires that parents who are aware their children possess a handgun make a reasonable effort to prevent the violation. It exempts individuals who possess firearms for hunting or other sports or who have their parent’s, grandparent’s or guardian’s permission to possess a firearm.

Georgia legislation also prohibits persons under the age of 18 from possessing handguns (Act 1125, SB 440, 1994). First offenders would be punished by a fine of up to $1,000 and/or 12 months in prison; second and subsequent offenses would be considered felonies, punishable by a fine of up to $5,000 and/or one to three years in prison. The act imposes criminal liability on parents who intentionally, knowingly or recklessly furnish a handgun to a minor if that possession violates state statutes or there is a risk that the minor would use the gun to commit a felony. The offense is punishable by a fine of up to $5,000 and/or imprisonment for two to five years.

The Georgia act further grants the state superior court jurisdiction over the following offenses committed by juveniles aged 13-17, thus moving serious offenders from the juvenile to the adult court system: murder, voluntary manslaughter, armed robbery, aggravated battery, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, kidnapping or first-degree arson.

A 1994 Kentucky enactment prohibits minors under age 18 from possessing, manufacturing or transporting handguns, except under certain circumstances, such as hunting with a valid license, participating in a target shooting competition or when the firearm is unloaded (HB 359, 1994). Minors also may possess weapons on the property of, and with the permission of, a parent or legal guardian.
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Under the act, persons are guilty of unlawfully providing (or permitting possession of) a handgun to a juvenile when: they intentionally, knowingly or recklessly provide a handgun, with or without remuneration, to any person under 18; or are the parent or legal guardian of a juvenile and intentionally, knowingly or recklessly provide the juvenile with (or permit possession of) a handgun knowing there is substantial risk that the juvenile will use the handgun to commit a felony or has already been convicted of a violent crime.

**Utah** prohibits minors under age 18 from possessing a dangerous weapon without parental permission (SB 2, Second Special Session, 1993). Any minor under the age of 14 in possession of a dangerous weapon must be accompanied by a responsible adult. Violators are guilty of a misdemeanor. Except as provided by federal law, a minor under age 18 may not possess a sawed-off rifle, shotgun, or fully automatic weapon. Any person who provides a handgun to a minor is guilty of a misdemeanor; any person who transfers a sawed-off rifle, sawed-off shotgun, or a fully automatic weapon to a minor is guilty of a felony.

Parents or guardians may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any minor who has been convicted of a violent crime or who has been adjudicated in juvenile court for an offense that would constitute violent crime if the minor were an adult. Any parent or guardian of a minor who knows the minor possesses a dangerous weapon or firearm and fails to make reasonable efforts to remove it from the minor's possession is guilty of a misdemeanor. The act does not apply to persons involved in hunting or related sporting events.

Utah also prohibits the sale of firearms to minors under age 18 unless they are accompanied by parents or guardians (SB 5, Second Special Session, 1993). Violators are guilty of a third-degree felony.

**Firearms at School**

**Colorado** prohibits possession of a weapon on school, college or university grounds (HB 93S-1001, 1993). **Florida** legislation expands the prohibitions relating to the possession or display of firearms and other dangerous weapons on school campuses to include school buses and school bus stops (Ch. 93-230, CSHB 387, 1993).

A 1994 **Georgia** enactment establishes school safety zones, within which handguns and other weapons are prohibited, with the maximum punishment for violation a fine of $10,000 and/or two to 10 years imprisonment; prohibits loitering in school safety zones; requires teachers and other school personnel to report certain crimes to local law enforcement agencies; increases from a misdemeanor to a high and aggravated misdemeanor the penalty for disrupting a public school; increases from one to five years the minimum penalties for aggravated assault and aggravated battery if the offense was committed upon a student, teacher or other school personnel within the school safety zone; and makes it unlawful for a person to intentionally, knowingly or recklessly sell or furnish a handgun to a minor (Act 94-105, 1994).
Juvenile Firearms Control Legislation (Note)

1125, SB 440, 1994). The act also requires schools to prepare school safety plans to be approved by local school boards, with input from students, parents, teachers, community leaders, law enforcement officers and school employees.

**Louisiana** law provides that carrying a firearm or dangerous weapon by a student or nonstudent on school property or at school sponsored functions is unlawful (Act 38, SB 21, 1994). The offense is defined as the possession of any firearm or dangerous weapon on one’s person, at any time while on a school campus or on school transportation or at any school sponsored function in a specific designated area, including, but not limited to: athletic competitions, dances, parties, or any extracurricular activities.

**North Carolina** legislation makes it a felony to cause, encourage or aid a minor under 18 to carry onto or possess a firearm or powerful explosive on educational property, whether the institution is public or private, elementary, secondary or post-secondary (Ch. 558, HB 1008, 1993).

**Oregon** makes it a felony for anyone to intentionally possess a loaded or unloaded firearm or other instrument used as a dangerous weapon in a public building (including public and private schools, colleges or universities, the state capitol, city or county government buildings, or the residences of any state officials) (SB 334, 1993). It also makes reckless discharge of a firearm on school grounds a felony. The act exempts peace and corrections officers and other authorized individuals.

The **Oregon** act further provides that juveniles aged 13 to 17 who are convicted of these offenses will have their driving privileges denied for a period of 90 days following the issuance of the first order and for a period of one year following the second or subsequent order issued. The act also directs district attorneys to notify the U.S. Attorney General regarding alleged violations of the federal Gun Free School Zone Act of 1990.

In **Utah**, any person on or about school premises, who commits any offense and uses or threatens to use a firearm in its commission, is subject to an enhanced degree of offense (HB 105, 1992). The prosecuting attorney or grand jury must provide notice upon information or indictment that the defendant is subject to the enhanced degree of an offense or penalty under the act provisions. The notice must be in a clause separate from and in addition to the substantive offense charged. If the notice is not included initially, the court may allow the prosecutor to amend the charging document to include the notice if certain conditions are met.

Under the act, any person who possesses a dangerous weapon, firearm or sawed-off shotgun on or about school premises is guilty of a misdemeanor. In considering whether to waive jurisdiction over a juvenile aged 14 or older who committed an act that would constitute a felony if committed by an adult, a juvenile court must consider several factors, including whether the juvenile used a firearm in the commission of the offense and whether the juvenile possessed a dangerous weapon on or about school premises.
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*Firearms in Vehicles*

**Utah** legislation requires immediate revocation of the driver’s license of a person convicted of discharging (or allowing the discharge of) a firearm from a vehicle, or using, or allowing or causing the use of any explosive, chemical or incendiary device from a vehicle (HB 5, Second Special Session, 1993). This includes revoking the license of any person for these offenses upon receiving record of adjudication from juvenile court. If the person adjudicated for the offense is younger than age 16, the license or driving privilege must be revoked for a minimum of one year from age 16, but not for a period to exceed the date the person turns 21. If the person adjudicated or convicted of the offense is 16 or older, the license or driving privilege must be revoked for a minimum of one to a maximum of five years.

*Firearm Storage and Safety*

**Minnesota** legislation establishes a gross misdemeanor for any person who negligently stores or leaves a loaded firearm in a location where the person knows a child under age 14 could gain access, unless reasonable action was taken to secure the firearm from the child’s access (Ch. 326, HF 1585, Art. 1 & 4, Sec. 22, 1993). The act excludes from the term “loaded firearm” those loaded weapons that are incapable of being fired by a child of that age. The act also expands the existing gross misdemeanor crime of child endangerment to include endangering a child under age 14 as a result of the child’s access to a loaded firearm, and expands existing felony child endangerment to include cases in which access results in the child’s injury. The crime does not apply to a child’s access to firearms as a result of an unlawful entry.

**North Carolina** legislation makes it a misdemeanor for a person to fail to store firearms in a reasonable manner for the protection of minors and to fail to warn a person of the act’s provisions upon the sale or transfer of a firearm (Ch. 558, HB 1008, 1993). It also establishes a misdemeanor if a person who resides with a minor: owns or possesses a firearm; stores or leaves the firearm in a condition in which it might be discharged; or knew or should have known than an unsupervised minor could have gained access to the firearm without permission and would possess the firearm on educational property, publicly exhibit it, or cause personal injury or use the firearm in the commission of a crime. The act does not prohibit a person from carrying a firearm on his or her body in close proximity and does not apply if the minor obtained the firearm as a result of unlawful entry.

**Michigan** legislation (Act 321, HB 4674, 1993) requires the state department of public safety to establish and maintain a firearms safety program to educate children about the safe handling of firearms. The department must make the program available to local school districts, and also must produce or arrange for the production of public service announcements to educate the public about the need to keep firearms and other weapons securely stored so they are not accessible to children, the need to operate or use firearms in a safe and legal manner, and the existence of weapon free school zones.
Criminal Justice System Substance Abuse Act

This act, based on 1991 Colorado legislation, requires the state judicial department, department of corrections, board of parole, department of public safety, division of criminal justice and department of public health to cooperate in developing and implementing a standardized procedure for assessing the use of controlled substances by offenders. Procedures must include the administration to each offender of a chemical test for the presence of controlled substances or alcohol. The act also requires the development of a system of programs for education and treatment of substance abuse which can be utilized by offenders who are placed on probation, incarcerated, placed on parole or placed in community corrections. Offenders may participate in a continuum of education and treatment programs as they proceed through the criminal justice system, including attendance at self-help groups, group counseling, individual counseling, outpatient treatment, inpatient treatment, day care or treatment in a therapeutic community. All programs must include a system of random chemical testing for the presence of controlled substances or alcohol. The act requires the development of a system of punitive sanctions for offenders who test positive for the use of substances subsequent to the initial test and after being placed in an education or treatment program.

Each drug offender who is convicted or receives a deferred sentence must pay a surcharge to the clerk of the court in the county in which the conviction occurs or in which the deferred sentence is entered. These monies are deposited in a drug offender surcharge fund. Procedures for assessment, treatment and sanctions required under the act may be implemented only to the extent monies are available from the drug offender surcharge fund. The act also requires defendants to comply with any court orders regarding substance abuse testing and treatment as a condition of probation.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Criminal Justice System Substance Abuse Act.

Section 2. [Legislative Declaration.] The legislature hereby declares that substance abuse, specifically the abuse of alcohol and controlled substances, is a major problem in the criminal justice system of the state of [state] and in the entire nation. Substance abuse is a significant factor in the commission of crimes and it is a significant factor in impending the rehabilitation of persons convicted of crimes
which results in an increased rate of recidivism. Therefore, the legislature hereby resolves to curtail the disastrous effects of substance abuse in criminal justice system by providing for consistency in the response to substance abuse throughout the criminal justice system and to improve and standardize substance abuse treatment for offenders at each stage of the criminal justice system and to provide punitive measures for offenders who refuse to cooperate with and respond to substance abuse treatment while such offenders are involved with the criminal justice system.

Section 3. [Substance Abuse Assessment — Standardized Procedure.]

(a) The [judicial department], the [department of corrections], the [state board of parole], the [division of criminal justice of the department of public safety], and the [department of health] shall cooperate to develop and implement the following:

(1) A standardized procedure for the assessment of the use of controlled substances of offenders, which procedure shall include the administration of a chemical test of such offender for the presence of controlled substances or alcohol, or such other test of the offender for the presence of controlled substances or alcohol as deemed appropriate by the supervising agency. The assessment procedure developed pursuant to this paragraph shall provide an evaluation of the extent of an offender’s abuse of substances, if any, and recommend treatment which is appropriate to the needs of the particular offender.

(2) A system of programs for education and treatment of abuse of substances which can be utilized by offenders who are placed on probation, incarcerated with the [department of corrections], placed on parole, or placed in community corrections. The programs developed pursuant to this paragraph shall be as flexible as possible so that such programs may be utilized by each particular offender to the extent appropriate to that offender. The programs developed pursuant to this paragraph shall be structured in such a manner that the programs provide a continuum of education and treatment programs for each offender as he proceeds through the criminal justice system and may include, but shall not be limited to, attendance at self-help groups, group counseling, individual counseling, outpatient treatment, inpatient treatment, day care, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. Any programs developed pursuant to this paragraph shall include a system of periodic or random chemical testing for the presence of controlled substances or alcohol, or such other testing as provided in paragraph (1) of this subsection (a). The frequency of such testing shall be that which is appropriate to the particular offender in accordance with the offender’s assessment performed pursuant to paragraph (1) of this subsection (a).

(3) A system of punitive sanctions for offenders who test positive for the use of substances subsequent to the initial test and after being placed in an education or treatment program. The sanctions developed pursuant to this paragraph should allow for appropriate responses by the criminal justice system to each occurrence.
of a positive test by an offender, each of which shall become a permanent part of the offender’s record.

(b) The procedures for assessment, treatment, and sanctions required to be developed by subsection (a) of this section shall be implemented only to the extent moneys are available in the [insert reference to funding source].

(c) The judicial department, the department of corrections, the division of criminal justice of the department of public safety, and the department of health shall cooperate to develop a plan for the allocation of moneys deposited in the [insert reference to funding source] among the judicial department, the department of corrections, the division of criminal justice of the department of public safety, and the department of health. The plan developed pursuant to this subsection shall be submitted to the legislature on or before [insert date]. For the fiscal year beginning [insert date], the legislature shall appropriate moneys only from the [insert reference to funding source] in accordance with such plan.

COMMENTS: The Colorado legislation on which this act is based creates a drug offender surcharge fund in the state treasury. The fund consists of moneys received by the state treasurer from surcharges paid by drug offenders who are convicted of an offense or receive a deferred sentence. All interest derived from the deposit and investment of these moneys is credited to the fund.

Section 4. [Substance Abuse Assessment Required — Convicted Felons — Controlled Substance Offenders.]

(a) Each person convicted of a felony committed on or after [insert date], who is to be considered for probation, shall be required, as a part of the presentence or probation investigation required pursuant to Section 3 of this act, to submit to an assessment for the use of controlled substances or alcohol developed pursuant to Section 3 (a) (1).

(b) Each person convicted of a [misdemeanor or petty offense] pursuant to [insert reference to appropriate section of state code], committed on or after [insert date], shall be required to submit to an alcohol and drug evaluation pursuant to [insert reference to appropriate section of state code]. The court shall order such person to comply with the recommendations of such evaluation. If such person is sentenced to probation, such person shall be ordered to comply with the recommendations as a condition of probation at such person’s own expense, unless such person is indigent. If such person is not sentenced to probation, such person shall be ordered to comply with the recommendations as a part of the sentence imposed at such person’s own expense, unless such person is indigent.

(c) The assessment required by subsection (a) of this section or the evaluation required by subsection (b) of this section shall be at the expense of the person assessed or evaluated, unless such person is indigent.
Section 5. [Sentencing of Felons — Parole of Felons — Treatment and Testing Based Upon Assessment Required.]

(a) Each person sentenced by the court for a felony committed on or after [insert date], shall be required, as a part of any sentence to probation, community corrections, or incarceration with the [department of corrections], to undergo periodic testing and treatment for substance abuse which is appropriate to such person based upon the recommendations of the assessment made pursuant to Section 4 of this act, or based upon any subsequent recommendations by the [department of corrections], the [judicial department], or the [division of criminal justice of the department of public safety], whichever is appropriate. Any such testing or treatment shall be at such person’s own expense, unless such person is indigent.

(b) Each person placed on parole by the [state board of parole] on or after [insert date], shall be required, as a condition of such parole, to undergo periodic testing and treatment for substance abuse which is appropriate to such person based upon the recommendations of the assessment made pursuant to Section 4 of this act, or any assessment or subsequent reassessment made regarding such person during his incarceration or any period of parole. Any such testing or treatment shall be at such person’s own expense, unless such person is indigent.

Section 6. [Departments Develop Testing Programs — Punitive Sanctions.]

(a) The [judicial department], the [department of health], the [department of corrections], the [state board of parole], and the [division of criminal justice of the department of public safety] shall cooperate to develop programs for the periodic testing of offenders under the jurisdiction of each agency and programs for the periodic reassessment of appropriate offenders under the jurisdiction of each agency. Any such periodic testing or treatment of an offender shall be based upon recommendations of appropriate treatment and testing made in the initial substance abuse assessment required by Section 4 of this act, or any subsequent reassessment.

(b) Any offender who tests positive for the use of alcohol or controlled substances subsequent to the initial test required by Section 4 of this act shall be subjected to a punitive sanction. The [judicial department], the [department of corrections], the [state board of parole], and the [division of criminal justice of the department of public safety] shall cooperate to develop and make public a range of punitive sanctions for those offenders under the jurisdiction of each agency which are appropriate to the offenders supervised by each particular agency. Such punitive sanctions shall be formulated in such a way as to promote fairness and consistency in the treatment of offenders and may include, but shall not be limited to, increases in the level of an offender’s supervision, increases in the use of electronic monitoring of an offender, loss of earned time granted pursuant to [insert reference to appropriate section of state code], and referral of the offender to the court or the [state board of parole] for re-sentencing or revocation of probation or parole. It is the intent of the legislature that any offender’s test which is positive for the use of controlled substances or alcohol shall result in an intensified level of testing, treatment, supervision, or other punitive sanctions.
pervision, or other sanctions designed to control abuse of substances for such offender.

(c) The [judicial department], the [department of corrections], the [state board of parole], and the [division of criminal justice in the department of public safety] shall cooperate to develop a range of incentives for offenders under the jurisdiction of each particular agency to discontinue abuse of alcohol or controlled substances.

(d) On or before [insert date], the [state board of parole] shall develop and make public guidelines for the revocation of parole due to the abuse of alcohol or controlled substances in violation of this act.

Section 7. [Samples for Testing of Offenders.] Any type of sample for the chemical testing of any offender for the presence of controlled substances or alcohol pursuant to this act may be collected from such offender by his probation officer, parole officer, case manager within the [department of corrections], or any contract provider of testing services.

Section 8. [Report to the Legislature.] On or before [insert date], the [judicial department], the [department of corrections], the [state board of parole], the [division of criminal justice of the department of public safety], and the [department of health] shall jointly make a report to a joint meeting of the [judiciary committees] of the [Senate and House of Representatives] regarding the implementation of this act, the results of the programs created by this act including any reduction in substance abuse by offenders while incarcerated, the standardized procedures developed pursuant to this act, and the number and kinds of punitive sanctions imposed upon offenders pursuant to this act.

Section 9. [Effective Date.] [Insert effective date.]
Alternate Incarceration Program

In cases where persons are convicted of non-violent misdemeanors and felonies and there is a mandatory minimum prison sentence, this act, based on 1989 Connecticut legislation, permits courts to order an assessment for placement in an alternate incarceration program. The act provides that, if the office of adult probation recommends placement in such a program, the office must also submit a proposed alternate incarceration plan for the individual. The court may suspend any sentence of imprisonment and make participation in an alternate incarceration program a condition of probation. An alternate incarceration program may include an intensive probation program, any community service program approved by the chief administrator of the courts and any approved residential or nonresidential program that provides care, supervision and supportive services such as employment, psychiatric and psychological evaluation and counseling, and drug and alcohol dependency treatment.

A separate 1990 Connecticut act established the office of alternative sanctions to oversee and implement the alternate sanctions program, including contracting with nonprofit organizations to provide alternative incarceration programs, halfway houses and similar programs, and administering funding for the program. That act is also published here. This program won a CSG Innovations award in 1992.

Alternate Incarceration Program Act

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Alternate Incarceration Program.]
(a) In all cases where a defendant has been convicted of a [misdemeanor or felony], other than a [capital felony, a class A felony] or a violation of [insert reference to appropriate sections of state penal code] or [any other offense of which there is a mandatory minimum sentence which may not be suspended or reduced by the court, after trial or by a plea of guilty without trial, and a term of imprisonment is part of a stated plea agreement or the statutory penalty provides for a term of imprisonment], the court may, in its discretion, order an assessment for placement in an alternate incarceration program to be conducted by the [office of adult probation]. If the [office of adult probation] recommends placement in an alternate incarceration program, it shall also submit to the court a proposed alternate incarceration plan. Upon completion of the assessment, the court shall determine whether such
Alternate Incarceration Program

defendant shall be ordered to participate in such program as an alternative to incarceration. If the court determines that the defendant shall participate in such program, the court shall suspend any sentence of imprisonment and shall make participation in the alternate incarceration program a condition of probation as provided in [insert reference to appropriate section of state penal code.]

(b) An alternate incarceration program includes, but shall not be limited to, an intensive probation program, any community service program approved by the [chief court administrator] and any residential or nonresidential program approved by the [chief court administrator] which provides care, supervision and supportive services such as employment, psychiatric and psychological evaluation and counseling, and drug and alcohol dependency treatment. Any defendant placed in an alternate incarceration program shall comply with any other condition of probation ordered by the court or required by the [office of adult probation], as provided in [insert reference to appropriate sections of state penal code].

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

Office of Alternative Sanctions Act

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Office of Alternative Sanctions Act.

Section 2. [Establishment of Office of Alternative Sanctions.] (a) There is established, within available appropriations, an [office of alternative sanctions] within the [state judicial department].

(b) The duties and responsibilities of the [office] shall be to:

(1) Oversee and coordinate the implementation of alternative sanctions;
(2) Evaluate the effectiveness of alternative sanctions and their impact on offenders, prison and jail overcrowding, court backlogs and community safety;
(3) Plan and establish new alternative sanctions;
(4) Develop criteria for determining the types of offenders appropriate to receive alternative sanctions and for determining the effectiveness of those sanctions for specific offender populations;
(5) Report annually to the legislature on its evaluation of alternative sanctions;
(6) Contract with nonprofit organizations providing alternative incarceration programs, halfway houses and other similar services;
(7) Contract for independent evaluations with respect to the use of alternative sanctions;
(8) Apply for, receive, allocate, disburse and account for grants of funds made available by the United States, the state, foundations, corporations and other businesses, agencies or individuals;
(9) Enter into agreements with the United States which may be required to obtain federal funds, and do all things necessary to apply or qualify for, accept and distribute any state and federal funds allotted under any federal or state law for alternative incarceration programs;
(10) Enter into contracts and cooperate with local government units and any communication of such units to carry out the duties imposed by this section;
(11) Enter into agreements necessary, convenient or desirable for carrying out the purposes of this section with foundations, agencies, corporations and other businesses or individuals;
(12) Accept gifts or donations of funds, services, materials or property from any source and use such gifts or donations as is appropriate to implement the provisions of this section.

Section 3. [Establishment of Advisory Committee.] There is established an advisory committee to the office of alternative sanctions. The committee shall consist of nine (9) members appointed by the chief court administrator and shall include a superior court judge, representatives from the office of adult probation, the office of the bail commissioner, the department of correction and the division of criminal justice, representatives of private nonprofit agencies serving offenders and providing programs of alternative sanctions and public members.

Section 4. [Effective Date.] [Insert effective date.]
Intensive Criminal Sanctions Act

This act, based on 1991 Wisconsin legislation, creates an intensive sanctions program administered by the state department of corrections. A person convicted of a felony (except one for which the sentence is life in prison) may be sentenced to participate in the program, directed to participate after a period of incarceration, or directed to participate as a condition of parole or an alternative to parole revocation. Participants may be placed in a prison or jail, county reforestation camp, residential treatment facility or a community-based residential facility, intensive field supervision, electronic monitoring, alcohol or other drug abuse outpatient treatment and services, mental health treatment and services, community service restitution, or other programs developed by the state department of corrections. Participants may be placed in this program for a period of less than one year or as specified by the court, whichever period is shorter.

The 1984 *Suggested State Legislation* volume included the “Alternative Sentences Act” (pp. 52-56), a draft based on legislation from Iowa, Maine, Nebraska, Oklahoma and Virginia. The draft act allowed such alternatives to incarceration as restitution to victims, reimbursement to the state, and community service. The 1993 *Suggested State Legislation* volume included a statement summarizing Texas’ “Omnibus Criminal Justice Reform Act” (pp. 149-150). The act allows the courts to sentence substance abuse offenders directly to new substance abuse felony punishment facilities. Persons convicted of DWI may also be sentenced to such facilities.

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**Suggested Legislation**

(Title, enacting clause, etc.)

Section 1. *[Short Title.]* This act may be cited as the Intensive Criminal Sanctions Act.

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

1. “Commission” means the [state sentencing commission].
2. “Department” means the [state department of corrections].
3. “Division” means the [division of intensive sanctions of the state department of corrections].
4. “Secretary” means the [secretary of the state department of corrections].

Section 3. *[Program Administration and Design.]* The [state department of corrections] shall administer an intensive sanctions program. The [department] shall design the program to provide all of the following:
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(1) Punishment that is less costly than ordinary imprisonment and more restrictive than ordinary probation or parole supervision.
(2) Component phases that are intensive and highly structured.
(3) A series of component phases for each participant that is based on public safety considerations and the participant’s needs for punishment and treatment.

Section 4. [Eligibility.] A person enters the [intensive sanctions program] only if he or she has been convicted of a felony and only under one of the following circumstances:
(1) A court sentences him or her to the program.
(2) He or she is a prisoner serving a felony sentence not punishable by life imprisonment and the [department] directs him or her to participate in the program.
(3) The [parole commission] grants him or her parole and requires his or her participation in the program as a condition of parole.
(4) The [department] and the person agree to his or her participation in the program as an alternative to revocation of probation or parole.

Section 5. [Component Phases.]
(a) The [department] shall provide each participant with one or more of the following sanctions:
(1) Placement in a prison or a jail, [county reforestation camp], residential treatment facility or community-based residential facility. The [department] may not place a participant under this paragraph for more than [one (1)] year or, if applicable, the period specified by the court, whichever is shorter, except as provided in Section 16.
(2) Intensive or other field supervision.
(3) Electronic monitoring.
(4) Alcohol or other drug abuse outpatient treatment and services.
(5) Mental health treatment and services.
(6) Community service.
(7) Restitution.
(8) Other programs as prescribed by the [department].
(b) The [department] may provide the sanctions under subsection (a) in any order and may provide more than one sanction at a time. Subject to the cumulative time restrictions under subsection (a) (1), the [department] may return to a sanction that was used previously for a participant. A participant is not entitled to a hearing regarding the [department]’s exercise of authority under this subsection unless the [department] provides for a hearing by rule.

Section 6. [Status.]
(a) A participant is in the custody and under the control of the [department], subject to its rules and discipline. A participant entering the program under Section 4 (1) or (2) is a prisoner. A participant entering the program under Section 4
Intensive Criminal Sanctions Act

(3) is a parolee. A participant entering the program under Section 4 (4) remains a probationer or parolee, whichever is applicable.

(b) The [department] shall operate the program as a correctional institution. The [secretary] may allocate and reallocate existing and future facilities as part of the institution. Construction or establishment of facilities for the institution are not subject to the ordinances or regulations relating to zoning of the county and municipality in which the construction or establishment takes place.

Section 7. [Escape.] Any intentional failure of a participant to remain within the extended limits of his or her placement under Section 5 (a) (1) or to return within the time prescribed by the [administrator] of the [division] is considered an escape.

Section 8. [Discharge.] The [department] may discharge a participant from participation in the program and from [departmental] custody and control at any time.

Section 9. [Reimbursement.] The [department] shall provide reimbursement to counties and others for the actual costs incurred under Section 5 of this act.

Section 10. [Education.] The [department] and the [director of state courts] shall educate [judges, district attorneys, criminal defense attorneys, county sheriffs, jail administrators and members of the public] regarding the [intensive sanctions program].

Section 11. [Information for the [Sentencing Commission].] The [department] shall provide the [sentencing commission] with information to assist the [commission] in promulgating rules. The [department] shall charge the [commission] for the actual costs of providing the information.

Section 12. [Rules.] The [department] shall promulgate rules to implement this act.

Section 13. [Sentence to [Intensive Sanctions Program].] Beginning [insert date], a court may sentence a person who is convicted of a felony occurring on or after [insert date], to participate in the [intensive sanctions program].

Section 14. [Eligibility.]

(a) A court may sentence a person under Section 13 of this act if the [department] provides a presentence investigation report recommending that the person be sentenced to the program. If the [department] does not make the recommendation, a court may order the [department] to assess and evaluate the person. After that assessment and evaluation, the court may sentence the person to the program unless the [department] objects on the ground that the presumptively appropriate sentence [under the sentencing guideline matrices] is probation.
(b) Notwithstanding subsection (a), the court may not sentence a person under Section 13 of this act if he or she is convicted of a felony punishable by life imprisonment.

Section 15. [Limitations.] The following apply to a sentence under Section 13 of this act:
(a) The court shall provide a maximum period for the sentence, which may not exceed the maximum term of imprisonment that could be imposed on the person, including imprisonment authorized by any penalty enhancement statute.
(b) The court shall provide a maximum period for placements under Section 5 (a) (1), which may not exceed one year unless the defendant waives this requirement.
(c) The court may prescribe reasonable and necessary conditions of the sentence, except the court may not specify a particular prison, jail, [camp], or facility where the offender is to be placed and the court may not restrict the [department]'s authority under Section 5 (b) of this act.

Section 16. [Modification.]
(a) The [department] may provide for placements under Section 5 (a) of this act for a shorter period than the maximum period specified by the court.
(b) The [department] may request that the court extend the maximum period provided by the court under Section 5 (a) of this act or the maximum period provided by the court under Section 5 (b) of this act or both. Unless a hearing is voluntarily waived by the person, the court shall hold a hearing on the matter. The court may not extend the maximum period of the sentence beyond the amount allowable under Section 5 (a) of this act. The court may not extend the maximum period for placements under Section 5 (a) (1) beyond a total, including the original period and all extensions, of [two (2)] years or [two-thirds (2/3)] of the maximum term of imprisonment that could have been imposed on the person, whichever is less.

Section 17. [Parole Restrictions.] A person sentenced under Section 13 of this act is not eligible for parole except when the conditions for mandatory release have been met.

Section 18. [Credit.] Any sentence credit for time served applies toward service of the period under Section 5 (a) of this act but does not apply toward service of the period under Section 5 (b) of this act.

Section 19. [Effective Date.] [Insert effective date.]
SLAPP (Strategic Lawsuits Against Political Participation) Legislation (Note)

Legislation addressing “strategic lawsuits against political participation,” otherwise known as SLAPPS, is designed to protect individuals who make good faith reports on business activities to appropriate governmental bodies. At least three states — Nevada, New York and Washington — have enacted such legislation, although others, including New Jersey, have considered similar provisions. Readers interested in the full text of these items should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 244-8000.

In 1989, Washington state enacted the nation’s first SLAPP legislation (Ch. 234, RCW 4.24.500-520). The act declares that a person, who in good faith communicates a complaint or other information to a federal, state or local government agency regarding any matter of reasonable concern to that agency, is immune from civil liability on claims based on the communication. An agency that receives a complaint or information under the provisions of the act may intervene in and defend against any suit precipitated by the communication. In the event a local government agency does not intervene in and defend against such a suit, the state’s attorney general may intervene to defend against the suit.

New York’s 1992 legislation (Ch. 767, A. 4299) amends the state’s civil rights law to protect citizens from lawsuits brought in retaliation against their action involving public petition and participation. The act defines “action involving public petition and participation” as an action, claim, cross claim or counterclaim for damages brought by a public applicant or permittee, and materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission. In an action involving public petition or participation, the act permits a defendant to recover damages, including costs and attorney fees, from any person commencing the action, provided there is demonstration that it was commenced to harass, intimidate, punish or otherwise inhibit the free exercise of speech, petition or association rights.

Nevada’s 1993 act (Ch. 653, SB 405) also provides immunity from civil action for communication of a complaint or other information made in good faith to a governmental entity, including legislators, officers or employees of the federal, state or local government. If a civil action is brought against such a person, the state attorney general or other legal representative of the state or legal subdivision may provide for the defense on the defendant’s behalf.
Civil Liability for Bias Crimes

This act, based on 1993 New Jersey legislation, provides a civil remedy independent of and in addition to those available under criminal provisions of the state statutes for victims of bias crimes. The act provides that a person, acting with the purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, who engages in conduct that is an offense is liable for any injury or property damage resulting from his or her actions. The act also authorizes the state attorney general to bring action against any person who commits this civil offense. The act provides that any party seeking recovery under the provisions of the act is entitled to damages, including punitive damage, reasonable attorney's fees and costs, damages for emotional distress or any other appropriate equitable relief. The act also provides that any award received would be reduced by the amount of any restitution that has been awarded for the same injury following a criminal conviction.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Civil Liability for Bias Crimes Act.

Section 2. [Definitions.] As used in this act:
(1) “Conduct” means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions.
(2) “Juvenile” means an individual who is under the age of [18] years.
(3) “Offense” means a crime, a disorderly persons offense or a petty disorderly persons offense.

Section 3. [Establishment of Civil Liability for Bias Crimes.]
(a) A person, acting with purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, who engages in conduct that is an offense under the provisions of the [state criminal code], commits a civil offense.
(b) Any person who sustains injury to person or property as a result of a violation of subsection (a) shall have a cause of action against the person or persons who committed the civil offense resulting in the injury. In the case of a homicide committed in violation of subsection (a), the estate of the deceased shall have a cause of action. Nothing in this subsection shall be construed to preclude the parent or legal
Civil Liability for Bias Crimes

guardian of a person who has sustained injury as a result of a violation of subsection (a) from initiating a civil action on behalf of a minor child or ward.

(c) The attorney general, as parents patriae, may initiate a cause of action against any person who violates subsection (a) of this section on behalf of any person or persons who have sustained injury to person or property as a result of the commission of the civil offense.

(d) Upon proof, by a preponderance of the evidence, of a defendant's violation of subsection (a) of this section and of resulting damages, the defendant shall be liable as follows:

(1) To the person or persons injured, for an award in the amount of damages incurred as a result of the commission of the civil offense, including damages for any emotional distress suffered as a result of the civil offense, such punitive damages as may be assessed, and any reasonable attorney's fees and costs of suit incurred;

(2) To the state, in any case in which the attorney general has participated, reasonable attorney's fees and costs of investigation and suit;

(3) Such injunctive relief as the state court may deem necessary to avoid the defendant's continued violation of subsection (a); and,

(4) Any additional appropriate equitable relief, including restraints to avoid repeated violation.

(e) An award entered pursuant to paragraph (1) of subsection (d) of this section shall be reduced by the amount of any restitution that has been awarded for the same injury following criminal conviction or juvenile adjudication, and, notwithstanding the provisions of paragraph (1) of subsection (d), damages awarded for injuries that have previously been compensated by the violent crimes compensation board shall be paid to the board for deposit in the violent crimes compensation board account.

(f) All fees and costs assessed for the benefit of the state pursuant to paragraph (2) of subsection (d) of this section shall be paid to the state treasurer for deposit in the civil rights enforcement fund established pursuant to section 4 of this act.

(g) The parent or guardian of a juvenile against whom an award has been entered pursuant to paragraph (1) of subsection (d) of this section shall be liable for payment only if the parent has been named as a defendant and it has been established, by a preponderance of the evidence, that the parent or guardian's conduct was a significant contributing factor in the juvenile's commission of the offense.

Section 4. [Civil Rights Enforcement Fund.] There shall be established in the state treasury a separate, nonlapsing fund designated the civil rights enforcement fund. Amounts credited to the fund shall be used by the attorney general for the payment of expenses and costs incurred by the attorney general in enforcement of the laws of this state protecting civil rights, in the development and delivery of training for public employees, including law enforcement officers, responsible for enforcement of these laws and in the development and delivery of related public education programs.
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Section 5. [Availability of Civil Remedies.] The provisions of this act are intended to provide remedies independent of and in addition to those that may apply under the provisions of the [state criminal code]. The civil actions authorized by this act are available whether or not the conduct has been prosecuted as an offense under the provisions of the [state criminal code] and whether or not any such prosecution has resulted in a conviction.

Section 6. [Effective Date.] [Insert effective date.]
Genetic Screening Prohibition Act
(Statement)

Tests for diagnosing or predicting some genetically based diseases have existed for several years. Screening tests for sickle cell trait, for example, have been available since the early 1970s. The states have authorized blood tests of newborns to screen for a genetic ailment that causes mental retardation or death if not treated early.

However, controversy has arisen over the prospect of applying genetic screening to personnel selection. Employers could use screening to determine whether there is a possibility that an applicant or employee may be susceptible to potentially life-threatening genetic diseases.

Among the genetic deficiencies detectable by screening are sickle-cell anemia and Tay-Sachs. Critics of such testing have questioned the validity and accuracy of the tests, raised a number of questions concerning privacy and access to test results, and have noted that screening programs could be discriminatory because the genetic traits tested tend to be distributed unequally among different races or ethnic groups.

Volume 50 of Suggested State Legislation (1991) included a note on Genetic Screening in the Workplace (p. 36), which described the enactments of two states in response to this issue. One was an Oregon statute prohibiting employers from requiring current and prospective employees to submit to genetic screening (ORS 659.227). Because the statute did not prevent employers from acquiring genetic information from a worker's medical records nor prohibit discrimination based on that information, there was still the potential that the information could be used to prevent individuals from obtaining life and health insurance.

In its 1993 regular legislative session, Oregon amended an existing statute to declare that an employer who seeks to obtain, obtains or uses genetic screening information regarding an employee or a prospective employee to distinguish between, discriminate against or restrict a right or benefit has committed an unfair employment practice (SB 277-B). An aggrieved employee may use existing civil remedies provided for other unlawful employment practices, with complaints channeled through the state's bureau of labor and industries.
Health Care Reform Legislation (Note)

In the past few years, several plans have been introduced on the federal level to deal with the health care crisis in the United States. During 1993, the Clinton administration introduced a national health care reform proposal and several alternative plans also have been introduced in Congress. In the meantime, however, states continue to explore different options and experiment with new ideas for state-based reforms.

The Committee on Suggested State Legislation has reviewed many of these reforms and provided overviews of the states’ legislative activities in recent volumes of *Suggested State Legislation*. The 1992 edition (Vol. 51) reviewed some of those enactments in *Access to Health Care (Note)* (pp. 1-5). The 1993 edition (Vol. 52) included *Health Care Legislation (Note)* (pp. 1-5), and the 1994 edition (Vol. 53), *Health Insurance Reform Legislation (Note)* (pp. 1-11). In this 1995 edition of *Suggested State Legislation*, the Committee once again is offering state policy makers a sampling of recent state legislative activity in this area.

This note describes the recent health care reform enactments of six states: Arizona, Florida, Illinois, Kentucky, Minnesota and Tennessee.

Cost Containment

Several states have enacted measures to contain rising health care costs. Legislation enacted by Arizona in 1992 provides for prepaid, capitated health services contracts with group disability insurers, hospital and medical service corporations, health care services organizations and any other appropriate public or private entities, including county-owned and -operated facilities, for health and medical services (Ch. 302, HB 2508). The Arizona health care cost containment system, originally established in 1982, empowers a state agency to contract with private health care providers for delivery of medical services to its members. The agency may contract with providers for the delivery of services to persons working for businesses with 25 or fewer employees.

Illinois legislation establishes a state health care cost containment council (PA 87-1003, HB 3619, 1990, amended 1992). This council may enter into an agreement with any corporation, association or other entity it deems appropriate to compile and analyze data and to conduct or contract for studies on health-related questions. The state’s departments of public health and public aid, along with hospitals, are required to assist the council in gathering and submitting certain hospital-specific financial information, including total gross revenue, Medicare, Medicaid and other contractual allowances, total admissions and patient days, average length of stay, and total assets and liabilities.

The cost containment council further urges Illinois hospitals to adopt a uni-
inance and public health, must establish a system of collecting information from hospitals using the raw data available from uniform billing forms. Such data must include: the patient's date of birth, sex, third-party coverage, date of admission, diagnoses, source of payment, and discharge date.

Recently enacted Kentucky legislation allows the state insurance commissioner to reject increases in health insurance premiums determined to be excessive (HB 250, 1994). The act requires physicians to follow practice parameters in the course of treatment and establishes a five-member health policy board with no direct rate-setting authority.

Minnesota legislation establishes integrated service networks (ISNs) to attain cost control (Ch. 345, HF 1178, SF 900, 1993). Health care providers who do not participate in the ISNs will be regulated by the state department of health under an adjunct regulated “all-payer system.” Under the ISN system, profits are linked to cost containment rather than increased spending. ISNs may be established by health care providers, hospitals and clinics, health maintenance organizations (HMOs), insurance companies, employers, government subdivisions or other organizations, and may be organized as nonprofit entities or cooperatives. The state health commissioner must establish rules for implementing ISNs and develop the all-payer system to control spending growth outside the ISN system. Under 1994 legislation (Ch. 625, SF 2192, HF 2525) smaller, “community ISNs” will be allowed to deliver services beginning in 1995, while full implementation of the ISN system will not take place until July 1997.

Alternative and Managed Health Care

In 1992, Florida enacted legislation (Ch. 92-278, HB 61E) requiring health providers under contract with the state to provide that the right of dismissal or termination of such a provider be retained by the governmental contractor and that the contractor have access to patient records for any provider under contract. Patient selection and initial referral must be made solely by the contractor and the contractor must accept all referred patients. The number of patients accepted may be limited under the contract. If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment begins or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later. Patient care, including follow-up or hospital care, is subject to approval by the governmental contractor. Providers are subject to supervision and regular inspection by the governmental contractor. Health care providers under contract with the state may not be named as defendants in any action arising from medical care or treatment provided.

Illinois legislation authorizes alternative health care models called subacute care hospitals (PA 87-1188, SB 837, 1990, amended 1992). A subacute care hospital is a designated site that provides medical specialty care for patients who need greater intensity or complexity of care than generally provided in a skilled nursing facility, but who no longer require acute hospital care. Subacute care includes physician
A subacute care hospital may be a freestanding building, or a distinct physical and operational entity within a hospital or nursing home building. To handle emergency cases, a subacute care hospital must maintain a contractual relationship with a general acute care hospital.

Kentucky legislation permits low-income residents to buy low-cost insurance coverage through the Medicaid program (HB 250, 1994). The act prohibits the refusal of coverage because of pre-existing medical conditions; ensures the portability of coverage, thus allowing persons to change jobs without losing their insurance coverage; and guarantees policy renewal. The act establishes a statewide health purchasing alliance designed to bargain for low insurance rates for its members.

A 1993 Tennessee enactment (HB 660) permits the state to apply for a federal waiver to develop an alternative system for the delivery of Medicaid services and authorizes the state commissioner of health to promulgate rules and regulations to implement the program. The state received the federal waiver from the Clinton administration in 1993, thus enabling it to establish a managed care system for Medicaid patients called “TennCare.” Previously, Medicaid recipients could acquire service from any physician who would provide it. Under the new system, every Medicaid recipient is assigned a family physician to provide primary care under the same plan used by state employees.
Assisted Reproductive Technology Act

This act, based on 1993 Florida legislation, provides statutory guidelines addressing the rights and obligations of parties involved with reproductive technology procedures, including in vitro fertilization and artificial insemination. The act defines the parental rights and obligations of egg or sperm donors, provides for the legitimacy of children born of donated eggs, sperm or pre-embryos, addresses the disposition of the commissioning agreement, and precludes inheritance rights for any unused pre-embryos. The act also addresses gestational surrogacy (a procedure whereby a woman agrees to gestate a child conceived from another woman's egg) by requiring a contract between a gestational surrogate and the commissioning couple, and by providing a judicial procedure following the birth of the child affirming the parental status of the commissioning couple.

The 1994 Suggested State Legislation volume included New York’s “Act to Prohibit Surrogate Parenting Contracts” (pp. 112-114). The act declared that surrogate parenting contracts are contrary to the state’s public policy and are void and unenforceable.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Assisted Reproductive Technology Act.

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

1. “Assisted reproductive technology” means those procreative procedures which involve the laboratory handling of human eggs or pre-embryos, including, but not limited to, in vitro fertilization embryo transfer, gamete intrafallopian transfer, pronuclear stage transfer, tubal embryo transfer, and zygote intrafallopian transfer.

2. “Commissioning couple” means the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents.

3. “Egg” means the unfertilized female reproductive cell.

4. “Fertilization” means the initial union of an egg and sperm.

5. “Gestational surrogate” means a woman who contracts to become pregnant by means of assisted reproductive technology without the use of an egg from her body.

6. “Gestational surrogacy” means a state that results from a process in which a commissioning couple’s eggs or sperm, or both, are mixed in vitro and the resulting pre-embryo is implanted within another woman’s body.
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(7) “Gestational surrogacy contract” means a written agreement between the gestational surrogate and the commissioning couple.

(8) “Gamete intrafallopian transfer” means the direct transfer of eggs and sperm into the fallopian tube prior to fertilization.

(9) “Implantation” means the event that occurs when a fertilized egg adheres to the uterine wall for nourishment.

(10) “In vitro” refers to a laboratory procedure performed in an artificial environment outside a woman’s body.

(11) “In vitro fertilization embryo transfer” means the transfer of an in vitro fertilized pre-embryo into a woman’s uterus.

(12) “Pre-embryo” means the product of fertilization of an egg by a sperm until the appearance of the embryonic axis.

(13) “Pronuclear stage transfer” or “zygote intrafallopian transfer” means the transfer of an in vitro fertilized pre-embryo into the fallopian tube before cell division takes place.

(14) “Sperm” means the male reproductive cell.

(15) “Tubal embryo transfer” means the transfer of a dividing in vitro fertilized pre-embryo into the fallopian tube.

Section 3. [Presumed Status of Child Conceived by Means of Artificial or In Vitro Insemination or Donated Eggs or Pre-embryos.]

(a) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by the means of artificial or in vitro insemination is irrebuttable presumed to be the child of the husband and wife, provided that both husband and wife have consented in writing to the artificial or in vitro insemination.

(b) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by means of donated eggs or pre-embryos shall be irrebuttable presumed to be the child of the recipient gestating woman and her husband, provided that both parties have consented in writing to the use of donated eggs or pre-embryos.

Section 4. [Donation of Eggs, Sperm, or Pre-embryos.] The donor of any egg, sperm or pre-embryo, other than the commissioning couple or a father who has executed a preplanned adoption agreement under [insert reference to appropriate section of state code] shall relinquish all maternal or paternal rights and obligations with respect to the donation or the resulting children. Only reasonable compensation directly related to the donation of eggs, sperm, and pre-embryos shall be permitted.

Section 5. [Gestational Surrogacy Contract.]

(a) Prior to engaging in gestational surrogacy, a binding and enforceable gestational surrogacy contract shall be made between the commissioning couple and the gestational surrogate. A contract for gestation by a woman shall not be binding.
older and the commissioning couple are legally married and are both [eighteen (18)] years of age or older.

(b) The commissioning couple shall enter into a contact with a gestational surrogate only when, within reasonable medical certainty as determined by a physician licensed under chapter [insert reference to appropriate section of state code]:

(1) The commissioning mother cannot physically gestate a pregnancy to term;
(2) The gestation will cause a risk to the physical health of the commissioning mother; or
(3) The gestation will cause a risk to the health of the fetus.

(c) A gestational surrogacy contract must include the following provisions:

(1) The commissioning couple agrees that the gestational surrogate shall be the sole source of consent with respect to clinical intervention and management of the pregnancy.
(2) The gestational surrogate agrees to submit to reasonable medical evaluation and treatment and to adhere to reasonable medical instructions about her prenatal health.
(3) Except as provided in paragraph (5), the gestational surrogate agrees to relinquish any parental rights upon the child’s birth and to proceed with the judicial proceedings prescribed under Section 6 of this act.
(4) Except as provided in paragraph (5), the commissioning couple agrees to accept custody of and to assume full parental rights and responsibilities for the child immediately upon the child’s birth, regardless of any impairment of the child.
(5) The gestational surrogate agrees to assume parental rights and responsibilities for the child born to her if it is determined that neither member of the commissioning couple is the genetic parent of the child.

(d) As part of the contract, the commissioning couple may agree to pay only reasonable living, legal, medical, psychological, and psychiatric expenses of the gestational surrogate that are directly related to prenatal, and postpartal periods.

Section 6. [Expedited Affirmation of Parental Status for Gestational Surrogacy.]

(a) Within [three (3)] days after the birth of a child delivered of a gestational surrogate, the commissioning couple shall petition a court of competent jurisdiction for an expedited affirmation of parental status.

(b) After the petition is filed, the court shall fix a time and place for hearing the petition, which may be immediately after the filing of the petition. Notice of the hearing shall be given as prescribed by the rules of civil procedure, and service of process shall be made as specified by law for civil actions.

(c) Upon a showing by the commissioning couple or the child or the gestational surrogate that privacy rights may be endangered, the court may order the names of the commissioning couple or the child or the gestational surrogate, or any combination thereof, to be deleted from the notice of hearing and from the copy of the petition attached thereto, provided the substantive rights of any person will not thereby be affected.

(d) Notice of the hearing shall be given by the commissioning couple to:
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(1) The gestational surrogate.
(2) The treating physician of the assisted reproductive technology program.
(3) Any party claiming paternity.

(e) All hearings held in proceedings under this section shall be held in closed court without admittance of any person other than essential officers of the court, the parties, witnesses, and any persons who have received notice of the hearing.

(f) The commissioning couple or their legal representative shall appear at the hearing on the petition. At the conclusion of the hearing, after the court has determined that a binding and enforceable gestational surrogacy contract has been executed pursuant to Section 5 of this act and that at least one member of the commissioning couple is the genetic parent of the child, the court shall enter an order stating that the commissioning couple are the legal parents of the child.

(g) When at least one member of the commissioning couple is the genetic parent of the child, the commissioning couple shall be presumed to be the natural parents of the child.

(h) Within [thirty (30)] days after entry of the order, the clerk of the court shall prepare a certified statement of the order for the [state registrar of vital statistics] on a form provided by the [registrar]. The court shall thereupon enter an order requiring the [state department of health and rehabilitation services] to issue a new birth certificate naming the commissioning couple as parents and requiring the [department] to seal the original birth certificate.

(i) All papers and records pertaining to the affirmation of parental status, including the original birth certificate, are confidential and exempt from the provisions of [insert reference to appropriate section of state code] and subject to inspection only upon order of the court. This exemption is subject to the [[state] open government sunset review act] in accordance with [insert reference to appropriate section of state code]. The court files, records, and papers shall be indexed only in the name of the petitioner, and the name of the child shall not be noted on any docket, index, or other record outside the court file.

Section 7. [Disposition of Eggs, Sperm, or Pre-embryos; Rights of Inheritance.]

(a) A commissioning couple and the treating physician shall enter into a written agreement that provides for the disposition of the commissioning couple’s eggs, sperm, and pre-embryos in the event of a divorce, the death of a spouse, or any other unforeseen circumstance.

(b) Absent a written agreement, any remaining eggs or sperm shall remain under the control of the party that provides the eggs or sperm.

(c) Absent a written agreement, decision-making authority regarding the disposition of pre-embryos shall reside jointly with the commissioning couple.

(d) Absent a written agreement, in the case of the death of one member of the commissioning couple, any eggs, sperm, or pre-embryos shall remain under the control of the surviving member of the commissioning couple.

(e) A child conceived from the eggs or sperm of a person or persons who died before the transfer of their eggs, sperm, or pre-embryos to a woman’s body shall
not be eligible for a claim against the decedent’s estate unless the child has been provided for by the decedent’s will.

Section 8. [Effective date.] [Insert effective date.]
Written Summary of Breast Cancer Treatment Alternatives Act

This act, based on 1993 California legislation, states that the failure of a physician or surgeon to inform their breast cancer patients with a written summary of treatment options constitutes unprofessional conduct under the physician’s professional conduct code. Existing California law required the publication and distribution of a booklet explaining the alternative efficacious methods of treatment for breast cancer. However, a survey taken by a local bar association chapter found that most physicians had not been furnishing information to their patients.

The 1992 Suggested State Legislation volume included several related items (pp. 6-16). New York’s “Breast Cancer Detection and Education Program Act” established a program to promote the screening and detection of breast cancer among unserved and underserved populations; to educate the public on the benefits of early detection; and to provide counseling and referral. Michigan’s “Breast Cancer Mortality Reduction Program Act” created a program consisting of education programs for health professionals and for the public, and an applied research and community demonstration grant program for local communities to demonstrate and evaluate methods of reducing breast cancer deaths. Michigan’s “Breast Cancer Screening Standards Act” includes provisions prohibiting use of unauthorized mammography machines; regulating the machines; and requiring the state’s department of public health to promulgate rules specifying minimum training and performance standards for non-physician mammography machine operators.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Written Summary of Breast Cancer Treatment Alternatives Act.

Section 2. [Definitions.] As used in this act, “department” means [state department of health services].

Section 3. [Information Requirement.] Physicians and surgeons shall inform patients being treated for any form of breast cancer of the alternative efficacious methods of treatment by providing the patient with the written summary described in Section 5 of this act.

Section 4. [Sanction for Failure to Inform.] The failure of a physician and surgeon to inform a patient, by means of a standardized written summary developed
by the [department] on the recommendation of the [state cancer advisory council] in accordance with Section 5 of this act, in layman's language and in a language understood by the patient, of alternative efficacious methods of treatment that may be medically viable, including surgical, radiological, or chemotherapeutic treatments or combinations thereof, when the patient is being treated for any form of breast cancer, constitutes unprofessional conduct within the meaning of [insert reference to appropriate section of state code].

Section 5. [Written Summary of Breast Cancer Treatment Alternatives.]
(a) A standardized written summary in layman's language and in a language understood by the patient shall be developed by the [department] with the recommendations of the [state cancer advisory council], and shall be printed and made available by the [state medical board] to physicians and surgeons, for the purposes of informing the patient of the advantages, disadvantages, risks and descriptions of the procedures with regard to medically viable and efficacious alternative methods of treatment for breast cancer as required by Section 3 of this act.

(b) Commencing no later than [insert date], and every [three (3)] years thereafter, the [department] shall review the written summary and shall revise the written summary if the [department] determines that new or revised information should be included in the written summary.

(c) At the next revision of the standardized written summary required by this act, the [department] shall incorporate all of the following additional information:

1. Information regarding methods of treatment for breast cancer that are in the investigational or clinical trial stage and are recognized for treatment by the Physician's Data Query of the National Cancer Institute.

2. Available reference numbers, including, but not limited to, the "800" telephone numbers for the [National Cancer Institute] and the [American Cancer Society], in order for breast cancer patients to obtain the most recent information.

3. A discussion of breast reconstruction surgery, including, but not limited to, problems, benefits, and alternatives.


Section 6. [Notation of Delivery of Information to Patient.] Prior to performance of a biopsy, the physician and surgeon shall note on the patient's chart that he or she has given the patient the written summary required by this section.

Section 7. [Linkage of Distribution System to License Renewal.] The [state medical board] shall establish a distribution system for the breast cancer treatment alternatives written summary that is linked to the process of biennial renewal of physician and surgeon licenses.

Section 8. [Effective Date.] [Insert effective date.]
Children's Mental Health Integrated Fund (Statement)

Children with emotional or behavioral disturbances often require attention from multiple service systems, including mental health, social services, education, corrections, juvenile court, health, and jobs and training. States face the challenge of effectively providing these services to meet the children's diverse needs.

In 1993, Minnesota amended its children's mental health act to establish an integrated children's mental health service system (S.S. Ch. 1, HF 1, Art. 7, Sec. 245.491-245.496). This system allows local decision makers to draw funding from a single local source so that funds follow clients, thus eliminating the need to match clients, funds, services and provider eligibilities. In lieu of presenting this amendatory item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following summary of the act's major provisions. Readers wishing to acquire a copy of the act should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike, PO. Box 11910, Lexington, KY 40578-1910, (606) 244-8000.

Local Children’s Mental Health Collaboratives

The act defines a local children's mental health collaborative as an entity formed by agreement of representatives of the local system of care, including mental health services, social services, correctional services, education services, health services, and vocational services, for the purpose of developing an integrated service system. To qualify as a local collaborative and qualify for start-up funds, the representatives of the local system of care (or at a minimum one county, one school district or special education cooperative, and one mental health entity) must agree to establish the collaborative, develop an integrated service system, and commit resources to providing services through the collaborative. The program targets children up to age 18 who have emotional or behavioral disturbances or who are at risk of suffering emotional or behavioral disturbances.

Each local collaborative must identify a service delivery area and an initial target population that is economically and culturally representative of children in the area to be served by the collaborative. Collaboratives also must seek to maximize federal revenues available to serve children in the target population by designating local expenditures for mental health services that can be matched with federal dollars; designing, developing and ensuring implementation of the integrated service system (described below) and developing necessary interagency agreements; expanding membership to incorporate representatives of other services in the local system of care. It should also provide the following services to target area children:
and clinical responsibility and outcome evaluation; spending funds generated by the local collaborative; and exploring methods and recommending changes to the state for reducing duplication and promoting service coordination, including the use of uniform forms for reporting, billing and planning services.

**Integrated Service System and Fund**

The act defines the integrated service system as a coordinated set of procedures established by the local children's mental health collaboratives for coordinating services and actions across categorical systems and agencies resulting in: integrated funding; improved outreach, early identification and intervention across systems; collaboration between parents and professionals in identifying children in the target populations; coordinated assessment processes; a multiagency care plan; and wraparound services (alternative, flexible, coordinated and highly individualized services based on the plan).

The integrated service system established by the local collaboratives must: include a process for communicating to agencies in the local system of care eligibility criteria for services received through the local collaborative and a process for determining eligibility; include measurable outcomes, timelines for evaluating progress and mechanisms for quality assurance and appeals; involve the family, and where appropriate, the individual child, in developing multiagency service plans; meet all standards and provide all mental health services required under state law and ensure the services provided are culturally appropriate; spend funds generated by the local collaborative; encourage public-private partnerships to increase efficiency, reduce redundancy and promote quality of care; and ensure that, if the county participant of the local collaborative is also a provider of child welfare targeted case management, then federal reimbursement received by the county for such case management is directed to the integrated fund.

The children's mental health integrated fund established under the act must be used to develop and support the system. The fund is a pool of public and private local, state and federal resources consolidated at the local level to accomplish locally agreed-upon service goals. The fund is to be used to help the local collaborative serve the mental health needs of children in the target population by allowing the collaboratives to develop and implement an integrated service system.

**State Coordinating Council**

The act also establishes a state coordinating council which, in consultation with the integrated fund task force, must: assist the local collaboratives in meeting the act's requirements, by seeking consultation and technical assistance from national experts and coordinating their presentations and assistance with the local collaboratives; assist the collaboratives in identifying economically-viable initial target populations; develop methods for reducing duplication and promoting coordinated services; develop a procedure for awarding start-up funds to the local
collaboratives; develop a mechanism for identifying the state share of funding for services to children in the target population and for making these funds available on a per capita basis for services provided through the local collaboratives; annually review the local collaboratives’ expenditures to ensure that funding for services provided to the target population continues from sources other than federal funds; and provide support services to local collaboratives, including assistance in their implementation and operations.
Dosage Form Definition Act

This piece of legislation was enacted by the state of New Jersey in 1993. The act amended the state's 1977 drug substitution act, which did not define the term "dosage form" because the common view at the time was that prescription drugs came only in dosage forms.

The New Jersey act (Ch. 256, AB 2625, 1993) changes the definition of "dosage form" in the state's drug substitution statute (see the new language presented below). The act is designed to: safeguard patient care by ensuring that the physician who prescribes a drug can be certain that its full therapeutic value is delivered to the patient in the dosage form he or she intended; prevent drug product substitution when a specific technology or mechanism is used to control and target the release of a drug and govern its systemic absorption in the body; and reinforce the original intent of the drug substitution act to reflect new medical and pharmaceutical technologies in delivering prescription drugs into the body which were not available in 1977.

In 1993, Oregon adopted similar legislation (HB 3472) in that it used much of the same language found in the New Jersey definition. It did not list as many types of medication, although it did not exclude any items.

[Definition.] "Dosage form" means the physical formulation or medium in which the product is intended, manufactured and made available for use, including, but not limited to: tablets, capsules, oral solutions, aerosols, inhalers, gels, lotions, creams, ointments, transdermals and suppositories, and the particular form of the above which utilizes a specific technology or mechanism to control, enhance or direct the release, targeting, systematic absorption or other delivery of a dosage regimen in the body.
Oilfield Site Restoration Act

This act, based on 1993 Louisiana legislation, provides for cleanup of abandoned oilfield sites. It encourages the establishment of site-specific trust accounts on transfers of producing properties to ensure that sufficient funds are available for cleanup and restoration at the end of the producing life of such properties. The act also establishes an oilfield restoration commission under the state’s department of natural resources. The commission is authorized to: establish a priority site restoration listing for the first two years of the program’s existence; publish an inventory of oilfield sites; approve lists of contractors acceptable to conduct site assessment and site restoration; recommend to the assistant secretary of natural resources sites to be declared “orphaned” (sites having no continued useful purpose for exploration, production or development of oil or gas); review administration of site restoration activities; administer and manage the oilfield site restoration fund and all site-specific accounts; and perform any function authorized under the act which is consistent with the commission’s purpose. The act establishes the oilfield site restoration fund, authorized to receive money from: fees and penalties; private contributions; interest earned on the funds deposited in the account and civil penalties; costs recovered from responsible parties for oilfield site restoration; grants and donations from public or private sources; and site-specific trust accounts not to be used for any oilfield site other than that specified for each account. The cleanup and restoration process involves proper plugging of all oil and gas wells and the restoration of the surface area near the wells.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Oilfield Site Restoration Act.

Section 2. [Legislative Findings and Purpose.] (a) The legislature finds and declares that:

(1) A present and future benefit to the environment, public health, safety, and welfare would be to clean up, close, and restore oilfield sites.

(2) State laws and regulations must comprehensively address those situations where proper and timely cleanup, closure, and restoration of orphaned oilfield sites must be assured.

(b) It is in the public interest and within the police power of this state to establish an [oilfield site restoration commission] and an [oilfield site restoration fund] to provide for the proper and timely cleanup, closure, and restoration of oilfield sites,
Oilfield Site Restoration Act

to be administered by the [assistant secretary of the office of conservation] within the [state department of natural resources].

(c) Nothing in this act shall be deemed to alter or impair any rights and responsibilities established by contract between private parties.

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

(1) "Assistant secretary" means the [assistant secretary of the office of conservation] within the [state department of natural resources] or [authorized representatives].

(2) "Commercial facility" means a facility that is or was legally permitted for waste storage treatment or disposal of nonhazardous oilfield wastes for a fee or other consideration.

(3) "Commission" means the [oilfield site restoration commission].

(4) "Department" means the [state department of natural resources].

(5) "Fund" means the [oilfield site restoration fund].

(6) "Nonproducing oilfield site" means an oilfield site which is not a producing oilfield site and which has not been declared an orphaned oilfield site by the [assistant secretary].

(7) "Oilfield site" means any location or any portion thereof on which oil or gas exploration, development, or production activities have occurred.

(8) "Orphaned oilfield site" means an oilfield site which has no continued useful purpose for the exploration, production, or development of oil or gas and which has been declared to be an orphaned oilfield site by the [assistant secretary] under Section 13 of this act.

(9) "Producing oilfield site" means an oilfield site which is associated with the production of oil or gas for at least [six (6)] months of the preceding calendar year.

(10) "Responsible party" means the operator of record according to the [office of conservation] records, who last operated the property on which the oilfield site is located at the time the site is about to be abandoned, ceases operation, or becomes an unusable oilfield site, and the operator's partners and working interest owners of that oilfield site. A working interest owner is the owner of a mineral right who is under an obligation to share in the costs of drilling or producing a well on the oilfield site.

(11) "Secretary" means the [secretary of the state department of natural resources].

(12) "Site restoration" means any and all oilfield site restoration activities required of a responsible party of an oil or gas property by regulations adopted by the [office of conservation] pursuant to this act, including without limitation plugging of oil and gas wells, pit closure, site remediation, and removal of oilfield equipment.

(13) "Unusable oilfield site" means an oilfield site which has no continued useful purpose for the exploration, production, or development of oil or gas and for which a responsible party can be located.
Section 4. [Oilfield Site Restoration Commission; Compensation; Powers.]

(a) The [oilfield site restoration commission] is hereby created within the [office of the secretary of the state department of natural resources]. The [commission] shall have the power to sue and be sued and shall be domiciled in the [insert name of jurisdiction]. Venue for any suit brought by or against the [commission] shall be in the [insert name of court]. The [commission] shall consist of [ten (10)] members comprised as follows:

(1) The [secretary of the state department of natural resources], who shall serve as the chairman.

(2) One (1) person appointed by the [governor], who shall serve at the pleasure of the [governor].

(3) One (1) person appointed by the [governor] from a list of [three (3)] persons submitted by the [state oil and gas association] for an initial term of [four (4)] years.

(4) One (1) person appointed by the [governor] from a list of [three (3)] persons submitted by the [state oil and gas association] for an initial term of [two (2)] years.

(5) One (1) person appointed by the [governor] from a list of [three (3)] persons submitted by the [state independent oil and gas association] who shall serve an initial term of [four (4)] years.

(6) One (1) person appointed by the [governor] from a list of [three (3)] persons submitted by the [state independent oil and gas association] who shall serve an initial term of [two (2)] years.

(7) One (1) person appointed by the [governor] from a list of [three (3)] persons submitted by the [state landowners association] who shall serve an initial term of [three (3)] years.

(8) One (1) person appointed by the [governor] from a list of [three (3)] persons submitted by representatives of the [state division of the Sierra Club], the [state Wildlife Federation], and the [state division of the Audubon Society], who shall serve an initial term of [three (3)] years.

(9) One (1) person appointed by the [governor] from a list of [three (3)] persons submitted by the [state environmental and coastal protection groups] for an initial term of [three (3)] years.

(b) The [assistant secretary for the office of conservation] shall serve as an ex officio member of the [commission]. He shall not be counted to determine the number needed to constitute a quorum; however, he may be counted to establish a quorum. The [assistant secretary] shall not be a voting member of the [commission].

(c) Each person appointed by the [governor] shall be subject to confirmation by the [state senate]. After the initial term, each successor shall be appointed in the same manner as the initial appointments and shall serve terms of [four (4)] years.

(d) A [majority] of the membership of the [commission] shall constitute a quorum for the transaction of business. The [commission] shall meet at least [six (6)] times per year. Meetings of the [commission] shall take place at its domicile; how-
ever, no more than [two (2)] meetings per year may be held at places in the state other than [commission's domicile].

(e) The members of the [commission] shall receive no compensation from the [commission] nor shall the members of the [commission] receive any reimbursement for expenses associated with attendance at the meetings of the [commission].

(f) The powers of the [commission] shall be limited to the following:

1. Approve a priority list for site restoration for the first [two (2)] years.
2. Publish an inventory of oilfield sites.
3. Approve lists of contractors acceptable to conduct site assessment and site restoration.
4. Recommend to the [assistant secretary] on oilfield sites to be declared orphaned.
5. Review administration of site restoration activities and review the adequacy of site restoration assessments and reopen the funding needs and arrangements for site-specific trust accounts every [four (4)] years.
6. Administer and manage the [oilfield site restoration fund] and all site-specific trust accounts. The [commission] shall delegate the power to disburse funds to the [secretary] pursuant to the authority granted to him herein.
7. Perform any function authorized by this act or which is consistent with its purpose.

(g) The records, documents, and meetings of the [commission] shall be subject to the same requirements and exceptions regarding access by the public as are the records, documents, and meetings of the [state mineral board].

Section 5. [State Department of Natural Resources Duties.] The [state department of natural resources] shall adopt rules and regulations, in accordance with the [state administrative procedure act], to implement the provisions of this act and to provide for procedures for site assessments and restoration.

Section 6. [Powers of Secretary of State Department of Natural Resources.] The powers of the [secretary] shall include without limitation the power to do the following:

1. Make expenditures or commitments to make expenditures from the fund for the restoration of oilfield sites and commercial facilities, as deemed necessary and appropriate.
2. Approve expenditures or release monies from site-specific trust accounts for restoration of oilfield sites at any time during the life of the oilfield site.
3. Modify funding requirements of site-specific trust accounts either upon recommendation of the [commission], the [assistant secretary] or upon the [secretary]'s own determination, based upon changes in operation, site conditions or trust account status.
4. Adopt and promulgate rules and regulations respecting the administration of this act.
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(5) Negotiate and execute contracts, upon such terms as the [secretary] may agree upon, for legal, financial, engineering, construction, and other professional services necessary to meet the purpose of this act. However, a contract for site assessment or site restoration shall require a performance bond and, except for a project declared to be an emergency by the [secretary], shall be in compliance with state public bid law. A project which the [secretary] has declared in writing to be an emergency may employ a written and thoroughly documented informal bidding procedure in which bids are received from at least [three (3)] bidders. All such contracts shall be reviewed prior to execution by the [secretary] and at least all informally bid contracts shall be reviewed by the [commissioner of the state division of administration]. No party contracting with the [department] under the provisions of this act shall be deemed to be a public employee or an employee otherwise subject to the [insert reference to appropriate section of state code].

(6) Perform such other specific functions as may be enumerated or envisioned by the provisions of this act.

(7) The [secretary] or the [secretary]'s agents, on proper identification, may enter the land of another for purposes of site assessment or restoration.

(b) The [commission], the [secretary], and the [assistant secretary], and their agents, are not liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this act.

(c) The powers provided for in this section shall be in addition to and shall not limit the powers conferred on the [secretary] in other provisions of this act [or other appropriate sections of state code] or by any other provisions of any state or federal law or regulation.

Section 7. [Powers of the Assistant Secretary of the Office of Conservation.]

(a) The powers of the [assistant secretary] shall include without limitation the power to do the following:

(1) Adopt and promulgate rules and regulations implementing the administration of this act.

(2) Perform such specific functions as may be enumerated by the provisions of this act.

(b) The aforementioned powers shall be in addition to and shall not limit the powers conferred on the [assistant secretary] in other provisions of this act [or other appropriate sections of state code] or any other pertinent provision of any state or federal law or regulation.

Section 8. [Oilfield Site Restoration Fund.]

(a) There is hereby established a fund in the custody of the [state treasurer] to be known as the [oilfield site restoration fund], hereafter referred to as the “fund,” into which the [state treasurer] shall, each fiscal year, deposit the revenues received from the collection of the monies enumerated in subsection (d) of this section, after those revenues have been deposited in the [state bond security and redemption fund].

(b) The funds remaining in the fund shall be used to carry out the purposes of this act.

(c) The powers provided for in this section shall be in addition to and shall not limit the powers conferred on the [secretary] in other provisions of this act [or other appropriate sections of state code] or by any other pertinent provision of any state or federal law or regulation.
after a sufficient amount is allocated from that fund to pay all the obligations se-
cured by the full faith and credit of the state that become due and payable within
each fiscal year, the [treasurer] shall pay into the [oilfield site restoration trust
fund] an amount equal to the revenues generated from collection of the fees pro-
vided for in subsection (d) of this section. Such funds shall constitute a special
custodial trust fund which shall be administered by the [commission] which shall
make disbursements from the fund solely in accordance with the purposes and uses
authorized by this act.

(b) The [commission] is hereby authorized pursuant to [insert reference to sec-
tion of state constitution] and this act, and upon approval of the [secretary] to
enter into one or more agreements with a private legal entity to receive and admin-
ister an interest-bearing trust fund for the purpose of providing financial responsi-
bility for proper and timely cleanup, closure, and restoration of orphaned oilfield
sites and commercial facilities, which shall constitute a grant under such terms
and conditions as the [state department of natural resources] and the [commis-
sion] shall determine. The funds received shall be placed in the special trust fund in
the custody of the [state treasurer] to be used only in accordance with the terms
and conditions of said grant and of this act and shall not be placed in the general
fund. The funds provided to the [commission] pursuant to this section and to the
said agreement shall at all times be and remain the property of the [commission].
The funds shall only be used for the purposes set forth in this act and for no other
governmental purposes, nor shall any portion hereof ever be available to borrow
from by any branch of government. It is the intent of the legislature that this fund
and its increments shall remain intact and inviolate. Any interest or earnings of
the fund shall be credited only to the fund.

(c) The [secretary] shall certify, to the [secretary of the state department of rev-
ue and taxation], the date on which the balance in the fund equals or exceeds
[ten (10) million] dollars. The oilfield site restoration fees on oil and gas provided
for in Section 9 of this act shall not be collected or required to be paid on or after the
[first day of the second month] following the certification, except that the [secre-
tary of the state department of revenue and taxation] shall resume collecting the
fees on receipt of a certification from the [secretary] that, based on the expendi-
tures or commitments to expend monies, the fund has fallen below [six (6)] million
dollars. The [secretary of the state department of revenue and taxation] shall con-
tinue collecting the fees until collections are again suspended in the manner pro-
voked by this section. The sums in the site-specific trust accounts within the fund
shall not be counted to determine the balance of the fund for the purposes of this
subsection.

(d) The following monies shall be placed into the [oilfield site restoration fund]:
(1) Those fees and penalties collected pursuant to Section 9 of this act.
(2) Private contributions.
(3) Interest earned on the funds deposited in the fund.
(4) Civil penalties or costs recovered from responsible parties for oilfield site
restoration pursuant to Sections 15 and 16 of this act.
(5) Any grants, donations, and sums allocated from any source, public or private, for the purposes of this act.

(6) Site-specific trust accounts; however, the monies of such accounts shall not be used for any oilfield site other than that specified for each respective account.

(e) The monies in the fund may be disbursed and expended pursuant to the authority and direction of the [secretary] for the following purposes and uses:

(1) Any oilfield site assessment or restoration conducted by the [state department of natural resources] pursuant to this act.

(2) The administration of this act by the [state department of natural resources] in an amount not to exceed [two hundred thousand (200,000)] dollars in any fiscal year.

(3) The payment of fees and costs associated with the administration of the fund, site-specific accounts, and any contract with a private legal entity pursuant to this section.

(4) Any costs and fees associated with the recovery of site restoration costs and penalties pursuant to Sections 15 and 16 of this act.

(5) The assessment or restoration of commercial facilities; provided that no more than [twenty-five (25)] percent of the monies placed in the fund in any calendar year may be disbursed and expended for the assessment or restoration of commercial facilities, in the calendar year. Any contributions to the fund pursuant to paragraphs (2) through (6) of subsection (d) of this section which are dedicated to the restoration of any commercial facility, shall be exempted from the limitation created by this subsection.

Section 9. [Oilfield Site Restoration Fees.]

(a) There is hereby imposed on crude petroleum produced from producing wells in this state a fee in the amount of [one (1)] cent on each barrel of oil and condensate. “Oil” and “condensate” shall mean the same such oil and condensate as is taxable under the provisions of [insert reference to appropriate section of state code]. The provisions of the [state tax code] shall apply to the administration, collection, and enforcement of the fee imposed herein, and the penalties provided by that code shall apply to any person who fails to pay or report the fee. Collection of the fee shall be suspended in the manner provided by Section 8 (c) of this act. Proceeds from the fee, including any penalties collected in connection with the fee, shall be deposited into the [oilfield site restoration fund].

(b) There is hereby imposed on gas produced from producing wells in this state a fee in the amount of [one-fifth of one cent] for each thousand cubic feet. “Gas” shall mean the same such gas as is taxable under the [insert reference to appropriate section of state code]. The provisions of the [state tax code] shall apply to the administration, collection, and enforcement of the fee, and the penalties provided by that code shall apply to any person who fails to pay or report the fee. Collection of the fee shall be suspended in the manner provided by Section 8 (c) of this act. Pro-
ceeds from the fee, including any penalties collected in connection with the fee, 
shall be deposited into the [oilfield site restoration fund].

(c) There is hereby imposed on nonproducing wells located in this state an [an-
nual] fee, commencing with [insert year], of [ten (10)] dollars except temporary 
abandoned or saltwater disposal wells in stripper fields. The provisions of the [state 
tax code] shall apply to the administration, collection, and enforcement of the fee, 
and the penalties provided by that code shall apply to any person who fails to pay or 
report the fee. Collection of the fee shall be suspended in the manner provided by 
Section 8 (c) of this act. Proceeds from the fee, including penalties collected in con-
nection with the fee, shall be deposited into the [oilfield site restoration fund].

(d) Notwithstanding subsections (a) and (b) of this section, the rate of the fees 
imposed by this section on any well shall be in proportion to the amount of sever-
ance taxes being collected on the production of the well.

(e) The fees provided for in subsections (a), (b), and (c) of this section shall be 
borne by the responsible parties and not by the royalty and overriding royalty 
owner. The fees provided for in subsections (a) and (b) of this section shall com-
ence with [insert date] production.

(f) The first year site restoration fee shall be the following:

(1) Full rate production (i) [one (1) cent] per barrel on crude oil and conden-
sate, or (ii) [one-fifth of one cent] per thousand cubic feet on natural gas and casing 
head gas.

(2) Reduced rate production such as stripper wells and incapable wells. The 
site restoration fee for each respective category of oil or gas hereunder shall be in 
the same proportion to the respective full rate production fees as the reduced rate 
severance tax to the full rate severance tax for [insert fiscal year] for each said 
respective category.

(g) As declines in production occur, the fund shall be compensated to maintain 
the required amount by increasing the site reclamation fees on each site as 
hereinabove set forth by [five (5)] percent [annually] until the fees respectively 
have been increased by a total of [one-hundred (100)] percent per site after which 
no further increases shall occur.

Section 10. [Oilfield Site Trust Accounts.]

(a) If an oilfield site is transferred from one party to another, a site-specific trust 
account may be established to separately account for each such site for the purpose 
of providing a source of funds for site restoration of that oilfield site at such time in 
the future when restoration of that oilfield site is required. For purposes of this act, 
a transfer shall be deemed to have been made once there is a change in ownership 
of any kind at an oilfield site. Once established, the site-specific trust account shall 
survive until completion of site restoration of the associated oilfield site.

(b) In the event the parties to a transfer elect to establish a site-specific trust 
account under this section, then at the time of the transfer or within [one (1) year] 
thereafter, the [secretary] shall require an oilfield site restoration assessment to be 
made to determine the site restoration requirements existing at the time of the
transfer. The oilfield site restoration assessment shall be conducted by contractors appearing on a list approved by the [commission] or acceptable to the [commission]. The oilfield site restoration assessment shall specifically detail site restoration needs and shall provide an estimate of the site restoration costs needed to restore the oilfield site based on the conditions existing at the time of transfer.

(c) The party or parties to the transfer shall, based upon the site restoration assessment, propose a funding schedule which will provide for the site-specific trust account. The funding schedule shall consider the uniqueness of each transfer, acquiring party, and oilfield site. Funding of the site-specific trust account shall include some contribution to the account at the time of transfer and at least [quarterly] payments to the account. Third party guarantees, assignor guarantees, letters of credit, bonds, or any combination may also be considered for funding. The [secretary] shall monitor each trust account to assure that it is being properly funded. The funds in each trust account shall remain the property of the [commission].

(d) The [secretary] may approve the site-specific trust account for an oilfield site upon review of the assessment and the site-specific trust account that has been proposed for that oilfield site as provided in the regulations. Such approval shall not be unreasonably withheld.

(e) When transfers of oilfield sites occur subsequent to the formation of site-specific trust accounts but prior to the end of their economic life, the [secretary] and the acquiring party shall, in the manner provided for in this subsection, again redetermine cost and agree upon a funding schedule. The balance of any site-specific trust account at the time of subsequent transfer shall remain with the oilfield site and shall be a factor in the redetermination.

(f) Once the [secretary] has approved the site-specific trust account the party transferring the oilfield site shall not thereafter be held liable by the state for any site restoration costs or actions associated with the transferred oilfield site provided such party is and remains in compliance with this act. The party acquiring the oilfield site shall thereafter be the responsible party for the purposes of this act.

(g) The failure of a transferring party to make a good faith disclosure of all oilfield site conditions existing at the time of the transfer will render that party liable for the costs of restoration of such undisclosed conditions in excess of the balance of the site-specific trust fund.

(h) Except as provided in subsection (e) of this section, the parties to a transfer may elect not to establish a site-specific trust account; however, in the absence of such account, the parties shall not be exempt from liability as set forth in subsection (f) of this section.

(i) Subject to agreement between the [assistant secretary], the seller and the purchaser of an oilfield site sold prior to the effective date of this act, a site-specific trust account can be established or transferred to the state.

(j) For unusable oilfield sites, after site restoration has been completed and approved by the [assistant secretary], funds from a site-specific trust account shall be disbursed as follows: The balance of the account existing in the site-specific trust
Section 11. [Non-Orphan Site Restoration.]
(a) Site restoration of an unusable oilfield site shall be completed by the responsible party for the site. The responsible party shall perform site assessment and restoration in accordance with the regulations of the [assistant secretary]. The responsible party shall be liable for the cost of the assessment and the restoration even though such cost may exceed the amount determined by the assessment.

(b) After due notice and hearing and upon certification from the [assistant secretary] that a responsible party has failed to undertake such site restoration, the [secretary] is authorized to disburse such funds as are necessary for site restoration from the site-specific trust account.

(c) The [assistant secretary], upon notice and hearing, pursuant to rules adopted by the [assistant secretary] in accordance with the [state administrative procedure act], may declare an oilfield site to be an unusable oilfield site. Upon failure of a responsible party to undertake site restoration as ordered by the [assistant secretary], the [secretary] is authorized to disburse such funds as are necessary for site restoration from the site-specific trust account.

(d) For sites restored pursuant to subsections (a) and (b) of this section, after site restoration has been completed and approved by the [assistant secretary], funds from the site-specific trust account will be disbursed as follows:

1. The balance of the account existing in the site-specific trust account will be remitted to the responsible party. Such account shall thereafter be closed.

2. If the funds in the site-specific trust account are depleted prior to the payment of all site restoration costs, the [department] is authorized to collect the remainder of site restoration costs from the responsible party or ensure that the responsible party completes the site restoration to the satisfaction of the [assistant secretary].

3. If the funds in the site-specific trust account are depleted prior to the payment of all site restoration costs, and if the [assistant secretary] declares that oilfield site to be an orphaned oilfield site, the [oilfield site restoration fund] shall contribute the balance of the restoration costs for that orphaned oilfield site.

Section 12. [Reports to the Legislature.]
(a) The [commission] shall submit to the [insert appropriate legislative committees] before [insert date], an [annual] report that reviews the extent to which the fund has enabled the [commission] to better protect the environment and enhance the income of the [oilfield site restoration fund].

(b) The [commission] shall generate a [three (3)] year plan which comprehensively addresses a balanced restoration of all oilfield sites in the state. The [three (3)] year plan shall include an inventory of all wells by classification, a timetable for implementation and completion of site restoration activities and set forth other goals and objectives of the [commission]. The [commission] will annually review
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the status of its [three (3)] year plan and shall generate successive [three (3)] year plans as needed.

(c) The [assistant secretary] shall furnish the [commission] with [semiannual] reports that review the efforts of the [assistant secretary] to assure proper and timely cleanup, closure, and restoration of oilfield sites.

(d) The [assistant secretary]'s [semiannual] reports shall include:
   (1) The number of wells plugged by the [assistant secretary].
   (2) The number of orphaned oilfield sites, including a breakdown of those which have been identified during the preceding year and those at which site restoration has been completed during the preceding year.
   (3) The number of producing and nonproducing oilfield sites.
   (4) The status of enforcement proceedings for all sites in violation of the [assistant secretary]'s rules and the time period during which the sites have been in violation, including the status of the [assistant secretary]'s attempts to recover reimbursement for restoration costs.

(e) The [commission]'s annual report to the legislature shall include:
   (1) The number of wells plugged by the [department].
   (2) The number of orphaned oilfield sites, including a breakdown of those which have been identified during the preceding year and those at which site restoration has been completed during the preceding year.
   (3) The number of producing and nonproducing oilfield sites.
   (4) The status of enforcement proceedings for all sites in violation of the [assistant secretary]'s rules and the time period during which the sites have been in violation, including the status of the [assistant secretary]'s attempts to recover reimbursement for restoration costs.
   (5) A report on the progress of the [commission]'s [three (3)] year plan.
   (6) A projection of the amount of oilfield cleanup funds needed for the next year for site restoration.
   (7) The status of implementation of the provisions of this act relating to possession and sale of equipment to recover site restoration costs.

Section 13. [Orphaned Oilfield Sites.]

(a) A site may be declared to be an orphaned oilfield site by the [assistant secretary] upon a finding that the site either:
   (1) Was not closed or maintained in accordance with all statutory requirements and the regulations adopted thereunder; or
   (2) Constitutes or may constitute a danger or potential danger to the public health, the environment, or an oil or gas strata; and
   (3) Has no responsible party who can be located, or such party has failed or is financially unable to undertake actions ordered by the [assistant secretary].

(b) Prior to declaring a site to be an orphaned oilfield site, the [assistant secretary] shall seek to notify the last operator, at his last known address contained in the [department] records, of the site that is to be declared abandoned and shall publish a notice in the state register that the oilfield site is to be declared orphaned.
If resolution of a factual dispute is requested by any owner or operator, the assistant secretary shall hold a fact-finding hearing prior to declaring the site orphaned and the assistant secretary shall make any fact determination necessary to resolve the dispute.

(c) For purposes of this act, the owner of the property upon which an orphaned oilfield site is located shall not be responsible for site restoration unless the owner is also a responsible party as defined herein.

Section 14. [Orphan Site Restoration.] The assistant secretary is hereby authorized to conduct site restoration on any site declared to be an orphaned oilfield site. The secretary may expend sums from the fund and enter into contracts for the purpose of site restoration.

Section 15. [Recovery of Site Restoration Costs.]
(a) If the assistant secretary undertakes restoration of an orphaned oilfield site under this act, the secretary shall seek to recover all costs incurred by the assistant secretary, penalties, and other relief from any party who has operated or held a working interest in such site, or who is required by law, rules adopted by the department, or a valid order of the assistant secretary to control, cleanup, close, or restore the oilfield sites except as follows:

(1) All oilfield sites transferred prior to [insert date], which become orphaned, shall be restored with monies provided by the fund. Except for the responsible party, the secretary shall not be authorized to recover restoration costs from parties which formerly operated or held a working interest in an orphaned oilfield site unless restoration costs for a particular orphaned oilfield site including support facilities exceed [two hundred thousand (200,000)] dollars. Transfer of an oilfield site shall be deemed to have taken place prior to [insert date], where a purchase and sale agreement has been executed prior to [insert date], and closing takes place within [one hundred twenty (120)] days of execution.

(2) Each oilfield site transferred on or after [insert date], for which a site-specific trust fund has been created, and which becomes orphaned, shall be restored in the following manner:

(i) Using funds in the site-specific trust fund established for the specific site, or

(ii) Using funds collected from any responsible party in such site where the site-specific trust fund is insufficient, or

(iii) If funds collected under subparagraphs (i) and (ii) above are insufficient to fully restore said orphaned oilfield site, the fund shall provide funds necessary to make up any deficiency up to a maximum of [two hundred thousand (200,000)] dollars.

(iv) If the cost to fully restore an orphaned oilfield site including support facilities therefor exceeds [two hundred thousand (200,000)] dollars and the funds provided or collected under subparagraphs (i), (ii), and (iii) above are insufficient, those funds necessary to fully restore said orphaned wells including support facilities therefor shall be provided by the fund.
ties therefor which exceed the funds collected under subparagraphs (i), (ii), and (iii) above shall be collected from operating parties and working interest owners as set forth in paragraph (3) below.

(3) The [assistant secretary] shall establish procedures for the recovery of costs under paragraphs (1) and (2) above from parties in inverse chronological order from the date on which the oilfield site has been declared orphaned.

(4) A party shall be exempt from liability for restoration of an orphaned oilfield site as provided for in this act in which said party had an operating or working interest if, and only if, the party complies with all of the following:

(i) The party makes full and reasonable timely contribution to the [oilfield site restoration fund].

(ii) The party, as a transferee of an oilfield site after [insert date], creates a site-specific trust account for the restoration of the oilfield site and is in compliance with the terms and conditions of the site-specific trust account.

(iii) The party, if a transferor after [insert date], makes full disclosure in compliance with Section 10 (g) of this act in the transfer of an oilfield site.

(iv) The party complies in full with any penalty assessment which has become final under this act for any violation under this act.

(v) The party is not determined to be an individual, partnership, corporation, or other entity which is an operator or working interest owner in an oilfield site determined to be orphaned.

(vi) The party is not determined to be a partnership, corporation, or other entity for which a general partner, an owner of more than [twenty-five (25)] percent ownership interest, or a trustee has held a position of ownership or control in another partnership, corporation, or other entity which is an operator or working interest owner in an oilfield site determined to be orphaned.

(vii) The party complies with all reviews of site-specific trust accounts as set forth in this act, including additional contributions thereto if deemed necessary.

(b) The [secretary] may file suit in a court of competent jurisdiction in [commission's domicile] to recover these costs. The [secretary] may settle or resolve any suits, disputes, or claims for any penalty under the provisions of this act. Costs recovered under this subsection shall be deposited into the [oilfield site restoration fund].

Section 16. [Penalties.]

(a) Failure of a responsible party to comply with its obligation under this act may cause that responsible party to lose all rights of an operator in the state. The [assistant secretary] may cancel forthwith any allowables and deny any permits until restitution is received by cashier's check for costs incurred by the [assistant secretary] under this act. Costs shall include without limitation restoration costs, legal expenses, and interest. The fund shall be reimbursed for any expenditures made on behalf of the oilfield site.

(b) The [assistant secretary] may withhold any permit application under this act to the following:

1. The party is not determined to be an individual, partnership, corporation, or other entity which is an operator or working interest owner in an oilfield site determined to be orphaned.

2. The party is not determined to be a partnership, corporation, or other entity for which a general partner, an owner of more than [twenty-five (25)] percent ownership interest, or a trustee has held a position of ownership or control in another partnership, corporation, or other entity which is an operator or working interest owner in an oilfield site determined to be orphaned.

3. The party does not comply with all reviews of site-specific trust accounts as set forth in this act, including additional contributions thereto if deemed necessary.
(1) Any individual, partnership, corporation, or other entity which has been found to have violated [insert reference to state regulations of oil and gas industry].

(2) Any partnership, corporation, or other entity for which a general partner, an owner of more than [twenty-five (25)] percent ownership interest, or a trustee has, within the [two (2)] years preceding the date on which the permit application is filed, held a position of ownership or control in another partnership, corporation, or other entity which has been found to have violated [insert reference to state regulations of oil and gas industry].

(c) An individual or entity has committed a violation of [insert reference to state regulations of oil and gas industry] if any one of the following has occurred:

(1) On order finding the violation has been entered against the individual or entity, all appeals have been exhausted and the individual or entity is not in compliance or on a schedule for compliance with an order:

(2) The [assistant secretary] and the individual or entity have entered into an agreed order relating to the alleged violation and the individual or entity is not in compliance or on a schedule for compliance with an order.

(d) The [assistant secretary] shall not deny the permit application if:

(1) The conditions that constituted the violation have been corrected.

(2) All administrative, civil, and criminal penalties relating to the violation have been paid.

(3) All costs and expenses relating to the violation have been paid.

(e) In addition to the foregoing, any person found by the [assistant secretary] to be in violation of any requirement of this act, may be liable for a civil penalty, to be assessed by the [assistant secretary] or court, of not more than [twenty-five thousand (25,000)] dollars for each day of the continued noncompliance.

(f) No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining whether or not a civil penalty is to be assessed and in determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered.

Section 17. [No Inference of Liability on Part of the State.] Nothing in this act shall establish or create any liability or responsibility on the part of the [commission] or the state to pay any costs associated with site restoration from any source other than the fund created by Section 8 of this act nor shall the [commission] or the state have any liability or responsibility to make any payments for costs associated with site restoration if the trust created herein is insufficient to do so.

Section 18. [Nullification.] This act shall be null, void, and without effect upon the appropriation by the legislature of all or any portion of the monies in the [oilfield site restoration fund] for any use of purpose other than that provided for by this act; provided however, upon the creation of a trust fund in the [state constitution]
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for the purposes contained in this act, the legislature may appropriate all of the monies in the [oilfield site restoration fund] to such constitutional trust fund.

Section 19. [Implementation; Trust Accounts.] The provisions of this act regarding the implementation of site-specific trust accounts shall not be implemented until the rules and regulations pertaining to such trust accounts are finally adopted.

Section 20. [Effective Date.] [Insert effective date.]
Environmental Audit Privilege and Voluntary Disclosure Act

This act, based on 1994 Colorado legislation, establishes an environmental self-evaluation or audit process. The act creates a presumption against the imposition of any administrative, civil or criminal penalties for voluntary disclosures arising from environmental audits. Environmental audit results are confidential, but the confidentiality may be lost unless facilities in violation of environmental standards are brought into compliance in a reasonable period of time.

Other states that have enacted similar legislation include Indiana (SB 417, 1994), Kentucky (HB 681, 1994) and Oregon (SB 912, 1993). Unlike the Colorado legislation, the Indiana and Oregon enactments also include provisions for environmental crimes.

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(Title, enacting clause, etc)

Section 1. [Short Title.] This act may be cited as the Environmental Audit Privilege and Voluntary Disclosure Act.

Section 2. [Legislative Findings and Declaration.] The legislature hereby finds and declares that protection of the environment is enhanced by the public’s voluntary compliance with environmental laws and that the public will benefit from incentives to identify and remedy environmental compliance issues. It is further declared that limited expansion of the protection against disclosure will encourage such voluntary compliance and improve environmental quality and that the voluntary provisions of this act will not inhibit the exercise of the regulatory authority by those entrusted with protecting our environment.

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

(1) “Administrative law judge” means any person appointed to be an administrative law judge pursuant to [insert reference to appropriate section of state code].

(2) “Environmental audit report” means any document, including any report, finding, communication, or opinion or any draft of a report, finding, communication, or opinion, related to and prepared as a result of a voluntary self-evaluation that is done in good faith.

(3) “Environmental law” means any requirement contained in [insert reference to appropriate section of state code] in regulations promulgated under such provisions, or in any orders, permits, licenses, or closure plans under such provisions.
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(4) "In camera review" means a hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the content of the oral and other evidence and statements of the judge and counsel shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record, until and unless its contents are disclosed by a court or administrative law judge having jurisdiction over the matter.

(5) "Voluntary self-evaluation" means a self-initiated assessment, audit, or review, not otherwise expressly required by environmental law, that is performed by any person or entity, for itself, either by an employee or employees employed by such person or entity who are assigned the responsibility of performing such assessment, audit, or review or by a consultant engaged by such person or entity expressly and specifically for the purpose of performing such assessment, audit, or review to determine whether such person or entity is in compliance with environmental laws. Once initiated, such voluntary self-evaluation shall be completed within a reasonable period of time. Nothing in this act shall be construed to authorize uninterrupted voluntary self-evaluations.

Section 4. [Environmental Audit Privilege Exceptions.] An environmental audit report is privileged and is not admissible in any legal action or administrative proceeding and is not subject to any discovery pursuant to the rules of civil procedure, criminal procedure, or administrative procedure, unless:

(1) The entity or person for whom the environmental audit report was prepared, whether the environmental audit report was prepared by the entity or by a consultant hired by the entity, waives the privilege under this act;

(2) (i) A court of record or pursuant to [insert reference to appropriate section of state code] an administrative law judge, after an in camera review, determines that:

(A) The environmental audit report shows evidence that the person or entity for which the environmental audit report was prepared is not or was not in compliance with an environmental law; and

(B) The person or entity did not initiate appropriate efforts to achieve compliance with the environmental law or complete any necessary permit application promptly after the noncompliance with the environmental law was discovered and, as a result, the person or entity did not or will not achieve compliance with the environmental law or complete the necessary permit application within a reasonable amount of time.

(ii) For the purposes of this paragraph (2) only, if the evidence shows noncompliance by a person or entity with more than one environmental law, the person or entity may demonstrate that appropriate efforts to achieve compliance were or are being taken by instituting a comprehensive program that establishes a phased schedule of actions to be taken to bring the person or entity into compliance with all of such environmental laws.

(3) A court of record, or pursuant to [insert reference to appropriate section of
Encompelling circumstances exist that make it necessary to admit the environmental audit report into evidence or that make it necessary to subject the environmental audit report to discovery procedures;

(4) A court of record, or, pursuant to [insert reference to appropriate section of state code], an administrative law judge, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the environmental audit report was prepared to avoid disclosure of information in an investigative, administrative, or judicial proceeding that was underway, that was imminent, or for which the entity or person had been provided written notification that an investigation into a specific violation had been initiated; or

(5) A court or record, or, pursuant to [insert reference to appropriate section of state code], an administrative law judge, after an in camera review, determines that the information contained in the environmental audit report demonstrates a clear, present, and impending danger to the public health or the environment in areas outside of the facility property.

Section 5. [Inapplicability of Privilege.] The self-evaluation privilege created by this act does not apply to:

(1) Documents or information required to be developed, maintained, or reported pursuant to any environmental law or any other law or regulation;

(2) Documents or other information required to be available or furnished to a regulatory agency pursuant to any environmental law or any other law or regulation;

(3) Information obtained by a regulatory agency through observation, sampling, or monitoring;

(4) Information obtained through any source independent of the environmental audit report or any person covered under [insert reference to appropriate section of state code (See Comments)];

(5) Documents existing prior to the commencement of and independent of the voluntary self-evaluation;

(6) Documents prepared subsequent to the completion of and independent of the voluntary self-evaluation; or

(7) Any information, not otherwise privileged, including the privilege created by this act, that is developed or maintained in the course of regularly conducted business activity or regular practice.

Section 6. [Grant of Limited Access to Audit Report; Penalty for Divulgence.] (a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-evaluation privilege under Section 4 of this act is applicable to an environmental audit report or that the privilege does not apply to the environmental audit report pursuant to the provisions of Section 5 of this act, then a court of record or, pursuant to [insert reference to appropriate section of state code] any administrative law judge, may allow such
camera review only. The court of record or the administrative law judge may grant such limited access to all or part of the environmental audit report under the provisions of this section upon such conditions as may be necessary to protect the confidentiality of the environmental audit report. A moving party who obtains access to an environmental audit report pursuant to the provisions of this section may not divulge any information from the report except as specifically allowed by the court or administrative law judge.

(b) (1) If any party divulges all or any part of the information contained in an environmental audit report in violation of the provisions of subsection (a) of this section or if any other person or entity knowingly divulges or disseminates all or any part of the information contained in an environmental audit report that was provided to such person or entity in violation of the provisions of subsection (a) of this section, such party or other person or entity is liable for any damages caused by the divulgence or dissemination of the information that are incurred by the person or entity for which the environmental audit report was prepared.

(2) If any public entity, public employee, or public official divulges all or any part of the information contained in an environmental audit report in violation of the provisions of subsection (a) of this section or knowingly divulges or disseminates all or any part of the information contained in an environmental audit report that was provided to such public entity, public employee, or public official in violation of the provisions of subsection (a) of this section, such public entity, public employee, or public official shall be guilty of a [insert offense], may be found in contempt of court by a court of record, and may be assessed a penalty not to exceed [ten thousand (10,000)] dollars by a court of record or an administrative law judge.

Section 7. Nothing in this act limits, waives, or abrogates the scope or nature of any statutory or common-law privilege.

Section 8. A person or entity asserting a voluntary self-evaluation privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of an environmental audit report has the burden of proving that such privilege does not exist under this act.

Section 9. Notwithstanding the provisions of Section 4 of this act, the existence of an environmental audit report shall be subject to discovery proceedings pursuant to the rules of civil procedure, criminal procedure, or administrative procedure; except that the contents of such a report or any other privileged information contained therein shall remain confidential.

COMMENTS: The Colorado legislation on which this act is based amends the state code to prohibit persons or entities who implement a voluntary self-evaluation from being examined as a witness. Exceptions are included under Sections 4 and 5 of this act. The provision only applies to voluntary self-evaluations per-
formed during the period beginning on the effective date of the act and ending on the act's sunset date.

Section 10. [Voluntary Disclosure Arising From Self-Evaluation.] For the purposes of this act, a disclosure of information by a person or entity to any division or agency within the [state department of health] regarding any information related to an environmental law is voluntary if all of the following are true:

1. The disclosure is made promptly after knowledge of the information disclosed is obtained by the person or entity;
2. The disclosure arises out of a voluntary self-evaluation;
3. The person or entity making the disclosure initiates the appropriate effort to achieve compliance, pursues compliance with due diligence, and corrects the non-compliance within [two (2)] years after the completion of the voluntary self-evaluation. Where such evidence shows the noncompliance is the failure to obtain a permit, appropriate efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time.
4. The person or entity making the disclosure cooperates with the appropriate [division or agency in the state department of health] regarding investigation of the issues identified in the disclosure.

Section 11. [Extension of Time Period to Correct Noncompliance.] For the purposes of subsection (3) of Section 10 of this act, upon application to and at the discretion of the [state department of health], the time period within which the noncompliance is required to be corrected may be extended if it is not practicable to correct the noncompliance within [two (2)] year period. A request for a de novo review of the decision of the [state department of health] may be made to the appropriate district court or administrative law judge.

Section 12. [Involuntary Disclosure.] If a person or entity is required to make a disclosure to a [division or agency] within the [state department of health] under a specific permit condition or under an order issued by the [division or agency], then the disclosure is not voluntary with respect to that [division or agency].

Section 13. [Presumption Against Imposition of Administrative, Civil or Criminal Penalties.] If any person or entity makes a voluntary disclosure of an environmental violation to a division or agency within the [state department of health], then there is a rebuttable presumption that the disclosure is voluntary and therefore the person or entity is immune from any administrative and civil penalties associated with the issues disclosed and is immune from any criminal penalties for negligent acts associated with the issues disclosed. The person or entity shall provide information supporting its claim that the disclosure is voluntary at the time that the disclosure is made to the [division or agency].
Section 14. [Rebuttal of Presumption of Voluntary Disclosure.] To rebut the presumption that a disclosure is voluntary, the appropriate [division or agency] shall show to the satisfaction of the respective [commission in the state department of health] or the [state board of health], if no respective [commission] exists, that the disclosure was not voluntary based upon the factors set forth in Sections (10), (11), and (12) of this act. A decision by the [commission] or the [state board of health], whichever is appropriate, regarding the voluntary nature of a disclosure is final agency action. The [division or agency] may not include any administrative or civil penalty or fine or any criminal penalty or fine for negligent acts in a notice of violation or in a cease and desist order on any underlying environmental violation that is alleged absent a finding by the respective [commission] or the [state board of health] that the [division or agency] has rebutted the presumption of voluntariness of the disclosure. The burden to rebut the presumption of voluntariness is on the [division or agency].

Section 15. [Inapplicability of Elimination of Penalties.] The elimination of administrative, civil, or criminal penalties under this act does not apply if a person or entity has been found by a court or administrative law judge to have committed serious violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders on consent and that were due to separate and distinct events giving rise to the violations, within the [three (3)] year period prior to the date of the disclosure. Such a pattern of continuous or repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the [three (3)] year period immediately prior to the date of the voluntary disclosure.

Section 16. Except as specifically provided in this act, this act does not affect any authority the [state department of health] has to require any action associated with the information disclosed in any voluntary disclosure of an environmental violation.

Section 17. [Effective Date.] [Insert effective date.]
Adopt-A-River Program Act

This act, based on 1993 Oregon legislation, establishes a state adopt-a-river program administered by the state marine board, which is the state’s recreational boating agency. Each group volunteering to become involved in the program is assigned a specific river or stream segment. The group must remove litter from the stream or river segment at least once a year for a period of at least two years. The state marine board must create a recognition program to acknowledge the efforts of volunteer groups and provide trash bags, safety information and assistance to participating groups. The program will be funded by the boating safety, law enforcement and facility account. In addition to the state marine board, other agencies supporting the program are the state fish and wildlife and parks and recreation departments; the U.S. Forest Service, Bureau of Land Management and Army Corps of Engineers; and a private organization called Stop Oregon Litter and Vandalism (SOLV).

This act is patterned after the state’s adopt-a-highway program. Other states with adopt-a-river programs include Minnesota and Tennessee. The program is designed to encourage and facilitate volunteer group involvement in litter cleanup in and along the rivers of the state.

The 1993 Suggested State Legislation volume included a related act, Minnesota’s “Adopt-a-Park Program Act” (pp. 74-75). The Minnesota act authorizes the state commissioner of natural resources to enter into formal agreements with businesses, civic groups or individuals for volunteer services to maintain and improve real and personal property in state parks, monuments, historic sites, and trails, in accordance with plans devised by the commissioner. The commissioner is prohibited from entering into any agreement that might displace public employees.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Adopt-A-River Program Act.

Section 2. [Establishment of Adopt-A-River Program; Responsibilities.]
(a) The [state recreational boating agency] shall administer a program designed to remove litter from and to beautify the state’s rivers. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating involvement of volunteer groups in litter cleanup work, assigning each group to a specific river or stream segment. The program shall be called the [state] adopt-a-river program.
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(b) Program funding is an authorized use of the [state recreational boating agency] under [insert appropriate section of state code].

c) The [state recreational boating agency] may adopt any rules necessary for implementation of the [state] adopt-a-river program.

d) An agreement entered into between the [state recreational boating agency] and a volunteer group under subsection (a) of this section shall include but need not be limited to:

   (1) Identification of the designated river or stream segment. The volunteer group may request a specific segment of the river or stream it wishes to adopt, but the assignment shall be at the discretion of the [state recreational boating agency]. In assigning sections of a river, the board shall coordinate and cooperate with affected federal, state and local management agencies and private landowners.

   (2) Specification of the duties of the volunteer group. The group shall remove litter along the designated river or stream segment at least once each year.

   (3) Specification of the responsibilities of the volunteer group. The group shall agree to abide by all rules related to the program that are adopted by the [state recreational boating agency].

   (4) Duration of the agreement. The volunteer group shall contract to care for the designated river or stream segment for at least two years.

   (e) The [state recreational boating agency] shall create a recognition program to acknowledge the efforts of volunteer groups, agencies and businesses that participate in the [state] adopt-a-river program.

   (f) The [state recreational boating agency] shall provide trash bags, safety information and assistance to the participating volunteer groups.

   (g) The [state recreational boating agency] shall be responsible for facilitating the removal of large or heavy items from a river or stream segment if such items are found by a volunteer group.

Section 3. The [state recreational boating agency] shall report to the legislature on the implementation and progress of the program established pursuant to this act.

Section 4. [Effective Date.] [Insert effective date.]
Voluntary Hazardous Waste Cleanup Act (Statement)

This piece of legislation (SB 221) was enacted by the state of Ohio in 1994. The purpose of the legislation is to encourage the remediation of industrial sites. It provides procedural requirements, remediation standards and sign-off procedures in addition to economic incentives for cleanup.

In lieu of presenting this lengthy (136 pages) and amendatory item in the standard format, the Committee on Suggested State Legislation approved the inclusion of a statement summarizing this act. Readers wishing to acquire a copy of the measure should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike, P.O. Box 11910, Lexington, KY 40578-1910, (606) 244-8000.

The 1993 volume of *Suggested State Legislation* (Vol. 52) included a similar act, Indiana’s *Voluntary Remediation of Hazardous Substances and Petroleum Act* (pp. 59-67). The Indiana act allowed a person to submit a proposed workplan to the state department of environmental management for the voluntary remediation of a hazardous substance or petroleum on property or at a facility that is or will be owned or operated by the person. The act provides that with the successful completion of the remediation under a plan approved by the state commissioner of environmental management, certain legal actions may not be brought against the person.

The Ohio act has several provisions not included in the Indiana act: the establishment of cleanup standards for property based on zoning, future use and site characteristics and standardized procedures to determine if conditions at a property meet cleanup standards; state certification of oversight professionals; a consolidated standards permit for activities undertaken in a voluntary cleanup; and an exemption from liability for lending institutions.

**Voluntary Cleanup Programs**

The act establishes a voluntary cleanup program that permits owners, operators and security interest holders of property contaminated with hazardous substances and petroleum to investigate and remediate the property through the use of individuals certified by the state to implement that task. The certified professionals must ensure that any remedial activities undertaken at the property comply with applicable standards and, upon completion of the remediation, issue a letter stating that no further action is required. A covenant not to sue must be issued after the issuance of the letter.

The act provides other incentives for participation in the voluntary cleanup program. Persons who undertake a voluntary cleanup can proportionally recover costs from parties who caused or contributed to the contamination, and any increase in
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value of the property occurring after a voluntary cleanup is exempt from real property taxation for a period of ten years. Cleanup to below the background level of contamination is not required. Background is defined as the level unaffected by current or past treatment and storage or disposal of hazardous substances or petroleum. Naturally occurring substances are also included in the definition of background. The act also establishes several low interest loan programs to help pay for cleanups.

Voluntary action can include property assessments, sampling plans, remediation plans and others necessary to address contamination by hazardous substances. Users of the voluntary action program must utilize the services of certified laboratories and professionals. Anyone participating in the program may be issued a letter requiring no further action (NFA) upon demonstration through a property assessment that the property meets the cleanup standards. County recorders are directed to record in property land records the NFA letter and covenants not to sue so that subsequent purchasers of the property will enjoy the releases from environmental liability and will be notified of any restrictions on uses of land.

Cleanup Standards

The act mandates the establishment of cleanup standards to be developed by the state environmental protection agency with the assistance of a multidisciplinary board created under the act. The agency must establish numerical cleanup standards for soil, sediment and water and risk-assessment procedures for deriving property-specific standards. Both numerical standards and the procedural standards must ensure protection of public health, safety and the environment and must take into account the intended future use of the property.

Other required standards include criteria for the certification, suspension and revocation of professionals who would review work conducted by persons under the act and issue letters recommending no further action and laboratories who will perform analyses under the act. The agency must also establish fees to defray the direct and indirect costs of the voluntary action program, procedures for auditing and a classification system to characterize groundwater. The act establishes interim cleanup standards to take effect until permanent rules are adopted.

The act creates a property revitalization board whose membership will consist of the directors of the state departments of commerce, development, environmental protection, health, industrial relations, natural resources and taxation. The purpose of the board is to coordinate information regarding economic and financial incentives available to persons undertaking voluntary actions and to issue variances for properties unable to meet cleanup standards.

Immunity

The act amends existing immunity provisions for the state when it is undertaking voluntary actions. The act also establishes several low interest loan programs to help pay for cleanups.

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Immunity

The act amends existing immunity provisions for the state when it is undertaking voluntary actions.
ability is willful or wanton misconduct or intentional tortious acts. The act also amends existing political subdivision sovereign immunity statutes so that political subdivisions are protected from lawsuits for damages occurring as a result of the cleanup. The standard of conduct establishing liability will change from negligence to willful or wanton misconduct or intentional tortious conduct.

Participants in the voluntary action program are immune from tort liability unless their conduct constitutes willful or wanton misconduct or is intentionally tortious conduct. The following persons are subject to this provision: contractors, state agencies and political subdivisions, state agencies and employees providing technical assistance, and private or public utilities.
Natural Gas Service Expansion Act

This act, based on 1991 North Carolina legislation, creates a method to promote expansion of natural gas service in the state. It authorizes the state utility commission to create expansion funds for each of four natural gas local distribution companies operating in the state. The funds may consist of refunds from pipeline companies to local gas distribution companies, a surcharge on gas sales which cannot exceed 15 cents per diaktherm, and other funds which the utilities commission deems appropriate. The funds, controlled by the commission, may only be used where expansion would not otherwise be economically feasible. When a project becomes economically viable because of sufficient increase in customer demand on the line, the commission may require a pay-back of the funds, with interest, by the company.

Litigation concerning the act was heard by the North Carolina State Supreme Court in February 1994. The court decided to uphold the law in July 1994.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Natural Gas Service Expansion Act.

Section 2. [Legislative Declaration.] Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of [state] is a matter of public policy. It is hereby declared to be the policy of the state to facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the state and, to that end, to authorize the creation of an expansion fund for each natural gas local distribution company to be administered under the supervision of the [state public utilities commission].

Section 3. [Definitions.] As used in this act, “commission” means the [state public utilities commission].

Section 4. [Natural Gas Expansion.]
(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the [commission] may, after a hearing, order a natural gas local distribution company to create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas within
the company's franchised territory that otherwise would not be feasible for the company to construct. The fund shall be supervised and administered by the [commission]. Any applicable taxes shall be paid out of the fund.

(b) Sources of funding for a natural gas local distribution company's expansion fund may, pursuant to the order of the [commission], after hearing, include:

(1) Refunds to a local distribution company from the company's suppliers of natural gas and transportation services pursuant to refund orders or requirements of the Federal Energy Regulatory Commission;

(2) Expansion surcharges by the local distribution company charged to customers purchasing natural gas or transportation services throughout that company's franchised territory; provided, however, in determining the amount of any surcharge the [commission] shall take into account the prices of alternative sources of energy and the need to remain competitive with those alternative sources, and the need to maintain just and reasonable rates for natural gas and transportation services for all customers served by the company; provided further that the expansion surcharge shall not be greater than [fifteen (15)] cents per dekatherm; and

(3) Other sources of funding approved by the [commission].

(c) The application of all such funds to expansion projects shall be pursuant to the order of the [commission]. The [commission] shall ensure that all projects to which expansion funds are applied are consistent with the intent of this act. In determining economic feasibility, the [commission] shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company to construct. In no event shall the [commission] authorize a distribution from the fund of an amount greater than the negative net present value of any proposed project as determined by the [commission]. If at any time a project is determined by the [commission] to have become economically feasible, the [commission] may require the company to remit to the expansion fund or to customers appropriate portions of the distributions from the fund related to the project, and the [commission] may order such funds to be returned with interest in a reasonable amount to be determined by the [commission]. A utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the [commission].

(d) The [commission], after hearing, may adopt rules to implement this section, including rules for the establishment of expansion funds, for the use of such funds, for the remittance to the expansion fund or to customers of supplier and transporter refunds and expansion surcharges or other funds that were sources of the expansion fund, and for appropriate accounting, reporting and rate-making treatment. The [commission] and public staff shall report to the [insert name of appropriate legislative oversight committee] on the operation of any expansion funds in conjunction with the reports required under [insert reference to appropriate section of state code].
Child Abuse and Neglect Reporting Legislation (Note)

Research has shown that many deaths which are directly the result of child abuse and neglect go unreported as such. According to a child fatality study conducted in Missouri, maltreatment deaths may instead be attributed to drowning, falls, burns, medical illnesses, sudden infant death syndrome (SIDS) or “undetermined” causes. The study attributed the under-reporting of abuse cases to “inadequate investigation of child fatalities, failure of agencies to share information, and characteristics of reporting systems that fail to capture the contribution of maltreatment to death.” Some states have taken legislative action to address this critical issue. The provisions of four states — Illinois, Louisiana, Missouri and North Carolina — are summarized here. Readers interested in the full text of these items should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578-1910, (606) 244-8000.

Legislation enacted in Illinois requires any person who has reasonable cause to believe a child has died as a result of abuse or neglect to report this suspicion to the appropriate medical examiner or coroner (Ch. 23, par. 2051-2061.7, enacted 1976, amended most recently, 1990). The examiner or coroner must investigate the report and, within 21 days, must communicate the findings in writing to the local law enforcement agency, prosecutor, state department of children and family services, and hospital (if it is the institution making the report). The child protective investigator assigned to the investigation has the right to acquire a copy of the completed autopsy report from the coroner or medical examiner. The act further requires the state’s department of children and family services to establish a child protective unit to conduct investigations of child abuse cases within each geographic region designated by the department director.

A 1992 Louisiana enactment (Act 745, SB 1105) establishes a state child death review panel in the state’s department of health and hospitals and requires an investigation in every unexpected death of a child under the age of seven. The panel is required to establish a standardized protocol for such investigations. The act requires that a copy of the child death investigation report be sent to the state panel, which will analyze the information and report its findings to the state legislature. In cases where parents or guardians used a treatment method in accordance with a well-recognized religious practice that has a reasonable and proven record of success, the act does not require a finding of negligent treatment or maltreatment.

Missouri legislation requires prosecuting or circuit attorneys to impanel child death review teams in their counties or cities to investigate, within 24 hours of their occurrence, the deaths of children under the age of 15 (HB 185, 1991).
sons with reasonable cause to suspect that a child between the ages of 15 and 18 died as a result of abuse or neglect also must report that suspicion to the appropriate coroner or medical examiner.) Local death review teams must be comprised of the prosecuting or circuit attorney for the county or city, the county or city coroner or medical examiner, county or city law enforcement personnel, a representative from the division of family services, a provider of public health services, and a representative of the juvenile court.

Under the act’s provisions, county coroners must review each death and determine the need for a child death review. A review must be activated to investigate any death which includes one or more of the suspicious circumstances described in protocol developed by the state department of social services pursuant to the act. Further, the act requires the state’s director of social services to appoint a state child death review team to gather data from the local teams for annual reports on child deaths and to advise the children’s services commission on ways to prevent further abuse. Local teams must issue a final report on each investigation to the state child death review team and to the state director of health.

In 1993, North Carolina (Ch. 321 and Ch. 285) enacted legislation authorizing multi-disciplinary reviews of selected child protective services cases and of the deaths of all children under the age of 18 in the state to determine the causes of those deaths and to recommend changes in laws, rules and policies to prevent such deaths in the future. It establishes in statutory form a 1991 executive order that created community child protection teams in each county for the purpose of reviewing child fatality cases, including suspected cases of abuse and neglect.
Family Transition Act

This act, based on 1993 Florida legislation, establishes the Family Transition Program (FTP) to provide short-term intensive services designed to move a person from public assistance dependency to employment and self-sufficiency. The act delineates the responsibilities of the public assistance recipient and the obligations of the state’s department of health and rehabilitative services to assist the participant in achieving employment and self-sufficiency. Among the work incentives provided in the act are provisions that allow participants to earn more money while on assistance, accumulate greater assets, and that allow two-parent households to remain together and receive assistance for a longer period. Child care and Medicaid are provided to participants through the transition period between dependency and employment.

Time limits for public assistance are established under the act. Aid to Families with Dependent Children (AFDC) benefits under FTP are available for 24 months in any 60-month period or, in some cases, for 36 months in any 72-month period. Sanctions are provided when a participant fails to participate in required program activities or when a participant’s child fails to attend school. The state’s department of health and rehabilitative services may provide incentive payments of up to 70 percent of AFDC benefits to employers that employ hard-to-place program participants. The act also provides for evaluations of the program.

To implement this act, Florida obtained a federal waiver from the U.S. Secretary of Health and Human Services (HHS) under Section 1115 of the Social Security Act to waive compliance with specified requirements. Two conditions had to be met before a waiver could be granted: the demonstration must be cost neutral to the federal government and the participating state must agree to a rigorous evaluation of its demonstration project, usually based on an experimental evaluation design. The U.S. Department of Health and Human Services approved the waiver application in January 1994 and implementation of the Family Transition Program began in February 1994.

Suggested Legislation

(Title, enacting clause, etc.)

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

Section 2. [Legislative Intent.]
(a) The purpose of the family transition program is to provide short-term comprehensive services that are concentrated on moving participants along the continuum from dependence on society through independence to the opportunity to contribute to society.
(1) The family transition program exists to meet the transitional needs of program participants who need assistance toward achieving independent, productive lives and gaining the responsibility that comes with self-sufficiency.

(2) The family transition program must be delivered in a manner consistent with the preservation and encouragement of self-worth, both for those who receive the services and for those who deliver the services.

(b) It is the intent of the legislature to implement this act statewide as soon as practicable.

(c) It is the intent of the legislature that the family transition program be implemented in its entirety and that the provisions authorizing enhanced benefits not be implemented without specific benefit limitations.

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

(1) “AFDC” means Aid to Families with Dependent Children.

(2) “Bootstrap training” means a process in which an employed person who has been a participant in the family transition program continues education through self-study instruction, technical-skills training, or other educational endeavors.

(3) “Case management” means a method by which the employment counselor or case manager ensures that services are provided based on assessing the needs of the participant and the participant’s family, and then arranging, coordinating, monitoring, evaluating, and advocating on behalf of the participant. For the purpose of this act, “case management” pertains to the development and implementation of the participant’s employability plan.

(4) “Department” means the [state department of health and rehabilitative services].

(5) “Employability plan” means an agreement developed for each participant that clearly delineates the obligations of the participant and the program activities that the participant must complete, as well as the [department]’s responsibilities in assisting the participant to comply with the employability plan. The plan is signed by the participant and the employment counselor, reviewed at least every [six (6)] months by the participant and the employment counselor to evaluate effectiveness, and updated on an ongoing basis as needs and circumstances warrant. The employability plan review may not interfere with the participant's work or education program. Except for participants determined appropriate for up-front job search, the employability plan is developed prior to assigning any participant to an activity other than assessment.

(6) “Family transition program” or “program” means the AFDC client’s transition program and involves a pact between service deliverers and participants under which enhanced benefits and services are provided in exchange for increased participant responsibility.

(7) “Participant” means any person participating in the family transition program.

(8) “Review panel” means the local panel selected by the [department]’s [health and human services board] to assist in reviewing the sufficiency of the [department]’s program.
delivery of enhanced family transition program services and the progress of family
transition program participants.

(9) "Workfare" means an employability-skills training program, consisting pri-
marily of unpaid work performed for a public agency or a nonprofit agency which
provides to the participant, in exchange for benefits under the family transition
program, the opportunity to develop basic work skills, to practice and improve
existing skills, to acquire on-the-job experience, and to meet the goal of long-term
self-sufficiency. A participant in workfare is not an employee of the state.

Section 4. [Family Transition Program; General Provisions.]
(a) (1) Any provision of law to the contrary notwithstanding, the [department]
shall begin to implement the family transition program as soon as possible, but no
later than [three (3)] months after it receives federal waiver approval and sufficient
funds. In order to satisfy the requirements for obtaining federal waivers, the [de-
partment] shall initially implement two variations of the family transition pro-
gram as demonstration projects, with the goal of having the program implemented
statewide as early as practicable, subject only to the availability of funding and
federal waivers. The demonstration projects must be implemented in distinct, ur-
ban locations that are as closely matched demographically as is feasible, selected by
the [department] as appropriate test locations for the purpose of collecting the data
necessary for evaluation in accordance with this act.

(2) The [department] shall select the locations of the demonstration projects
within the following guidelines:

(i) Locations must be manageable sites consistent with the evaluation de-
sign, and selection factors must include labor markets, transportation system, eth-
nic composition, concentrations of low-income families, local employment capaci-
ties, and the capacities of local service delivery systems.

(ii) The [department] must consult with the [district health and human
service boards] in the process of site selection and must encourage community in-
put into the selection process through the [boards].

(3) The [department] shall immediately request all federal waivers necessary
to implement the program demonstration projects. The [department] may redirect
current support funds offered to family transition program participants to opti-
mize the effectiveness of the funds in this program, shall report to the [chairmen of
the appropriate substantive committees of the Senate and the House of Representa-
tives] on the waivers that are being used, shall compile data evaluating the use of
waivers as part of evaluating the program and shall recommend [annually] any
program changes that need to be incorporated as progress toward statewide imple-
mentation is made.

(b) The demonstration projects must provide an identical array of time-limited,
concentrated transitional services as delineated in the employability plan devel-
oped for each participant, except that:

(1) In one of the demonstration projects, participation in the family transi-
well as in a workfare program, must be mandatory. Each participant who is assessed as job-ready must, after an initial [three (3)] weeks of job search, participate in the employability-skills training program for at least [thirty (30)] hours per week. However, a participant may be exempted from participation in the employability-skills training program if day care and transportation are not available or if the participation is participating in an allowable federal job-opportunities and basic-skills activity that provides education or training, for at least [thirty (30)] hours per week or full time, as designated by the education or training institution. The employability-skills training program must meet all federal requirements.

(2) In the other demonstration project, public assistance applicants who meet statewide AFDC eligibility standards and recipients must be provided with the option to participate in the family transition program by entering into a written contract. The written contract must include an agreement to accept the time-limited benefits described in this act in exchange for the concentrated transitional services. As part of this demonstration project, workfare may be used where appropriate or as a component in a participant’s employability plan.

(c) (1) The [department] shall encourage maintaining the currency of immunizations pursuant to Section 18 of this act and also preventive health for the participant family’s children, and shall provide information on the full range of voluntary public health services as part of the program’s integrated services delivery system. The information must be made available at the yearly or periodic redetermination review, and information about the services must be provided during the program’s application and orientation process.

(2) The department shall advise program applicants for AFDC benefits of the availability of standard childhood immunizations through the county public health unit. At the [six (6)] month review, if the participant fails to submit proof of immunizations, the employment counselor shall notify the review panel. The review panel shall take into consideration the failure of the participant to provide proof of immunization at its scheduled review. The [department] shall address barriers that prohibit the participant’s ability to comply with the immunization requirement.

(3) The [department] shall conduct the program’s application and orientation process on a daily basis, and shall strongly encourage noncustodial parents as well as custodial parents to attend.

(d) If a participant family ceases to receive AFDC benefits in a transitional demonstration project because the family moves out of the project area or becomes ineligible for AFDC benefits and the family later begins again to receive AFDC benefits in the project area, the duration limitation on the monthly payment applies as though the family never ceased to receive AFDC benefits in the transitional demonstration project. However, if the family has been ineligible for AFDC benefits for at least [thirty-six (36)] consecutive months before reapplying for AFDC benefits, this subsection does not apply.

Section 5. [Federal Waivers and Evaluation.]
(a) The [department] shall conduct, through contract, a comprehensive evaluation of the demonstration projects operated under this act. An initial phase of such
evaluation must be designed to monitor the extent to which the family transition program is being implemented and to make recommendations on how best to expand the family transition program to other sites, including validation of estimated program costs and savings related to factors such as child care, other support services, AFDC benefits, staffing ratios and service integration.

(b) The initial phase of the evaluation must provide information on the preliminary outcomes of the program, including rates of job placement and job retention and participant salary levels. The [department] shall report results of the initial evaluation within [eighteen (18)] months after the demonstration projects begin.

(c) Following the initial implementation of the demonstration projects, a subsequent phase of evaluation must be conducted to determine the impact of the family transition program on participants. The evaluation must include, but is not limited to:

1. The effect of the program on post-program levels of the earnings and public assistance receipt.
2. The effect of the program on longer term job retention and welfare recidivism.
3. Estimates of the impact of the family transition program on aggregate expenditures for AFDC, Food Stamps, Medicaid, child care, other support services, funds expended under the Job Opportunities and Basic Skills Training (JOBS) program, the Job Training Partnership Act (JTPA), and similar publicly funded programs and services.

(d) In order to provide evaluation findings with the highest feasible level of scientific validity, the [department] is specifically authorized to contract for an evaluation design that includes random assignment of program participants to program groups and control groups. Under such design, members of control groups must be given the level of benefits and services generally available to recipients who are not included in the family transition program demonstration areas.

(e) If the [secretary] determines that procurement procedures for the evaluation will delay the application or approval of any required federal waivers or would otherwise delay initial implementation of family transition program demonstration sites beyond [insert date], the [secretary] may proceed with such procurement. However, the professional standards of any contractor selected must be consistent with the provisions of this section, and the amount of the contract must not exceed the funds provided for this purpose.

Section 6. [Responsibilities of the [Department].]

(a) To improve efficiency, the [department] shall promote innovative approaches to the delivery of program services that foster the development of entrepreneurial program efforts among participants. To this end, the [department] shall establish a task force comprised of the [state department of labor and employment security], the [state department of commerce], [consumers], [business leaders], [private industry councils] and other appropriate community agencies or organizations that
can develop opportunities that emphasize enterprise development for participants in the demonstration sites.

(b) To the greatest possible extent, there must be a single location at which participants can receive program services.

(c) The [department] shall develop a procedure for determining the employability of program participants when they enter the program. Those participants who are found to be job-ready must be referred to job-search programs. Screening criteria may include, but are not limited to, work experience, academic or vocational aptitudes, and length of time on public assistance.

(d) Each participant who is not initially referred to a job-search program must be provided with family-centered case-management beginning with screening or with an assessment to determine appropriate services, followed by development and implementation of a mutually understood employability plan that includes, but need not be limited to, the provision of necessary education, training, motivation, and other related support services, and culminating in the participant family’s self-sufficiency through employment.

(e) For staff who deal directly with participants, the [department] shall provide training to encourage a positive staff attitude, an understanding of the goals of the family transition program, and the necessary capabilities to accomplish these goals.

(f) The [department] shall provide to participants full notification of all benefit limitations and mutual expectations. Full notification must be made a part of the employability plan.

(g) The [department] shall expand project independence and establish bootstrap training programs that include education, training, apprenticeship, and work internships, with priority placed on assisting participants to achieve self-sufficiency by obtaining employment or higher-paying jobs. The [department] may establish a bootstrap training initiative, including formal motivational training, to cultivate positive attitudes, self-esteem, and personal responsibility and to increase the participants’ likelihood of achieving self-sufficiency.

(h) At least once every [six (6)] months, the case manager shall conduct a review to assure that the participant is making progress on the employability plan. After the evaluation, the case manager must advise the participant as to the progress made.

(i) The [department] shall work with other units of state and local government, including housing authorities, through innovative, cooperative rent-subsidy programs, toward reducing disincentives to employment, and shall conduct public-awareness programs that provide effective community understanding of the new opportunities to achieve self-sufficiency.

(j) The [department] may offer, where appropriate, vouchers for the purchase of various types of program services from a menu of appropriate services, which may include child care and transportation.
Section 7. [Benefits Limitations and Enhanced Services Applicable to All Participants.]

(a) Except as otherwise provided in this act, AFDC benefits may not be received for more than [twenty-four (24)] months in any [sixty (60)] month period by applicants and current recipients, except that those recipients who have received AFDC for [thirty-six (36)] of the past [sixty (60)] months, or who are under [twenty-four (24)] years old, have no high school diploma or are not currently in high school or a high school equivalency program, and have little or no work history in the past year, may not receive AFDC benefits for more than [thirty-six (36)] months out of any [seventy-two (72)] month period.

(b) The family transition program review panel may approve or disapprove a maximum of [two (2)] extensions of the time limit on AFDC benefits of up to [four (4)] months each. Such extensions may be granted only if the participant has substantially met the requirements of the participant’s employability plan and has encountered extraordinary difficulties in obtaining employment. Participants who are granted an extension to the benefit time limits remain responsible for meeting all program requirements.

(c) The following persons are exempt from the time limits on AFDC benefits contained in this act:

1. A disabled or incapacitated adult;
2. A full-time caretaker of a disabled dependent person;
3. A caretaker relative whose needs are not included in the AFDC benefits;
4. A person who is under [eighteen (18)] years of age who remains in an educational program or is working at least [thirty (30)] hours per week to support his family;
5. A parent who has a child who is [six (6)] months of age or younger; and
6. A recipient who is [sixty-two (62)] years of age or older.

Exempted persons generally are not eligible for enhanced program services, but may choose to participate if they would have been included in the program except for the exemption. The [department] may provide selected appropriate enhanced services to exempted persons if funds are available. Exempted persons and persons who do not opt for time-limited benefits shall continue to be eligible for all services and benefits provided in accordance with state and federal law.

Section 8. [Review Panels; Selection and Responsibilities.]

(a) (1) Upon selection of the demonstration project locations, there shall be established at least one review panel for each demonstration project to assist in reviewing the sufficiency of the [department]’s delivery of enhanced family transition program services as required in this act and the progress of participants. Each review panel must consist of [seven (7)] members and must include a member of the [local health and human services board], a member of the [private industry council], a participant or former participant in the family transition program, [two members, one of which shall be from the faith community], [two members, one of which shall be from the education community], and [one member, one of which shall be from the business community]. The board shall establish criteria for selecting the members of the review panel.

(b) Each review panel shall report to the [department] at least [twice (2)] a year on the sufficiency of the [department]’s delivery of enhanced family transition program services and shall provide [recommendations (R)] to the [department] for improving the delivery of program services.
mit nominees for each review panel to the [health and human services board] for confirmation. The member of the review panel designated from the [health and human services board] shall serve as interim chair until a permanent chair is elected by the members of the panel.

(2) The [department] shall provide support staff and services for the review panels, and shall provide all review panel members with intensive training in public assistance issues and the goals of the family transition program.

(3) Review panels shall operate under the auspices of the [health and human services boards], but all determinations must be made independently of the [department]. Review panel members, while serving on review panels, are agents of the state for purposes of sovereign immunity under [insert reference to appropriate section of state code].

(b) The review panels shall:

(1) Review every [nine (9)] months the cases of those participants who are failing to meet the requirements of their employability plans or to meet program requirements. This review should include an evaluation of the sufficiency of the [department]’s efforts to meet its responsibilities under the program.

(2) Approve or disapprove applications for the extension of the time limit in AFDC benefits pursuant to this act. Failure by the [department] to substantially provide sufficient services as specified in the family transition program employability plan shall be considered by the review panel in evaluating an application for the extension of the time limit on benefits and may void or modify the time limit on benefits. The participant and the participant’s advocate may review and obtain copies of all documents concerning the participant, including documents submitted to the review panel, at least [ten (10)] days before the review hearing is held. The participant and the participant’s advocate may question the case manager at the review hearing and submit information for consideration by the review committee. The review panel’s decision must be in writing.

(c) The participant’s case manager shall submit the participant’s entire case file and prepare the information presented to the review panel for the participant’s review hearing, and the participant may bring an advocate to the review hearing.

(d) Review panel members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses as provided in [insert reference to appropriate section of state code].

(e) Nothing precludes any participant from seeking a standard fair hearings process review procedure in addition to the review panel proceedings. The participant must be informed of this option by the [department].

Section 9. [District Administrator’s Review.] In addition to the review conducted by the review panel, the district administrator shall conduct a full durational review of each participant reaching the end of the benefit eligibility period with the option of removing the parent’s needs from the AFDC grant and assigning a protective payee in any situation in which AFDC grant cancellation would result in
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district administrator shall determine whether to remove the parent’s needs from the AFDC grant and assign a protective payee or to remove the parent’s needs from the AFDC grant but continue the grant for the child in the name of the parent. Termination of full AFDC benefits shall not occur unless the district administrator makes a determination that such termination is not likely to result in the child being placed into emergency shelter or foster care.

Section 10. [Enhanced Services; Participant Responsibilities.]

(a) The asset-accumulation limit for each participant family is [five thousand (5,000)] dollars per family, plus a vehicle of reasonable worth needed primarily for self-sufficiency purposes, in order not to discourage the accumulation of assets for purposes such as education, employment, training, improved housing, or the development of a business.

(b) In order to be eligible to participate in the program, the participant must meet statewide AFDC eligibility requirements. Thereafter, in computing a participant family’s eligibility of continued program benefits, the following amounts must be disregarded:

(1) The first [two hundred (200)] dollars of a participant’s monthly gross earnings and [fifty (50)] percent of all additional earned income.

(2) Amounts earned during the summer by a teenager who has remained in school throughout the previous academic year and who has not yet been graduated from high school.

(3) The income of a stepparent whose needs are not included in the AFDC assistance group. The duration of the income exclusion allowed under this paragraph may not exceed [six (6)] months.

(c) The [department] shall inform participants of the advantages of the earned-income tax-credit option that is available as a wage supplement for low-wage working families with children and encourage them to take advantage of that credit.

(d) A child who is a full-time student in secondary school or vocational training, or the equivalent, and who is expected to complete the program by age [nineteen (19)], is eligible for basic AFDC benefits until the [19]th birthday.

(e) A participant family that meets the requirements of [insert reference to appropriate section of state code], may receive [twelve (12)] additional months of transitional child care benefits, in addition to the [twelve (12)] months of transitional child care benefits provided under [insert reference to appropriate section of state code]. During the second year of subsidized child care benefits, participants shall pay a child care fee, based on a sliding scale and as specified in [insert reference to appropriate section of state code].

(f) With respect to Medicaid, the [department] shall eliminate the periodic reporting requirement and extend benefits for [twelve (12)] full months for employed participant families who lose their AFDC eligibility due to earnings.

(g) Each participant with a school-age child is required to have a conference with an appropriate school official of the child’s school during each grading period to
assure that the participant is involved in the child’s educational progress and is aware of any existing attendance of academic problems.

(h) Participants who are eligible for the AFDC unemployed parent program as provided for under [insert reference to appropriate section of state code], must be granted a waiver of the AFDC unemployed parent program [one hundred (100)] hour rule.

(i) The [department] may grant case-by-case exceptions to the AFDC unemployed parent program [six (6)] month time limit on the availability of cash benefits, which limit is provided under [insert reference to appropriate section of state code], for the purpose of enabling the family’s principal wage earner to complete an employability plan, based on whether the employability plan could reasonably be completed in [six (6)] months.

(j) If a participant fails without good cause, as defined by [department] rule, to participate in any required family transition program activity, the [department] must impose sanctions against the participant to the fullest extent allowable under federal law. The [department] shall request a waiver from the United States Department of Agriculture, Food and Nutrition Service so that, when a participant’s AFDC benefits are reduced due to sanctions, that participant’s food stamp benefits do not increase because of the reduced benefits.

Section 11. [Court-Ordered Participation.] Upon notification that a dependent child’s parent who is absent from the home is unemployed or underemployed, the court may order that parent to participate in work experience, job training activities, or education for up to [forty (40)] hours per week. A parent who fails without good cause to participate as ordered by the court may be held in contempt.

Section 12. [Incentives for Employers.] In order to promote job availability for participants who are hard to place at a level equal to or exceeding the average wage at placement, certain incentives to private employers are provided. The minimum wage level must be defined based upon the situation at the time the participant enters the job. The employer incentives apply only to full-time jobs, [forty (40)] hours a week.

(1) The [department], if a federal waiver is obtained, may pay employers who employ those participants who are hard to place [seventy (70)] percent of the individual participant’s AFDC benefits for up to [one (1)] year to compensate them for intensive training in the skills necessary for the particular position and general skills for retaining employment. The employer must demonstrate to the [department]’s satisfaction that no other employees are displaced due to the employment of the participant.

(2) The [department] may establish a work supplementation program to further promote the placement of the hard-to-place participants, as provided in section 482 of Title IV-F of the Social Security Act and as established pursuant to section 201 of the Family Support Act of 1988, Pub. L. No. 100-485.
(3) For the purposes of this section, a participant is hard to place if, during the preceding [twelve (12)] months, the participant has been unable to retain any job for at least [three (3)] months, has held more than [two (2)] jobs during the preceding [twelve (12)] months, and meets at least one of the following federal criteria for enhanced funding:

   (i) Has been on AFDC for [thirty-six (36)] of the past [sixty (60)] months; or
   (ii) Is under [twenty-four (24)] years of age, has no high school diploma or is not currently enrolled in a high school equivalency program, and has little or no work history during the past [twelve (12)] months.

(4) Nothing in this section shall be construed to create an obligation for the state to pay any incentive to employers either prospectively or retroactively.

Section 13. [Family Transition Program Learnfare Requirement.] Pursuant to federal law and regulations, the [department] shall reduce the benefit payments for a participant’s eligible dependent child or for an eligible teenage participant who has not been exempted from education-participation requirements during a grading period in which the child or teenage participant has accumulated a number of unexcused absences from school that is sufficient to jeopardize the student’s academic progress, in accordance with rules adopted by the [department] with input from the [state department of education]. The benefit payments must be reinstated after a subsequent grading period in which the child has substantially improved his attendance. Good cause exemptions from the rule of unexcused absences include the following:

   (1) The student is expelled from school and alternative schooling is not available.
   (2) The teen has a child under [six (6)] months of age.
   (3) No licensed day care is available for a child of teen parents subject to Learnfare.
   (4) Prohibitive transportation problems exist (e.g., to and from day care).
   (5) The teen is over [sixteen (16)] years of age and not expected to graduate from high school by [twenty (20)].

Fifteen days after sanction notification, the participant parent of a dependent child or the teenage participant may file an internal fair hearings process review procedure appeal, and no sanction shall be imposed until the appeal is resolved.

Section 14. [Family Transition Program AFDC Dependency Diversion.] (a) The [department] shall fund a program targeted for children “at risk” of AFDC dependency or parenting within the demonstration projects to divert them from future welfare participation.

   (1) The diversion efforts shall include case management, educational counseling, mentoring programs, educational enrichment programs, and extracurricular activities.
   (2) The children targeted for this program must be receiving AFDC benefits or residing in public housing projects, and not be teen parents or school dropouts or children who have been involved in delinquent activities.
(b) The [department] shall establish a public education campaign in collaboration with the local school system to provide students ages [thirteen (13) to nineteen (19)] with information regarding the changing welfare system, including the transitional approach of time-limited benefits and the parental responsibility of both boys and girls in being able to support their children themselves as self-sufficient, contributing members of their community.

Section 15. [Rules.] The [department] shall adopt rules governing the family transition program and shall provide programmatic features by rule when appropriate.

Section 16. [Reporting.]

(a) The [department], in consultation with the [state department of labor and employment security], the [state department of commerce], and the [state department of education], shall provide to the [governor], the [president and the minority leader of the Senate], and the [speaker and minority leader of the House of Representatives], a status report on the operation of the demonstration projects by [insert date] of each year during which the demonstration projects are operational, and at the conclusion of the demonstration projects, and shall report [annually] thereafter on the effectiveness of the family transition program in meeting its objectives, accompanying the final report and each [annual] report with an analysis of welfare reform initiatives in other states and any recommendations for additional demonstration projects or changes in the law or rules governing the program.

(b) Within [one (1)] year after the date of demonstration project implementation, the [department] shall provide a report describing the feasibility of including a child support assurance program as part of the family transition program.

Section 17. [Family Transition Program; Awards of Recognition.] The [department] may provide family transition program meritorious success and service awards, incentives, and recognition to program participants and service deliverers.

Section 18. [Immunizations.] Statewide, the [department] shall advise applicants for aid to families with dependent children of the availability of standard childhood immunizations through the county public health unit. Within [twelve (12)] months after a determination of eligibility for aid to families with dependent children or at the next scheduled full redetermination, the recipients must submit to the [department] proof that the children for whom they receive benefits have received their standard childhood immunizations. If a recipient fails to provide such proof of immunization, the [department] shall review the case to determine whether sanctions should be imposed. The [department] shall waive this requirement if the failure to immunize the children is because of religious reasons or other good cause, or upon proof that the immunization sequence has been started.
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Section 19. [Required Quarters of Work for AFDC Unemployed Parent Program.] The [department] shall waive the required quarters of work for the AFDC unemployed parent program within the family transition program except for recent refugee entrants who qualify for the Refugee Assistance Program.

Section 20. [Vendor Payment for Housing Authority.] Statewide, the [state department of health and rehabilitative services] shall expand the vendor payment program for housing authorities that wish to participate in the Aid to Families with Dependent Children Two-party Payment Program. The program shall be implemented statewide as defined in [insert reference to appropriate section of state code].

Section 21. [Periods of Substantially High Unemployment Rates.] The [department] shall use an unemployment rate threshold established by the [social services estimating conference] established pursuant to [insert reference to appropriate section of state code], in consultation with the [economic estimating conference] described in [insert reference to appropriate section of state code], to provide for suspension of the family transition program’s duration of benefits time limit during [six (6)] month periods of unemployment rates that are substantially higher than average. No such suspensions shall occur unless the state’s unemployment rate is at least [three (3)] base percentage points above the average for the past [three (3)] years.

Section 22. [Effective Date.] [Insert effective date.]
Work-Not-Welfare Pilot Program Act

This act, based on 1993 Wisconsin legislation, establishes a pilot program in selected counties that changes the state’s system of public assistance. It limits cash benefits under the Aid to Families With Dependent Children (AFDC) program to 24 months within a four-year period, except in certain circumstances and as determined by a case management team. Each recipient of assistance must comply with an employment plan within 30 days of entering the program as a condition of receiving cash benefits. The act provides waivers to extend medical assistance eligibility and transitional child care for up to 12 months after a family leaves AFDC. Within two months of enrollment in the program, those subject to the employment and training program must begin participation in employment and training programs. Counties must operate employment and training programs designed to provide participants over the age of 16 with the means to achieve long-term independence from public assistance, including, where appropriate, education.

Persons are subject to the program if one of the following conditions is met: the person resides in a county which has a pilot work-not-welfare program, is receiving or is the caretaker of a child who is receiving benefits under the AFDC on January 1, 1995 and has had regularly scheduled reinvestigations after January 1, 1995; the person resides in a pilot county and applies for AFDC for himself or herself or the dependent child on or after January 1, 1995; the person moves to a pilot county on or after January 1, 1995 and at the time of the move the person is receiving or is the caretaker of a child who is receiving AFDC benefits; or the person resides in the state in a county other than a pilot county and, within the previous 36 months, had resided in a pilot county and was subject to the work-not-welfare program. The act sunsets AFDC, Food Stamps, General Relief and Relief to Needy Indian Persons (RNIP) on December 31, 1998. The state department of health and social services will propose an alternative plan in 1995.

The pilot program will be implemented in two Wisconsin counties. The state recently received the necessary waivers from the Clinton administration to implement the demonstration project requiring able-bodied welfare recipients to work and to end cash benefits after two years. The governor vetoed several portions of the bill, some to meet the terms and conditions of the federal waivers as approved by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services.

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(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Work-Not-Welfare Pilot Program Act.
Section 2. [Definitions.] As used in this act:

(1) “Benefit period” means, with respect to a work-not-welfare group, a period commencing on the work-not-welfare group’s enrollment date and ending [forty-eight (48)] months later, except as the benefit period may be extended under Section 5 of this act.

(2) “Department” means the [state department of health and social services].

(3) “Enrollment date” means the first day of the first month for which a work-not-welfare group receives a benefit payment determined under Section 5 of this act, unless the work-not-welfare group has not received a benefit payment determined under Section 5 of this act within the previous [thirty-six (36)] months, in which case the enrollment date means the first day of the first month, after that [thirty-six (36)] month period, for which the work-not-welfare group receives a benefit payment determined under Section 5 of this act.

(4) “Work-not-welfare group” means all persons in an aid to families with dependent children case, if the head of household of the case is subject, under Section 4 of this act, to the work-not-welfare pilot program under this act. “Work-not-welfare group” includes a caretaker of dependent children, regardless of whether the needs of the caretaker are not considered in determining the amount of the benefit determined under Section 5 or Section 12 (1) to (6) of this act, and all dependent children in the household, including dependent children born more than [ten (10)] months after the work-not-welfare group’s enrollment date.

Section 3. [Waiver; Applicability.] The [department] shall request a waiver from the secretaries of the federal department of health and human services and the federal department of agriculture to conduct a work-not-welfare pilot program as part of the aid to families with dependent children program under [insert reference to appropriate section of state code], the food stamp program under 7 USC 2011 to 2029 and the medical assistance program under [insert reference to appropriate section of state code]. If the [department] receives the federal waivers and if sufficient funds are available, the [department] shall pilot the program, beginning on [insert date], in [one or more] pilot counties selected by the [department]. Sections 4 to 12 apply only while the waiver is in effect and the [department] is conducting the program.

Section 4. [Participation.] A person is subject to the work-not-welfare pilot program under this act if at least one of the following conditions is met:

(1) The person resides in a pilot county; is receiving, or is the caretaker of a child who is receiving, aid to families with dependent children benefits on [insert date]; and has had a regularly scheduled reinvestigation under [insert reference to appropriate section of state code] after [insert date].

(2) The person resides in a pilot county and applies for aid to families with dependent children benefits, for himself or herself or for a dependent child, on or after
(3) The person moves to a pilot county on or after [insert date], and, at the time of the move, the person is receiving, or is the caretaker of a child who is receiving, aid to families with dependent children benefits.

(4) The person resides in this state in a county other than a pilot county and, within the preceding [thirty-six (36)] months, the person had resided in a pilot county, was subject to the work-not-welfare program under paragraph (1), (2) or (3) of this section and received benefits determined under Section 5 of this act.

Section 5. [Cash Benefits.]

(a) Relation with other public assistance benefits. Except as determined under this section or Section 8 or Section 12 (1) to 12 (6) of this act, a member of a work-not-welfare group may not receive an aid to families with dependent children benefit, other than aid to families with dependent children benefits under [insert reference to appropriate section of state code]. Except as determined under this section or Section 12 (1) to (6) of this act, a member of a work-not-welfare group may not receive food stamp benefits under 7 USC 2011 to 2029 for a month unless the work-not-welfare group has received the maximum number of benefit payments permitted under subsections (e) and (g) of this section.

(b) Eligibility requirements. A county department in a pilot county shall determine the eligibility of a work-not-welfare group for benefits determined under this section in the same manner as it determines eligibility for aid to families with dependent children benefits under [insert reference to appropriate section of state code], except as follows:

(1) Once eligibility for a work-not-welfare group is established, the work-not-welfare group does not lose continued eligibility solely because one or more wage earners in the work-not-welfare group work more than [one hundred (100)] hours in a month.

(2) Once eligibility for a work-not-welfare group is established, the work-not-welfare group remains eligible until the next eligibility review, unless the benefit determined under this subsection could be adjusted under subsection (d) prior to the next regularly scheduled reinvestigation under [insert reference to appropriate section of state code].

(3) Instead of the child support disregard under [insert reference to appropriate section of state code], the [department] shall disregard [fifty (50)] dollars of the unearned income received under subsection (h) by a work-not-welfare group in a month.

(c) Calculation of benefit amount. Notwithstanding [insert reference to appropriate section of state code], subject to the limitations in subsections (d) to (g) and except as provided in Sections 6 (f) and 10 of this act, a county department under [insert reference to appropriate section of state code] in a pilot county shall pay to a work-not-welfare group that is eligible under subsection (b) a combined monthly aid to families with dependent children benefit under [insert reference to appropriate...
partial freezing of benefits.

(1) Notwithstanding [insert reference to appropriate section of state code], the portion of the benefit amount calculated under this paragraph is based on the average income of the work-not-welfare group, estimated prospectively for a [six (6)] period, except that for the first [two (2)] months for which benefits calculated under this subsection are paid the portion of the benefit amount calculated under this paragraph is based on the estimated average income for those first [two (2)] months.

(2) An amount equal to the cash value of the food coupons that the work-not-welfare group would receive under 7 USC 2011 to 2029 if the waiver under Section 3 of this act were not in effect, except as follows:

(i) Child support payment shall be treated as provided in subsection (h).

(ii) The portion of the benefit amount calculated under this subdivision is based on the average income of the work-not-welfare group, estimated prospectively for a [six (6)] period, except that for the first [two (2)] months for which benefits calculated under this subsection are paid the portion of the benefit amount calculated under this paragraph is based on the estimated average income for those first [two (2)] months.
(two (2)) months for which benefits calculated under subsection (c) are paid, only at a regularly scheduled reinvestigation under [insert reference to appropriate section of state code], except as follows:

(i) The benefit amount calculated under subsection (c) may be adjusted to reflect a significant change in circumstances under paragraph 2.

(ii) The benefit amount calculated under subsection (c) may be adjusted to reflect a decrease in earned income if there is good cause, as defined by the [department] by rule, for the decrease.

(iii) The benefit amount calculated under subsection (c) may be adjusted to reflect an increase in earned income if the head of household of the work-not-welfare group requests a reduction in the benefit amount determined under this section.

(2) A work-not-welfare group experiences a significant change in circumstances, for purposes of paragraph (1) (i), in any month in which at least one of the following occurs:

(i) The number of persons in the work-not-welfare group changes.

(ii) A person in the work-not-welfare group is sanctioned under Section 6 (f) or [insert reference to appropriate section of state code].

(iii) A person in the work-not-welfare group obtains a new source of unsubsidized employment.

(iv) A person in the work-not-welfare group receives a new source of unearned income in an amount greater than was estimated and that source of unearned income is expected to continue until the next regularly scheduled reinvestigation under [insert reference to appropriate section of state code].

(v) The work-not-welfare group experiences an increase or decrease in the amount of unearned income in a month that differs from the estimated amount of monthly unearned income by more than [fifty (50)] dollars.

(vi) The combined equity value of all of a work-not-welfare group’s assets exceeds the limitation in [insert reference to appropriate section of state code].

(vii) A person in the work-not-welfare group enters the [seventh] month of pregnancy.

(viii) A person in the work-not-welfare group experiences a life-threatening emergency, as defined by the [department] by rule.

(e) Maximum number of benefit payments. Except as provided in subsection (g), a work-not-welfare group may not receive more than [twenty-four (24)] monthly benefit payments determined under this section during the work-not-welfare group’s benefit period. The benefit payments need not be for consecutive months.

(f) Period of ineligibility. A work-not-welfare group may not receive a benefit payment determined under this section after the work-not-welfare group’s benefit period has elapsed unless it has been at least [thirty-six (36)] months since the work-not-welfare group received a benefit payment determined under this section.

(g) Additional monthly payments; extension of benefit period.

(1) A work-not-welfare group shall receive one monthly benefit payment in addition to the [twenty-four (24)] monthly benefit payments permitted under subsection (c) if

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section (e) and a [one (1)] month extension to the work-not-welfare group’s benefit period for each month after the work-not-welfare group’s enrollment date in which each person in the work-not-welfare group meets at least one of the following conditions:

(i) The person receives a supplemental security income payment under 42 USC 1381 to 1383c or a supplemental payment under [insert reference to appropriate section of state code] for the month.

(ii) The person is the head of the household of the work-not-welfare group, is a nonlegally responsible relative of a dependent child in the work-not-welfare group and is not included in determining the payment under this section.

(iii) The person is required to attend school as part of the learnfare program under [insert reference to appropriate section of state code].

(iv) The person is under [eighteen (18)] years of age.

(v) The person is incapacitated or is needed in the home to care for a member of the work-not-welfare group who is incapacitated.

(vi) The person is needed in the home to care for a child who is under [one (1)] year of age and who was born not more than [ten (10)] months after the work-not-welfare group’s enrollment date.

(vii) The person requires child care services in order to participate in the employment and training program under Section 6 of this act, is subject to the employment and training requirements under Section 6 (b) and child care services are not available to the person under Section 11 (d) (3) for at least the number of hours specified as part of the person’s assignment under Section 11 (d) (3).

(2) A work-not-welfare group may receive monthly benefit payments in addition to the [twenty-four (24)] monthly benefit payments permitted under subsection (e) and extensions to the group’s benefit period if a county department under [insert reference to appropriate section of state code] determines, in accordance with rules promulgated by the [department], that unusual circumstances exist that warrant an additional benefit payment and an extension of the benefit period.

(h) Child support payments. Notwithstanding [insert reference to appropriate section of state code], the rights of work-not-welfare group members to support or maintenance from other persons, including rights to unpaid amounts accrued on the work-not-welfare group’s enrollment date and rights to unpaid amounts accruing during the time that the work-not-welfare group member is subject to the work-not-welfare pilot program under Section 4 of this act, are not assigned to the state. Work-not-welfare group members shall comply with [insert reference to appropriate section of state code] and are subject to sanction under [insert reference to appropriate section of state code]. Child support payments shall be treated as unearned income in determining eligibility for benefits and in determining the amount of a monthly benefit determined under this section. If child support payments are being received by the work-not-welfare group regularly, such payments shall be budgeted prospectively in determining the amount of any benefit determined under this section. If child support payments are not being received regularly, the
payments may not be budgeted prospectively in determining the amount of any benefit determined under this section.

Section 6. [Employment and Training Requirements.]
(a) Relation with other public assistance employment and training requirements. The [department] shall conduct the employment and training program described in this section as part of the job opportunities and basic skills program under [insert reference to appropriate section of state code]. Compliance with the employment and training program described in this section by a person in a work-not-welfare group satisfies the employment and training requirements of the job opportunities and basic skills program under [insert reference to appropriate section of state code] and the food stamps workfare program under 7 CFR 273.22.

(b) Persons subject to employment and training requirements. Notwithstanding [insert reference to appropriate section of state code] and except as provided in subsection (c), every person in a work-not-welfare group who is over [sixteen (16)] years of age shall comply with the requirements of the employment and training program described in this subsection, as a condition to receiving a benefit determined under Section 5.

(c) Exemptions. A person is not subject to the requirements of the employment and training program described in this section in any month in which at least one of the following conditions is met:

1. The person is ill, incapacitated or of an advanced age within the meaning of 7 USC 602 (a) (19) (C) (i).
2. The person is needed in the home because of the illness or incapacity of another member of the work-not-welfare group.
3. The person receives a supplemental security income payment under 42 USC 1381 to 1383c or a supplemental payment under [insert reference to appropriate section of state code] for that month.
4. The person is a nonlegally responsible relative of a dependent child in the work-not-welfare group and the person's needs are not considered in calculating the amount of the benefit determined under Section 5.
5. The person is required to attend school as part of the learnfare program under [insert reference to appropriate section of state code].
6. The person is the head of household of the work-not-welfare group and is under [eighteen (18)] years of age.
7. The person is the caretaker of a child who is under [six (6)] months of age.
8. The person is the caretaker of a child who is under [one (1)] year of age and who was born no more than [ten (10)] months after the work-not-welfare group's enrollment date.
9. The person is pregnant and a physician has indicated that the person is unable to work.
10. The county department under [insert reference to appropriate section of state code] determines, in accordance with rules promulgated by the [department],
that the person has good cause for not complying with the employment and training requirements of this section.

(d) Participation requirements. Within a [two (2)] month period beginning on the work-not-welfare group's enrollment date, each member of the work-not-welfare group who is subject to the employment and training program described in this section shall participate in orientation activities under Section 11 (d) (2). Beginning on the first day of the month following the completion of the orientation activities under Section 11 (d) (2), each member of the work-not-welfare group who is subject to the employment and training program described in this section is required to participate in the employment and training program for a specified number of hours each month. The number of hours of participation required shall be based on the amount of the monthly benefit determined under Section 5 that is paid to the work-not-welfare group and on the number of persons in the work-not-welfare group who are subject to the employment and training program described in this section. The [department] shall promulgate a rule specifying the manner in which the number of required hours is to be calculated. No person may be required to spend more than [forty (40)] hours per week participating in the employment and training program described under this section. The number of hours of participation required under this subsection may not exceed the number of hours that a person is assigned under Section 11 (d) (3). If the person needs child care services, the number of hours of participation required under this paragraph also may not exceed the number of hours for which the child care is made available under Section 11 (d) (3).

(e) Program components and requirements. A county department under [insert reference to appropriate section of state code] shall operate the employment and training program described in this section in a manner designed to provide members of a work-not-welfare group who are over age [sixteen (16)] with the means to achieve long-term independence from public assistance, including, where appropriate, education. The employment and training program described in this section shall include all of the same program components and requirements as in [insert reference to appropriate section of state code] except that:

(1) The services priorities in [insert reference to appropriate section of state code] do not apply to persons who are subject to the employment and training program described in this section, all of whom shall receive equal priority.

(2) A county department under [insert reference to appropriate section of state code] may not give a person subject to the employment and training program described in this section an education or training assignment, if the education or training is not likely to be completed within a [twenty-four (24)] month period. A person who is subject to the employment and training program described in this section may not fulfill the hours of participation requirement under subsection (d), in whole or in part, through participation in a self-initiated education or training program, if the program is not likely to be completed within a [twenty-four (24)] month period.
(3) Notwithstanding [insert appropriate section of state code], a person who is subject to the employment and training program described in this section may be required to work more than [thirty-two (32)] hours per week and more than [sixteen (16)] weeks in a [twelve (12)] month period in a community work experience program.

(4) Notwithstanding [insert reference to appropriate section of state code], a county department under [insert reference to appropriate section of state code] may require participation in a work supplementation program.

(5) A person in need of a high school diploma shall be assigned to a course of study meeting the standards established by the [state superintendent of public instruction] for the granting of a declaration of equivalency of high school graduation unless the person demonstrates a basic literacy level or the employability plan for the individual identifies a long-term employment goal that does not require a high school diploma or a declaration of equivalency.

(6) In addition to the employment and training activities under [insert reference to appropriate section of state code], the employment and training program described in this section shall include an independence jobs program, providing for subsidized employment in the public sector.

(7) Participation in alcohol and other drug abuse prevention and treatment programs may be required to fulfill employment and training requirements described in this section.

(8) The employment and training requirements described in this section may be satisfied through working the number of hours required under subsection (d) in unsubsidized employment or in a combination of unsubsidized employment and employment and training activities.

(9) The subsidized employment components of the employment and training program described in this section may not be operated so as to do any of the following:

   (i) Displace any regular employee or reduce the wages, employment benefits or hours of work of any regular employee.

   (ii) Impair an existing contract for services or collective bargaining agreement.

   (iii) Fill a position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit.

   (iv) Have the effect of filling a vacancy created by an employer terminating a regular employee or otherwise reducing its work force for the purpose of hiring an individual under this section.

   (v) Infringe in the promotional opportunities of a regular employee.

(10) The [department] shall establish a grievance procedure for resolving complaints by regular employees or their representatives that the subsidized employment components of the employment and training program under this subsection violate paragraph (9).

(f) Sanctions. If, after the first month for which a work-not-welfare group receives employment benefits determined under Section 5 of this act, a person in the work
not-welfare group fails to meet the employment and training requirements under this section in a month, the work-not-welfare group may be sanctioned by reducing, or by not paying, the benefit amount determined under Section 5 of this act for that month. For purposes of the maximum number of monthly benefit payments permitted under Section 5 (e), a work-not-welfare group shall be considered to have received a monthly benefit in a month in which, as a result of sanctions under this subsection, a reduced monthly benefit or no monthly benefit is paid. The notice requirement under [insert reference to appropriate section of state code] and the fair hearing and review provisions under [insert reference to appropriate section of state code] apply to a sanction imposed under this subsection.

(g) Voluntary participation. To the extent that funding permits, persons who are exempt under subsection (c) may participate in the employment and training program under this subsection and, to the extent that funding permits, persons may participate in the employment and training program described in this section for more hours than are required under subsection (d).

Section 7. [Transitional Child Care.]
(a) Eligibility. Except as provided in subsection (b), a work-not-welfare group is eligible for transitional child care services under subsection (c) in any month in which all of the following conditions are met:

1. The work-not-welfare group has received at least one monthly cash benefit determined under Section 5 of this act.
2. The work-not-welfare group will not receive benefits determined under Section 5 or Section 12 (1) to (6) for the month.
3. The work-not-welfare group’s benefit period has not yet expired.
4. At least one person in the work-not-welfare group is employed in unsubsidized employment.

(b) Time limitations on transitional child care benefits. A work-not-welfare group that is eligible for transitional child care under subsection (a) may receive transitional child care benefits under subsection (c) for a maximum of [twelve (12)] months during a benefit period. These months need not be consecutive. A work-not-welfare group may not receive transitional child care benefits under this section after the work-not-welfare group’s benefit period has elapsed unless it has been at least [thirty-six (36)] months since the work-not-welfare group received benefits determined under Section 5 or Section 12 (1) to (6).

(c) Benefits. A county department under [insert reference to appropriate section of state code] shall provide assistance in paying the child care costs of a work-not-welfare group that is eligible to receive benefits under this subsection if the child care is provided by a child care provider, as defined in [insert reference to appropriate section of state code]. The formula for determining the amount of assistance shall be the same as the formula established by the [department] under [insert reference to appropriate section of state code]. The rates for child care services under this subsection shall be determined under [insert reference to appropriate section of state code] or, if a higher rate is established under [insert reference to appropriate section of state code], the rates for child care services under this subsection shall be adjusted to reflect the higher rate.
appropriate section of state code] and if the child care services meet the quality standards established under [insert reference to appropriate section of state code], the rates for child care services under this subsection that meet those standards shall be determined under [insert reference to appropriate section of state code]. The [department] shall promulgate rules for the disbursement of funds under this subsection.

Section 8. [Shelter Payments.]
(a) Eligibility. A work-not-welfare group is eligible for shelter payment benefits under this section if all of the following conditions are met:

(1) The work-not-welfare group has received the maximum number of benefit payments determined under Section 5 or Section 12 (1) to (6), as provided in Section 5 (e) and (g).

(2) The period of ineligibility under Section 5 (f) and (g) for the work-not-welfare group has not yet expired.

(3) The work-not-welfare group is in danger of becoming homeless, as defined by the [department] by rule.

(b) Benefits. For a work-not-welfare group that is eligible for benefits under this section, the [department] shall pay a shelter benefit equal to the lesser of the work-not-welfare group’s shelter expenses or the benefit amount that the work-not-welfare group would have received under [insert reference to appropriate section of state code] if a waiver under Section 3 were not in effect, based only on the number of children in the work-not-welfare group. The shelter benefit under this subsection shall be paid directly to the provider of the shelter or in the form of a voucher that may be used only for shelter expenses.

Section 9. [Transitional Medical Benefits.]
(a) Eligibility. Except as provided in subsection (b), all members of a work-not-welfare group are eligible for transitional medical benefits under subsection (c) for any month in which all of the following conditions are met:

(1) The work-not-welfare group has received at least [one (1)] monthly cash benefit determined under Section 5.

(2) The work-not-welfare group will not receive benefits determined under Section 5 or Section 12 (1) to (6) for the month.

(3) The work-not-welfare group’s benefit period has not yet expired.

(4) At least one member of the work-not-welfare group is employed in unsubsidized employment.

(5) The income of the work-not-welfare group is not greater than [one hundred eighty-five (185)] percent of the poverty line for a family the size of the work-not-welfare group.

(6) If the income of the work-not-welfare group is greater than [one hundred (100)] percent of the poverty line for a family the size of the work-not-welfare group, the work-not-welfare group pays, notwithstanding [insert reference to appropriate section of state code], a health care services premium to the [department].
(b) Time limitation on benefits. The work-not-welfare group is eligible for transitional medical benefits under subsection (c) for a maximum of [twelve (12)] months during a benefit period. The months need not be consecutive. A work-not-welfare group may not receive transitional medical benefits under this section after the work-not-welfare group’s benefit period has elapsed unless it has been at least [thirty-six (36)] months since the work-not-welfare group received benefits determined under Section 5 or Section 12 (1) to (6).

(c) Benefits. Each person in a work-not-welfare group that is eligible for benefits under this subsection in a month shall receive medical assistance coverage under [insert reference to appropriate section of state code] or, if a person could be covered by an insurance plan offered by the employer of one of the members in the work-not-welfare group and if the [department] determines that it would be cost-effective to do so, a payment equal to the amount of the premium that is required to be paid by the employee member of the work-not-welfare group, if any.

Section 10. [Cooperation Requirement.] As a condition for continued benefits under this act, a person who is subject to the work-not-welfare pilot program under this act shall comply with reasonable requests for cooperation by work-not-welfare case management workers in applying for programs or resources that these workers believe may be available to the person.

Section 11. [Administration in Pilot Counties.] (a) Contracts. The [department] shall enter into a contract with the county department under [insert reference to appropriate section of state code] in each pilot county. The contract shall specify the obligations of the county department in administering the work-not-welfare pilot program in that county and shall require at least the following:

1. The establishment of a community steering committee under subsection (b).
2. The establishment of a children’s services network under subsection (c).
3. The provision of case management services under subsection (d).

(b) Community steering committee.

1. Each county department under [insert reference to appropriate section of state code] entering into a contract with the [department] under subsection (a) shall establish a community steering committee instead of an employment and training council under [insert reference to appropriate section of state code]. The chairperson and the other members of the community steering committee shall be appointed by the [county executive] or [county administrator] in the pilot county or, if the pilot county has no [county executive] or [county administrator], by the [chairperson of the county board of supervisors]. The appointments shall be made in consultation with the [department]. The community steering committee shall have at least [twelve (12)] members but not more than [fifteen (15)] members. The chairperson of the community steering committee shall be a person who represents business interests.
(2) The community steering committee shall do all of the following:

(i) Perform the functions of an employment and training council under [insert reference to appropriate section of state code].

(ii) Identify and encourage employers to provide permanent jobs for persons who are subject to the employment and training program described in Section 6.

(iii) Create and encourage others to create subsidized jobs for persons who are subject to the employment and training program described in Section 6.

(iv) Create and encourage others to create on-the-job training sites for persons who are subject to the employment and training program described in Section 6.

(v) Foster and guide the entrepreneurial efforts of persons who are subject to the employment and training program described in Section 6.

(vi) Provide mentors, both from its membership and from recruitment of members of the community, to provide job-related guidance, including assistance in resolving job-related issues and the provision of job leads or references, to persons who are subject to the requirements of the employment and training program described in Section 6.

(c) Children’s services network. Each county department under [insert reference to appropriate section of state code] entering into a contract with the [department] under subsection (a) shall establish a children’s services network. The children’s services network shall provide information about community resources available to the children in a work-not-welfare group during the work-not-welfare group’s benefit period and the work-not-welfare group’s period of ineligibility under Section 5 (f), including charitable food and clothing centers; the state supplemental food program for women, infants and children under [insert reference to appropriate section of state code]; and child care programs under [insert reference to appropriate section of state code].

(d) Case management services.

(1) The county department under [insert reference to appropriate section of state code] administering a work-not-welfare pilot program under this act shall assign each work-not-welfare group to a case management team. The case management team shall be composed of case managers representing the income maintenance, job opportunities and basic skills, child care and child support components of the work-not-welfare pilot program under this act.

(2) During the month beginning with the work-not-welfare group’s enrollment date, the county department under [insert reference to appropriate section of state code] shall provide work-not-welfare group members with orientation services. The services shall include provision of oral and written explanations of the limitations on the benefits described under this act and of the participation requirements of the employment and training program described in Section 6. As a condition of receiving benefits under this act, adult work-not-welfare group members may be required to sign a statement, which may be referred to as an “Independence Pledge,” indicating that they received a copy of the written explanation of benefits.
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benefits and understand the employment and training requirements and the time-limited benefits of the work-not-welfare pilot program under this act. The orientation services shall also include the provision of a benefit account book, in which the case management team will indicate the remaining number of months of eligibility for cash and transitional benefits under this act.

(3) To the extent that assignments are available, the case management team shall assign to persons who are subject to the employment and training requirements described in Section 6 an employment or training assignment that enables the person to fulfill the participation requirements described in Section 6 (d). To the extent that funding for child care is available, the case management team shall also assist persons who are subject to the employment and training program described in Section 6 in obtaining child care services.

(e) Child support assistance. From the appropriation under [insert reference to appropriate section of state code], the [department] may provide funds to pilot counties for assistance in establishing paternity and obtaining child support.

Section 12. [Administration in Nonpilot Counties.] A county department under [insert reference to appropriate section of state code] in a nonpilot county may not pay aid to families with dependent children benefits under [insert reference to appropriate section of state code] to any person in a work-not-welfare group, except as provided in this section. With respect to persons in a work-not-welfare group residing in a non-pilot county, the county department in the nonpilot county shall do all of the following:

(1) Determine the eligibility of a work-not-welfare group member for aid to families with dependent children under [insert reference to appropriate section of state code] without regard to Section 5 (b).

(2) Determine the amount of aid to families with dependent children under [insert reference to appropriate section of state code] without regard to Section 5 (c).

(3) Issue food coupons in administering the food stamp program under [insert reference to appropriate section of state code] without regard to Section 5 (c) (2).

(4) Adjust aid to families with dependent children and food stamp benefits without regard to Section 5 (d).

(5) Apply the limitations contained in Section 5 (e) to (g) to aid to families with dependent children payments under [insert reference to appropriate section of state code].

(6) Treat child support payments as provided in [insert reference to appropriate section of state code] without regard to Section 5 (h).

(7) Administer the job opportunities and basic skills program under [insert reference to appropriate section of state code] and the food stamp employment and training program under [insert reference to appropriate section of state code] without regard to any of the provisions in Section 6, including the hours-of-participation requirement under Section 6 (d) and the sanctions provisions under Section 6 (f).
(8) Give priority for receipt of services under [insert reference to appropriate section of state code].

(9) Provide transitional child care services under Section 7, shelter payments under Section 8 and transitional medical assistance coverage under Section 9.

Section 13. [Evaluation.] If the work-not-welfare program under this act is conducted, the [department] shall enter into a contract with a public or private agency for the preparation of evaluations of the work-not-welfare program under this act. These evaluations shall include an implementation evaluation, an outcome evaluation and an impact evaluation.

Section 14. [Effective Date.] [Insert effective date.]
Improvement of Student Achievement Act
(Statement)

With an increasingly competitive world economy and changes in the workplace, states have moved to enact education reform legislation designed to better prepare youngsters for the future workforce. Education reform efforts were particularly notable during the late 1980s and early 1990s, and the 1991 edition of Suggested State Legislation (Vol. 50) provided an overview of many of the legislative actions taken by the states in the areas of education reform and accountability and finance and governance (see Education Legislation (Note), pp. 1-13).

A more recent example of state education reform legislation is Washington’s “Improvement of Student Achievement” enactment (Ch. 336, ESHB 1209, 1993). Based on recommendations of the governor’s council on education reform and funding, the act modifies the student learning goals, changes the duties and membership of the commission on student learning, and includes enhancements and directives to the school learning improvement grants, educator assistance programs, technology initiatives and community-based consortia programs.

In lieu of presenting this amendatory item in the standard format, the Committee on Suggested State Legislation approved the inclusion of the following summary of the major provisions of the act. Readers wishing to acquire a copy of the measure should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike, PO. Box 11910, Lexington, Kentucky 40578-1910, (606) 244-8000.

Student Learning Goals

The goals of the state’s basic education act were modified with this 1993 enactment. Under its provisions, the primary goal for the state’s schools is to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to their families and communities, and to enjoy productive and satisfying lives. The goals of the school districts are to provide opportunities for students to develop the knowledge and skills essential to: read with comprehension, write with skill, and communicate effectively and responsibly in a variety of settings; know and apply the core concepts and principals of mathematics, social, physical and life sciences, civics and history, geography, arts, and health and fitness; think analytically, logically and creatively, and integrate experience and knowledge to form reasoned judgments and solve problems; and understanding the importance of work, and how effort, performance and decisions directly affect future career and educational opportunities.

Commission on Student Learning

Under the enactment, the definitions, membership and duties of the state’s commission on student learning, established in 1992, are modified. The act defines
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“performance-based education system” as one in which a significantly greater emphasis is placed on how well students are learning, and significantly less emphasis on state-level laws and rules dictating how instruction is to be provided. The system created under this act does not require schools to use an outcome-based instructional model. Decisions are to be made as to how instruction is to be provided, to the greatest extent possible, by the schools and school-district personnel, not the state.

The duties of the commission (enlarged from nine to 11 members) regarding accountability are made more specific and include requirements for school-site, school district and state level accountability reporting systems; creation of a school assistance program to help students and districts having difficulty helping students with the essential learning requirements and a system to intervene in schools or districts in which significant numbers of students persistently fail to learn those essential requirements; and creation of an awards program to provide incentives to school staff to help their students with the essential learning requirements.

**Student Learning Improvement Grants**

The act directs the office of the superintendent of public instruction to provide student learning improvement grants to schools for the 1994-95, 1995-96 and 1996-97 school years. The purpose is to provide funds for additional time and resources for staff development and planning to improve student learning.

To be eligible for the grants, school district boards must adopt policies regarding the sharing of instructional decisions with school staff, parents and community members and submit school-based applications that have been developed by school building personnel, parents and community members.

**Educator Training and Assistance Programs**

In 1985, the state created a program to assist beginning teachers during their first year of teaching. In subsequent years, the program was expanded to provide mentors for experienced teachers, but few programs had been funded. The 1993 enactment specifies that mentors may be provided in the teacher assistance program for experienced teachers who are having difficulty. It establishes a pilot teacher assistance program to support both the pairing of full-time mentor teachers with beginning teachers and with experienced teachers who are having difficulties. The act also creates principal and superintendent program administrator internship support programs to provide funds to school districts to hire substitutes for district employees in principal, superintendent or program administrator preparation programs so they can complete their internships.

**Center for the Improvement of Student Learning**

The act establishes a center for the improvement of student learning under the office of the superintendent of public instruction. The center's purpose is to assist
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and advise parents, educators and the public regarding strategies for assisting students in essential academic learning requirements. The center is to work in conjunction with the commission on student learning, educational service districts, and institutions of higher education.

The center also is directed to serve as a clearinghouse for school improvement programs, provide technical assistance to educators, and contract out for the development of parental involvement materials and other efforts to increase public awareness of the importance of parental involvement in education.

Technology

The act directs the office of the superintendent of public instruction to develop and implement a state K-12 education technology plan that will coordinate and expand the use of education technology in the common schools of the state. At a minimum, the plan is to address technical assistance, the continued development of a network, and methods to increase the use of education technology by students and school personnel throughout the state.

The office is directed to submit recommendations to the state legislature regarding the development of a grant program for school districts to purchase and install computers, computer software, telephones and other types of education technology.

Readiness to Learn

To the extent funds are appropriated, the act directs the state’s family policy council to award grants to community-based consortiums submitting comprehensive plans that include strategies to assist students in being ready to learn.

The purpose of this council, which includes the directors of state-level education and human service agencies, legislators, and a governor’s representative, is to improve the responsiveness of programs for at-risk children and families by increasing coordination and flexibility in the use of program funds.
Education of the Visually Impaired Act
(Statement)

Advancements in audio and computer technologies have led to a decline in the use of Braille by students with visual impairments. Understanding Braille helps students learn spelling, grammar, sentence construction and critical thinking skills.

This piece of legislation was enacted by the state of Illinois in 1992. In lieu of presenting this amendatory item in the standard format, the Committee on Suggested State Legislation approved the inclusion of a statement summarizing the major provisions of the act. Readers wishing to acquire a copy of the measure should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike, P.O. Box 11910, Lexington, KY 40578-1910, (606) 244-8000.

The Illinois act (PA 87-1071, SB 1640, 1992) prohibits school districts from purchasing textbooks from publishers who do not supply computer disc versions of any textbook to the state board of education for Braille reproduction purposes. Publishers must also furnish the state board of education with copies of textbooks with copyright permission to duplicate them into Braille, large print or tape.

The act also requires individuals seeking a certificate to teach students with visual impairments to successfully complete a Braille examination before applying for such a certificate. The act also requires the state board of education to determine criteria for a student to be classified as functionally blind. Students not currently identified as functionally blind but who are entitled to Braille instruction include those whose vision loss is so severe that they are unable to read and write at a level comparable to their peers solely through the use of vision and those who show evidence of progressive vision loss that may result in functional blindness.
Youth Apprentice Pilot Program Act

The act presented below, which is based on 1991 Oregon legislation, requires the state apprenticeship and training council and state division of vocational education to establish a youth apprenticeship pilot program to assist in the transition to regular apprenticeship programs and to provide occupational skill training. Under the Oregon act, the program is limited to 100 students in each biennium and is restricted to students over the age of 16 who are enrolled in appropriate high school vocational programs. The program requires that employment with a training agent count toward graduation requirements.

The act also creates a business tax credit equal to wages paid to a youth apprentice for the first year of employment, up to $2,500 per student. Students must be enrolled in and complete an 18-week career exploration and work experience program prior to being registered with a training agent. The apprentice's combined in-school course work and training in addition to that on the job may not exceed 40 hours per week and the wage must not be less than the state minimum wage.

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>Title, enacting clause, etc.

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

Section 2. [Establishment of Program.]

(a) The [state apprenticeship and training council] and the [state division of vocational education] shall establish a youth apprenticeship pilot program to provide occupational skill training for up to [100] individual high school students in each [biennium] to assist them in making the transition to apprenticeship programs under [insert reference to appropriate section of state code].

(b) Participating students must be [16] years of age or older and must be enrolled in a high school vocational technical program that is applicable to the specific youth apprenticeship pilot program for which they are applying. Students also must be enrolled in and complete an [18-]week career exploration and work experience program prior to being registered with a training agent. In licensed trades and in hazardous occupations, on-the-job training for students [16] years of age may be simulated cooperatively at industry training centers.

(c) Participating schools shall develop and maintain a list of students eligible for youth apprenticeship programs. In a cooperative effort, high school counselors, instructors, training agents and local apprenticeship committee members shall review and select students for participation from the list of eligible students established under this subsection.
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(d) Training agents under [insert reference to appropriate section of state code] shall cooperate with the [state director of apprenticeship and training] through the applicable apprenticeship committee to develop training guidelines consistent with youth apprenticeship standards for a specific trade. The guidelines shall provide a listing of work processes and related training to be done that will permit the student to acquire necessary skills. The training agent, school and youth apprentice shall evaluate monthly the student's progress in high school curriculum, related training and on-the-job training.

(e) The [state apprenticeship and training council] shall adopt rules detailing the process through which local apprenticeship committees shall periodically evaluate youth apprentices and grant credit, consistent with committee policies, to eligible youth apprentices for experience obtained through participation in youth apprenticeship programs.

(f) No registered youth apprentice shall displace a regular employee of an approved training agent.

Section 3. [Program Restrictions.] In addition to the provisions of Section 2 of this act, in each pilot program:

(1) Each training agent shall be allowed [one (1)] youth apprentice. An additional youth apprentice shall be allowed for each training agent who employs from [three (3) to 10] journeypersons and at least [two (2)] registered apprentices. A third youth apprentice shall be allowed when the training agent employs more than [15] journeypersons in that trade. At no time shall any training agent have more than [three (3)] youth apprentices.

(2) The training agent shall provide workers' compensation coverage for the youth apprentices as required by [insert reference to appropriate section of state code].

(3) The student youth apprentice shall begin at a wage that is [80] percent of the first period of the apprenticeship wage established by the appropriate apprenticeship committee for the applicable standards, but shall not be less than the state minimum wage.

(4) Youth apprentices shall be evaluated for wage increases consistent with the policies established by the participating local apprenticeship committee.

(5) Youth apprentices shall not be employed on projects subject to the federal Davis-Bacon Act or on projects subject to [insert reference to appropriate sections of state code].

(6) The youth apprentice's combined in-school coursework and related training, as well as on-the-job training and other training experiences shall not exceed [eight (8)] hours per day or [40] hours per week.

(7) Employment with the training agent shall not exceed [20] hours per week while the student is enrolled in school classes. All or a portion of the on-the-job training shall be used to meet graduation requirements.

(8) Participating students who fail to regularly attend in-school courses and required related training or who leave high school prior to graduation or completion of their high school requirements shall automatically be removed from the youth apprenticeship program.
COMMENTS: Under the provisions of the Oregon legislation on which this act is based, a business tax credit is allowed to eligible taxpayers who sponsor student participants in the youth apprenticeship program.

Section 4. [Penalties for Termination of Youth Apprentices Without Cause] Training agents who terminate youth apprentices without cause as determined by the appropriate apprenticeship committee prior to completion of training or who violate Section 2 or 3 of this act or rules adopted pursuant thereto by the [state apprenticeship and training council] or the [state division of vocational education], upon notice to the [state department of revenue], may lose their eligibility for tax credits pursuant to [insert reference to appropriate section of state code] and [insert reference to new sections of code establishing tax credit for apprenticeship program] and their eligibility to train and employ youth apprentices under this act for a period of [one (1)] year.

Section 5. [Effective Date.] [Insert effective date.]
Riverboat Gambling Control Legislation (Note)

In an era of fiscal constraints, many states are seeking ways to increase revenue to pay for basic services without increasing taxes. During the last several years, states and other entities have begun to consider various forms of gaming. During 1993, of the 49 states that met in regular legislative session, only one did not address some aspect of gaming.

From 1980 to 1994, the number of states sponsoring lotteries has grown from 13 to 37. In 1988, South Dakota voters approved a measure permitting low-stakes gaming in the historic community of Deadwood, and later that year Congress permitted gaming on Native American reservations. In 1990, Colorado approved small stakes casino gambling in three historic towns. As recently as the mid-1980s, only the states of Nevada and New Jersey had authorized casino gambling. Today, however, 14 states have adopted some form of casino gambling, not all of it on dry land.

In 1989, Iowa became the first state to approve riverboat gambling and two years later launched its first riverboat casino. Since then, several other states have considered or approved the concept of riverboat gambling as a new source of revenue and a way to promote economic development. The provisions of six states — Illinois, Indiana, Iowa, Louisiana, Mississippi, and Missouri — are highlighted here. Readers interested in the full text of these items should contact the Suggested State Legislation Program, The Council of State Governments, 3560 Iron Works Pike, PO. Box 11910, Lexington, Kentucky 40578-1910, (606) 244-8000.

During 1993, riverboat casinos were operational in four states: Illinois (PA 87-1005, 1992); Iowa (Ch. 67, 1989, amended by Ch. 260, 1991 and Ch. 1203, 1992); Louisiana (Act 753, 1991); and Mississippi (Ch. 45, 1991). Indiana (PL 277, 1993) also has approved riverboat gambling and is expected to launch gaming during 1994.

The common elements of the states' riverboat gambling legislation include: permitting casino gambling on licensed riverboat casinos operating on navigable waters within state boundaries and/or dockside gaming; establishing a professional gaming commission with oversight, licensing and enforcement responsibilities; and requiring that riverboat operators meet certain qualifications, including adoption of an internal control system, and that operators not have any kind of criminal record.

The states' provisions vary in other respects, however. For example, the Illinois, Indiana, and Iowa statutes authorize excursion boat casinos, while Mississippi's law authorizes dockside riverboat casinos only. Louisiana allows both excursion and dockside casinos. Illinois law authorizes the issuance of 10 riverboat casino licenses; Indiana, 11; and Louisiana, 15. Mississippi and Iowa have set no limit on the number of boats, although Mississippi currently has 20 boats and Iowa
Riverboat Gambling Control Legislation (Note)

has three. Unlike the other states, Iowa sets a maximum wager of five dollars per hand or play and a maximum loss of $200 per person per gambling excursion.

Unlike lottery revenues, which are deposited in state treasuries, riverboat gambling legislation typically taxes the profits of casino operators. For example, Illinois assesses a 20 percent tax on a casino’s adjusted gross receipts, of which the state retains 75 percent and the locality receives the remainder. The state also charges a $2 tax for every gambler, which is split between the state and the town in which the boat operates. Illinois’ riverboat casino taxes are earmarked for the state’s education assistance fund.

Occasionally, disputes have arisen between states that have riverboat casinos and neighboring states that do not. For example, Indiana has plans to launch boats on the Ohio River, although all but 100 feet of the river belongs to Kentucky under a 1985 U.S. Supreme Court decision reaffirming an agreement almost two hundred years old. Iowa and Nebraska also are engaged in a dispute over the right to have riverboats on the Missouri River. Moreover, in several states, legislation is being considered that would prohibit riverboats from giving customers free food or selling food at subsidized prices. Louisiana already has such restrictions for its land-based casinos.

Despite a trend toward the states’ serious consideration of riverboat gambling as a new revenue source, the voters in at least one jurisdiction recently have rejected a gambling measure. In November 1992, Missouri voters approved riverboat gambling, but the state Supreme Court invalidated the portion of the original law concerning games of chance, including slot machines, in January 1994. In April 1994, voters had another opportunity to consider a proposed constitutional amendment that would have legalized games of chance on riverboats, but the voters rejected it. Despite the vote, riverboats may still operate games of skill, such as card games, and four riverboat casinos are currently plying Missouri waters.
Prize and Sweepstakes Regulation Act

This act, based on 1993 Minnesota legislation, prohibits a company or sponsor from requiring a person to pay the sponsor money as a condition of awarding the person a prize. If the sponsor represents that the person is a “winner,” a “finalist,” or is otherwise among a selected group of individuals, the sponsor must disclose in a statement the maximum number of other persons also having the enhanced likelihood of winning; the name of the sponsor; the restrictions applicable to winning; and the actual retail value of any prize or prizes awarded. Violators are subject to up to two years in prison and/or a fine of up to $10,000.

The 1992 Suggested State Legislation volume included Virginia’s “Prizes and Gifts Act” (pp. 145-148). The act requires that: consumers who win a prize or gift or any item of value must receive it within 10 days of the representation; consumers must be told who is conducting the contest; consumers must be told of any conditions they must meet to receive the prize; and shipping charges may not exceed the cost of postage of the delivery service. The Virginia act also bans the use of notifications that resemble checks or documents that resemble invoices. Consumers who suffer losses as a result of violations of these provisions may bring civil action.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Prize and Sweepstakes Regulation Act.

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

1. “Catalog seller” means any entity (and its subsidiaries) or person at least [fifty (50)] percent of whose annual revenues are derived from the sale of products sold in connection with the distribution of catalogs of at least [twenty-four (24)] pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least [two hundred fifty thousand (250,000)].

2. “Prize” means a gift, award, or other item or service of value that is offered or awarded to a participant in a real or purported contest, competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection process.

3. “Retail value” of a prize means:

   i. a price at which the sponsor can substantiate that a substantial number of the prizes have been sold to the public in [state] in the preceding year; or
(ii) if the sponsor is unable to satisfy the requirement in subparagraph (i), then no more than [one and a half] times the amount the sponsor paid for the prize in a bona fide purchase from an unaffiliated seller.

(4) "Sponsor" means a corporation, partnership, limited liability company, sole proprietorship, or natural person that requires a person in [state] to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, or that creates the reasonable impression that such a payment is required.

Section 3. [Disclosures Required.]
(a) No sponsor shall require a person in [state] to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, nor shall a sponsor use any solicitation that creates the reasonable impression that a payment is required, unless the person has first received a written prize notice containing the information required in subsections (b) and (c) of this section.

(b) A written prize notice must contain each of the following:

1. the true name or names of the sponsor and the address of the sponsor's actual principal place of business;
2. the retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;
3. a statement of the person's odds of receiving each prize identified in the notice;
4. any requirement that the person pay shipping or handling fees or any other charges to obtain or use a prize, including the nature and amount of the charges;
5. if receipt of the prize is subject to a restriction, a statement that a restriction applies, and a description of the restriction;
6. any limitations on eligibility; and
7. if a sponsor represents that the person is a "winner," is a "finalist," has been "specially selected," is in "first place," or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

(c) The information required by subsection (b) of this section must be presented in the following form:

1. the retail value and the statement of odds required under subsection (b), paragraphs (2) and (3), must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize;
2. the statement of odds must include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic
“... (number of prizes) out of ... notices distributed.”;

(3) if a person is required to pay shipping or handling fees or any other charges to obtain a prize, to be eligible to obtain a prize, or participate in a contest, the following statement must appear in immediate proximity to each listing of the prize in the written prize notice, in not less than [ten-point boldface] type: “You must pay $... to receive this item” or “You must pay $... to compete for this item,” whichever is applicable; and

(4) a statement required under subsection (b), paragraph (7), must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same size and boldness of type as the representation.

Section 4. [Prize Award Required.] A sponsor who represents to a person that the person has been awarded a prize shall, not later than [thirty (30)] days after making the representation, provide the person with the prize, or with a voucher, certificate, or other document giving the person the unconditional right to receive the prize, or shall provide the person with either of the following items selected by the person:

(1) any other prize listed in the written prize notice that is available and that is of equal or greater value; or

(2) the retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

Section 5. [Advertising Media Exempt.] Nothing in this act creates liability for acts by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, television station, cable television system, or other advertising medium arising out of the publication or dissemination of a solicitation, notice, or promotion governed by this act, unless the publisher, owner, agent, or employee had knowledge that the solicitation, notice, or promotion violated the requirements of this act, or had a financial interest in the solicitation, notice, or promotion.

Section 6. [Exemptions.] This act does not apply to solicitations or representations, in connection with (1) the sale or purchase of books, recordings, video cassettes, periodicals, and similar goods through a membership group or club which is regulated by the Federal Trade Commission pursuant to Code of Federal Regulations, title 16, part 425.1, concerning use of negative option plans by sellers in commerce; (2) the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription management, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and after the receipt of the goods is given the opportunity to examine the goods and to receive a full refund of charges for the goods upon return of the goods undamaged; or (3) sales by a catalog seller.
Section 7. [Exemptions for Regulated Activities.] This act does not apply to advertising permitted and regulated under [insert reference to appropriate sections of state code], concerning membership camping practices; advertising permitted and regulated under [insert reference to appropriate sections of state code], concerning subdivided lands and interests in subdivided lands; pari-mutuel betting on horse racing permitted and regulated under [insert reference to appropriate sections of state code]; lawful gambling permitted and regulated under [insert reference to appropriate sections of state code]; or the state lottery created and regulated under [insert reference to appropriate sections of state code].

Section 8. [Violations.]
(a) Nothing is this act shall be construed to permit an activity otherwise prohibited by law.
(b) A violation of this act is also a violation of [insert reference to appropriate sections of state code] and is subject to [insert reference to appropriate sections of state code].
(c) Whoever intentionally violates this act may be fined not more than [ten thousand (10,000) dollars] or imprisoned for not more than [two (2) years], or both. It is evidence of intent if the violation occurs after the office of the attorney general has notified a person by certified mail that the person is in violation of this act.
(d) A person suffering pecuniary loss because of an intentional violation of this act may bring an action in any court of competent jurisdiction and shall recover costs, reasonable attorney fees, and the greater of: (1) [five-hundred (500) dollars]; or (2) [twice] the amount of the pecuniary loss.
(e) The relief provided in this act is in addition to remedies or penalties otherwise available against the same conduct under common law or other statutes of this state.

Section 9. [Effective Date.] [Insert effective date.]
New Assistive Devices Warranty Act

This act, based on 1993 Louisiana legislation, requires manufacturers of assistive devices (such as wheelchairs and similar devices, devices which assist hearing, and devices which assist communications) to offer warranties. The act specifies that the warranties do not include batteries or nonfunctional accessories. It provides for replacement or refund when nonconformities or repairs are of certain frequency or for repairs which cannot be made; when procedures or repairs are of certain frequency or for repairs which cannot be made; for procedures to be followed for replacement or refund, including the respective responsibilities of the consumer, the manufacturer and the lessor; and for calculations of refunds to be made. The act requires the temporary replacement or refund, including the respective responsibilities of the consumer, the manufacturer and the lessor; and for calculations of refunds to be made. The act requires the temporary replacement of assistive devices under certain circumstances, including reimbursements to the consumer for up to $20 per day.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the New Assistive Devices Warranty Act.

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

(1) “Assistive device” means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity which includes but is not limited to: manual wheelchairs, motorized wheelchairs, motorized scooters, and other aides that enhance the mobility of an individual; hearing aids, telephone communication devices for the deaf (TDD), assistive listening devices, and other aides that enhance an individual’s ability to hear; voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight impaired individual’s ability to communicate; and any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver, but does not include batteries or nonfunctional accessories.

(2) “Assistive device dealer” means a person who is in the business of selling assistive devices.

(3) “Assistive device lessor” means a person who leases assistive devices to consumers, or who holds the lessor’s rights, under a written lease.
(4) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive device.

(5) "Consumer/Agency" means any of the following:
   (i) The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale.
   (ii) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device.
   (iii) A person who may enforce the warranty.
   (iv) A person who leases an assistive device from an assistive device lessor under a written lease.

(6) "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

(7) "Early termination cost" means any expense or obligation that an assistive device lessor incurs as a result of both the termination date set forth in that lease and the return of an assistive device to the manufacturer. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(8) "Early termination savings" means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to a manufacturer which shall include an interest charge that the assistive device lessor would have paid to finance the assistive device, if the assistive device lessor does not finance the assistive device, the difference between the total period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(9) "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, distributor branch, and any warrantors of the manufacturer’s assistive device, but does not include an assistive device dealer or assistive device lessor.

(10) "Nonconformity" means any specific condition or generic defect or malfunction, or any defect or condition which substantially impairs the use, value, or safety of an assistive device, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by the consumer.

(11) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive device or within one year after first delivery of the assistive device to a consumer, whichever is sooner:
   (i) The manufacturer, assistive device lessor, or any of the manufacturer’s authorized assistive device dealers shall accept return of the new assistive device for repair at least [two (2)] times.
   (ii) The assistive device is out of service for an aggregate of at least [thirty (30)] cumulative days because of warranty nonconformities.
Suggested State Legislation

Section 3. [Express Warranties; Time Limit to Conform.]
(a) A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than [one (1)] year after first delivery of the assistive device to the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.
(b) An express warranty does not take effect until the consumer takes possession of the new assistive device.
(c) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before [one (1)] year after first delivery of the device to a consumer, a reasonable attempt to repair the nonconformity shall be made.

Section 4. [Assistive Device Replacement or Refund.]
(a) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement under paragraphs (1) or (2) of this subsection, whichever is appropriate:

(1) To provide for refunds, at the request of the consumer, the manufacturer shall do one of the following:

(i) Accept return of the assistive device and refund to the consumer and to any holder of perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge or sales tax paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.

(ii) Accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use. The manufacturer shall have a cause of action against the dealer or lessor for reimbursement of any amount that it pays to a consumer which exceeds the net price received by the manufacturer for the assistive device.

(2) To receive a comparable new assistive device or a refund, a consumer shall do one of the following:

(i) Offer to the manufacturer of the assistive device having the nonconformity to transfer possession of that assistive device to that manufacturer. No later than [thirty (30)] days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the
assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(ii) Offer to return the assistive device having the nonconformity to its manufacturer. No later than [thirty (30)] days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the assistive device having the nonconformity.

(iii) Offer to transfer possession of the assistive device having the nonconformity to its manufacturer. No later than [thirty (30)] days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(b) Under the provisions of this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer’s early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor’s early termination savings.

(c) Under the provisions of this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is [one thousand eight hundred twenty-five (1,825)] and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

(d) No person may enforce the lease against the consumer after the consumer receives a refund.

Section 5. [Nonconformity Disclosure Requirement.] No assistive device returned by a consumer or assistive device lessor in this state or any other state may be sold or leased again in this state unless full disclosure of the reason for return is made to any prospective buyer or lessee.

Section 6. [Other Remedies.]

(a) This act shall not limit rights or remedies available to a consumer under any other law.

(b) Any waiver of rights by a consumer under the provisions of this act shall be void.

(c) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this act. The court shall award a consumer who prevails in such an action, no more than [twice] the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney fees, and any equitable relief that the court determines is appropriate.
Section 7. [Manufacturer’s Duty to Provide Reimbursement for Temporary Replacement of Assistive Devices; Penalties.]

(a) Whenever an assistive device covered by a manufacturer’s express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable and at least one of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a rental assistive device reimbursement of up to [twenty (20)] dollars per day. The applicable conditions are as follows:

(1) The repair period exceeds [ten (10)] working days, including the day on which the device is tendered to the manufacturer or a dealer designated by the manufacturer for repairs. If the dealer does not tender the assistive device to the manufacturer in a timely enough manner for the manufacturer to make the repairs within [ten (10)] days, then the manufacturer shall have a cause of action against the dealer for reimbursement of any penalties that it must pay.

(2) The defect, malfunction, or nonconformity is the same for which the assistive device has been tendered to the dealer for repair on at least [two (2)] previous occasions.

(b) The provisions of this section regarding a manufacturer’s duty shall apply for the period of the manufacturer’s express warranty or for [two (2)] years from delivery of the assistive device to the customer, whichever period of time ends sooner.

Section 8. [Effective Date.] [Insert effective date.]
Private Property Protection Act

This act, based on 1993 Utah legislation, requires each state agency to adopt guidelines to assist in the identification of actions that have implications of constitutional taking of private property. In creating the guidelines, state agencies must take into consideration recent court rulings on the taking of private property. Each state agency must determine whether an action has constitutional taking of private property implications and prepare an assessment of those implications. The act also requires political subdivisions to enact ordinances establishing guidelines to assist them in identifying actions involving the physical taking or exaction of private real property that may have constitutional taking issues.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Private Property Protection Act.

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

1. “Constitutional taking” or “taking” means due to a governmental action private property is taken such that compensation to the owner of the property is required by either:

   (i) The Fifth or Fourteenth Amendment of the Constitution of the United States; or
   
   (ii) [insert reference to appropriate article, section of state constitution].

2. “Constitutional taking issues” means actions involving the physical taking or exaction of private real property by a political subdivision that might require compensation to a private real property owner because of:

   (i) the Fifth or Fourteenth Amendment of the Constitution of the United States;
   
   (ii) [insert reference to appropriate article, section of state constitution]; or
   
   (iii) any recent court rulings governing the physical taking or exaction of private real property by a government entity.

3. (i) “Governmental action” or “action” means:

   (A) proposed rules and emergency rules by a state agency that if adopted and enforced may limit the use of private property unless its provisions are in accordance with applicable state or federal statutes;

   (B) proposed or implemented licensing or permitting conditions, requirements, or limitations to the use of private property unless its provisions are in accordance with applicable state or federal statutes, rules, or regulations;

   (C) required dedications or exactions from owners of private property; or
Suggested State Legislation

(D) statutes and rules.
(ii) "Governmental action" or "action" does not mean:
(A) activity in which the power of eminent domain is exercised formally;
(B) repealing rules discontinuing governmental programs or amending rules in a manner that lessens interference with the use of private property;
(C) law enforcement activity involving seizure or forfeiture of private property for violations of law or as evidence in criminal proceedings;
(D) school and institutional trust land management activities and disposal of land and interests in land conducted pursuant to [insert reference to appropriate section of state code];
(E) orders and enforcement actions that are issued by a state agency or a court of law in accordance with applicable federal or state statutes.

(4) "Political subdivision" means a county, municipality, special district, school district, or other local government entity.

(5) "Private property" means any school or institutional trust lands and any real or personal property in this state that is protected by either the Fifth or Fourteenth Amendment of the Constitution of the United States or [insert reference to appropriate article, section of state constitution].

(6) "State agency" means an officer or unit of the executive branch of state government that is authorized by law to adopt rules. State agency does not include the legislative or judicial branches of state government.

Section 3. [State Agencies to Adopt Guidelines.]
(a) Each state agency shall adopt guidelines to assist them in the identification of actions that have constitutional taking implications.
(b) In creating the guidelines, the state agency shall take into consideration recent court rulings on the taking of private property.
(c) The state agency shall complete the guidelines on or before [insert date], and review and update the guidelines annually to maintain consistency with court rulings.

Section 4. [Agency Actions.]
(a) Using the guidelines prepared under Section 3 of this act, each state agency shall:
(1) determine whether an action has constitutional taking implications; and
(2) prepare an assessment of constitutional taking implications that includes an analysis of the following:
(i) the likelihood that the action may result in a constitutional taking, including a description of how the taking affects the use or value of private property;
(ii) alternatives to the proposed action that may:
(A) fulfill the government's legal obligations of the state agency;
(B) reduce the impact on the private property owner; and
(C) reduce the risk of a constitutional taking; and
(iii) an estimate of financial cost to the state for compensation and the source of payment within the agency’s budget if a constitutional taking is determined.

(b) In addition to the guidelines prepared under Section 3 of this act, each state agency shall adhere, to the extent permitted by law, to the following criteria if implementing or enforcing actions that have constitutional taking implications:

1. If an agency requires a person to obtain a permit for a specific use of private property, any conditions imposed on issuing the permit shall directly relate to the purpose for which the permit is issued and shall substantially advance that purpose.

2. Any restriction imposed on the use of private property shall be proportionate to the extent the use contributes to the overall problem that the restriction is to redress.

3. If an action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

4. Before taking an action restricting private property use for the protection of public health or safety, the state agency, in internal deliberative documents, shall:
   i. clearly identify, with as much specificity as possible, the public health or safety risk created by the private property use;
   ii. establish that the action substantially advances the purpose of protecting public health and safety against the specifically identified risk;
   iii. establish, to the extent possible, that the restrictions imposed on the private property are proportionate to the extent the use contributes to the overall risk; and
   iv. estimate, to the extent possible, the potential cost to the government if a court determines that the action constitutes a constitutional taking.

(c) If there is an immediate threat to health and safety that constitutes an emergency and requires an immediate response, the analysis required by paragraph (a) (2) of this section may be made when the response is completed.

(d) Before the state agency implements an action that has constitutional taking implications, the state agency shall submit a copy of the assessment of constitutional taking implications to the governor and the [insert appropriate legislative committee].

Section 5. [Applicability.] This act does not apply when a political subdivision formally exercises its power of eminent domain.

Section 6. [Political Subdivisions to Adopt Guidelines.]

(a) Each political subdivision shall enact an ordinance establishing guidelines to assist in identifying actions involving the physical taking or exaction of private real property that may have constitutional taking issues.
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(b) Each political subdivision shall consider the guidelines required by this section when taking any action that might result in the physical taking or exaction of private real property.

(c) The guidelines adopted under the authority of this section are advisory.

1. A court may not impose liability upon a political subdivision for failure to comply with the guidelines required by this section.

2. The guidelines neither expand nor limit the scope of any political subdivision’s liability for a constitutional taking.

Section 7. [Appeals of Decisions.]

(a) Each political subdivision shall enact an ordinance that:

1. establishes a procedure for review of actions that may have constitutional taking issues; and

2. meets the requirements of this section.

(b) Any owner of private property whose interest in the property is subject to a physical taking or exaction by a political subdivision may appeal the political subdivision’s decision within [thirty (30)] days after the decision is made.

(c) The legislative body of the political subdivision, or an individual or body designated by them, shall hear and approve or reject the appeal within [fourteen (14)] days after it is submitted.

(d) If the legislative body of the political subdivision fails to hear and decide the appeal within [fourteen (14)] days, the decision is presumed to be approved.

Section 8. [Effective Date.] [Insert effective date.]
State Housing Initiatives Partnership

This act, based on 1992 Florida legislation, establishes a state housing initiatives partnership program for the purpose of providing funds to local governments as an incentive for the creation of partnerships to produce and preserve affordable housing. To be eligible to receive funds under the program, a county or municipality must submit to the state housing finance agency and the state department of community affairs its local housing assistance plan describing the local housing assistance program. Within 12 months after establishing, by ordinance, the local housing assistance program, the county or municipality must submit to the state housing finance agency and the state department of community affairs its affordable housing incentive plan. A county or a municipality seeking approval to receive its share of local housing distribution must adopt an ordinance containing the following provisions: creation of an affordable housing trust fund; establishment of a local housing assistance program to be implemented by a local housing partnership; designation of the responsibility for the implementation and administration of the local housing assistance program (such ordinance may also provide for the contracting of all or part of the administrative or other functions of the program to a third person or entity); and creation of an affordable housing advisory committee. The act establishes a local government trust fund in the state treasury to be administered by the state housing finance agency.

The 1990 Suggested State Legislation volume included a note on housing legislation (pp. 1-5). The note described state enactments concerning housing trust funds, tax credits and acquisition of low income housing. The note also included several state-local partnerships, including Florida's 1988 legislation (Ch. 88-376) establishing an apartment incentive loan program, a home ownership assistance program, an affordable housing loan program and several other housing programs.

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(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the State Housing Initiatives Partnership Program Act.

Section 2. [Legislative Findings and Purpose.] The state legislature finds that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and provide new housing for very low-income persons, low-income persons, and moderate-income persons. The legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-
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saving measures. The legislature further intends that the State Housing Initiatives Partnership Program provide the maximum flexibility to local governments to determine the use of funds for housing programs while ensuring accountability for the efficient use of public resources and guaranteeing that benefits are provided to those in need. Extending the partnership concept to encompass cooperative efforts between local governments is specifically encouraged.

Section 3. [Definitions.] As used in this act:
(1) “Adjusted for family size” means adjusted in a manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility determined as provided in subsection (17), subsection (18), or subsection (22), based upon a formula established by the United States Department of Housing and Urban Development.

(2) “Adjusted gross income” means wages, income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, minus the deductions allowable under s. 61 of the Internal Revenue Code of 1986, as amended.

(3) “Affordable” means that monthly rents or monthly mortgage payments including taxes and insurance do not exceed [thirty (30)] percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (17), subsection (18), or subsection (22). However, it is not the intent to limit an individual’s ability to devote more than [thirty (30)] percent of his income for housing.

(4) “Agency” means the [state housing finance agency] created under [insert reference to appropriate section of state code].

(5) “Award” means a loan, grant, or subsidy funded wholly or partially by the local housing distribution.

(6) “Department” means the [state department of community affairs].

(7) “Eligible housing” means any real and personal property located within the county or the eligible municipality which is designed and intended for the primary purpose of providing decent, safe, and sanitary residential units that are designed to meet the standards of [insert appropriate section of state code] for homeownership or rental for eligible persons as designated by each county or eligible municipality participating in the local housing assistance program.

(8) “Eligible municipality” means a municipality that is eligible for federal community development block grants as an entitlement community identified in [insert reference to appropriate section of state code].

(9) “Eligible person” means one or more natural persons or a family determined by the county or eligible municipality to be of very low income, low income, or moderate income according to the adjusted gross income of the resident with adjustment made for family size.
(10) "Eligible sponsor" means a person or a private or public for-profit or not-for-profit entity that applies for a loan under the local housing assistance program for the purpose of providing eligible housing for eligible persons.

(11) "Grant" means a distribution of a portion of a local housing distribution to an eligible sponsor or eligible person to partially assist in the construction or rehabilitation of eligible housing or to provide the cost of tenant or ownership qualifications.

(12) "Loan" means a pledge of the local housing distribution moneys to an eligible sponsor or eligible person to partially finance the construction or rehabilitation of eligible housing.

(13) "Local housing assistance plan" means a concise description of the local housing assistance program adopted by local government ordinance with an explanation of the way in which the program meets the requirements of [insert reference to appropriate section of state code].

(14) "Local housing assistance program" means the housing construction, rehabilitation, repair, and finance program implemented by a participating county or eligible municipality with the local housing distribution or other funds deposited into the local housing assistance trust fund.

(15) "Local housing distributions" means the proceeds of the taxes collected under [insert reference to appropriate section of state code] deposited into the [local government housing trust fund] and distributed to counties and eligible municipalities participating in the State Housing Initiatives Partnership Program pursuant to Section 5 of this act.

(16) "Local housing partnership" means the implementation of the local housing assistance program in a manner that involves the applicable local government, lending institutions, housing developers, community-based housing and service organizations, and providers of professional services relating to affordable housing. The term includes initiatives to provide support services for housing program beneficiaries such as training to prepare persons for the responsibility of homeownership, counseling of tenants, and the establishing of support services such as day care, health care, and transportation.

(17) "Low-income person" means one or more natural persons or a family, not including students, that has a total annual adjusted gross household income that does not exceed [eighty (80)] percent of the median annual adjusted gross income for households within the state or [eighty (80)] percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county, whichever amount is greater. With respect to rental units, the low-income person’s annual income at the time of initial occupancy may not exceed [eighty (80)] percent of the state’s median income adjusted for family size. While occupying the rental unit, a low-income person’s annual income may increase to an amount not to exceed [one hundred forty (140)] percent of [eighty (80)] percent of the state’s median income adjusted for family size.
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(18) "Moderate-income person" means one or more natural persons or a family, not including students, that has a total annual adjusted gross household income that is less than [one hundred twenty (120)] percent of the median annual adjusted gross income for households within the state or [one hundred twenty (120)] percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county, whichever is greater. With respect to rental units, the moderate-income person’s annual income at the time of initial occupancy may not exceed [one hundred twenty (120)] percent of the state’s median income adjusted for family size. While occupying the rental unit, a moderate-income person’s annual income may increase to an amount not to exceed [one hundred forty (140)] percent of [one hundred twenty (120)] percent of the state’s median income adjusted for family size.

(19) "Personal property" means major appliances, including a freestanding refrigerator or stove, to be identified on the encumbering documents.

(20) "Population" means the latest official state estimate of population certified pursuant to [insert reference to appropriate section of state code] prior to the beginning of the fiscal year.

(21) "Student" means a person not living with the person’s parent or guardian who is eligible to be claimed by the person’s parent or guardian as a dependent under the Federal Income Tax Code and who is enrolled at least half time in a secondary school, vocational-technical center, community college, or university. The term does not include a person participating in a job training program approved by the county or the eligible municipality.

(22) "Very low-income person" means one or more natural persons or a family, not including students, that has a total annual adjusted gross household income that does not exceed [fifty (50)] percent of the median annual adjusted gross income for households within the state or [fifty (50)] percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county, whichever is greater. With respect to rental units, the very low-income person’s annual income at the time of initial occupancy may not exceed [fifty (50)] percent of the state’s median income adjusted for family size. While occupying the rental unit, a very low-income person’s annual income may increase to an amount not to exceed [one hundred forty (140)] percent of [fifty (50)] percent of the state’s median income adjusted for family size.

Section 4. [State Housing Initiatives Partnership Program.]

(a) The State Housing Initiatives Partnership Program is created for the purpose of providing funds to local governments as an incentive for the creation of partnerships to produce and preserve affordable housing.

(b)(1) To be eligible to receive funds under the program, a county or eligible municipality must:
State Housing Initiatives Partnership

(i) Submit to the [agency] and the [department] its local housing assistance plan describing the local housing assistance program established pursuant to Section 6 of this act; and

(ii) Within [twelve (12)] months after establishing, by ordinance, the local housing assistance program, submit to the [agency] and the [department] its affordable housing incentive plan pursuant to Section 7 of this act.

(2) A county or an eligible municipality seeking approval to receive its share of the local housing distribution must adopt an ordinance containing the following provisions:

(i) Creation of an affordable housing assistance trust fund.

(ii) Establishment of a local housing assistance program to be implemented by a local housing partnership.

(iii) Designation of the responsibility for the implementation and administration of the local housing assistance program. Such ordinance may also provide for the contracting of all or part of the administrative or other functions of the program to a third person or entity.

(iv) Creation of the affordable housing advisory committee as provided in Section 7 of this act. The ordinance must not take effect until at least [thirty (30)] days after the date of formal adoption.

(c) The governing board of the county or of an eligible municipality must submit to the [agency] and the [department] by certified mail [two (2)] copies of its local housing assistance plan. The plan must include a copy of the ordinance and such other information as the [agency] requires by rule; however, information to be included in the plan is intended to demonstrate consistency with the requirements of this program without posing an undue burden on the local government. Plans shall be reviewed by a committee composed of [agency] and [department] staff as established by [agency] rule, in consultation with the [department]. Within [thirty (30)] days after receiving a plan, the review committee shall review the plan and either approve it or identify inconsistencies with the requirements of the program. The [agency] and the [department] shall assist a local government in revising its plan if it initially proves to be inconsistent with program requirements. A plan that is revised by the local government to achieve consistency with the program shall be reviewed within [thirty (30)] days after submission. A local government may twice revise and resubmit its plan during any state fiscal year. The deadlines for submitting original and revised plans shall be established by [agency] rule. The legislature intends that approval of plans be expedited to ensure that the production of needed housing and the related creation of jobs occur as quickly as possible. After being approved for funding, a local government may revise its local housing assistance program without seeking further approval if the program as revised complies with the requirements for such programs.

(d) Moneys in the Local Government Housing Trust Fund shall be distributed by the [agency] to each approved county and eligible municipality within the county as provided in Section 5 of this act. Distributions shall be allocated to the participating census tracts and eligible municipalities within the county according to an
interlocal agreement between the county governing authority and the governing body of the eligible municipality or, if there is no interlocal agreement, according to population. The portion for each eligible municipality is computed by multiplying the total moneys earmarked for a county by a fraction, the numerator of which is the population of the eligible municipality and the denominator of which is the total population of the county. The remaining revenues shall be distributed to the governing body of the county.

(e) Local governments are encouraged to make the most efficient use of their resources by cooperating to provide affordable housing assistance. Local governments may enter into an interlocal agreement for the purpose of establishing a joint local housing assistance program subject to the requirements of this act. The local housing distributions for such local governments shall be directly disbursed on a monthly basis to each local government to be administered in conformity with the interlocal agreement providing for a joint local housing assistance program.

(f) The moneys that otherwise would be distributed pursuant to Section 5 of this act to a local government that does not meet the program’s requirements for receipt of such distributions shall remain in the Local Housing Trust Fund to be used by the [agency] to administer the local government housing program pursuant to Section 8 of this act.

(g) A county or an eligible municipality must expend its portion of the local housing distribution only to:

(1) Implement a local housing assistance program.
(2) Supplement funds available to the [agency] to provide enhanced funding of state housing programs within the county or the eligible municipality.
(3) Provide the local matching share of federal affordable housing grants or programs.
(4) Fund emergency repairs by existing service providers under weatherization assistance programs pursuant to [insert reference to appropriate section of state code.]

A county or an eligible municipality may not expend its portion of the local housing distribution to provide rent subsidies.

(h) Funds distributed under this program may not be pledged to pay the debt service on any bonds.

(i) The [agency] may adopt rules necessary to implement this act.

Section 5. [Local Housing Distributions.]

(a) Distributions calculated in this section shall be disbursed on a monthly basis by the [agency] beginning the [first] day of the month after program approval pursuant to Section 4 of this act. Each county’s share of the funds to be distributed from the portion of the funds in the Local Government Housing Trust Fund received pursuant to [insert reference to appropriate section of state code] shall be calculated by the [agency] for each fiscal year as follows:
amount for each fiscal year.

(2) Each county other than a county that has implemented the provisions of [insert reference to appropriate section of state code] may receive an additional share calculated as follows:

(i) Multiply each county’s percentage of the total state population excluding the population of any county that has implemented the provisions of [insert reference to appropriate section of state code] by the total funds to be distributed.

(ii) If the result in subparagraph (i) is less than the guaranteed amount as determined in subsection (c), that county’s additional share shall be zero.

(iii) For each county in which the result in subparagraph (i) is greater than the guaranteed amount as determined in subsection (c), the amount calculated in subparagraph (i) shall be reduced by the guaranteed amount. The result for each such county shall be expressed as a percentage of the amounts so determined for all counties. Each such county shall receive an additional share equal to such percentage multiplied by the total funds received by the Local Government Housing Trust Fund pursuant to [insert reference to appropriate section of state code] reduced by the guaranteed amount paid to all counties.

(b) Effective [insert date], distributions calculated in this section shall be disbursed on a monthly basis by the [agency] beginning the [first day of the month] after program approval pursuant to [insert reference to appropriate section of state code]. Each county’s share of the funds to be distributed from the portion of the funds in the Local Government Housing Trust Fund received pursuant to [insert reference to appropriate section of state code] shall be calculated by the [agency] for each fiscal year as follows:

(1) Each county shall receive the guaranteed amount for each fiscal year.

(2) Each county may receive an additional share calculated as follows:

(i) Multiply each county’s percentage of the total state population, by the total funds to be distributed.

(ii) If the result in subparagraph (i) is less than the guaranteed amount as determined in subsection (c), that county’s additional share shall be zero.

(iii) For each county in which the result in subparagraph (i) is greater than the guaranteed amount, the amount calculated in subparagraph (i) shall be reduced by the guaranteed amount. The result for each such county shall be expressed as a percentage of the amounts so determined for all counties. Each such county shall receive an additional share equal to this percentage multiplied by the total funds received by the Local Government Housing Trust Fund pursuant to [insert reference to appropriate section of state code] as reduced by the guaranteed amount paid to all counties.

(c) Calculation of guaranteed amounts:

(1) The guaranteed amount under subsection (a) shall be calculated for each fiscal year by multiplying [two hundred fifty thousand (250,000)] dollars by a fraction, the numerator of which is the amount of funds distributed to the Local Government Housing Trust Fund pursuant to [insert reference to appropriate section of state code] and the denominator of which is the total amount of funds distributed to the Local Government Housing Trust Fund pursuant to [insert reference to appropriate section of state code].
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uted to the Local Government Housing Trust Fund pursuant to [insert reference to appropriate section of state code]. For fiscal year [insert year], the guaranteed amount in [insert reference to appropriate section of state code] shall be [two hundred fifty thousand (250,000)] dollars.

(2) The guaranteed amount under subsection (b) shall be calculated for each fiscal year, beginning in fiscal year [insert year], by multiplying [two hundred fifty thousand (250,000)] dollars by a fraction, the numerator of which is the amount of funds distributed to the Local Government Housing Trust Fund pursuant to [insert reference to appropriate section of state code] and the denominator of which is the total amount of funds distributed to the Local Government Housing Trust Fund pursuant to [insert reference to appropriate section of state code].

(d) Funds distributed pursuant to this section may not be pledged to pay debt service on any bonds.

Section 6. [Local Housing Assistance Programs.]

(a) Each eligible municipality participating in the State Housing Initiatives Partnership Program shall establish a local housing assistance program created to make affordable residential units available to persons of very low income, low income, or moderate income and to persons who have special housing needs, including, but not limited to, homeless people and migrant farmworkers. The programs are intended to increase the availability of affordable residential units by combining local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce the cost of housing.

(b) Each local housing assistance program is governed by the following criteria and administrative procedures:

(1) The county or eligible municipality or its administrative representative shall advertise the availability of a housing assistance program in a newspaper of general circulation and periodicals serving ethnic and diverse neighborhoods, at least [thirty (30)] days before the beginning of the application period.

(2) The county or the eligible municipality shall adopt a maximum award schedule or system of amounts that is commensurate with the intent of its local housing assistance program and this act.

(3) In accordance with the provisions of [insert reference to appropriate section of state code], it is unlawful to discriminate on the basis of race, creed, religion, color, age, sex, marital status, familial status, national origin, or handicap in the loan application process for eligible housing.

(4) As a condition of receipt of an award, the eligible sponsor or eligible person must contractually commit to comply with the affordable housing criteria provided under this act applicable to the affordable housing objective of the award. The program criteria adopted by the county or eligible municipality must prescribe the contractual obligation required to ensure compliance with award conditions.

(c) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:
(1) At least [sixty-five (65)] percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for homeownership for eligible persons.

(2) At least [seventy-five (75)] percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for construction, rehabilitation, or emergency repair of affordable housing.

(3) The sales price of new or existing eligible housing may not exceed [ninety (90)] percent of the median area purchase price in the area where the eligible housing is located, as established by the United States Department of Treasury in accordance with s. 3(b)(2) of the United States Housing Act of 1937.

(4) All units constructed, rehabilitated, or otherwise assisted with the funds provided from the local housing assistance program must be occupied by very low-income persons, low-income persons, and moderate-income persons. At least [thirty (30)] percent must be occupied by very low-income persons and at least an additional [thirty (30)] percent by low-income persons.

(5) Loans shall be provided for periods not exceeding [thirty (30)] years, except for deferred payment loans or loans that extend beyond [thirty (30)] years which continue to serve eligible persons.

(6) Eligible rental housing constructed, rehabilitated, or otherwise assisted from the housing assistance program moneys must be reserved for eligible persons for [fifteen (15)] years or the term of the assistance, whichever period is longer. Eligible sponsors that offer rental housing for sale before [fifteen (15)] years or that have remaining mortgages funded under this program must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible recipients.

(7) Eligible owner-occupied housing constructed, rehabilitated, or otherwise assisted from proceeds provided from the housing assistance program shall be subject to the recapture provisions of the mortgage revenue bond program contained in s.143(m) of the Internal Revenue Code of 1986.

(8) The total amount of monthly mortgage payments or the amount of monthly rent charged by the eligible sponsor or his designee must be made affordable.

(9) The cost per unit and the maximum cost per unit for eligible housing benefiting from awards made pursuant to this section must be established by resolution.

(10) Each county, eligible municipality, or entity formed through interlocal agreement to implement a local housing assistance program must develop a qualification system for applications for awards consistent with the intent of its local housing assistance program and [insert reference to appropriate section of state code].

(11) The staff or entity that has administrative authority for a local housing assistance program assisting rental developments shall annually monitor and determine tenant eligibility and the amount of subsidy.

If both an award under the local housing assistance program and federal low-income housing tax credits are used to assist a project and there is a conflict between the terms of the award and the terms of the tax credits, the terms of the award shall prevail.
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tween the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (1) and (4) of this subsection.

(d) Each county or eligible municipality receiving local housing distribution monies shall establish and maintain a local housing assistance trust fund. All moneys of a county or an eligible municipality received from its share of the local housing distribution and other funds received or budgeted to provide the local housing assistance program shall be deposited into the trust fund. Expenditures other than for the administration and implementation of the local housing assistance program may not be made from the trust fund.

(e) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance program. The cost of administering the program may not exceed [five (5)] percent of the local housing distribution monies deposited into the trust fund. A county or an eligible municipality may not exceed the [five (5)] percent limitation on administrative costs, unless its governing body finds, by resolution, that [five (5)] percent of the local housing distribution is insufficient to adequately pay the necessary costs of administering the local housing assistance program. The cost of administering the program may not exceed [ten (10)] percent of the local housing distribution deposited into the trust fund.

(f) Pursuant to [insert reference to appropriate section of state code], the [department] shall provide technical assistance to local governments regarding the creation of partnerships, the design of housing assistance programs, the implementation of incentive plans, and the provision of support services. The [department] shall monitor the activities of local governments to determine compliance with program requirements and shall collect data on the operation and achievements of housing partnerships.

(g) Each county or eligible municipality shall submit to the [department] and to the [agency] by [insert date] of each year a report of its affordable housing programs and accomplishments. The report must include, but is not limited to:

1. The number of people served by income, age, family size, and race and data regarding any special needs populations such as farmworkers, rural residents, and the elderly.
2. The number of units and the average cost of producing units under each program.
3. The average sales price of a single-family unit and the amount of rent charged for a rental unit based on unit size.
4. The number of mortgages made and the rate of default.
5. A description of the implementation of the affordable housing incentive plan and the resulting reduction in housing costs.
(6) A concise description of the support services that are available to the residents of affordable housing provided by local programs.

(7) Such other data or affordable housing accomplishments considered significant by the reporting county or eligible municipality.

(h) The report shall be made available by the local government for public inspection. Members of the public may submit written comments on the report to the [department].

(i) The [agency] shall review the report of each county or eligible municipality and any written comments from the public and transmit any comments concerning the effectiveness of local programs to the [department]. The [department] shall include a summary of local housing activities and public comment in the [annual] housing report required by [insert reference to appropriate section of state code].

(j) If, as a result of the review of such report or at any other time, the [agency] or the [department] determines that a county or eligible municipality may have established a pattern of violation of the criteria for a local housing assistance program established under this act or that an eligible sponsor or eligible person has violated the applicable award conditions, the [agency] or [department] shall report such pattern of violation of criteria or violation of award conditions to the [governor] and the [auditor general].

Section 7. [Adoption of Affordable Housing Incentive Plans; Committees.]

(a) Each county or eligible municipality participating in the State Housing Initiatives Partnership Program must adopt an affordable housing incentive plan within [twelve (12)] months after the date of adoption of the ordinance by the county or eligible municipality establishing a local housing assistance program.

(b) The governing board of a county or an eligible municipality shall appoint the members of the affordable housing advisory committee by resolution. Pursuant to the terms of any interlocal agreement, a county and an eligible municipality may create and jointly appoint an advisory committee to prepare a joint plan. The ordinance adopted pursuant to Section 6 of this act which creates the advisory committee or the resolution appointing the advisory committee members must provide for [nine (9)] committee members and their terms. The committee must include:

[(1) [One (1)] citizen who is actively engaged in the residential home building industry.

(2) [One (1)] citizen who is actively engaged in the banking or mortgage banking industry.

(3) [One (1)] citizen who is representative of those areas of labor engaged in home building.

(4) [One (1)] citizen who is designated as an advocate for low-income persons.

(5) [One (1)] citizen who is a provider of affordable housing.

(6) [One (1)] citizen who is a real estate professional.]

(c) All meetings of the advisory committee are public meetings, and all committee records are public records. Staff, administrative, and facility support to the ad-
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visory committee shall be provided by the appointing county or eligible municipality.

(d) The resolution creating and appointing the advisory committee must define affordable housing as applicable to the county and eligible municipality in a way that is consistent with the adopted local comprehensive plan. The advisory committee shall review the established policies and procedures, ordinances, land development regulations, and adopted local comprehensive plan of the appointing local government and shall recommend specific initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. Such recommendations may include the modification or repeal of existing policies, procedures, ordinances, regulations, or plan provisions; the creation of exceptions applicable to affordable housing; or the adoption of new policies, procedures, regulations, ordinances, or plan provisions. At a minimum, each advisory committee shall make recommendations on affordable housing incentives in the following areas:

1. The affordable housing definition in the appointing resolution.
2. The expedited processing of permits for affordable housing projects.
3. The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment.
4. The allowance of increased density levels.
5. The reservation of infrastructure capacity for housing for very low-income persons and low-income persons.
6. The transfer of development rights as a financing mechanism for housing for very low-income persons and low-income persons.
7. The reduction of parking and setback requirements.
8. The allowance of zero-lot-line configurations.
9. The modification of sidewalk and street requirements.
10. The establishment of a process by which a local government considers, before adoption, policies, procedures, ordinances, regulations, or plan provisions that have a significant impact on the cost of housing.

The advisory committee recommendations must also include other affordable housing incentives identified by the advisory committee. To the maximum extent feasible, the approved affordable housing incentive recommendations submitted to the governing board of the appointing county or eligible municipality must quantify the affordable housing cost reduction anticipated from implementing the specific recommendation.

(e) The approval by the advisory committee of its affordable housing incentive recommendations must be made by affirmative vote of a majority of the membership of the advisory committee taken at a public hearing. Notice of the time, date, and place of the public hearing of the advisory committee to adopt final affordable housing incentive recommendations must be published in a newspaper of general paid circulation in the county. Such notice must contain a short and concise summary of the affordable housing initiative recommendations to be considered by the advisory committee. The notice must state the public place where a copy of the recommendations is available for public inspection.
tentative advisory committee recommendations can be obtained by interested persons.

(f) Within [ninety (90)] days after the date of receipt of the affordable housing incentive recommendations from the advisory committee, the governing body of the appointing local government shall adopt an affordable housing incentive plan. Such plan must consist of the adoption of specific initiatives to encourage or facilitate affordable housing and a schedule for implementation and must include, at a minimum, a schedule for implementation of expedited permit processing for affordable housing projects and a process for review of local policies, ordinances, regulations, and plan provisions that significantly impact the cost of housing.

(g) The governing board of the county or the eligible municipality shall notify the [agency] by certified mail of its adoption of an affordable housing incentive plan. The notice must include a copy of the approved plan.

(1) If the [agency] fails to receive timely the approved affordable housing incentive plan, a notice of termination of its share of the local housing distribution shall be sent by certified mail by the [agency] to the affected county or eligible municipality. The notice of termination must specify a date of termination of the funding if the affected county or eligible municipality has not adopted an affordable housing incentive plan. If the county or the eligible municipality has not adopted an affordable housing incentive plan by the termination date specified in the notice of termination, the local distribution share terminates; and any uncommitted local distribution funds held by the affected county or eligible municipality in its local housing assistance trust fund shall be transferred to the State Housing Trust Fund to the credit of the [agency] to administer the local government housing program pursuant to Section 8 of this act.

(2) If a county fails to adopt timely an affordable housing incentive plan but an eligible municipality within the county does timely adopt a plan, the [agency], after receipt of a notice of termination, shall thereafter distribute directly to the participating eligible municipality its share calculated in the manner provided in [insert reference to appropriate section of state code].

(3) Any county or eligible municipality whose local distribution share has been terminated may subsequently elect to receive directly its local distribution share by adopting an affordable housing incentive plan in the manner and according to the procedure provided in Section 7 of this act and by adopting an ordinance in the manner required in Section 4 of this act.

Section 8. [State Administration of Remaining Local Housing Distribution Funds.]

(a) With that portion of the documentary stamp tax moneys remaining in the Local Government Housing Trust Fund pursuant to Section 4 (f), the [agency] shall administer a local government housing program for counties, eligible municipalities, and eligible sponsors in conformity with the criteria prescribed in Section 6 of this act.

(b) The [agency] shall, in cooperation with the [department], provide by rule for a scoring system for evaluating applications submitted under the program. The
Suggested State Legislation

scoring system must include the following factors:

1. The existence of a local housing partnership.

2. For a county or eligible municipality, the extent to which the local government applicant has adopted, in land development regulations, incentives to encourage or facilitate affordable housing.

3. To extent to which the requested project will provide eligible housing.

4. The amount of project funds other than the requested moneys.

5. The provision of or assistance in securing support services for housing program beneficiaries, which may include:
   - Counseling to prepare persons for homeownership, which may address personal budgeting, home inspection and maintenance, the fundamentals of home mortgages and insurance, and other pertinent topics.
   - Counseling to assist tenants in improving their economic well-being, which may address educational opportunities, job placement, management of personal finances, and related concerns.
   - Providing social services, including day care, health care, and transportation.

6. Sponsor’s agreement to reserve the units for persons or families who have incomes below [fifty (50)] percent of the state or local median income, whichever is higher, for a time period that exceeds the minimum required by federal law or the provisions of this act.

7. Sponsor’s agreement to reserve more than:
   - [Twenty (20)] percent of the units in the project for persons or families who have incomes that do not exceed [fifty (50)] percent of the state median income or local median income, whichever is higher; or
   - [Forty (40)] percent of the units in the project for persons or families who have incomes that do not exceed [sixty (60)] percent of the state median income or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

The rule must provide for the establishment of a review committee composed of [agency] and [department] staff members. [Department] staff members shall be appointed by the [secretary of the department].

The rule must provide measures to be applied if there is a documented failure to perform in accordance with the award contract.

At least [sixty (60)] days before the application deadline, the [agency] must publish a notice of fund availability in a publication of general circulation throughout the state.

Section 9. [Local Government Housing Trust Fund.] There is created in the State Treasury the Local Government Housing Trust Fund, which shall be administered by the [agency] according to the provisions of this act. There shall be deposited into the fund a portion of the documentary stamp tax revenues as provided in [insert reference to appropriate section of state code], moneys received from any other source for the purposes of this act, and all proceeds derived from the use of such funds.
moneys. Moneys in the trust fund that are not currently needed for the purposes of the programs administered pursuant to this act shall be deposited with the [treasurer] to the credit of the trust fund and may be invested as provided by law. The interest received on any such investment shall be credited to the trust fund.

Section 10. [Severability Clause.] [Insert severability clause.]

Section 11. [Effective Date.] [Insert effective date.]
Downed Animals Act

This act, based on 1993 Illinois legislation, defines a downed animal as one inca-pable of walking without assistance. It prohibits the sending of a downed animal to a stockyard, auction, or other facility. It requires the humane euthanasia of such an animal at the owner’s expense. If an animal becomes downed in transit, it is the responsibility of the carrier to provide for humane euthanasia. Violations of the act are increased from a petty offense to a misdemeanor. This act amends the state’s Humane Care for Animals Act.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the Downed Animals Act.

Section 2. [Definition.] As used in this act, “downed animal” means one inca-pable of walking without assistance.

Section 3. [Prohibition.] No downed animal shall be sent to a stockyard, auction, or other facility where its impaired mobility may result in suffering. An injured animal may be sent directly to a slaughter facility.

Section 4. [Disposition; Transport of Downed Animals.]
(a) A downed animal sent to a stockyard, auction, or other facility in violation of this section shall be humanely euthanized, the disposition of such animal shall be the responsibility of the owner, and the owner shall be liable for any expense incurred.

If an animal becomes downed in transit it shall be the responsibility of the carrier.

(b) A downed animal shall not be transported unless individually segregated.

Section 5. [Effective Date.] [Insert effective date.]
State Vital Statistics Act
(Statement of Availability)

The first version of the State Vital Statistics Act was developed in 1907 and has been revised periodically through a cooperative process between the federal government (currently the National Center for Health Statistics) and state vital statistics offices. The act, which concerns the reporting of national vital statistics such as births, deaths and other population data, was designed for state registrars of vital statistics and state legislators considering revision of state vital statistics acts. Volume 38 of Suggested State Legislation (1979) included the 1977 revision of the vital statistics act drafted by the National Center for Health Statistics of the U.S. Department of Health, Education and Welfare.

In 1992, the State Vital Statistics Act and Regulations was revised again by the National Center for Health Statistics under the U.S. Department of Health and Human Services. On September 16, 1993, the revision was approved by the Clinton administration’s newly appointed assistant secretary for health.

This latest draft establishes standard reporting requirements and procedures for registering vital events, allows for electronic filing of records, and revises the definitions of “live births,” “fetal death,” and “induced termination of pregnancy.” The revision further provides that persons in charge of institutions may certify births instead of requiring an attending physician to do so. Provisions regarding fetal death were altered to use weight as the principal means of determining whether a fetal death should be reported. Requirements for filing delayed certificates of birth were changed to reduce the possibility that such certificates could be used to establish false identities. To protect the privacy of decedents and surviving family members, language was added to specify the situations under which cause-of-death information would be included on certified copies of a death certificate.

The draft was amended to indicate that certain information is not subject to subpoena, including medical and health information on birth certificates and information collected for statistical purposes on marriage and divorce records. A “hold harmless” clause was added to the act to protect persons or institutions who are required to provide information in vital records (physicians, medical examiners, funeral directors, hospitals, etc.) from being subject to damages for the information they provide.

Readers wishing to acquire a copy of the 1992 draft act may contact the Registration Methods Branch, Division of Vital Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, 6525 Belcrest Road, Room 840, Hyattsville, Maryland 20782.
Federal election laws cover one-tenth of one percent of the persons who run for public office in the United States. The remaining officials, from governor to local government officials, are subject to state regulations. Campaign finance reform is receiving increased attention at the state level.

Readers should note that the 1992 *Suggested State Legislation* volume included a statement summarizing *Campaign Finance, Ethics and Lobbying Regulation*, an act drafted by the Council on Governmental Ethics Laws (COGEL). The draft was the result of a three-year effort by COGEL and was completed in 1990. The draft act includes limitations on aggregate campaign contributions by individuals, political committees and political parties. There are also restrictions on loan repayments to a candidate or a candidate’s immediate family after an election. Quarterly reporting is generally required, except that a monthly reporting requirement by candidates receiving public funding is imposed. A blanket itemization threshold of $100 was established for reporting purposes.

### Limiting Contributions

Campaign contribution limits are among the most popular tools of campaign finance regulation. *Arizona* legislation (SB 1039, 1993) requires a candidate who exceeds the contribution limit on personal monies to give written notice within 24 hours to all other candidates for the same office and to the filing officer of the same jurisdiction. The other candidates may have a temporary lifting of the limit until they can match the higher amount. The law also allows those in compliance to receive an additional $500 for each day the notice is delinquent.

*Arkansas* prohibits candidates for governor and other statewide constitutional offices, the general assembly or an exploratory committee for any candidacy from accepting campaign contributions during the period beginning 30 days before and ending 30 days after any regular session of the general assembly or during any special session (Acts 818 and 1195, 1993). It also makes it unlawful to promise a contribution to elected officials, candidates and exploratory committees during the same period.

*Iowa* bans contributions between candidate committees and amends the definition of “contribution” to exempt candidate expenditures made solely for the purpose of attending an event to promote the candidacy of another (Ch. 1228, 1992). The act allows nonprofit corporations to expend contributions to support or oppose ballot measures, but requires that expenditures be disclosed in the manner provided for a permanent organization temporarily engaged in political activity.

*Kentucky* prohibits cash contributions of more than $50 and prohibits registered lobbyists from making contributions to members of the general assembly.
contributions of $100 or more and bans contributions by federally registered out-of-state political action committees (PACs). The law limits a candidate’s total PAC contributions to 35 percent of receipts or $5,000, whichever is larger. Leftover PAC money carried into the next election would not count against the limit.

**Minnesota** requires contributions from all subsidiary and “independent” political committees to be attributed to the parent committee and counted toward the parent committee’s contribution limit (Ch. 318, HF 201, 1993). Every campaign that solicits aggregate contributions of more than $5,000 is required to file with the state a list of contributors, their contributions, and the recipients of the contributions, at least 10 days before an election. The act reduces contribution limits for the offices of governor, attorney general, secretary of state, auditor, treasurer, senator and representative. Contributions from PACs, lobbyists, and large givers are limited to no more than 20 percent of the expenditure limit for the office sought.

**New Jersey** limits individual and corporate contributions to $1,500 per election and PAC contributions to $5,000 per election in municipal, county and state election campaigns (Ch. 65, AB 100, 1993). The act requires donors of $200 or more to disclose their occupations and employers. Candidates who receive illegal or excessive contributions are penalized by fines of three times the amount of the excess contribution.

**New Mexico** prohibits anonymous contributions over $100 and limits the total of anonymous contributions to $2,000 for statewide elections and $500 for all others (Ch. 46, HB 105, 1993). The act requires the disclosure of the identity of all contributors and the occupation or type of business of contributors of $250 or more and of anyone who delivers at one time either five or more separate contributions or contributions that together total more than $500. It also prohibits the passing of contributions in one name when it is known the money is being given by someone else.

**Pennsylvania** (Act 25, 1993) limits individual contributions in excess of: $500 per election for the state House of Representatives; $750 per election for the state Senate; or $1,000 per election for any candidate for statewide office. The act also limits PAC contributions in excess of: $2,500 per election for the state House of Representatives; $3,750 per election for state Senate; or $5,000 per election for any candidate for statewide office.

**Virginia** requires the state board of elections to establish and implement a system of cataloging contribution and expenditure reports filed with it and to report violations (Ch. 393, 1993). Local boards are required to retain reports for one year after a filing of a final report or until the next general election for the office, whichever is later.

**Washington** has established contribution limits of $500 for state legislative candidates and $1,000 for candidates for statewide offices (Initiative Measure 134, approved November 3, 1992). The law applies to contributions from PACs, corporations, labor unions, and individuals and limits contributions to political parties.
Suggested State Legislation

Wide elected officials may not accept contributions from 30 days before until 30 days after a regular session of the legislature. Out-of-state corporations or labor unions having fewer than 10 members in the state may not make campaign contributions. It also prohibits voluntary payroll deductions by state workers to be contributed to political campaigns. Candidates may lend unlimited funds to their own campaigns, but the law limits the amount they can be repaid from campaign contributions to $3,000.

Disclosure

Many states are trying to strengthen their campaign finance disclosure laws. **Arkansas** (Act 1195, 1993) mandates equal reporting thresholds for state, district, county and municipal candidate committees. **Minnesota** requires lobbyists and PACs that solicit contributions of more than $5,000 a year for candidates and legislative caucuses to file special reports (Ch. 318, HF 201, 1993). A **New Jersey** statute (Ch. 65, AB 100, 1993) establishes a PAC registration requirement that calls for the name of the PAC, a descriptive statement giving the name, address, occupation and employer of each person organizing or controlling the PAC and the general category of interests the PAC represents. It also calls for a 48-hour requirement for last-minute expenditures by a PAC or a political committee. **New Mexico** (Ch. 46, HB 105, 1993) requires more pre-election reporting in election years and annual reporting in non-election years. **North Dakota** legislation (SB 2470, 1993) requires various committees to file on the same dates. **Rhode Island** requires state vendors who provide goods or services worth more than $5,000 to report contributions of $250 or more to candidates and political parties (H. 6543, 1993). **South Dakota** requires that certain committees report all PAC contributions by eliminating the threshold for itemization (HB 1008, 1993).

Technology and Disclosure

The use of certain technologies for disclosure is a new trend. For example, **Idaho** (HB 165, 1993) allows reporting by fax machine, and **Wyoming** (HB 14, 1993) allows reports to be filed by fax provided an original copy is mailed the same day a transmission is made.

Initiative, Referendum and Recall

The initiative, referendum and recall process has led some states to consider disclosure legislation applying to those types of elections. **Arizona** law extends the initiative, ballot question and referendum financial disclosure statutes to committees operating at the district, county and municipal levels as well as the state level (SB 1039, 1993). The statute lowers reporting thresholds and expands the definition of committees.
oppose an initiative or referendum question to include: the total amount expended to obtain petition signatures, the number of people paid, the rate paid per signature and the period of time during which new signatures were obtained (HB 99, 1993).

Administration

Some states are restructuring the processes involved in the regulation of campaign financing. Iowa has increased the contribution limit for a political party giving to a candidate to 10 times the limit for other categories of contributors (Ch. 142, 1993). The act also raises the candidate filing threshold from $200 to $500. New Jersey has enacted legislation that raises the reporting threshold for contributor disclosure from more than $100 to more than $200 and for last minute contributors on 48-hour notices from more than $250 to more than $500 (Ch. 65, AB 100, 1993). These and other thresholds in the act are to be adjusted for inflation every four years.

Surplus Funds

The use of surplus campaign funds is a major problem for many states. Arkansas requires candidates to disclose the option used to dispose of surplus campaign funds in the final campaign report (Act 1243, 1993). Kentucky limits the use of surplus campaign money to future campaign purposes (Ch. 61(A), SB 7, 1993). Minnesota prohibits the conversion of money collected for political purposes to personal use by the candidate (Ch. 318, HF 201, 1993). New Hampshire allows a candidate to use surplus campaign contributions after a general or special election for future fund-raising activities and any other politically related activity sponsored by the candidate (Ch. 664, 1992). The act also forbids the use of surplus campaign funds for personal use. New Mexico specifies lawful uses for surplus campaign funds and prohibits use of campaign money for personal or legislative session living expenses (Ch. 46, HB 105, 1993). Washington prohibits the transfer of surplus campaign funds to other candidate committees or political parties (Initiative Measure 134, approved 1992).

Other Laws

Arkansas legislation (Act 1196, 1993) allows a former candidate with a campaign debt to raise funds to retire the debt. Kentucky legislation (Ch. 61(A), SB 7, 1993) prohibits legislators or legislative leaders from forming their own PACs. New Jersey legislation (Ch. 65, AB 100, 1993) creates four legislative leadership committees for the party leaders in both houses. These committees have the same ability to raise and spend money as do the state’s two political parties.
On-Line Legislative Information System Act

This act, based on 1993 California legislation, requires the legislative counsel, with the advice of the Assembly committee on rules and the Senate committee on rules, to make available to the public a nonprofit, cooperative public computer network containing specified information concerning bills and bill histories, legislative analyses, veto messages, the legislative calendar, the proceedings of each house of the legislature and their committees, statutory enactments and the state constitution.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the On-line Legislative Information System Act.

Section 2. [Legislative Findings.] The legislature finds and declares that it is now possible and feasible in this electronic age to more widely distribute legislative information by way of electronic communication in order to better inform the public of the matters pending before the legislature and its proceedings. The legislature further finds that it is desirable to make information regarding these matters and proceedings available to the citizens of this state, irrespective of where they reside, in a timely manner and for the least possible cost.

Section 3. [On-line Legislative Information System; Content Access.]
(a) The [legislative service agency] shall, with the advice of the [House and Senate rules committees], make all of the following information available to the public in electronic form:

(1) The legislative calendar, the schedule of legislative committee hearings, a list of matters pending on the floors of both houses of the legislature, and a list of the committees of the legislature and their members.

(2) The text of each bill introduced in each current legislative session, including each amended, enrolled, and chaptered form of each bill.

(3) The bill history of each bill introduced and amended in each current legislative session.

(4) The bill status of each bill introduced and amended in each current legislative session.

(5) All bill analyses prepared by legislative committees in connection with each bill in each current legislative session.
(6) All vote information concerning each bill in each current legislative session.

(7) Any veto message concerning a bill in each current legislative session.

(8) [The state code.]

(9) [The state constitution.]

(10) All statutes enacted on or after [effective date].

(b) The information identified in subsection (a) of this section shall be made available to the public by means of access by way of the largest nonproprietary, nonprofit cooperative public computer network. The information shall be made available in one or more formats and by one or more means in order to provide the greatest feasible access to the general public in this state. Any person who accesses the information may access all or any part of the information. The information may also be made available by any other means of access that would facilitate public access to the information. The information that is maintained in the legislative information system that is operated and maintained by the [legislative service agency] shall be made available in the shortest feasible time after the information is available in the information system. The information that is not maintained in the information system shall be made available in the shortest feasible time after it is available to the [legislative service agency].

(c) Any documentation that describes the electronic digital formats of the information identified in subsection (a) and is available to the public shall be made available by means of access by way of the computer network specified in subsection (b).

(d) Personal information concerning a person who accesses the information may be maintained only for the purpose of providing service to the person.

(e) No fee or other charge may be imposed by the [legislative service agency] as a condition of accessing the information that is accessible by way of the computer network specified in subsection (b).

(f) The electronic public access provided by way of the computer network specified in subsection (b) shall be in addition to other electronic or print distribution of the information.

(g) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright or other proprietary interest or entitlement of the state of [state] relative to any of the information made available pursuant to this act.

Section 4. [Effective Date.][Insert effective date.]
Federal Mandates for State Action

A Note on Enactments from the First Session of the 103rd Congress

Federal mandates for state government action have become increasingly common in recent years. During the 1980s and early 1990s, new regulations for domestic programs were established and federal preemptive power expanded while funding for federal grant programs to states was reduced.

The Committee on Suggested State Legislation approved the inclusion of this note to provide state policy makers with a continuing overview of recent federal measures requiring state legislative action or additional expenditures. In some cases, federal mandates preempt state statutes or policies. This note covers the activities of the first session (1993) of the 103rd U.S. Congress. Readers should take caution, however, in that this is an overview, and as such is not intended to serve as the primary source of information on all aspects of the federal legislation and requirements, technical and otherwise.

The 1992 volume of Suggested State Legislation (SSL) included a note on enactments from the 101st Congress (1989-90); the 1993 volume, on enactments from the first session of the 102nd Congress (1991); and the 1994 volume, a note on enactments from the second session of the 102nd Congress (1992). The Committee on Suggested State Legislation intends to continue to include mandate reviews in future volumes of SSL, not only as a mechanism for tracking major enactments, but also as an historical reference for the states.

The 103rd Congress

During the first session of the 103rd U.S. Congress, several major enactments — many of which were contained within the 1993 Federal Budget Reconciliation Act (PL 103-66) — mandated state action. Each mandate is listed here with a brief description of its impact upon state governments.

Communications

Under the Federal Budget Reconciliation Act (PL 103-66), there is no provision for preemption of state authority to levy property taxes on telecommunications companies. The act allows states that currently regulate rates to continue to do so, pending a Federal Communications Commission (FCC) review of alleged anti-competitive effects of state regulation. States that do not currently regulate rates for mobile services will be allowed to petition the FCC for the right to do so. Other forms of state regulation to protect consumers of mobile services are preserved.
Domestic Affairs

The Family and Medical Leave Act (PL 103-3, S 5, HR 1) permits employees to take up to 12 weeks of unpaid leave for the birth or adoption of a child, to care for a seriously ill child, spouse or parent, or for their own illnesses. To be eligible for leave, an employee must have worked for the employer for at least a year and have worked at least 1,250 hours in the previous 12 months. If necessary, employers may deny leave to the highest-paid 10 percent of their workers to prevent economic injury to the employer. Only employers with 50 or more employees within a 75-mile area are affected. State laws or local ordinances with more generous leave policies are not preempted under the act.

At the employer’s or employee’s option, certain types of paid leave may be substituted for unpaid leave. Employees may be required to provide 30 days advance leave notice and medical certification when the leave for a serious health condition is foreseeable. Medical certification also may be required if the employee is unable to return from leave for such a condition. An employee may take intermittent or reduced leave to reduce the usual number of work hours per day or work week. Such leave is subject to employer approval unless medically necessary.

Upon returning from leave, most employees must be restored to their original or equivalent positions with equivalent pay and benefits. Employers may deny restoration to highly compensated employees only if it is necessary to avoid severe economic injury to the workplace. For the duration of the leave, the employer must maintain the employee’s medical insurance coverage under a group health plan if the coverage would have been provided had the employee continued working.

Education

The Student Loan Reform Act (PL 103-66) requires states in which there are institutions of higher education with a student loan default rate over 20 percent to assume partial responsibility for the cost of defaults.

Fiscal Issues

The Federal Budget Reconciliation Act (PL 103-66) requires states to pay a fee for federal administration of state supplemental security benefits (or opt to send a separate check at their own expense). This will be phased in during 1994. The fee will be set at $1.67 per monthly payment in 1994, $3.33 in 1995, and $5 thereafter. Previously, states had the option of having the Social Security Administration pay beneficiaries their state supplemental security income (SSI) benefits. The act also prohibits the disclosure of federal tax return information to any state agency unless the state has entered into a contract to provide death certificate information to the U.S. Secretary of Health and Human Resources.

States also will face reduced enhanced matching rates for Aid to Families with Dependent Children (AFDC) and food stamps through the budget reconciliation.
Suggested State Legislation

As of April 1, 1994, states lost their enhanced matches for automation and fraud prevention control, and, with certain exceptions, are instead receiving a flat 50 percent administrative match. Under AFDC, exceptions are: verification of alien immigration status (100 percent federal match); management information systems (90 percent federal match); and fraud and abuse control activities (75 percent federal match). Under the food stamp program, exceptions include: verification of alien immigration status (100 percent federal match); management information systems (63 percent federal match); and fraud and abuse control activities (75 percent federal match).

**Government**

The 1993 Reform Amendments to the Hatch Act (PL 103-94, HR 20), which regulate political activities of federal employees, prohibit any elected state government official from making or transmitting to any officer or employee of a federal agency, any oral or written recommendation or statement regarding an employee or applicant. Recommendations based solely on job performance, however, are permissible.

**Health**

The Comprehensive Child Health Immunization Act (PL 103-66, S 733) requires state Medicaid programs to cover some recommended childhood vaccines and to reimburse providers for the administration of the vaccines. The act also offers grants to states to establish immunization registries to help doctors determine the immunization histories of particular children.

**Justice**

The National Child Protection Act (PL 103-209, HR 1237) requires authorized state criminal justice agencies to report child abuse crime information to (or index child abuse information in) the national criminal background check system. The U.S. Attorney General must require states, within three years of the enactment, to have a computerized criminal history file containing at least 80 percent of the child abuse crime cases in which there has been activity within the previous five years; to continue to maintain at least an 80 percent reporting rate of final case dispositions in all identifiable child abuse cases in which there has been activity within the preceding five years; and to take steps to achieve full disposition reporting, including data quality audits and periodic notices to other criminal justice agencies identifying records that lack final dispositions and requesting those dispositions. The U.S. Attorney General also must establish guidelines for state background check procedures. One year after the enactment of the measure, if a state is not in compliance with the implementation timetable established for that state, the U.S. Attorney General may reduce, by up to 10 percent, a state’s allocation for
one fiscal year under Title I of the Omnibus Crime Control and Safe Streets Act of 1968. However, some grant money may be available to states under the act.

The **International Parental Kidnapping Crime Act** (PL 103-173) makes it a federal crime for a parent to kidnap children in violation of a valid child support custody order.

**Transportation**

The **South African Democratic Transition Support Act** (PL 103-149, Sec. 4(c)(2)(A)) repeals a law that permits states and localities to enforce state or local anti-apartheid policies prohibiting the procurement of products manufactured or fabricated in South Africa without affecting federal transportation funds. The measure becomes effective at the end of fiscal year 1995.

**Voter Registration**

The **National Voter Registration Act** (PL 103-31, HR 2, S 460), also known as the "Motor Voter Act," requires that states establish procedures for voter registration in federal elections to be made simultaneously with applications for motor vehicle driver's licenses, by mail application, and through agency-based registration and agencies providing services to the disabled. These agencies include offices that provide services under several programs, including food stamps, the Women, Infants and Children (WIC) nutrition program, Medicaid, and Aid to Families with Dependent Children (AFDC). States may choose to provide registration at unemployment compensation offices.

This legislation exempts states that do not have registration requirements for voting in federal elections and states that permit registration at the polls. To qualify for the exemption, states must have enacted such a provision by March 11, 1993. The act sets requirements for the content of the application form, lists provisions for mailed registrations, and sets standards for clearing and updating voter logs. State and local governments are eligible for reduced postal rates under the act. The act takes effect January 1, 1995, in all states except those with constitutional provisions requiring separate registration for state and federal elections. Such states have an additional year to amend their constitutions. The act permits a private party to sue to enforce the law.

**Executive Orders**

On October 26, 1993, President Clinton issued Executive Order 12875 prohibiting federal departments and agencies from promulgating regulations — not required by statute — that impose mandates on state, local or tribal governments without meeting certain conditions. To issue such regulations, the federal government must provide the funds necessary to comply with the mandate, or the federal
mandate, must provide the director of the U.S. Office of Management and Budget with a description of the agency’s prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, any written communications submitted to the agency by state and local governments, and the agency’s positions supporting the need to issue the regulation contained in the mandate.

The order also requires each federal agency to review the application process for waivers of statutory and regulatory requirements in connection with programs administered by such agencies and to take steps to streamline the process. The purpose of the order is to use flexible policy approaches at the state, local and tribal level in cases where proposed waivers are consistent with applicable federal policy objectives.
Cumulative Index, 1976-1995

The following cumulative index covers volumes of Suggested State Legislation since 1976 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 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 1976 may be found in Volume 43 (1984).

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