

INITIATING PLANNING STATUTE REFORM

This Chapter discusses how to initiate planning statute reform through the state legislature, the governor, and private interest groups. It identifies several institutional mechanisms, including special study commissions composed of state legislators, independent study commissions, task forces composed of legislators and nonelected officials, private coalitions, and joint legislative study committees. The Chapter also reviews specific approaches that will help ensure the reform initiative's success (regardless of which organizational vehicle is selected). Finally, it provides three model statutes and two model executive orders that describe the structure and authority of the various institutional alternatives.

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INITIATING PLANNING LAW REFORM

STARTING THE PROCESS

How do you begin the process of revamping state laws affecting planning and the management of change? In the early years of planning in the U.S. – the period roughly between 1915 and 1930 – states adopted, in whole or in part, the *Standard City Planning Enabling Act* and *Standard State Zoning Enabling Act* drafted by an advisory committee of the U.S. Department of Commerce in the 1920s, or they copied each others' laws.

Planning statute reform began quietly in the 1960s and accelerated in the 1970s.¹ States such as Wisconsin, Connecticut, and New Mexico began to reexamine their legislation and consider new approaches. In this sophisticated political environment, states approached the assessment and drafting of legislation in a novel way. No longer did legislators simply draft a bill and place it in the hopper to await enactment. The new process called for a more formal, systematic approach for defining the procedural, substantive, and structural components of planning legislation and envisioned a broad citizen involvement.

STATES TAKE DIFFERENT APPROACHES

States undertake planning statute reform through either initiation by (1) the state legislature; (2) the governor; or (3) private interest groups. These private interest groups may be APA chapters themselves or coalitions of groups who have agreed, via a privately sponsored consensus-building process, that reform is desirable.² In addition, there is (4) the joint legislative committee, which monitors the effect of new legislation and provides ongoing responses to state agencies charged with implementing and administering the statutes. Occasionally, those initiating land-use reform will use the services of a facilitator, often connected to a state university that has a research institute in planning or public administration. This Chapter contains a variety of models and executive orders

¹See generally Fred Bosselman and David Callies, *The Quiet Revolution in Land-Use Control* (Washington: U.S.GPO, 1971); John M. DeGrove, *Land, Growth and Politics* (Chicago: APA Planners Press, 1974); Robert Linowes and Don T. Allensworth, *The States and Land Use Control* (New York: Praeger, 1975); Frank Popper, *The Politics of Land-Use Reform* (Madison, Wis.: University of Wisconsin, 1981); Nelson Rosenbaum, *Land Use and the Legislatures: The Politics of State Innovation* (Washington, D.C.: The Urban Institute, 1976); Robert G. Healy and John S. Rosenberg, *Land Use and the States*, 2d ed. (Baltimore, Md.: Johns Hopkins University Press, 1979).

²Sarah Bohlen, Mary Beth McGuire, and Stuart Meck, "Getting Started: The Process of Initiating State Planning Law Reform," in *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1*, Planning Advisory Service Report No. 462/463 (Chicago: American Planning Association, 1996), 171-183.

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intended to initiate legislative or administrative reform. The characteristics of the political leadership of the state, the state's political traditions, and the nature of the problems to be addressed all influence how reform will be approached.

(1) Legislature initiates reform. When the state legislature initiates reform, the vehicle may be a special study commission composed of state legislators. This tends to work when there is broad, bipartisan agreement on the general need for reform since the commission will draw on both houses of the legislature. The reform process itself may be comprehensive (that is, it looks at all aspects of planning legislation and proposes new concepts, tools and institutional relationships) or incremental, fixing only the parts of existing statutes that pose the most pressing or immediate problems. State legislators may not have looked at the planning statutes for a while and feel they need to undertake an intensive analysis. The commission may be permanent or temporary, with a life of two to five years, depending on its scope of work.

The legislature may also create a special independent study commission composed of state legislators and citizens. The citizen representatives may be from local government and other interest groups (e.g., homebuilders, county and municipal associations, development groups, environmentalists, historic preservationists, "smart growth" advocates, and manufactured housing representatives). Sometimes state agency directors or other members representing the state's chief executive will also serve on the commission, by appointment of the governor. The special independent study commission is more appropriate when there is less certainty on the part of the legislature or governor about the nature of needed reforms. Legislators

Moving Forward on Planning Law Reform

In most states, the legislative and institutional structure for land-use decision making is antiquated, ineffective, poorly integrated, and not likely to succeed in guiding growth and change in a way that results in better communities.

If you care about the future quality of life in your state, you can begin and sustain actions to accomplish meaningful change over time by following a few basic principles:

- (1) Establish a comprehensive goal, such as modernizing planning and zoning enabling legislation and implementation tools, and related, but much smaller objectives, such as individually amending existing acts.
- (2) Strategically establish priorities and find partners to tackle them (but don't let priorities get in the way of opportunity).
- (3) Know your state laws, how they work, and why they don't. Identify valuable tools that communities lack authority to use but which are in use elsewhere.

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may want to gauge political acceptability and build support using citizen members of the commission and the organizations they represent. Such commissions are created via statute or resolution.

(2) **Governor initiates reform.** The governor may initiate reform in partnership with the legislature via statute or independently through executive order. The reform vehicle is the independent study commission or, on occasion, a special task force whose membership consists of state agency officials. Wisconsin uses a state interagency land-use council composed of secretaries of state departments or their representatives to develop a renewed vision for land use for the state and recommend land-use policy objectives for state agencies. The council is assisted by a strategic growth task force of representatives of state and local agencies, municipal associations, and other public and private groups. Governor Tommy G. Thompson created the council and task force through an executive order.³

In Delaware, Governor Thomas R. Carper has created both an advisory panel on intergovernmental planning and coordination, pursuant to statute, and a state planning citizens advisory council. The advisory panel consists of two members from each county appointed by the governor, a member appointed by the speaker of the house, and a member appointed by the president pro tem of the senate.⁴ The citizens advisory council includes both members of the advisory council and additional representatives from various statewide interest groups.⁵ The Delaware groups have a charge similar to that of their Wisconsin counterparts.

Fitting Reform to the Political Climate	
<i>Approach</i>	<i>Use Where There Is:</i>
Special study commission composed of state legislators	Strong bipartisan legislative support
Special independent study commission or task force	Mixed gubernatorial and legislative support and where the state needs to define objectives
Private coalition or consensus building	Little or mixed support in legislature or by governor
Joint legislative study committee program	A reform agenda or implementation that requires legislature's ongoing assessment

³State of Wisconsin, Office of the Governor, *Executive Order No. 236, Relating to the Creation of the State Interagency Land Use Council and the Wisconsin Strategic Growth Task Force* (September 15, 1994).

⁴Del. Code, Tit. 29, §9102(a) (Advisory Panel on Intergovernmental Planning and Coordination).

⁵State of Delaware, Executive Department, *Executive Order No. 29, Establishment the State Planning Citizens' Advisory Council* (April 28, 1995).

Factors Stimulating Planning Statute Reform

- Desire to protect significant natural resources of state, such as coastal areas
- Lack of affordable housing
- Desire to ensure balanced economic growth among the state's regions
- Need to link regulation and capital investment with planning
- Lack of mechanism to resolve interjurisdictional conflicts; lack of coordination among governmental units
- Perception that existing system is unfair, unwieldy, unpredictable, and delay-ridden
- Loss of open space and agricultural lands
- Control of urban sprawl
- Mismatch between development and infrastructure
- Need for new planning tools and techniques

A variation on this approach is the creation of a state futures commission with the authority to prepare a state futures plan or report. The state futures commission attempts to obtain statewide consensus on where the state should be heading and what actions should be taken to bridge the gap between the reality of the present and the potential of the future. It may result in proposals to revamp state planning laws or study the issue of planning statute reform more thoroughly. Model legislation for a state futures commission is included in Chapter 4 of the *Legislative Guidebook*.

(3) Private group initiates reform. Private coalition building or consensus building is appropriate when there is little support among legislators or governors for planning law reform or when reform has not been perceived as a statewide issue. Private groups like APA chapters may join with others in the hope of getting agreement on the elements of a bill that could then be introduced by a supportive state legislature. For example, in 1991, the Kansas APA Chapter joined with representatives of the Kansas League of Municipalities, the state homebuilders association, the Kansas Association of Counties, and the Manufactured Housing Institute, and successfully obtained enactment of major amendments to the state's planning statutes.⁶ Consensus building has been attempted in California as a mechanism to break the legislative gridlock among competing political interests over pending growth management statutes, although with little

⁶“Kansas Modernizes Planning and Zoning Laws,” *Zoning News*, January 1992, 3.

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success.⁷ In Massachusetts, 1000 Friends of Massachusetts, a statewide, private, nonprofit, advocacy group, assumed the job of overseeing the drafting of a reform bill to implement recommendations of the Special Commission on Population Growth and Change, after it made its report in 1990.

(4) Legislature monitors reform statutes. Another alternative is the joint study committee, a standing committee of the state legislature. Such a committee may be established in tandem with an independent study commission or after a state has enacted a comprehensive rewrite of its planning laws and wishes to monitor its implementation, provide advice to the state agency charged with administering it, and consider amendments. The joint committee is an approach that can ensure effective communication between two houses of the legislature and provide a state planning agency with quick responses on proposed initiatives.

The Oregon legislature has such a committee. According to Mitch Rohse of the Oregon Department of Land Conservation and Development, the committee “serves as a bellwether for the legislature in the interim periods” between sessions. If we are struggling with a policy and need a test from the legislature, they can provide it.” A joint legislative committee can oversee evaluations of how programs are being executed and to what degree state objectives are being achieved. “You can’t make appropriate policy or make appropriate mid-course corrections unless you know what the policy is doing,” says Rohse. While the joint legislative study committee may initiate legislation, it is more likely to produce amendments to existing statutes rather than comprehensive reform.

INGREDIENTS OF SUCCESSFUL REFORM EFFORTS

No matter what institutional approach is selected, statutory reform tends to be successful when it does the following:⁸

(1) Hold public hearings and invite widespread participation. All reform efforts included a series of statewide public hearings and workshops, held on a regional basis, to gauge citizen sentiment on the issues and involve them in the process. These public hearings may include testimony from representatives from other states where reform has already been undertaken. Both

⁷The California experience is discussed by Professor Judith Innes in “The Growth Management Consensus Project,” and “The Economic and Environmental Recovery Coalition” in Judith Innes *et al.*, *Coordinating Growth and Environmental Management Through Consensus Building* (Berkeley: California Policy Seminar, 1994), 73-91.

⁸For an excellent account of how Pennsylvania enacted a single-purpose bill, see Robert A. Peters, “The Politics of Enacting State Legislation to Enable Local Impact Fees: The Pennsylvania Story,” *Journal of the American Planning Association* 60, no.1 (Winter 1994): 61-69; see also Patricia Salkin, “Political Strategies for Modernizing State Land-Use Statutes,” *Land Use Law & Zoning Digest* 44, no. 8 (August 1992): 3-6. Salkin recommends the appointment of an official body to oversee the modernization process.

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Massachusetts and Pennsylvania used public hearings to initiate their study projects.⁹ Public hearings may also be held after the study commission has issued its report and before legislation is introduced, although this may telescope the process of getting a bill drafted.¹⁰ The study commission should always try to keep the avenues for communication with various constituencies open.

(2) Review previous efforts and undertake new research. In most states, the formation of an official body to examine the state's planning statutes has been preceded by other studies, often undertaken by a state agency or private group. To avoid reinventing the wheel, these studies should be reviewed for an identification of problems and approaches that have been previously considered.

The research phase should also include gathering statutes from other states, model legislation, and working papers written by experts in planning and planning law reform. The Virginia Commission on Population Growth and Development prepared "background" readers for its members containing papers on regionalism, growth strategies, state strategic planning, and housing and economic development.¹¹ The New York State Legislative Commission on Rural Resources prepared a similar set of "white papers" for a community planning and land-use retreat of state legislators, state and local officials, and planning experts.¹²

Research may also include surveys of local governments, developers, homebuilders, and other "users" of the planning system. In New York in 1994, the Legislative Committee on Rural Resources surveyed cities, towns, and villages to determine what land-use tools they were currently using.¹³

⁹Commonwealth of Massachusetts, Special Commission on Growth and Change, *Final Report* (Boston: The Commission, Adopted January 23, 1990), 13 (discussion of result of ten public hearings); Commonwealth of Pennsylvania, House of Representatives, *Final Report of the 1991-92 House Select Committee on Land Use and Growth Management* (Harrisburg, Pa.: The Committee, 1992), 2-11 (discussion of individual public hearings).

¹⁰See, e.g., Massachusetts Association of Regional Planning Agencies, *Report on the Public Hearings on the Final Report of the Special Commission on Growth and Change* (June 1991).

¹¹State of Virginia, Commission on Population Growth and Development, *Regionalism: Shared Decision Making; A Background Reader* (Richmond, Va.: The Commission, July 1994); _____, *Growth Management and Strategic Planning; A Background Reader* (Richmond, Va.: The Commission, July 1994).

¹²New York State Legislative Commission on Rural Resources, *White Papers for a Community Planning and Land Use Retreat Held At The Government Law Center, Albany Law School, January 10-11, 1991* (Albany, N.Y.: The Commission, 1991).

¹³New York State Legislative Commission on Rural Resources, *Local Planning and Zoning Survey: New York State Cities, Towns and Villages* (Albany, N.Y.: The Commission, April 1994); see also Commonwealth of Pennsylvania, Department of Community Affairs, Planning Services Division, *1992 Inventory of Selected Land Use Controls by County and Municipality* (Harrisburg, Pa.: The Division, 1992).

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Study commissions should avail themselves of state resources like regional planning commissions, university faculty and extension services, legislative research bureaus, and nonprofit organizations that have expertise in particular areas. These organizations can often conduct specialized studies quickly and with objectivity. When the State of Illinois studied land-use reform for the first time in 1970-71, it commissioned an extensive survey of local government officials and attorneys specializing in local government law through the Bureau of Urban and Regional Planning Research at the University of Illinois at Urbana-Champaign.¹⁴

(3) Develop a clear statement of the problems to be addressed. What is important for one part of the country may be less so in another. Therefore, the changes stimulating planning law reform initiatives are diverse. Defining them and agreeing on their magnitude establish a framework in which appropriate reform measures can be considered.

The problem statement must be tailored to the individual state, reflecting its unique range of issues. Sustained growth has been a reform stimulus in many regions of the nation, particularly in coastal states; other areas are excluded from the boom. For example, in West Virginia, the eastern panhandle, which is under the influence of the Washington, D.C., metropolitan area, is growing rapidly, but the remainder of the state is not, thereby creating differences in perception of the need for statutory change.

In Michigan, a careful analysis of trends by the Michigan Society of Planning Officials showing loss of farmland and the implications of that loss on the state's economy helped to galvanize support for state-level proposals to stem farmland conversion that resulted from a special task force appointed by Governor John Engler.¹⁵ While such trend analyses need not be elaborate, they do help to sharpen the focus of the study commission's effort and develop broad support for reform measures.

(4) Ensure good staff support. Good staff is critical in order to keep the initiative on track. Staff can schedule meetings, prepare agenda materials, meet with interest group representatives, arrange for consultant assistance, and oversee details, like obtaining outside speakers or handling report publication. A state study commission may employ a small staff or may use employees from different state departments. For the Georgia Growth Strategies Commission (GSC), whose work resulted in the enactment of the Georgia Planning Act of 1989, the state Department of Community

¹⁴Clyde W. Forrest, David C. Lager, and Katherine A. Messenger, *Zoning Problems: Supplementary Statistical Report for the Illinois Zoning Laws Study Commission* (Urbana-Champaign, Ill.: Bureau of Urban and Regional Planning Research, 1971).

¹⁵Michigan Farmland and Agriculture Development Task Force, *Policy Recommendations and Options for the Future Growth of Michigan Agriculture: A Report to Governor John Engler* (Lansing, Mich.: The Task Force, December 1994).

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Affairs staff, along with other agencies, provided administrative backup.¹⁶ The GSC also used a facilitator from the University of Georgia's Institute for Community and Area Development to build consensus on problem identification and the development of solutions.¹⁷ APA chapters may also provide extensive assistance. In Michigan, the chapter produced a detailed outline of reform legislation that influenced a task force of Republican legislators from the House of Representatives in preparing recommendations.¹⁸

(5) Obtain representation on study commission. A successful study commission will speak the language of differing viewpoints. Consequently, it is important that regardless of who appoints the representatives, the commissions be comprised of individuals, elected or not, with varying perspectives. Often, legislation or executive orders establishing such commissions will specify the nature of the outside groups to be represented. Typical stakeholders come from the office of the governor, state agencies, the legislature, local government, environmental groups, universities, developers, home builders, businesses, and transportation.

(6) Limit size of commission, but provide for outside advisors. Study commissions should be kept small – 15 members or less. One study commission director, Katherine Imhoff, AICP, of the Virginia Commission on Population Growth and Development, worked with a 33-member group. That number was unwieldy and the commission had to break up into subcommittees to be effective. A large commission will spread staff resources too thin, taking away time from necessary research.

The Governor's Role in Planning Reform

The chances of success in generating and passing a comprehensive legislative package [for planning law reform] are greatly enhanced by leadership from the state's chief executive. The politics of state land- use reform are such that there is always strong opposition to extending the state's authority in this sensitive area. In such an environment, getting the issue on the public policy agenda is a challenge. And the state's chief executive is uniquely positioned to do so if he or she is willing to spend always scarce political capital in this way.

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¹⁶John M. DeGrove with Deborah Mines, *The New Frontier for Land Policy: Planning and Growth Management in the States* (Cambridge, Mass.: Lincoln Institute of Land Policy, 1992), 103.

¹⁷Ibid.

¹⁸Michigan APA Planning Law Committee, "Suggested Outline for Unified Planning Enabling Legislation in Michigan" (Unpublished, July 1994).

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Some study commissions – such as those in New York and Georgia – have used advisory bodies of experts to give depth and breadth to their work. These groups may meet separately to study certain defined areas and recommend alternatives for the commission but would not be responsible for the final recommendation. The Georgia commission divided into four task forces to look more closely at economic development, infrastructure, land-use, and environmental issues, and recruited persons who were not commission members to assist. The New York commission has a special standing advisory group of experts on planning law, including planners, builders, surveyors, and attorneys.

(7) Establish strong links to the governor and legislature. The closer the study effort is to the state legislature or governor, the more likely the initiative will succeed.¹⁹ Legislators have many issues competing for their attention; in some states they may meet for a short period each year (and, in some places, every two years) and must resolve their business quickly.

A signal from a legislative leader or the state government's chief executive that planning law reform is important will distinguish it from other pressing matters. In Rhode Island, the skills of Representative (now Lt. Governor) Robert Weygand in initiating the reform effort and steering the resulting bills through the legislature were credited with the

Major State Planning Statute Reforms

Year	State	Title
1969	Massachusetts	Affordable Housing Appeals Act
1970	Vermont	Act 250-State Land Use and Development Act
1970	Maine	Site Location Act
1972	Florida	Environmental Land and Water Management Act
1973	Oregon	SB 100 – Oregon Land Use Act
1984-5	Florida	State and Regional Planning Act and Omnibus Growth Management Act
1985-6	New Jersey	State Planning Act and Fair Housing Act
1988	Maine	Comprehensive Planning and Land Use Regulation Act
	Vermont	Act 200-Growth Management Act
	Rhode Island	Comprehensive Planning and Land Use Regulation Act and Comprehensive Appeals Board Act
1989	Georgia	State Planning Act
1990-1	Washington	Growth Management Acts I and II
1991	Kansas	SB23 (comprehensive planning and zoning)
1992	Maryland	Economic Growth, Resource Protection and Planning Act
1994	South Carolina	Comprehensive Planning Enabling Act
1997	Maryland	HB 1195, Smart Growth Act
1998	Tennessee	SB 3278 (growth management)
1999	Wisconsin	1999 Wis. Act 9

¹⁹John M. DeGrove, "The Role of the Governor in State Land Use Reform," in *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1*, Planning Advisory Service Report No. 462/463 (Chicago: American Planning Association, 1996), 71-74.

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enactment of new laws.²⁰ In Georgia, Governor Joe Frank Harris made planning law reform a high priority for his second term in office; he created the Growth Strategies Commission and actively lobbied the legislature for the passage of legislation carrying out its recommendations.²¹

Florida's Governor Bob Graham provided the push for the reforms in the mid-1980s in Florida.²² In contrast, in California, where Governor Pete Wilson decided not to participate formally in the Growth Management Consensus Project (a private effort to agree on principles that would lead to legislation), no statutory reform of any significance resulted.²³

(8) Emphasize consensus, but don't expect 100 percent agreement. Reform requires a balancing of interests, but it is often difficult to completely satisfy all of them. If success is to be achieved, participants in reform commissions should expect to negotiate workable compromises rather than perfect solutions. The private effort in California, the Growth Management Consensus Project, established a requirement of complete agreement on reform principles that proved to be a significant roadblock. While the project developed some mutual understandings between the various public and private stakeholders (who represented 32 interest groups), the effort to be inclusive, combined with the complete consensus requirement, practically guaranteed no agreement on any point.²⁴

(9) Minimize time between report and proposed legislation. Reducing or eliminating the period between a study commission's recommendations and the drafting of legislation is highly desirable. The public hearings and the attendant publicity surrounding the commission's recommendations create an air of expectation. Moreover, the reasons the study effort began may be due to temporary factors like a strong economy – leading to a development boom – rapid increases in housing costs, or a major locational controversy. Timing is often a key to success. Public interest in reform may also fade as conditions change. In Rhode Island, the study commission eschewed an interim and even a final report, preferring instead to go from public meetings and hearings directly to drafting the bill and getting it introduced into the legislature. Thus the commission was able to press for the enactment of the first legislative package quickly before the climate cooled and the legislature's attention shifted to other priorities. Alternately, the legislation

²⁰DeGrove and Miness, *The New Frontier for Land Policy*, 88-89; Stuart Meck, "Rhode Island Gets It Right," *Planning* 63, No. 11 (November 1997): 10-15.

²¹Tom Walker, "Governor Joe Frank Harris," *Planning*, March 1990, 12.

²²DeGrove, *The Role of the Governor in State Land Use Reform*, 4.

²³Innes, "The Growth Management Consensus Project," 74, 78.

²⁴*Ibid.*, 78.

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establishing the study commission may call for the commission to draft the new legislation in conjunction with the preparation of the final report.

(10) **Keep the study commission in existence while the legislation is underway.** The study commission will typically develop a great deal of expertise during its term of operation. Consequently, keeping it in existence while the reform legislation is being considered is highly desirable. The commission can continue to advise the legislature and the governor as to possible alternatives, suggest compromises, and generally serve as an external advocate for change. Therefore, legislation creating a study commission should not terminate the commission after it makes its final report, but should allow for its continuation for a reasonable period.

(11) **Initiate a public information campaign.** When a commission or other group proposes changes to the existing system, a public information program is typically mounted to explain the nature of the reforms, gain support and defuse potential opposition.

Attorney Patricia Salkin, Director of the Government Law Center at the Albany Law School, observes that, where state planning offices exist, undertaking public education – including information, training, and technical assistance – is easier. However, says Salkin, “[i]n those states where the community planning office is either nonexistent or scaled down to an ineffective level, creativity in the development and financing of this strategy will be important.”²⁵ Both state legislators and local officials will want to know who is to provide the information and how and what kind of help the state will provide.

For the Georgia Growth Strategies Commission, this took the form of a simplified version of the Commission’s recommendations in a final report, slide presentations, a video production and brochures.²⁶ In Vermont, the Governor’s Commission on Vermont’s Future produced an elegant report with photographs, many of them drawn from the statewide public hearings held by the Commission.²⁷ Vermont’s Department of Housing and Community Affairs followed up with a brochure in 1990 to explain changes in the state planning statutes made as a consequence of the Commission’s recommendations.²⁸ In South Carolina, the state municipal and county associations,

²⁵Patricia Salkin, “Political Strategies for Modernizing State Land Use Statutes,” *Land Use Law & Zoning Digest* 44, no. 8 (August 1992): 6.

²⁶See Governor’s Growth Strategies Commission (GSC), *Quality Growth Partnership: The Bridge to Georgia’s Future, Final Report* (Atlanta: GSC, undated).

²⁷Governor’s Commission on Vermont’s Future, *Report of the Governor’s Commission on Vermont’s Future: Guidelines for Growth* (Montpelier, Vt.: The Commission, December 31, 1987).

²⁸Vermont Department of Housing and Community Affairs, *Planning Your City’s Future: A Guide to Recent Changes in Vermont’s Municipal and Regional Planning and Development Act (24 V.S.A., Chapter 117)* (Montpelier, Vt.: The Department, December 1990).

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in conjunction with the Institute of Public Affairs at the University of South Carolina and the Strom Thurmond Institute of Government at Clemson University, published a comprehensive planning guide for local officials. It explained how to bring their local planning process into compliance with the state's new Comprehensive Planning Enabling Act of 1994. The manual contained the act, sample forms, model rules of procedure, and helpful narratives on technical aspects of the revised South Carolina statute.²⁹

Commentary: Model Legislation and Executive Orders for Initiating Planning Statute Reform

The model statutes and executive orders that follow have been written so that they may be tailored to individual states by adding or deleting language or adopting alternate wording. The number of members of the commission or committee may be increased or decreased beyond those in brackets; however, the maximum number shown, 15, represents a reasonable upper limit on the size of such commissions. If additional advice or perspectives are needed, they can be obtained through the creation of advisory committees or small working groups.

Alternative 1 assumes the initiative will come from the state legislature. Under Alternative 2, the legislature and the governor are responsible for appointments. Alternative 3 provides for a joint legislative study commission. Several of the planning statute reforms have occurred through initiative of the governor by executive order instead of action of the state legislature through enactment of statutes. The following executive orders address the most typical scenarios: Alternative 4 is an internal task force composed of state agency officials; and Alternative 5 is the independent study commission, similar to Alternative 1 above. With a less specific mandate, the internal study task force is more likely to focus on improving procedures and defining a state role in planning than on drafting legislation, although legislation may be a consequence of its activities. Combinations of these models are possible. For example, the governor could create an independent state study commission by executive order (e.g., Alternative 5) that would work with a joint legislative study commission. In addition to these alternatives, states may have standard approaches to the study of complex topics requiring legislation that derive from their political traditions.

States typically have standard formats for legislation or executive orders, as dictated by a legislative service commission or other bureau. Consequently, these models will need to be redrafted into those formats.

²⁹Municipal Association of South Carolina and South Carolina Association of Counties, *Comprehensive Planning Guide for Local Governments* (Columbia, S.C.: The Associations, December 1994).

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Alternative 1 – Study Commission Composed of State Legislators and State Department Head

1-101 Creation of a Planning and Land-Use Legislative Study Commission; Membership; Reimbursement for Expenses

- (1) There is hereby created a special planning and land-use legislative study commission, referred to in this Act as the commission.
- (2) The commission shall consist of [15] members, [7] of whom shall be from the house of representatives, not more than [4] from the same political party, to be appointed by the speaker of the house; [7] of whom shall be from the senate, not more than [4] from the same political party, to be appointed by the president of the senate; and [1] member, who is a director of a state department, to be appointed by the governor. If the speaker of the house of representatives or the president of the senate is a member, either may designate from time to time an alternate from among the members of the appropriate house to exercise powers as a member of the commission, except that the alternate shall not preside if the speaker or president is chair. Vacancies in the commission shall be filled in a like manner as the original appointment.
- (3) The commission shall elect a chair and vice chair from among its members who are either state representatives or senators. The chair may, in addition to other duties, approve voucher claims for expenditures or may delegate this function to staff.
- (4) The members of the commission shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties in the work of the commission.

1-102 Functions and Duties; Public Hearings; Interim and Final Reports; Recommended Legislation

- (1) The commission shall perform the following functions and duties:
 - (a) evaluate the effectiveness of current state, regional, and local planning and land-use laws;
 - (b) survey state and regional agencies, local governments, and the private sector to determine the extent and types of planning techniques, and land-use tools being used and their attitudes toward the current system, and identify desired new tools;
 - (c) survey developers, builders, contractors, planners, engineers, surveyors, environmentalists, historic preservationists, attorneys, citizen groups, and local

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- government agencies about problems associated with the current system and seek their advice on solutions to those problems;
 - (d) review model legislation and studies on planning and land-use systems and collect information on states that have undertaken reform efforts and have working systems;
 - (e) identify public information, training, and technical assistance needs by state and regional agencies and local governments related to planning and land use;
 - (f) identify incentives or techniques for sharing the benefits of economic growth and eliminating or reducing fiscal competition among local governments;
 - (g) propose initiatives for the development of geographic information systems related to planning and land use at all levels of government;
 - (h) propose innovative and cooperative planning and land-use approaches that will accommodate and guide growth and development, ensure the planning and construction of adequate supporting services and infrastructure, including utilities, stormwater management systems, and transportation, provide opportunities for or eliminate barriers to affordable housing, protect the environment and historic and scenic resources, enhance community livability, and minimize exposure to natural hazards;
 - (i) examine and evaluate methods of coordinating activities of the legislature and state agencies relating to matters of growth and development, protection of the environment and natural resources, and stabilization and revitalization of existing communities, including, but not limited to, the consideration of a statewide planning process and the establishment of state goals and policies to guide state strategic and functional planning and regional and local planning;
 - (j) evaluate and recommend approaches that will balance the advancement of the public interest with the protection of private property rights and ensure certainty in the planning and land-use system and streamlined and efficient administrative and judicial review of development proposals; and
 - (k) stimulate statewide discussion on problems related to planning and land-use change, identify alternative planning, regulatory, and capital investment solutions, and attempt to reach consensus on desired approaches.
- ◆ This list of activities can be reduced, expanded, or modified to address issues in a particular state.
- (2) The commission may hold public hearings on a regional basis throughout the state, take testimony, and make its investigations at such places as it deems necessary. Each member

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of the commission shall have power to administer oaths and affirmations to witnesses appearing before the commission. [The commission may, at its option, hold hearings after releasing its final report, as described in paragraph (3) below, but before drafting proposed legislation to carry out its recommendations.]

- (3) The commission shall prepare an interim report of findings by *[date]*, a final report with specific recommendations for legislation or administrative changes by *[date]*, and proposed legislation to carry out its recommendations by *[date]*. These reports and proposed legislation shall be transmitted to the members of the legislature and the governor and shall be made available to the public. Copies shall be deposited in the state library and sent to all public libraries in the state that serve as depositories for state documents.

1-103 Staff and Consulting Support; Application for and Acceptance of Gifts and Grants

- (1) The commission is empowered to employ such staff as may be necessary to enable it to perform its duties as set forth in this Act. It is authorized to determine the duties of such staff and to fix staff salaries and compensation within the amounts appropriated therefor. The commission may also contract for assistance from consultants.
- (2) The commission is further authorized to apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to better carry out its functions.

1-104 Advisory Committees; Cooperation of State Departments and Agencies

- (1) The commission may establish such advisory committees as are necessary to enhance its work. Such committees may be composed of commission members as well as other individuals selected by the commission.
- (2) All departments and agencies of the state shall cooperate with the commission and provide information and advice and otherwise assist the commission in its work.

1-105 Appropriation of Funds

There is hereby appropriated out of any money in the state treasury not otherwise appropriated for the fiscal year *[name of year]* the sum of *[amount]* to the commission. The state *[controller]* is hereby authorized and directed to draw orders upon the treasurer for the payment of said sum, or so much thereof as may from time to time be required, upon receipt by the *[controller]* of properly authenticated vouchers.

1-106 Commission to Expire Unless Extended

The provisions of this Act shall expire on *[date – a minimum of two years from the date of establishment of the commission]* unless extended by an act of the legislature.

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Alternative 2 – Independent Study Commission Composed of State Legislators, a State Department Head, and Citizen Representatives

1-201 Creation of Planning and Land-Use Legislative Study Commission; Membership; Reimbursement for Expenses

- (1) There is hereby created a special planning and land-use legislative study commission, referred to in this Act as the commission.
- (2) The commission shall consist of [15] members, [4] of whom shall be from the house of representatives, not more than [2] from the same political party, to be appointed by the speaker of the house; and [4] of whom shall be from the senate, not more than [2] from the same political party, to be appointed by the president of the senate. If the speaker of the house of representatives or the president of the senate is a member, either may designate from time to time an alternate from among the members of the appropriate house to exercise powers as a member of the commission, except that the alternate shall not preside if the speaker or president is chair. In addition, there shall be [7] members to be appointed by the governor:
 - (a) [1] member who is the director of a state department;
 - (b) [1] member who is an elected or appointed municipal official or employee;
 - (c) [1] member who is an elected or appointed county official or employee;
 - (d) [1] member who is a builder or developer;
 - (e) [1] member who is a municipal or regional planner;
 - (f) [1] member who is a representative of an environmental, historic preservation, or community revitalization organization in the state; and
 - (g) [1] at-large member.
- (3) The committee shall elect a chair and vice chair from among its members who are either state representatives or senators. The chair may, in addition to other duties, approve voucher claims for expenditures or may delegate this function to staff.
- (4) The members of the committee shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties in the work of the committee.

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1-202 Functions and Duties of Committee; Public Hearings; Interim and Final Reports; Recommended Legislation

- ◆ The language in this section is the same as Section 1-102 above.

1-203 Staff and Consulting Support; Application for and Acceptance of Gifts and Grants

- ◆ The language in this section is the same as Section 1-103 above.

1-204 Advisory Committees; Cooperation of State Departments and Agencies

- ◆ The language in this section is the same as Section 1-104 above.

1-205 Appropriation of Funds

- ◆ The language in this section is the same as Section 1-105 above.

1-206 Commission to Expire Unless Extended

- ◆ The language in this section is the same as Section 1-106 above.

Alternative 3 – Permanent Joint Legislative Study Committee on Planning, Land Use, and Growth Management

1-301 Creation of Joint Legislative Study Committee on Planning, Land Use, and Growth Management; Membership; Vacancies; Reimbursement for Expenses; Quorum

- (1) There is hereby created a joint legislative study committee on planning, land use, and growth management referred to in this Act as the committee.
- (2) The committee shall consist of [7] members, [4] of whom shall be from the house of representatives, not more than [2] from the same political party, to be appointed by the speaker of the house; and [3] of whom shall be from the senate, not more than [2] from the same political party, to be appointed by the president of the senate. If the speaker of the house of representatives or the president of the senate is a member, either may designate from time to time an alternate from among the members of the appropriate house to exercise powers as a member of the committee except that the alternate shall not preside if the speaker or president is chair.
- (3) The committee shall have a continuing existence and may meet, act, and conduct business during sessions of the legislature or any recess thereof, and in the interim between sessions.

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- (4) The committee shall elect a chair and a vice chair from among its members. The chair may, in addition to other duties, approve voucher claims or expenditures, or may delegate this function to staff.
- (5) The term of a member shall expire upon the convening of the legislature in regular session next following the commencement of the member's term. When a vacancy occurs in the membership of the committee in the interim between sessions, until such vacancy is filled, the membership of the committee shall be deemed not to include the vacant position for the purpose of determining whether a quorum is present and a quorum shall be the majority of the remaining members.
- (6) The members of the committee shall receive no compensation for their services, but shall be reimbursed for their actual expenses incurred in the performance of their duties in the work of the committee.
- (7) Action of the committee shall be taken only upon the affirmative vote of the majority of the members of the committee.

1-302 Functions and Duties of Committee; Powers

- (1) The committee shall perform the following functions and duties:
 - (a) advise the [state department *or* office of planning] on all matters under the jurisdiction of the [department *or* office];
 - (b) review and comment on any proposed comprehensive or functional plans of any state department or agency;
 - (c) review and comment on the state capital budget and capital improvements program;
 - (d) study, evaluate, and make recommendations to the legislature on the political, social, economic, historic, scenic, and environmental effects of the state's land-use and planning program on local governments, public and private land owners, and the citizens of the state;
 - (e) study, evaluate, and make recommendations to the legislature on improvements in laws and regulations for state planning, land-use, growth management and revitalization of existing communities, to ensure certainty in the planning and land-use system and streamlined and efficient administrative and judicial review of development proposals;
 - (f) study and evaluate the impact of planning, land-use, and growth management laws on the supply and cost of housing, particularly for low- and moderate-income

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- persons, and make recommendations to ensure an adequate supply of housing at appropriate locations for all income levels on a statewide basis;
- (g) study, evaluate, and make recommendations on measures designed to encourage redevelopment and revitalization of existing communities;
 - (h) stimulate interest in planning, land use, growth management, and revitalization of existing communities by the citizens of the state;
 - (i) study, evaluate, and make recommendations on geographic information systems related to planning, land use, growth management, and revitalization of existing communities at all levels of government;
 - (j) study, evaluate, and make recommendations on measures to minimize the effects of natural hazards on existing and future development;
 - (k) study, evaluate, and make recommendations on the impact of planning, land-use, and growth management laws on the environment and natural resources; and
 - (l) make recommendations to the legislature on any other matter relating to planning, land use, growth management, and revitalization of existing communities in the state.
- (2) The committee may perform the following functions and duties:
- (a) request from any department, division, board, commission, or other agency of the state or any political subdivision of the state, such information as may be necessary for the committee's studies;
 - (b) subpoena witnesses, take testimony, and compel the production of books, records, documents, papers, and other sources of information deemed by the committee to be relevant to its studies;
 - (c) have access to all books, records, documents, and papers of any political subdivision of this state;
 - (d) exercise all the powers and authority of other standing committees of the legislature; and
 - (e) convene a meeting anywhere within the state to carry out its duties.

1-303 Staff and Consulting Support; Executive Secretary

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- (1) The commission is empowered to employ such staff as may be necessary to enable it to perform its duties as set forth in this Act. It is authorized to determine the duties of such staff and to fix staff salaries and compensation within the amounts appropriated therefor. The commission may also contract for assistance from consultants.
- (2) The committee [may *or* shall] appoint a staff member as executive secretary who shall serve at the pleasure of the committee and under its direction. The executive secretary shall be selected for his or her training, knowledge, and experience in planning, land use, growth management, and revitalization of existing communities.

1-304 Annual Report; Other Reports

- (1) The committee shall prepare an annual report of its studies, evaluations, and recommendations and shall submit it to the legislature by [date].
- (2) The annual report shall be transmitted to the members of the legislature and the governor and shall be made available to the public. Copies shall be deposited in the state library and shall be sent to all public libraries in the state that serve as depositories for state documents.
- (3) The committee may, from time to time, prepare other reports and studies that shall be transmitted and deposited in the same manner as provided for in paragraph (2) above.

1-305 Appropriation of Funds

- ◆ The language in this section is the same as Section 1-105 above.

Alternative 4 – Executive Order No. _____ Establishing a State Interagency Planning and Land-Use Task Force [and Advisory Committee] Appointed by the Governor

Section 1

WHEREAS, local governments in the State of [name] have identified a need for a greater state awareness of the planning and land-use decisions of state agencies, improved consistency in the policies and programs of state agencies, and increased assistance to local governments in resolving planning and land-use problems; and

WHEREAS, decisions about new growth and development in the State have become increasingly complex and challenging for all levels of government due to regulation, differing public policy objectives, the need for better coordination and cooperation, and diverse viewpoints; and

WHEREAS, local land-use decisions increasingly affect the ability of state agencies to accomplish their missions; and

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WHEREAS, state agencies have recognized that they need to provide appropriate and acceptable responses to these land-use decisions; and

WHEREAS, state-initiated development and land-use coordination efforts may lead to public infrastructure cost savings, better stewardship of the state's natural, historic, scenic, and cultural resources, an increased supply of affordable housing, orderly, safe, and well-planned urban and rural environments, preservation of important historic and scenic resources, and increased private economic development activities.

Section 2

NOW THEREFORE, I, [name], Governor of the State of [name], by virtue of the authority vested in me, hereby establish the state interagency planning and land-use task force.

- (1) The task force shall be made up of the directors, or their designees, of the following state departments and agencies: *[List departments and agencies]*.
- (2) The director of the state department of [name] shall serve as the chair of the task force. The department of [name] shall provide staff and administrative support.
- (3) All departments and agencies of the state shall cooperate with the task force and shall provide information and advice and otherwise assist the task force in its work. This assistance shall include free access to any books, records, or documents in the custody of the department or agency.

Section 3

- (1) The commission shall have the following functions and duties:
 - (a) identify state planning goals and objectives;
 - (b) recommend planning and land-use policies and administrative procedures for state agencies, including identification of alternative coordination processes;
 - (c) recommend mechanisms for state agency participation in local land-use decisions;
 - (d) recommend mechanisms for local government participation in state agency land-use decisions; and
 - (e) identify information and training needs for state agency personnel [and local government officials] in the area of planning and land use.
- ◆ Alternatively, include all or a portion of those functions and duties listed in Sections 1-102(1)(a)-(k) above.

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- (2) In undertaking these functions and duties, the commission shall hold public hearings throughout the state and shall seek broad-based involvement from the state's governmental units and citizens.
- (3) Subject to the review and consent of the governor, the chair shall appoint an advisory committee comprised of [15] members to advise the task force on coordinating land-use activities and issues between state agencies and local public and private interests. The members of the advisory committee shall be from diverse geographic areas of the state and shall represent a variety of individual and business perspectives and interests, including, but not limited to [state and local government, business and industry, real estate, building and development, municipal and regional planning, academia, law, environment, architecture, landscape architecture, historic preservation, scenic conservation, engineering, emergency management, and/or transportation].
- (4) The task force [and advisory committee] may seek advice from other sources as [it or they] deem[s] necessary.
- (5) All meetings of the task force [and advisory committee] shall be open to the public. [or All meetings of the task force [and advisory committee] shall comply with the [state statute governing public meetings]].

Section 4

The task force shall submit to the governor an interim report no later than [date], followed by a more comprehensive report with recommendations and budget proposals related to state-level and joint-state local-level planning and land-use issues no later than [date]. These reports shall be made available to the public. Copies shall be deposited in the state library and shall be sent to all public libraries in the state that serve as depositories for state documents.

Section 5

The task force shall terminate within two weeks submitting its final report, as provided for in Section 1 above, at which time it may continue only at the pleasure of the governor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of [name] to be affixed at [place] this ___ day of ___, A.D., [year].

Governor of [State]

By the Governor:

Secretary of State

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Alternative No. 5 – Executive Order No. ____ Establishing An Independent [Growth Strategies] Study Commission Appointed by the Governor

Section 1

WHEREAS, the State of [name] is experiencing rapid growth and land-use change in the periphery of metropolitan centers in the [geographic area] of the state; and

WHEREAS, this growth and land-use change have resulted in significant impacts on development patterns, traffic, air and water resources, historic and scenic resources, open space, wetlands, availability of affordable housing, and the ability of local governments to finance public facilities and service improvements; and

WHEREAS, new growth and development in the State have been uneven and imbalanced, with rural areas, small towns, and older portions of metropolitan areas losing economic vitality, resulting in out-migration, loss of revenue, disinvestment, and increased unemployment; and

WHEREAS, this imbalance in growth and development has resulted in loss of community character and natural beauty in all parts of the State and an imbalance in economic opportunity to its citizens; and

WHEREAS, many of the problems of growth and development are interjurisdictional and require cooperation, coordination, and creative partnerships by all levels of government; and

WHEREAS, this growth and development have, in some cases, resulted in heightened exposure of property to the effects of natural hazards, requiring additional public expenditures for repair, replacement, and mitigation after the natural disasters; and

WHEREAS, local governments lack adequate tools to address new growth and development.

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Section 2

NOW THEREFORE, I, [name], Governor of the State of [name], by virtue of the authority vested in me, do hereby establish the [Growth Strategies] Commission.

- (1) The commission shall be composed of [11] citizens and [4] state legislators, of whom [2] shall be from the house of representatives and [2] from the senate. The members of the commission shall, to the extent possible, be from diverse geographic areas of the state and shall represent a variety of individual and business perspectives and interests, including, but not limited to [state and local government, business and industry, real estate, building and development, municipal and regional planning, academia, law, environment, architecture, landscape architecture, historic preservation, scenic conservation, engineering, emergency management, and/or transportation].
- (2) All members of the commission shall serve at the pleasure of the governor [who shall appoint a chair and vice chair from among the commission's membership]. [or The commission shall elect a chair and vice chair from among its members].
- (3) The department of [planning or community affairs or community development] shall provide staff and administrative support for the commission. The members of the commission shall receive no compensation for their services, but shall be reimbursed by the department for their actual expenses incurred in the performance of their duties in the work of the commission.
- (4) All departments and agencies of the state shall cooperate with the commission and shall provide information and advice and otherwise assist the commission in its work. This assistance shall include free access to any books, records, or documents in the custody of the department or agency.

Section 3

- (1) The commission shall have the following functions and duties:
 - ◆ Include all or a portion of those functions and duties listed in Sections 1-102(1)(a)-(k) above.
- (2) In undertaking these functions and duties, the commission shall hold public hearings throughout the state and seek broad-based involvement from the state's governmental units and citizens.

Section 4

The commission shall prepare an interim report of findings by [date], a final report with specific recommendations for legislation or administrative changes by [date], and proposed legislation to carry out its recommendations by [date]. These reports and proposed legislation shall be transmitted

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to the governor and the legislature and shall be made available to the public. [The commission may, at its option, hold hearings after releasing its final report, but before drafting proposed legislation to carry out its recommendations.] Copies shall be deposited in the state library and shall be sent to all public libraries in the state that serve as depositories for state documents.

Section 5

All meetings of the commission shall be open to the public [*or* All meetings of the commission shall comply with the [*state statute governing public meetings*]].

Section 6

The commission shall terminate on [*date*], at which time it may continue only at the pleasure of the governor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of [*name*] to be affixed at [*place*] this ____ day of ____, A.D., [*year*].

Governor of [*State*]

By the Governor:

Secretary of State