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**THE SMART GROWTH AGENDA:  
A SNAPSHOT OF STATE ACTIVITY AT THE  
TURN OF THE CENTURY**

**2002**



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# **THE SMART GROWTH AGENDA: A SNAPSHOT OF STATE ACTIVITY AT THE TURN OF THE CENTURY**

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**2002**

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THE SMART GROWTH AGENDA:  
A SNAPSHOT OF STATE ACTIVITY AT THE TURN OF THE CENTURY

By Patricia E. Salkin<sup>1</sup>

**Introduction**

A not so quiet revolution in land use law reform continues to occur under the guise of the smart growth movement. One article published less than three years ago documented the smart growth reform efforts in nineteen states<sup>2</sup> and the American Planning Association released a report documenting more than one thousand land use law statutory reform proposals introduced in state legislatures in 1999.<sup>3</sup> This article picks up where those two studies ended and reports on the smart growth activities in three dozen states. The scope of the study is limited primarily to gubernatorial executive orders and other related activities emanating from the governors' offices;<sup>4</sup> legislative activities (including proposals just introduced as well as those that were passed) that closely address comprehensive smart growth principles;<sup>5</sup> and some key ballot initiatives<sup>6</sup> at the start of the twenty-first century. While the level of activity in the states is as diverse as the individual states, taken collectively the amount of executive and legislative interest in the topic of land use reform at the dawn of a new century is an indication that reliance on the planning and zoning enabling acts modeled on 1920s model legislation from the U.S. Department of Commerce<sup>7</sup> will not survive in the new century.

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<sup>1</sup> Patricia E. Salkin is Associate Dean and Director of the Government Law Center of Albany Law School where she is also a Professor of Government Law. Dean Salkin is grateful to the following research assistants who tirelessly helped to assemble information from each of the states in preparation of this study: Adam Bear, Mike Kenneally, Amy Maggs, Trudy Menard and Sally Seitz. Information contained in this study was prepared in part for Planning for Smart Growth: 2002 State of the States (American Planning Association 2002).

<sup>2</sup> See Patricia E. Salkin, Smart Growth at Century's End: The State of the States, 31 *The Urban Lawyer* 601 (1999).

<sup>3</sup> Patty Salkin, American Planning Association, *Planning Communities for the 21st Century*, Part IV, Reform Proposals by the Thousand (1999).

<sup>4</sup> In some cases, governors have created committees and announced other smart growth related initiatives through press releases and other announcements, not through formal executive order.

<sup>5</sup> A review of all land use legislation introduced in state legislatures in 2000 and 2001 legislative sessions yielded an overwhelming number of bills totaling well over one thousand. For purposes of this article, only legislation directly related to comprehensive land use planning and zoning overhauls and legislation that in the author's opinion represents key principles in the smart growth statutory reform effort are included. In some cases, such as in Idaho and Louisiana, where the land use reform effort proposed was not comprehensive but was a significant component to good planning, it was included herein.

<sup>6</sup> For an excellent review and analysis of ballot initiatives relating to land use controls and smart growth, see Phyllis Myers & Robert Puentes, Brookings Institution Center on Urban and Metropolitan Policy, *Growth and the Ballot Box: Electing the Shape of Communities* in Nov. 2000 (2001).

<sup>7</sup> U.S. Department of Commerce, *A Standard City Planning Enabling Act* (1926); U.S. Department of Commerce, *A standard State Zoning Enabling Act* (1926).

In just the last two years, there have been thirteen gubernatorial executive orders promulgated to address the issues of growth and development within the states.<sup>8</sup> Noteworthy is the bipartisan interest in the topic. Seven of the executive orders were issued by Democratic governors and six by Republican governors. The executive orders exemplify different approaches to managing smart growth reform. In some states, the executive order was used to create a task force or study commission,<sup>9</sup> in other states it was used to require state agencies to submit smart growth implementation plans to the governor,<sup>10</sup> and in other states it was used to follow-up on and monitor recently enacted smart growth legislation.<sup>11</sup> Gubernatorial interest in the smart growth agenda is also evidenced through the work of the National Governor's Association.<sup>12</sup>

Final reports were issued from task forces or designated committees in five states from 2000 to 2001 (Florida, Kentucky, New Hampshire, New Mexico and New York). A review of the sponsors of smart growth legislation also evidences clear bi-partisan interest in addressing the topics of land use reform. This is consistent with public opinion polls that support the adoption and implementation of smart growth policies.<sup>13</sup> What follows is a "state of the states" review of significant smart growth activities.

### **The State of the States: A Snapshot 2000-2001 Arizona Executive Order**

In February 2001, Governor Jane Hull established the Growing Smarter Oversight Council by Executive Order.<sup>14</sup> The Council, a public-private partnership, is charged with monitoring the effectiveness of Arizona's growth management statutes (Growing Smart and Growing Smarter Plus Acts) and with offering suggestions for their improvement. The Council is to report annually.

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<sup>8</sup> The executive orders, discussed more fully in the discussion following each state, were issued in Arizona, California, Delaware, Florida, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New York, Rhode Island and Vermont (2).

<sup>9</sup> See, e.g., Exec. Order No. 102 (N.Y. 2000), creating the Quality Communities Interagency Task Force.

<sup>10</sup> See, e.g., Exec. Order No. 14 (Del. 2001), directing state agencies to submit implementation plans for the Governor's Livable Delaware agenda.

<sup>11</sup> See, e.g., Exec. Order No. 02 (Ariz. 2001), creating the Growing Smarter Oversight Council, 7 Ariz. Admin. Reg. 932 (2001).

<sup>12</sup> The National Governor's Association Center for Best Practices offers a wealth of information, including studies and reports, on smart growth initiatives for state governors, <http://www.nga.org> (last visited Mar. 21, 2002).

<sup>13</sup> For example, a recent national survey commissioned by Smart Growth America (a nationwide coalition of over 60 public interest groups) revealed that more than 75% of respondents expressed support for smart growth policies and land use planning and 76% supported state efforts to plan for and manage growth. A full copy of the study along with poll results is available at <http://www.smartgrowthamerica.com> (last visited Jan. 7, 2002).

<sup>14</sup> Exec. Order No. 02, (Ariz. 2001), <http://www.governor.state.az.us> (last visited Mar. 20, 2002).

## **Executive Activities**

In her 2001 State of the State address, Governor Hull asked the Legislature to support an appropriation of \$800,000 for small community planning assistance.<sup>15</sup>

## **Legislative Activities**

Pursuant to state legislation, after the appointment of a Growing Smarter Commission in 1998 that issued its final report in 1999, Governor Jane Hull called for a special legislative session in early 2000 to act on her Growing Smarter Plus Plan.<sup>16</sup> Enacted into law and signed by the Governor in February 2000, the plan revised the state's municipal zoning policies in a number of significant ways, including the following:

- large or fast growing communities are required to establish voter-approved growth areas;
- the local general plan must contain an analysis of how the future growth project in the plan will be served by the water supply;
- counties have the same power as cities to assess developer impact fees provided they have an adopted capital improvements plan;
- municipalities are prohibited from using private lands or state trust lands within their borders as designated open space, recreation, conservation or agricultural lands to meet the general plan open space and growth elements without approval of the landowner;
- municipalities must adopt a citizen review process for rezonings;
- municipalities are authorized to designate infill incentive districts and adopt an infill incentive plan to encourage redevelopment in the district; and
- authorization required for subdivision and split parcel review for five or fewer lots.

Cities have until the end of 2001 to approve updated general plans under the law.

## **Ballot Initiatives**

In November 2000, voters rejected Proposition 100, the Governor's proposal for a constitutional amendment to create the Arizona Conservation Reserve by a 52 to 48% margin.<sup>17</sup> The Reserve would have designated up to 70,000 acres of state trust land for permanent conservation, and it provided a framework for the designation of up to 200,000 additional acres. Also defeated on the November ballot was Proposition 202, the Sierra Club-sponsored Citizens Growth Management Initiative. This proposed constitutional amendment would have required, among other things, most cities and counties to adopt ten-year urban growth boundaries.<sup>18</sup> This initiative was defeated by a 70 to 30% margin.<sup>19</sup>

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<sup>15</sup> State of the State, 45th Leg., 1st Reg. Sess. (Ariz. 2001), <http://www.governor.state.az.us/sos/stateofstate01.cfm> (last visited Mar. 20, 2002).

<sup>16</sup> S.B. 1001, 44th Leg., 2d Reg. Sess. (Ariz. 2000).

<sup>17</sup> Smart Growth Network, Smart Growth by State, Nov. 2000, available at <http://www.smartgrowth.org>.

<sup>18</sup> Meyers & Puentes, *supra* note 5.

<sup>19</sup> *Id.*

## **Arkansas**

### **Legislative Activities**

A new law enacted in 2001 promotes intergovernmental cooperation by providing that where a municipality is located in two or more different planning and development districts, the municipality may adopt an ordinance to attach itself to the planning and development district that included the county with the highest proportion of the municipality's population.<sup>20</sup>

## **California**

### **Executive Order**

On October 29, 2001, Governor Gray Davis signed Executive Order D-46-01 ordering the California Department of General Services to promote downtown revitalization by constructing and reusing state buildings in downtown and central city areas. Smart growth patterns of development are to receive maximum support, renovations of state-owned office buildings are to be done with site plans and architectural designs of the "highest quality," and communication with local residents, property owners, business people, etc., is to occur to help determine local concerns, along with the siting and leasing of the facilities within easy access of transportation, and affordable and available housing.

### **Executive Activities**

The Governor's Commission on Building for the 21st Century<sup>21</sup> issued two reports evaluating infrastructure deficits in the state and recommending solutions to address these problems. As a result of the Commission's work, the Governor and the Legislature have agreed to a process that will result in a five-year capital outlay plan beginning with the Budget Act of 2002.<sup>22</sup>

### **Legislative Activities**

In November 2000, Speaker Robert Hertzberg formed the Speaker's Commission on Regionalism in collaboration with the California Center for Regional Leadership to explore opportunities to encourage and promote regional cooperation and to better manage growth.<sup>23</sup>

In January 2000, Member of the Assembly Patricia Wiggins organized the Smart Growth Caucus, a bipartisan, geographically diverse coalition of thirty-seven California legislators who believe that the State must pursue land use policies that are economically, environmentally and

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<sup>20</sup> Act 754, signed Mar. 13, 2001.

<sup>21</sup> Exec. Order No. D-4-99 (Cal. 1999) (creating the Commission).

<sup>22</sup> 2000-01 Governor's Budget Summary, Commission for the 21st Century, <http://www.dof.ca.gov/html/BUDGT00-01/Building21st-N.htm> (last visited Mar. 19, 2002).

<sup>23</sup> See Speaker's Commission on Regionalism: About the Commission, <http://www.regionalism.org/about/index.html> (last visited Mar. 19, 2002).

socially sustainable, and who are committed to advancing a smart growth legislative agenda.<sup>24</sup> In March and April 2001, the Caucus, along with key legislative committees, held hearings on a number of growth-related issues: "Reducing Commutes and Promoting Housing," "Reinvesting in Urban Neighborhoods," and "Protecting California's Shrinking Agricultural Lands."<sup>25</sup> Individual members have taken active roles in discussing smart growth. For example, Assemblyman Gil Cedillo held a legislative hearing in Los Angeles in March 2001 on the state's role in promoting smart growth.<sup>26</sup>

To address transportation gridlock and congestion concerns, Governor Davis signed a package of bills that provides \$5.3 billion for his five-year Transportation Congestion Relief Fund.<sup>27</sup>

There have been number of key legislative proposals introduced in 2000 and 2001 that would advance various aspects of the smart growth agenda, but none have been enacted. For example, the California Farmland Conservation Bond Act of 2002 would authorize the state to sell bonds to buy farmer development rights in areas threatened by sprawl and to promote urban infill.<sup>28</sup> The Local Government General Plan Update and Sustainable Communities Grant Program would award grants of up to \$250,000 to cities and counties to revise and update their plans and policies and to encourage a coordinated effort between land use, housing and transportation.<sup>29</sup> Other initiatives include: a proposal to enact the recommendations of the Speaker's Commission on Regionalism that includes policies and strategies to encourage and support regional collaboration among local governments, business, and other community organizations;<sup>30</sup> a requirement for an updated land use element in local plans that include an urban growth boundary to be submitted to the Office of State Planning for approval no later than July 1, 2002 for approval, and funding therefore;<sup>31</sup> funding for a study to monitor and evaluate the fair share of housing starts that is a required part of the housing element of local plans;<sup>32</sup>

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<sup>24</sup> See Smart Growth Caucus, <http://www.assembly.ca.gov/sgc> (last visited Mar. 19, 2002).

<sup>25</sup> See California Futures Network: Land Use Lines, [http://www.calutures.org/resource/LUL/LUL\\_Mar01.html](http://www.calutures.org/resource/LUL/LUL_Mar01.html) (last visited Mar. 21, 2002).

<sup>26</sup> Lee Romney, Hearing Focuses on Creating Coherent Growth Strategy, L.A. Times, Mar. 24, 2001, at C2 (among the speakers at the hearing were California State Treasurer Phil Angelides, former Massachusetts Governor Michael Dukakis, and SunAmerica Inc. Chairman Eli Broad).

<sup>27</sup> See Welcome to California, [http://www.dot.ca.gov/dist07/route5/is5\\_mip.htm](http://www.dot.ca.gov/dist07/route5/is5_mip.htm) (last visited Mar. 19, 2002).

<sup>28</sup> Assemb. B. 52, 2001-02 Reg. Sess. (Cal. 2001).

<sup>29</sup> Assemb. B. 291, 2001-02 Reg. Sess. (Cal. 2001).

<sup>30</sup> Assemb. B. 787, 2001-02 Reg. Sess. (Cal. 2001).

<sup>31</sup> Assemb. B. 1514, 2001-02 Reg. Sess. (Cal. 2001).

<sup>32</sup> S.B. 213, 2001-02 Reg. Sess. (Cal. 2001).

authorization for counties and cities to prepare joint cooperative general plans in lieu of individual plans and the establishment of a pilot program for grants or low-interest loans to localities for the development of these plans where the Office of Planning Research determines that the plans are consistent with the adopted rational planning principles;<sup>33</sup> and proposals to provide funding for regional planning and general plan updates.<sup>34</sup>

### **Ballot Initiatives**

On Election Day 2000, there were seventy-eight state and local growth related measures on the ballot addressing various smart growth principles including: transportation, affordable housing, schools, water quality, open space/natural resources/recreation, economic development, growth management, and governance/flexibility. All but two of these initiatives were locally initiated. More than half of these initiatives garnered voter approval.<sup>35</sup>

## **Colorado**

### **Executive Activities**

After unveiling his "Smart Growth: Colorado's Future" initiative in his State of the State address,<sup>36</sup> in May 2000, Governor Owens signed five pieces of smart growth legislation,<sup>37</sup> and he announced the creation of the Governor's Commission on Saving Open Spaces, Farms and Ranches.<sup>38</sup> The Commission reported back in December 2000 with a list of eleven recommendations to assist with preservation efforts.<sup>39</sup>

In his 2001 State of the State address, Governor Owens asked the General Assembly to implement recommendations of this blue ribbon commission.

### **Legislative Activities**

On May 24, 2000, Governor Owens signed into law five smart growth initiatives: House Bill 1427 creates the Office of Smart Growth within the Department of Local Affairs. The Executive Director is authorized to designate areas in the state as "Colorado Heritage

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<sup>33</sup> Assemb. B. 924, 2001-02 Reg. Sess. (Cal. 2001).

<sup>34</sup> Assemb. B. 1968, 2001-02 Reg. Sess. (Cal. 2001), Assemb. B. 2774, 2001-02 Reg. Sess. (Cal. 2001).

<sup>35</sup> Meyers & Puentes, *supra* note 5.

<sup>36</sup> Governor Bill Owens, State of the State Address 2000 (Jan. 6, 2000), <http://www.state.co.us.owenspress/2000sos.html> (last visited Mar. 19, 2002).

<sup>37</sup> H.B. 1427, 62d Gen. Assemb., 2d Reg. Sess. (Colo. 2000), H.B. 1001, 62d Gen. Assemb., 2d Reg. Sess. (Colo. 2000), H.B. 1306, 62d Gen. Assemb., 2d Reg. Sess. (Colo. 2000), H.B. 1302, 62d Gen. Assemb., 2d Reg. Sess. (Colo. 2000), H.B. 1348, 62d Gen. Assemb., 2d Reg. Sess. (Colo. 2000).

<sup>38</sup> Press Release, Office of the Governor, Owens Signs Anti-Sprawl Legislation, <http://www.state.co.us/owenspress/05-24-00a.htm> (last visited Mar. 26, 2002).

<sup>39</sup> Governor's Commission on Saving Open Spaces, Farms and Ranches, Colorado's Legacy to its Children (2000), available at <http://www.state.co.us/smartgrowth/lscap.html> (last visited Mar. 19, 2002).

Communities," enabling these communities to receive planning grants provided that applications must be submitted jointly by the governing bodies of at least two local governments and that critical planning issues, including land use and development patterns, transportation planning, mitigation of environmental hazards and energy use, will be addressed. The Office of Smart Growth is also charged with advising the Governor and the General Assembly on matters involving growth. The Office is vested with the following specific powers and duties: to serve as a clearinghouse of information for the benefit of local governments; to assist local governments with referrals to appropriate state departments and agencies where they can receive assistance for specific problems relating to growth; to perform research; to encourage and assist, upon request, with promoting cooperative efforts among local governments to address growth related problems; and upon request of local governments, to provide technical assistance including assistance with the completion of comprehensive or master plans and the resolution of land use disputes involving other governmental entities. The Department of Local Affairs is also charged with maintaining a list of qualified professionals to assist in resolving land use disputes.

The second proposal signed, House Bill 1001, provides additional criteria that may be used in local government comprehensive plans including public places and facilities; schools; the location of adequate water supply; existing, proposed or projected location of residential neighborhoods; and sufficient land for future housing development to meet projected needs.

The Governor signed House Bill 1306 to promote urban redevelopment and infill by providing a state income tax incentive of up to \$100,000 for each individual developer who cleans up brownfields. The Department of Health and Environment is charged with certifying that clean-up has occurred and with verifying the cost of the clean-up.

In addition, he enacted House Bill 1302 to address affordable housing by providing a state income tax credit to developers who build low income rental housing and agree to make such housing available within their development for a period of fifteen years.

Governor Owens also signed House Bill 1348 which promotes the donation of conservation easements by offering a state tax refund up to \$20,000. The law also authorizes landowners to transfer all or a portion of unused tax credits to another taxpayer.

A resolution passed the General Assembly in 2000 asking that the Federal Communications Commission not pre-empt local land use decisionmaking.<sup>40</sup>

Several growth-control bills that were introduced in the 2001 legislative session failed to win support in the Legislature, even after the Governor ordered legislators into a special session on growth that limited the session to four issues: regional planning for the Denver Metro area, comprehensive planning for selected cities and counties, mediation of land use disputes, and revision of annexation rules.<sup>41</sup> One bill would have provided for a comprehensive growth plan,<sup>42</sup>

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<sup>40</sup> S.J. Res. 31, 62d Gen. Assemb. (Colo. 2000).

<sup>41</sup> Smart Growth News (April 2001), available at <http://www.smartgrowth.org/news/bydate.asp?.redate=5/1/01> (last visited Mar. 19, 2002).

and another would have given voters the opportunity to limit the increase in the number of building permits for homes to 3%, while limiting the development of rural lands outside a municipality to a minimum lot size of thirty-five acres or cluster developments.<sup>43</sup> Other bills that failed to win support in the First Special Session included: a proposal aimed at providing a non-binding alternative dispute resolution option for counties and cities;<sup>44</sup> a grant program for local governments to aid in the development of master plans;<sup>45</sup> and the establishment of land use courts to settle land use disputes more efficiently.<sup>46</sup>

In September 2001, the Legislature met for a Second Special Session, and as a result, four land use bills were enacted. Proposals authorize the collection of impact fees by certain municipalities;<sup>47</sup> set forth procedures for municipalities to resolve conflicts;<sup>48</sup> restrict certain annexations;<sup>49</sup> and require the adoption of master plans for certain counties and cities.<sup>50</sup> Despite the success of the Second Special Session, a number of bills introduced failed to secure passage including: requiring some counties and cities to develop public works plans;<sup>51</sup> creating a regional planning agreement for the Denver area;<sup>52</sup> and authorizing grants to local governments for the implementation of master plans.<sup>53</sup>

### **Ballot Initiatives**

The Responsible Growth Initiative, Amendment 24, was defeated in the November 2000 election by 70 to 30%.<sup>54</sup> The Initiative, sponsored by the Coloradans for Responsible Growth,

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<sup>42</sup> S.B. 01S-012, 63d Gen. Assemb., 1st Extraordinary Sess. (Colo. 2001).

<sup>43</sup> S.B. 01S-002, 63d Gen. Assemb., 1st Extraordinary Sess. (Colo. 2001).

<sup>44</sup> H.B. 01S-1013, 63d Gen. Assemb., 1st Extraordinary Sess. (Colo. 2001).

<sup>45</sup> H.B. 01S-1006, 63d Gen. Assemb., 1st Extraordinary Sess. (Colo. 2001).

<sup>46</sup> S.B. 01S-014, 63d Gen. Assemb., 1st Extraordinary Sess. (Colo. 2001).

<sup>47</sup> S.B. 01S2-015, 63d Gen. Assemb., 2d Extraordinary Sess. (Colo. 2001).

<sup>48</sup> H.B. 01S2-1020, 63d Gen. Assemb., 2d Extraordinary Sess. (Colo. 2001).

<sup>49</sup> H.B. 01S2-1001, 63d Gen. Assemb., 2d Extraordinary Sess. (Colo. 2001).

<sup>50</sup> H.B. 01S2-1006, 63d Gen. Assemb., 2d Extraordinary Sess. (Colo. 2001).

<sup>51</sup> H.B. 01S2-1025, 63d Gen. Assemb., 2d Extraordinary Sess. (Colo. 2001).

<sup>52</sup> H.B. 01S2-1010, 63d Gen. Assemb., 2d Extraordinary Sess. (Colo. 2001).

<sup>53</sup> H.B. 01S2-1002, 63d Gen. Assemb., 2d Extraordinary Sess. (Colo. 2001).

<sup>54</sup> This initiative did not have the support of Governor Owens.

would have required certain cities and counties to designate urban growth boundaries on maps subject to citizen approval. The measure would have also required impact analysis of growth plans and regional cooperation. There were a total of sixty-seven initiatives on the November 2000 ballots across the state, with all but two proposing local initiatives. As with the strong ballot activity in California, these proposals addressed various smart growth principles including: transportation, affordable housing, schools, water quality, open space/natural resources/recreation, economic development, growth management, and governance/flexibility. More than half of these initiatives garnered voter approval.<sup>55</sup>

## **Delaware**

### **Executive Order**

In March 2001, Governor Ruth Ann Minner issued Executive Order No.14 to implement her "Livable Delaware" agenda. The Order reiterates the eleven state development goals set forth in the Shaping Delaware's Future: Managing Growth in the 21st Century Report, and pursuant to her January 2001 State of the State address, calls for the development of "Livable Delaware" principles to keep sprawl in check, reduce traffic congestion, strengthen towns and cities, improve the environment, and protect the state's significant investment in public infrastructure. The Executive Order directs each state agency and department to submit, by August 31, 2001, an implementation plan for the identified development goals along with implementation strategies in accordance with six criteria set forth in the Order. The Cabinet Committee on State Planning Issues is to review and comment on these plans to the Office of State Planning Coordination and to the agencies no later than October 31, 2001.

### **Legislative Activities**

As part of Governor Minner's Livable Delaware agenda, ". . .a comprehensive strategy to get sprawl under control and direct intelligent growth to areas where state, county and local governments are most prepared for new development in terms of infrastructure, services and thoughtful planning. . .,"<sup>56</sup> the Governor put forth five legislative proposals. These proposals include: graduated impact fees so that the state is not subsidizing sprawl; a requirement that counties and towns adopt zoning laws that conform to their plans as well as the development of statewide annexation standards; the creation of a new Governor's Advisory Council on Planning Coordination that will include members in addition to state agencies; a strengthening of the Land Use Planning Act to bring consistency to development projects by requiring developers of major projects to attend pre-application meetings with state, county and local planners; and a change to the Open Space Funding formula that would extend the State's ability to acquire land and provide funds for stewardship of acquired parcels.<sup>57</sup>

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<sup>55</sup> Myers & Puentes, supra note 5.

<sup>56</sup> Governor Ruth Ann Minner, Remarks at the Livable Delaware Unveiling (Mar. 22, 2001), [http://www.state.de.us/governor/speeches/2001/livable\\_de\\_remarks.htm](http://www.state.de.us/governor/speeches/2001/livable_de_remarks.htm) (last visited Mar. 9, 2002).

<sup>57</sup> Id. See also H.B. 235, 141st Gen. Assemb., Reg. Sess. (Del. 2001) (Development of State Impact Fees); S.B. 90, 141st Gen. Assemb., Reg. Sess. (Del. 2001) (Intergovernmental Coordination Zone Act); H.B. 255, 141st Gen. Assemb., Reg. Sess. (Del. 2001) (Land-Use, Comprehensive Plans, and Annexations); S.B. 105, 141st Gen. Assemb., Reg. Sess. (Del. 2001) (Planning Coordination); H.B. 39, 141st Gen. Assemb., Reg. Sess. (Del. 2001)

Senate Bill 90 would require each county to develop intergovernmental coordination zones to coordinate land use activities between municipalities and counties including joint plans. The legislation would also provide for notice of proposed land use action by either the county or the municipality.<sup>58</sup>

## **Florida**

### **Executive Order**

Governor Jeb Bush created the Growth Management Study Commission by executive order in July 2000.<sup>59</sup> In an effort to review the state growth management systems in place in Florida since the early 1970s, the Commission, a joint legislative and executive branch initiative, was directed to consider the growth trends that affect the quality of life, environment, and economy in Florida, and to identify goals and outcomes along with levels of implementation. The executive order directed the Commission to recommend state, regional and local level implementation strategies to further the identified goals and to achieve desired outcomes. The Commission, which issued its report in February 2001, was chaired by now HUD Secretary, Mel Martinez.<sup>60</sup> In his 2001 State of the State message, Governor Bush announced that a goal for the year should be elevating the quality of life for all Floridians, and that included realizing the full potential of the Growth Management Act.<sup>61</sup>

### **Executive Activities**

After an eight-city series of public hearings, the Growth Management Study Commission completed its report, "A Liveable Florida for Today and Tomorrow," offering eighty-nine recommendations including the implementation of a new statewide initiative, "Growth Management A+." As part of this new strategy, the Commission recommends moving away from the top-down approach of the Florida growth management system to a new paradigm that promotes partnership between the state and local governments. One aspect of the proposal that has garnered national interest is the full-cost accounting provision that could greatly assist in projecting the true costs of sprawl.<sup>62</sup>

In February 2000, the Florida Department of Community Affairs issued a Report of its

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(Inland Bays Watershed); H.B. 192, 141st Gen. Assemb., Reg. Sess. (Del. 2001) (Reallocation of Realty Transfer Tax Revenue to Conservation Trust Fund).

<sup>58</sup> S.B. 90, 141st Gen. Assemb., Reg. Sess. (Del. 2001).

<sup>59</sup> Exec. Order No. 2000-196 (Fla. 2000), <http://www.dca.state.fl.us/growth/executiveorder.htm>.

<sup>60</sup> Growth Management Study Commission, State of Florida, A Livable Florida for Today and Tomorrow (2001), <http://www.floridagrowth.org> (last visited Mar. 19, 2002).

<sup>61</sup> Governor Jeb Bush, Address Before the Florida Legislature (Mar. 6, 2001), [http://www.nga.org/governors/1,1169,C\\_SPEECH<<caret>>D\\_1442,00.html](http://www.nga.org/governors/1,1169,C_SPEECH<<caret>>D_1442,00.html) (last visited Mar. 19, 2002).

<sup>62</sup> Smart Growth News (Mar. 2001), at <http://www.smartgrowth.org/news/default.asp> (last visited Mar. 19, 2002).

first Growth Management Survey.<sup>63</sup> The report found that the most serious growth management problems noted in the survey were traffic congestion, urban sprawl, loss of wildlife habitat and limited water supplies.<sup>64</sup> There appeared to be broad support for providing incentives for urban redevelopment, limiting urban sprawl, incentives for community visioning and design, requiring intergovernmental coordination, and providing incentives to keep land in agricultural uses.<sup>65</sup> Furthermore, respondents supported a strengthening of the links between transportation and land use, the establishment of urban growth boundaries, the development of a state comprehensive plan with clear priorities for growth, and a strengthening of the role of citizen participation.<sup>66</sup>

### **Legislative Activities**

Although the Growth Management A+ proposal failed to win legislative support in 2001 (it is expected to resurface in 2002), a program to purchase conservation easements was enacted that is designed to offer private landowners a per-acre payment from the state in exchange for a conservation easement to keep the land rural. A transfer of development rights program was enacted to allow counties to set up programs so that landowners in agricultural and rural areas may realize compensation for transferring their development rights to areas within the county slated for development.<sup>67</sup>

## **Georgia**

### **Legislative Initiatives**

Enacted in 2000, Governor Roy Barnes signed legislation creating the Georgia Green Space Commission, funded by the Georgia Green Space Trust Fund (with \$30 million).<sup>68</sup> Mentioned in his 2000 State of the State address,<sup>69</sup> this legislation allows the fast growing counties (and municipalities) in the state to have a "flexible" means of green space conservation, with a primary goal of protecting 20% of a county's green space through local plans. Although Georgia's populous and fast-growing counties are eligible but not required to participate in the program, by August 2000 thirty-eight of the forty counties had already applied for funding.<sup>70</sup>

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<sup>63</sup> Florida Department of Community Affairs, Summary of Growth Management Survey (2000), <http://www.dca.state.fl.us/fdcp/dcp/resources/publications> (last visited Oct. 2001).

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Fla. Stat. Ann. § 570.71 (2001).

<sup>68</sup> S.B. 399, 2000 Gen. Assemb., Reg. Sess. (Ga. 2000).

<sup>69</sup> Governor Roy Barnes, Remarks Prepared for Delivery of the State of the State Address (Feb. 3, 2000), <http://www.gagovernor.org/speech/press.cgi?prfile=PR.20000203.01> (last visited Mar. 19, 2002).

<sup>70</sup> Smart Growth News (Sept. 2000), at <http://www.smartgrowth.org/news/bydate.asp?reupdate=9/1/00> (last visited Mar. 19, 2002).

Rules for distributing the grants were promulgated in August 2000 after twenty statewide hearings.<sup>71</sup> To receive funds, municipalities must have their programs approved by the Commission.

In 2001, the legislature created an eighteen-county Metropolitan North Georgia Water Planning District to deal with, among other things, storm water run-off, development of a district-wide watershed management plan, sewage treatment and water conservation.<sup>72</sup>

It is worth noting that added to the state investment in smart growth planning, the Atlanta Regional Commission has offered \$5 million in grants over five years for its Livable Centers Initiative,<sup>73</sup> and the Georgia Regional Transportation Authority is making serious headway on its comprehensive, \$36 billion, twenty-five-year transportation plan that combines road, transit, bikeway and sidewalk projects designed to reduce traffic congestion and improve air quality.<sup>74</sup>

## **Hawaii**

### **Legislative Activities**

In June 2001, Governor Ben Cayetano vetoed Senate Bill 1473 which would have established the position of a special advisor for smart growth to be appointed by the Governor. A Smart Growth Advisory Council would have been created to reduce the public costs of growth and to preserve the character, livability, and economic productivity of established communities and rural areas.<sup>75</sup>

Other legislative initiatives that failed to win support included: the establishment of an Open Lands Task Force to evaluate the feasibility of implementing the protection of open lands in the State Constitution;<sup>76</sup> a proposal to establish a statewide greenways strategy including the establishment of a steering committee to direct the strategy;<sup>77</sup> and a temporary four-year

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<sup>71</sup> Ga. Comp. R. & Regs. r. 391-1-4 (2000).

<sup>72</sup> S.B. 130, 2001 Gen. Assemb., Reg. Sess. (Ga. 2001).

<sup>73</sup> Atlanta Regional Commission, Implementation of the Livable Centers and Mixed Income Housing Initiatives Within the Framework of the Partnership for Regional Livability, at <http://www.atlantaregional.com/qualitygrowth/planning/housing/prlframework2.html> (last visited Mar. 19, 2002).

<sup>74</sup> See Georgia Regional Transportation Authority, Commuter Options at [http://grta.org/commuter\\_options/home.htm](http://grta.org/commuter_options/home.htm) (last visited Mar. 19, 2002).

<sup>75</sup> S.B. 1473, 21st Leg., Reg. Sess. (Haw. 2001). See <http://www.urbanfutures.org/state.cfm?state=Hawaii> (last visited Apr. 11, 2002) ("This bill is unnecessary because existing laws already allow the Office of Planning to develop growth objectives and strategies and advise the Governor and Legislature on planning matters," Governor Cayetano said in his veto message. He added, "Furthermore, there is no need to statutorily establish a temporary advisory council with no appropriation of funds to operate").

<sup>76</sup> S. Con. Res. 86, 21st Leg., Reg. Sess. (Haw. 2001).

<sup>77</sup> H.B. 266, 21st Leg., Reg. Sess. (Haw. 2001).

moratorium on the reclassification of lands presently classified as agricultural, conservation or rural for the purposes of discouraging urban sprawl, encouraging reinvestment in the revitalization of existing lands, protecting existing agricultural, conservation and rural lands, and to provide stakeholders with a chance to systematically reexamine the state's overall land use policies and plans.<sup>78</sup>

## **Idaho**

### **Legislative Activities**

A law enacted in 2000 allows for voluntary mediation to resolve land use disputes, enabling an applicant, affected person, zoning or planning commission or the governing body to request the use of mediation.<sup>79</sup>

## **Illinois**

### **Executive Order**

Addressing vanishing open spaces, loss of agricultural land, decaying urban infrastructure, increased traffic congestion and a reduction in quality of life in many Illinois communities, Governor George Ryan established the Balanced Growth Cabinet by Executive Order in April 2000.<sup>80</sup> The Cabinet is directed to coordinate key decisions that impact growth and development. The order calls for the task force to evaluate existing state programs to ensure that they accomplish the Governor's goals for smart growth to protect the vanishing open spaces and farmland, while restoring the decaying architecture and urban structure, and decreasing increased congestion. Partnership with local government is a core principle that is to be preserved under the work of the Cabinet. The executive order further directs the task force to recommend additional state growth programs to make them more effective in achieving balanced growth in Illinois, and to encourage public input from a wide array of key stakeholder interests.

### **Executive Activities**

The same month, Governor Ryan announced his smart growth initiative, "Illinois Tomorrow," a voluntary incentive-based program designed to "provide municipalities with the tools they need to encourage the creation, expansion, and restoration of livable communities."<sup>81</sup> Based on five core balanced growth principles--reducing traffic congestion, preserving open space, reinvesting and redeveloping, quality of life and local government partnership--the

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<sup>78</sup> H.B. 1455, 21st Leg., Reg. Sess. (Haw. 2001).

<sup>79</sup> H.B. 601, 55th Leg., 2d Reg. Sess. (Idaho 2000).

<sup>80</sup> Exec. Order No. 8 (Ill. 2000).

<sup>81</sup> Press Release, Governor George H. Ryan, Ryan Unveils New Balanced Growth Initiative, "Illinois Tomorrow." (Apr. 28, 2000), <http://www.state.il.us/gov/press/00/apr/iltom.htm> (last visited Mar. 11, 2002); see also Illinois Tomorrow: Balanced Growth Clearinghouse, Balanced Growth for a Better Quality of Life, at <http://www.state.il.us/state/balanced> (last visited Mar. 19, 2002).

program has state agencies working with local governments and focuses on state assistance for local projects and partnerships with local governments.<sup>82</sup> As part of this initiative, three new programs were created: The Department of Commerce and Community Affairs houses the Prime Sites and Linked Development Programs, and the Department of Transportation houses the Transportation Corridor Grant Program.<sup>83</sup>

In January 2001 the Governor announced \$3.7 million in grants from the Illinois Tomorrow Corridor Program to assist forty-one communities with land development and growth projects.<sup>84</sup>

### **Legislative Activities**

The legislatively established Illinois Growth Task Force, created to, among other things, develop a set of statewide land use, housing and transportation goals,<sup>85</sup> produced a series of reports in 2000 which include detailed proposals for providing local governments with tools to manage growth, technical assistance to local governments, adoption of a planning negotiation act, establishment of a state advisory planning commission, and the creation of incentives to promote intergovernmental planning and coordination.<sup>86</sup> The Task Force on Growth was continued in 2001, and a series of meetings is scheduled in the fall of 2001 around the state.<sup>87</sup>

A number of smart growth legislative proposals were introduced but failed to win support. These included: The Illinois Growth Act which would have created a Balanced Growth Council to meet in conjunction with the Governor's Balanced Growth Cabinet and to serve as a monitor for Cabinet activities;<sup>88</sup> the Growth Planning Act to require each county (except Cook County) to appoint a coordinating committee to recommend a growth plan for the county or to file one with the Department of Commerce and Community Affairs if one had been adopted within the last five years;<sup>89</sup> an Act to amend the Regional Planning Commission Act for the purpose of authorizing the establishment of an intergovernmental cooperation council composed of county and municipal representatives to develop and recommend plans for the coordination of

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<sup>82</sup> Ryan, *supra* note 80.

<sup>83</sup> *Id.*

<sup>84</sup> Press Release, Governor George H. Ryan, Governor Announces \$3.7 Million in Grants To Assist Community Land Development and Growth Projects (Jan. 16, 2001), <http://www.state.il.us/gov/press/01/jan/0116tomorrow.htm> (last visited Mar. 19, 2002).

<sup>85</sup> S.J. Res. 45, 91st Gen. Assemb., Reg. Sess. (Ill. 1999).

<sup>86</sup> All three Task Force Reports are available at <http://www.growingsensibly.org> (last visited Oct. 2001).

<sup>87</sup> Illinois Growth Task Force Meeting Schedule, <http://dnr.state.il.us/orep/nrcc/igtff/meetings.htm> (last visited Oct. 2001).

<sup>88</sup> H.B. 793, 92d Gen. Assemb., Reg. Sess. (Ill. 2001).

<sup>89</sup> H.B. 1085, 92d Gen. Assemb., Reg. Sess. (Ill. 2001).

land use, transportation and infrastructure and to provide a forum for the resolution of intergovernmental land use related disputes;<sup>90</sup> authorization for counties and municipalities to adopt purchase of development rights programs and the adoption of local ordinances to authorize development incentives for affordable housing, open space and other public amenities;<sup>91</sup> the Land Development Enforcement Act to provide for the enforcement of land development regulations through administrative hearings, civil proceedings and criminal proceedings;<sup>92</sup> and the Local Land Development Act that would, among other things, require local governments to periodically review their land development regulations and provide developers with vested rights.<sup>93</sup>

## **Indiana**

### **Executive Order**

In March 2001, Governor Frank O'Bannon issued an executive order creating the Indiana Land Use Forum.<sup>94</sup> The Forum is charged with developing a method by which state government can work collaboratively with local government and with the private sector to develop a coordinated and balanced land use policy. The executive order denotes the great importance of establishing a land use policy that addresses farmland preservation, open space development, and urban revitalization as the population continues to grow in Indiana. The Forum is to submit recommendations to the Governor no later than March 2002.

In 2000, the Indiana Land Resources Council, established as a result of the recommendations of the Hoosier Farmland Preservation Task Force,<sup>95</sup> met for the first time for the purpose of collecting information and providing assistance and advice to local governments regarding land use strategies and issues across the state.<sup>96</sup> According to its first report, the Council has been holding meetings and conducting research on land use planning and zoning, growth issues and transportation.<sup>97</sup>

## **Iowa**

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<sup>90</sup> H.B. 942, 92d Gen. Assemb., Reg. Sess. (Ill. 2001).

<sup>91</sup> H.B. 1084, 92d Gen. Assemb., Reg. Sess. (Ill. 2001).

<sup>92</sup> H.B. 3186, 92d Gen. Assemb., Reg. Sess. (Ill. 2001).

<sup>93</sup> H.B. 3186, 92d Gen. Assemb., Reg. Sess. (Ill. 2001).

<sup>94</sup> Exec. Order No. 8, 112th Gen. Assemb., 1st Reg. Sess. (Ind. 2001).

<sup>95</sup> Ind. Code Ann. § 15-7-9-6 (2001).

<sup>96</sup> Indiana Land Resource Council, A Report on the Councils Work in 2000 (Mar. 2001), [http://www.in.gov/oca/ilrc/reports/IRLC\\_report.pdf](http://www.in.gov/oca/ilrc/reports/IRLC_report.pdf) (last visited Oct. 2001).

<sup>97</sup> Id.

## **Legislative Activities**

For the purposes of preserving the state's agricultural lands, a bill has been introduced in the legislature to commission a study by the Iowa State University on land use policies within the state and nation-wide that will review: policies to discourage conversion of agricultural land; the feasibility and potential uses of the county land inventories; annexation laws; zoning laws and requirements related to comprehensive plans; a review of smart growth policies in other states; and a review of current state and local tax assessments and incentives that encourage development.<sup>98</sup>

## **Kentucky**

### **Executive Order**

In March 2001, Governor Paul Patton created the bipartisan Task Force on Smart Growth via executive order.<sup>99</sup> The Task Force is charged with, among other things, conducting a thorough review of Kentucky statutes, regulations, and programs that relate to growth. After holding public forums throughout the state, the Task Force is due to report to the Governor in December 2001.

### **Legislative Activities**

During the 2000 Session, legislation was introduced to make significant reforms to the planning and zoning enabling acts.<sup>100</sup> One significant focus of the legislation is citizen participation. To further this, the proposal calls for the creation of an Office of Neighborhood Advocacy to monitor land use, zoning, capital investments, transportation and other planning processes to ensure that the processes are fair and open.<sup>101</sup> The proposal also directs that local comprehensive plans shall include the designation of one or more full-service areas within the jurisdiction and that the designation should be based upon the probability of growth over a twenty-year period, and a demonstration of a full range of government services through a five-year plan. The legislation sets forth urban growth boundaries by mandating that no local government shall extend urban levels of sewer or water facilities to serve currently underserved parcels in designated limited-service areas.<sup>102</sup> In addition, the legislation requires municipal comprehensive plans to include a comprehensive growth policy element that addresses enumerated items, and all these are subject to a compatibility review by the regional planning council.<sup>103</sup> The legislation also calls for regional planning areas, and authorizes the designation

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<sup>98</sup> S.F. 434, 79th Gen. Assemb., 1st Sess. (Iowa 2001).

<sup>99</sup> H.J. Res. 107, 2001 Leg., Reg. Sess. (Ky. 2001).

<sup>100</sup> H.B. 524, 2000 Leg., Reg. Sess. (Ky. 2000).

<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id.

of neo-traditional neighborhoods.<sup>104</sup>

A Joint Legislative Resolution was introduced in February 2001 to establish a Statewide Task Force on Smart Growth.<sup>105</sup> The thirty-member task force would be responsible for, among other things: surveying stakeholders about problems associated with the current land development system and seeking their advice on possible solutions; reviewing model legislation and studies on planning and land use systems; leading a statewide discussion to reach consensus on the state's long-term growth management goals; conducting a cost of unplanned growth study; and suggesting model community planning and land use guidelines that encourage community participation through incentives.<sup>106</sup> Another legislative proposal would establish a voluntary brownfields clean-up program.<sup>107</sup>

A new law requires planning commissioners, members of boards of adjustments, planning professionals, zoning administrators and other zoning officials to complete mandatory training programs.<sup>108</sup>

## **Louisiana**

### **Legislative Activities**

Although it passed the Senate, a bill introduced in May 2001 to require at least three hours of formal training for members of planning and zoning commissions failed to secure enactment.<sup>109</sup>

## **Maine**

### **Executive Activities**

In his 2001 State of the State Address, Governor Angus King pledged to "propose a 'Smart Growth' package of initiatives that will preserve our neighborhoods, keep our communities alive, and strengthen the natural resource economy of our rural areas."<sup>110</sup>

In January 2000, Governor King's Cabinet Committee on Smart Growth issued its report

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<sup>104</sup> Id.

<sup>105</sup> H.J. Res. 107, 2001 Leg., Reg. Sess. (Ky. 2001).

<sup>106</sup> Id.

<sup>107</sup> H.B. 104, 2001 Leg., Reg. Sess. (Ky. 2001).

<sup>108</sup> H.B. 55, 2001 Leg., Reg. Sess. (Ky. 2001) (enacted Chapter 20 of the Kentucky Laws of 2001).

<sup>109</sup> S.B. 1084, 2001 Leg., Reg. Sess. (La. 2001).

<sup>110</sup> See [http://www.nga.org/governors/1,1169,c\\_SPEECH<<caret>>D\\_1155,00.html](http://www.nga.org/governors/1,1169,c_SPEECH<<caret>>D_1155,00.html) (last visited Oct. 2001).

with a series of recommendations they labeled the "Smart Growth Action Plan."<sup>111</sup> Recommendations included, among other things: limiting state growth-related capital investments to areas designated for growth by local governments; speeding up the funding of local comprehensive plans and implementation programs by doubling the state funding to \$500,000 per year; protecting certain lands through acquisition programs; strengthening the right-to-farm law for areas outside of locally-designated growth areas; creating and capitalizing a "Downtown Fund" to make low-interest loans to municipalities for downtown infrastructure improvements; beginning discussion on building code reform; and establishing a pilot program to fund the restoration of physical landscapes of older urban neighborhoods and the restoration of commercial areas through the concept of the "downtown strip."<sup>112</sup>

### **Legislative Activities**

In 2000, the Legislature enacted a bill to implement the recommendations of the task force on state office building location<sup>113</sup> that had been established a year prior.<sup>114</sup> The report recommended, among other things: providing municipalities with the resources necessary to establish, implement or update comprehensive plans; requiring those who choose to live outside of designated growth areas to pay the cost of developing new areas; preserving economically important lands; promoting downtown revitalization and the development of traditional compact neighborhoods; and continuing a review of issues related to smart growth and patterns of development.<sup>115</sup> Also in 2000, the legislature required the Department of Transportation and the Bureau of Planning, Research and Community Services to work with the State Planning Office and regional council to provide technical assistance to local governments on road planning and construction.<sup>116</sup>

In 2000, the Task Force to Study Growth Management was created by Joint Study Order of the Senate and the House.<sup>117</sup> Charged with conducting a targeted review of Maine's growth management laws with the goal of making them more responsive to the issues of sprawl,<sup>118</sup> the Task Force issued its final report in December 2000, making the following seven recommendations:

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<sup>111</sup> Cabinet Committee on Smart Growth, Smart Growth: The Competitive Advantage (2000), <http://www.state.me.us/spo/publications/publications.htm>.

<sup>112</sup> Id.

<sup>113</sup> L.D. 2600, 119th Leg., Reg. Sess. (Me. 2000).

<sup>114</sup> S.P. 61, 119th Leg., 1st Reg. Sess. (Me. 1999).

<sup>115</sup> Final Report of the Task Force on State Office Building Location, Other State Growth related Capital Investments and Patterns of Development (Jan. 2000), available at <http://www.state.me.us/legis/opla/sprawl.PDF>.

<sup>116</sup> L.D. 2550, 119th Leg., 2d Reg. Sess. (Me. 2002).

<sup>117</sup> S.P. 380, 120th Leg., 1st Reg. Sess. (Me. 2001).

<sup>118</sup> Id.

- provide ongoing legislative oversight of growth management and sprawl issues by establishing a Joint Select Committee on Growth Management and Smart Growth;
- develop an outcome performance based approach to growth management;

- amend the Growth Management Act to include outcome-based performance standards, staggered deadlines for the adoption of comprehensive plans, and an exemption to established deadlines for enacting consistent comprehensive plans for towns that enter into regionally-based comprehensive plans;

- provide funding to the State Office of Geographic Information Systems for the development, coordination and maintenance of a regional GIS system and a system for tracking patterns of development and associated land use planning;

- capitalize the Municipal Investment Trust Fund;

- increase funding for growth management to be used for planning, implementation grants, plan updates, smart growth initiatives, pilot projects and additional financial and technical assistance to municipalities; and

- revise the municipal subdivision law by amending the definition of subdivision, clarifying municipalities' home rule authority, and prohibiting municipalities from adopting more restrictive minimum lot size and minimum set back ordinances.<sup>119</sup>

In June 2001, the Legislature issued a Joint Study Order establishing the Joint Committee to Study Growth Management.<sup>120</sup> The Committee, consisting of nine members from both the Senate and the House, is charged with studying sprawl and growth management in Maine, including, but not limited to, issues addressed in the state's act to amend the growth management law, act to amend the comprehensive planning and land use regulation laws, act to promote criteria for the municipal use of rate of growth ordinances and act to enhance local accountability.<sup>121</sup> Pursuant to the Order, a report of the Committee, including findings, recommendations and suggested legislation, is scheduled to be released in December 2001.<sup>122</sup>

In February 2001, the Land and Water Resources Council reported to the legislature on the use of incentives to keep land in productive farming, fishing and forestry use.<sup>123</sup> Among its recommendations is the monitoring of impacts of development using coordinated GIS and further study relating to: a sprawl offset or environmental impact fee or tax; development of a Maine-oriented transfer of development rights model; and incentives for agricultural zoning.<sup>124</sup>

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<sup>119</sup> Final Report of the Task Force to Study Growth Management (Dec. 2000), <http://www.state.me.us/legis/opla/growthep.prd> (last visited Oct. 2001).

<sup>120</sup> H.P. 1330, 116th Leg., 2d Reg. Sess. (Me. 1994).

<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> State Planning Office, Land and Water Resources Council, Report on the Use of Incentives to Keep Land in Productive Farming, Fishing and Forestry Use (2001), <http://www.state.me.us/spo/wrc/pdf/rural>.

<sup>124</sup> Id.

## **Maryland**

### **Executive Order**

Continuing a long line of executive order to promote smart growth, Governor Parris Glendening issued his first executive order of 2001 creating the Commission on Environmental Justice and Sustainable Communities.<sup>125</sup> Acknowledging that certain communities in the state may suffer disproportionately from environmental hazards related to programs and policies designed to encourage industrial, municipal or commercial revitalization, Governor Glendening stated that environmental justice considerations should be integrated into statewide revitalization initiatives for reducing sprawl, encouraging redevelopment and enhancing community life. The Executive Order establishes a commission to, among other things, review and analyze the impact of, and determine whether there is a relationship between, current state policies, laws and regulations on the issue of environmental justice and sustainable development; develop criteria to assess whether communities may be experiencing environmental justice issues; and make appropriate recommendations to the Governor related to environmental justice and the priority programs in place.<sup>126</sup>

### **Executive Activities**

In his 2000 State of the State Message, Governor Glendening announced that he envisioned statewide adoption of his "Smart Codes" program and promised priority funding eligibility to jurisdictions that accept the codes without amendment.<sup>127</sup>

### **Legislative Activities**

In 2000, legislation was enacted requiring the Department of Planning to draft model land use codes ("smart codes") and guidelines for infill development.<sup>128</sup> A law to encourage rehabilitation of existing buildings through "smart codes" passed,<sup>129</sup> as did amendments to the smart growth laws that were enacted to require, among other things, a statement of "visions" in the comprehensive, general or master plan related to the protection of sensitive areas and development in suitable areas.<sup>130</sup> As part of the redevelopment programs, municipalities were

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<sup>125</sup> Exec. Order No. 03.09.2001.01, 415th Gen. Assemb., Reg. Sess. (Md. 2001).

<sup>126</sup> Id.

<sup>127</sup> See State of the State, 2001, Achieving Maryland's Potential, <http://www.gov.state.md.us/gov/speech/2001/html/sos01.html> (last visited Oct. 2001).

<sup>128</sup> H.B. 285, 2000 Leg., Reg. Sess. (Md. 2000).

<sup>129</sup> S.B. 207, 2000 Leg., Reg. Sess. (Md. 2000).

<sup>130</sup> H.B. 889, 2000 Leg., Reg. Sess. (Md. 2000).

authorized to grant property tax credits for rehabilitation.<sup>131</sup>

The Governor signed legislation in May 2001 creating the Office of Smart Growth in the Executive Branch, as well as the position of special secretary of smart growth.<sup>132</sup> The Office is required to review agency smart growth programs and plans to identify inefficiencies and unmet needs. In addition, the Office is charged with reviewing state assistance programs related to smart growth, providing technical assistance, and promoting interagency consensus with projects related to smart growth. The Office of Smart Growth provides a single point of access for assistance with regulations that are consistent with smart growth policies as well as assisting local governments with expediting the review of projects that are consistent with smart growth.

Also in May 2001, the Governor signed legislation creating the Maryland GreenPrint Program which, among other things, provides for the purchase of easements on agricultural lands.<sup>133</sup> The same day, the Governor signed legislation creating the Community Legacy Program within the Department of Housing and Community Development to fund local projects designed to prevent or reverse decline or disinvestment in a community legacy area.<sup>134</sup> The legislation is designed to preserve existing communities as desirable places to live and conduct business.<sup>135</sup> Applications under this program are required to, among other things, state a commitment to the development of local smart growth policies and propose benchmarks for evaluating whether the proposed plan results in the desired outcome(s).<sup>136</sup>

In recapping the 2001 Legislative Session, Governor Glendening reported that the General Assembly had passed and funded the Administration's entire package of smart growth bills including aforementioned initiatives and the neighborhood parks and playground program that allows existing communities to establish or renovate parks and playgrounds, a critical part of community quality of life.<sup>137</sup>

## **Massachusetts**

### **Executive Order**

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<sup>131</sup> S.B. 507, 2000 Leg., Reg. Sess. (Md. 2000).

<sup>132</sup> S.B. 204, 2001 Leg., Reg. Sess. (Md. 2001).

<sup>133</sup> H.B. 1379, 2001 Leg., Reg. Sess. (Md. 2001).

<sup>134</sup> H.B. 301, 2001 Leg., Reg. Sess. (Md. 2001).

<sup>135</sup> Id.

<sup>136</sup> Id.

<sup>137</sup> Press Release, Governor Parris Glendening, 2001 Legislative Session, A Solid Record of Success: A Solid Foundation for Maryland's Future, at <http://www.gov.state.md.us/gov/legagenda/2001/html/legisaccom2001.html> (last visited Nov. 2001).

In 2000, Governor Paul Cellucci created the Community Development Program to provide assistance to municipalities who voluntarily engage in community planning that addresses: future housing, open space and resource protection, and economic and transportation development.<sup>138</sup> The Executive Order defines "community development plan" as a "comprehensive, strategic plan, for the future development of a city or town, and shall include, among other things, plans for: A. where the community will create new housing opportunities; B. where it will target commercial or industrial economic development (if any); C. how it will improve its transportation infrastructure (or how its existing infrastructure will handle any growth); and D. where and how it will preserve open space."<sup>139</sup> Among the actions arising out of this Executive Order was the provision of up to \$30,000 in grants and technical assistance to communities to help plan for future development.<sup>140</sup>

### **Legislative Activities**

In September 2000, Governor Cellucci signed the Community Preservation Act<sup>141</sup> which, among other things, authorizes the establishment of local community preservation committees that can make recommendations to the legislative body for the acquisition, creation and preservation of open space, historic resources, land for recreational use, preservation and support of community housing and for rehabilitation or restoration of such areas.<sup>142</sup> Dedicated community preservation funds at the local level are authorized as well as authorization for the surcharges on certain fees to help fund the preservation funds.<sup>143</sup> A State Community Preservation Trust Fund was also established.<sup>144</sup>

## **Michigan**

### **Executive Activities**

In his 2000 State of the State Address, Governor John Engler asked the legislature to pass a new brownfields redevelopment program as part of a core cities strategy that would encourage developers to invest in blighted areas and reuse old buildings while reducing development pressures in rural areas where there are no existing services.<sup>145</sup> The Governor also called upon

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<sup>138</sup> Mass. Exec. Order No. 418 (Mass. 2000).

<sup>139</sup> Id.

<sup>140</sup> Policy Report, Bringing Down the Barrier: Changing Housing Supply Dynamics in Massachusetts (Oct. 2000), available at <http://www.state.ma.us/eoaf/policyreports/housing/pr4housing.pdf> (last visited Nov. 2001).

<sup>141</sup> Mass. Gen. Laws Ann. Ch. 44B, § 5 (2001).

<sup>142</sup> Id.

<sup>143</sup> Id.

<sup>144</sup> Id.

<sup>145</sup> Governor John Engler, Lessons From the 20th Century: Leadership for the 21st Century, 2000 State of the State Address (Jan. 19, 2000), at [http://www.michigan.gov/gov/1,1431,7-103-705-1933-M\\_2000\\_1,00.html](http://www.michigan.gov/gov/1,1431,7-103-705-1933-M_2000_1,00.html) #ENVIRONMENT (last visited Nov. 2001).

the legislature to adopt a proposal to tax agricultural land on use value rather than on market value, a key recommendation of the Agricultural Preservation Task Force.<sup>146</sup>

### **Legislative Activities**

In March 2000, Governor Engler signed the following five bills related to various aspects of zoning and smart growth: a law addressing enforcement;<sup>147</sup> authorization for the enforcement of airport zoning regulations;<sup>148</sup> clarification of the role of the county board of zoning appeals;<sup>149</sup> clarification of the role of the township board of appeals;<sup>150</sup> and amending procedures for appeal in a city or village.<sup>151</sup> An agricultural preservation fund was also established to provide grants to local governments for purchase of development rights and agricultural conservation easements.<sup>152</sup>

In April 2001, House Republican leaders introduced legislation designed to curb sprawl and protect the state's lakes and rivers.<sup>153</sup> Of even greater significance, in April 2001, more than a dozen legislators introduced legislation to provide for coordinated land use and capital facility planning among cities, villages, townships, counties, regions, and state and federal agencies.<sup>154</sup> The coordinated planning act is a comprehensive modernization of the state's planning and zoning enabling acts, and represents years of work by advocates of sound planning and zoning.

### **Minnesota**

During the 2001 legislative session, one proposal was introduced to require local zoning and land use controls to conform with land use plans.<sup>155</sup> A second proposal would require the Attorney General to develop guidelines for state agencies to use in determining whether their

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<sup>146</sup> Id.

<sup>147</sup> S.B. 515, 90th Leg., Reg. Sess. (Mich. 2000).

<sup>148</sup> S.B. 509, 90th Leg., Reg. Sess. (Mich. 2000).

<sup>149</sup> S.B. 516, 90th Leg., Reg. Sess. (Mich. 2000).

<sup>150</sup> S.B. 517, 90th Leg., Reg. Sess. (Mich. 2000).

<sup>151</sup> S.B. 518, 90th Leg., Reg. Sess. (Mich. 2000).

<sup>152</sup> H.B. 5780, 90th Leg., Reg. Sess. (Mich. 2000).

<sup>153</sup> H.B. 4926, 91st Leg., Reg. Sess. (Mich. 2001).

<sup>154</sup> H.B. 4571, 91st Leg., Reg. Sess. (Mich. 2001).

<sup>155</sup> S.F. 1618, 82d Leg., Reg. Sess. (Minn. 2001).

actions constitute a taking.<sup>156</sup>

## **Mississippi**

### **Legislative Activities**

Although it failed to secure passage, the Smart Growth Economic Development Infrastructure Act was introduced in 2001 to create a Smart Growth Economic Development Fund for the purpose of providing financial assistance to qualified distressed counties for certain infrastructure needs.<sup>157</sup>

## **Montana**

### **Related Activities**

At the request of the Montana Smart Growth Coalition, the American Planning Association conducted a critical analysis of the state's planning and land use laws. Released in January 2001, the report assesses the need for statutory changes to improve planning and land use controls in the state.<sup>158</sup> Recommendations were categorized into four themes: planning for growth, managing growth, planning and development reviews and paying for growth. Recommendations for an enhanced state role were also provided.<sup>159</sup>

## **New Hampshire**

### **Executive Activities**

Building upon her 1999 executive order,<sup>160</sup> Governor Jeanne Shaheen established "GrowSmart NH" in February 2001, "a comprehensive initiative aimed at helping New Hampshire combat sprawl and effectively manage growth."<sup>161</sup> The Governor has directed that GrowSmart NH be implemented in the following ways: the state will now consider whether projects contribute to sprawl and the state will support projects that manage growth effectively; the state will support redevelopment of brownfields; state grants will be available to assist communities in protecting water supply lands from development and possible contamination;

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<sup>156</sup> S.F. 1333, 82d Leg., Reg. Sess. (Minn. 2001).

<sup>157</sup> S.B. 2917, 2001 Leg., Reg. Sess. (Miss. 2001).

<sup>158</sup> American Planning Association, A Critical Analysis of Planning and Land Use Laws in Montana (2001), at <http://www.planning.org/plnginfo/GROWSMAR/guidebk.html>.

<sup>159</sup> Id.

<sup>160</sup> Exec. Order No. 99-2 (N.H. 1999).

<sup>161</sup> Governor Jeanne Shaheen, GrowSmart NH (Feb. 2, 2001), at <http://www.state.nh.us/governor/growsmart.html> (last visited Nov. 2001).

corridor management studies by the State Department of Transportation will help provide information to communities so they can better manage growth; innovative planning grants will be made to strengthen regional planning agencies and to allow these agencies to work with communities on downtown revitalization, traffic-calming techniques and the discouraging of sprawl development; the state's GIS system will assist communities in understanding and planning for the impacts of growth; new legislation will strengthen master planning requirements for communities to encourage smart growth and better integration of local land use planning and zoning; and new legislation will expand state agency participation on the Council on Resources and Development.<sup>162</sup>

In her 2000 State of the State Message, Governor Shaheen stated that, "State government should serve as a role model for smart growth."<sup>163</sup> Based on the sprawl study conducted by the Council on Resources and Development, the Governor directed all state agencies to incorporate smart growth into their decisionmaking.<sup>164</sup>

In December 2000, the Office of State Planning, in conjunction with the Growth Management Advisory Committee, issued a report on managing growth in the State of New Hampshire.<sup>165</sup> The study, as directed by earlier legislation,<sup>166</sup> examines the effects of sprawl and makes a series of recommendations on local, regional and state growth management initiatives. Recommendations include: updating and revising the New Hampshire Planning Statute, establishing and coordinating state development goals and policies, coordinating regional land use planning with state transportation programs, improving support and strengthening the role of regional planning agencies, improving efforts to protect significant farm land, forest land, natural habitats and historic and cultural resources, strengthening efforts to revitalize and redevelop urban and small town centers, addressing the need for affordable housing, recognizing the impact of state and local government investment policies, encouraging creative local partnerships, improving the management of information related to growth and development, and considering effects of transportation policy for employees.<sup>167</sup>

### **Legislative Activities**

In July 2001, Governor Shaheen signed legislation establishing a commission to develop

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<sup>162</sup> Id.

<sup>163</sup> Governor Jeanne Shaheen, Governor's Address (Feb. 3, 2000), at [http://www.nga.org/governors/1,1169,C\\_SPEECH<<caret>>D\\_713,00.html](http://www.nga.org/governors/1,1169,C_SPEECH<<caret>>D_713,00.html) (last visited Nov. 2001).

<sup>164</sup> Id.

<sup>165</sup> New Hampshire Office of State Planning, *Managing Growth in New Hampshire: Changes and Challenges* (2000), at <http://www.state.nh.us/ops/planning/GMReport/TOC.html> (last visited Nov. 2001).

<sup>166</sup> H.B. 207, 1999 Gen. Assemb., Reg. Sess. (N.H. 1999).

<sup>167</sup> New Hampshire Office of State Planning, *Managing Growth in New Hampshire: Changes and Challenges* (2000), at <http://www/state.nh.us/osp/planning/GMReport/TOC.html>.

and recommend legislation aimed at reducing regulatory barriers to affordable housing.<sup>168</sup> Legislation was also enacted to support the expanded responsibilities of the Council on Resources and Development so that it can consult and resolve conflicts concerning the encouragement of smart growth by state agencies and to ensure consistency of state actions with New Hampshire's smart growth policies.<sup>169</sup>

A number of smart growth related bills failed to win support in 2001 including: revised requirements for master plans and optional elements;<sup>170</sup> a proposal to coordinate state and local land use planning efforts by requiring more coordination and consistency in the structure of master plans developed at the state, regional and local level;<sup>171</sup> and adoption of a uniform state building code.<sup>172</sup>

In 2000, a law to establish a coordinated and comprehensive effort by state agencies for economic growth, resource protection and planning policy to encourage smart growth was enacted.<sup>173</sup> The Office of State Planning is directed to take a proactive leadership role in encouraging smart growth and farmland preservation. The office is charged with designing a comprehensive plan that provides for the orderly development of the state, and state agencies are to give consideration to smart growth policies when giving advice on the expenditure of their own, state, or federal funds.<sup>174</sup>

## **New Mexico**

### **Legislative Activities**

A number of bills introduced in the New Mexico Legislature in 2001 were designed to promote better planning and smart growth. Although the legislative initiatives failed to secure enactment, one bill would have required municipal comprehensive plans to be consistent with local land use regulations.<sup>175</sup> The proposal would have provided up to \$3 million in grants to municipalities for the development of consistent comprehensive plans and revised regulations.<sup>176</sup>

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<sup>168</sup> S.B. 21, 2001 Gen. Assemb., Reg. Sess. (N.H. 2001).

<sup>169</sup> H.B. 585, 2001 Gen. Assemb., 157th Sess. (N.H. 2001).

<sup>170</sup> H.B. 650, 2001 Gen. Assemb., 157th Sess. (N.H. 2001).

<sup>171</sup> H.B. 712, 2001 Gen. Assemb., 157th Sess. (N.H. 2001).

<sup>172</sup> H.B. 285, 2001 Gen. Assemb., 157th Sess. (N.H. 2001).

<sup>173</sup> H.B. 1259, 2000 Gen. Assemb., Reg. Sess. (N.H. 2000).

<sup>174</sup> Id.

<sup>175</sup> H.B. 464, 45th Leg., 1st Sess. (N.M. 2001).

<sup>176</sup> Id.

Other failed legislative initiatives included: a proposal to authorize transfer of development rights,<sup>177</sup> and a proposal to strengthen the New Mexico Subdivision Act by enabling counties to merge contiguous parcels under common ownership if certain procedures were followed and by allowing counties to have some discretion in selecting exemptions to be made available in local subdivision regulations.<sup>178</sup>

Joint memorials were passed by both the House and Senate to request New Mexico universities to develop outreach programs to provide land use planning and zoning assistance to local governments;<sup>179</sup> to request the Municipal League and Association of Counties to study the need for uniformity in zoning classification nomenclature;<sup>180</sup> and to request that the Local Government Division inventory cities' and counties' land use planning procedures and enforcement capabilities and document problems in implementing sound land use policies.<sup>181</sup> Further, a joint memorial to continue the interim legislative land use committee passed both the Senate and the House.<sup>182</sup>

## **New Jersey**

### **Executive Activities**

In March 2001, the State Planning Commission adopted a revised State Development and Redevelopment Plan.<sup>183</sup> According to the Office of State Planning, more than 250 municipalities have stepped forward to voluntarily be a part of the cross-acceptance process.<sup>184</sup>

In her 2000 State of the State Message, Governor Christie Todd Whitman stated, "By encouraging smart growth, protecting air quality and ensuring a reliable supply of drinking water," the state can become "clean, green and pristine."<sup>185</sup> By October 2000, Governor

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<sup>177</sup> H.B. 363, 45th Leg., 1st Sess. (N.M. 2001).

<sup>178</sup> S.B. 157, 45th Leg., 1st Sess. (N.M. 2001). It should be noted, that the New Mexico Chapter of the American Planning Association submitted this bill in response to HB 77, 45th Leg., Reg. Sess. (N.M. 2001) which would have weakened the Subdivision Act.

<sup>179</sup> H.J.M. 15, 45th Leg., 1st Sess. (N.M. 2001).

<sup>180</sup> H.J.M. 19, 45th Leg., 1st Reg. Sess. (N.M. 2001).

<sup>181</sup> H.J.M. 41, 45th Leg., 1st Sess. (N.M. 2001).

<sup>182</sup> S.J.M. 6, 45th Leg., 1st Sess. (N.M. 2001).

<sup>183</sup> New Jersey Office of State Planning, State Development and Redevelopment Plan (2001), <http://www.state.nj.us/osp/sdrp2.htm> (last visited Oct. 2001).

<sup>184</sup> New Jersey Office of State Planning, State Planning Year in Review, Fiscal Year 1999 & 2000 Annual Report (2000), <http://www.state.nj.us/osp/doc/annr9900.pdf> (last visited Oct. 2001).

<sup>185</sup> See <http://www.state.nj.us/sos2k/speech.html> (last visited Oct. 2001).

Whitman had awarded more than \$3.7 million for thirty-seven smart growth planning grants to benefit 128 municipalities.<sup>186</sup>

### **Legislative Activities**

In 2000 and early 2001, Governor Whitman signed into law three bills making appropriations from the Garden State Farmland Preservation Trust Fund for county and municipal farmland preservation.<sup>187</sup> One of the laws grants local governments in five counties \$14 million for purchase of development rights to 15,000 acres, including \$2 million for the purchase of lands at risk of development.<sup>188</sup> Governor Whitman also signed a four-year \$3.75 billion Transportation Trust Fund bill (that requires voter approval to make funding permanent) in 2000 which she stated "is going to promote smart growth" by reducing congestion without paving over every available acre in the state.<sup>189</sup>

Governor Donald DiFrancesco signed two bills in 2000<sup>190</sup> and one bill in 2001<sup>191</sup> that appropriate approximately \$30 million for the purchase of development easements on farmland and \$11.8 million for farmland preservation grants.

Related smart growth proposals that did not pass include a bill to authorize the adoption of municipal transfer of development rights programs,<sup>192</sup> and a bill to authorize municipalities situated in growth areas within the New Jersey Pinelands to adopt timed growth ordinances under certain circumstances.<sup>193</sup>

### **New York**

#### **Executive Order**

In January 2000, Governor Pataki created the Quality Communities Task Force and charged the group with inventorying key local, state and federal programs that affect community

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<sup>186</sup> New Jersey Office of State Planning, Smart Growth Planning Grants: Fact Sheet (Oct. 5, 2000), <http://www.njstateplan.com/doc/grants/sg01fact.htm> (last visited Oct. 2001).

<sup>187</sup> S.B. 1711, 209th Leg., 2d Reg. Sess. (N.J. 2001); S.B. 1712, 209th Leg., Reg. Sess. (N.J. 2000); S.B. 1713, 209th Leg., Reg. Sess. (N.J. 2000).

<sup>188</sup> S.B. 1711, 209th Leg., 2d Reg. Sess. (N.J. 2001).

<sup>189</sup> Press Release, Office of the Governor, Governor Signs Transportation Trust Fund Bill Providing \$3.75 Billion for Road and Transit Projects Through 2004 (July 20, 2000), <http://www.state.nj.us/transportation/press/2000releases/f000720.htm> (last visited Oct. 2001).

<sup>190</sup> S.B. 1712, 209th Leg., Reg. Sess. (N.J. 2000); S.B. 1713, 209th Leg., Reg. Sess. (N.J. 2000).

<sup>191</sup> S.B. 1711, 209th Leg., 2d Reg. Sess. (N.J. 2001).

<sup>192</sup> Assemb. B. 3632, 209th Leg., 2d Reg. Sess. (N.J. 2001).

<sup>193</sup> Assemb. B. 3253, 209th Leg., 2d Reg. Sess. (N.J. 2001).

development, preservation and revitalization goals.<sup>194</sup> In addition, the Task Force was directed to make recommendations to: strengthen the capacity of local governments to develop and implement land use planning and community development strategies; promote inter-municipal cooperation; and recommend changes in state regulations and legislation to enhance community choices in land development, preservation and rehabilitation.<sup>195</sup> The Task Force, chaired by Lt. Governor Mary Donohue, issued its final report in January 2001 offering more than forty recommendations.<sup>196</sup>

The 2000 Quality Communities Demonstration Grant Program awarded twenty-eight grants totaling more than \$1.4 million to assist approximately 100 local governments.<sup>197</sup> Funding has not yet been made available in the current fiscal year to continue the program.

### **Legislative Activities**

A number of smart growth proposals have been introduced in the Legislature, although none have been enacted during the last two years. Proposals include: the establishment of a Smart Growth and Economic Competitiveness Task Force and a Smart Growth Local Assistance Office within the Department of State;<sup>198</sup> the establishment of the New York State Smart Growth Compact including the creation of a Smart Growth Compact Council and criteria to be including in inter-municipal compact plans;<sup>199</sup> the creation of local Smart Growth Commissions to develop joint smart growth plans;<sup>200</sup> the Smart Growth for a New Century Act that establishes a smart growth review board for the purpose of reviewing and certifying proposed smart growth plans and the creation of the New York State smart growth revolving loan fund;<sup>201</sup> the Quality Communities Planning Act,<sup>202</sup> and the Governor's Program Bill, the "Quality Communities Act of 2001."<sup>203</sup>

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<sup>194</sup> Exec. Order No. 102, N.Y. Comp. Codes R. & Regs. Title 9, § 5.102 (2000).

<sup>195</sup> Id.

<sup>196</sup> Governor George E. Pataki, Quality Communities Interagency Task Force, State and Local Partnering for a Better New York (Jan. 2001), <http://www.state.ny.us/ltagovdoc/cover.html>.

<sup>197</sup> See <http://www.dos.state.ny.us/qcp/qcpawards.html>.

<sup>198</sup> Assemb. B. 6807, 224th Leg., Reg. Sess. (N.Y. 2001).

<sup>199</sup> Assemb. B. 1710A, 224th Leg., Reg. Sess. (N.Y. 2001).

<sup>200</sup> Assemb. B. 423, 224th Leg., Reg. Sess. (N.Y. 2001).

<sup>201</sup> S.B. 5575, 224th Leg., Reg. Sess. (N.Y. 2001).

<sup>202</sup> S.B. 5527, 224th Leg., Reg. Sess. (N.Y. 2001).

<sup>203</sup> S.B. 5560, 224th Leg., Reg. Sess. (N.Y. 2001).

## North Carolina

### Executive Activities

In January 2000, Governor Hunt announced the One Million Acre Initiative to preserve one million acres of open space land by the end of 2009 through a combination of conservation easements and other farmland protection programs.<sup>204</sup> The focus of the initiative is on lands permanently protected through voluntary fee acquisition or conservation easements by federal, state, local or private, non-profit land trust organizations.<sup>205</sup>

In support of the Governor's smart growth agenda, the Board of Transportation issued Traditional Neighborhood Development Street Design Guidelines in August 2000 to "promote managed growth and establish communities where walking and biking are safe and enjoyable ways to get to schools, shops and playgrounds."<sup>206</sup>

### Legislative Activities

In June 2000, the legislature passed a recommendation of the Environmental Review Commission to preserve 1,000,000 acres of land by December 31, 2009 by adding a new article entitled, "Conservation, Farmland, and Open Space Protection and Coordination."<sup>207</sup>

During the 2001 legislative session, a proposal to address developments of regional impact was introduced.<sup>208</sup> The proposal is designed to ensure that developments of regional impact and regional and extrajurisdictional impact and interest are identified and addressed by providing for an intergovernmental review procedure, ensuring public participation in the process, and ensuring that impacts are reviewed according to policies concerning urban sprawl, environmental quality, balancing jobs and housing, housing affordability and adequate public infrastructure.<sup>209</sup>

In January 2001, the reports and recommendations of the legislatively created Commission to Address Smart Growth, Growth Management and Development Issues were adopted.<sup>210</sup> Among the eight major goal areas are recommendations to: require planning and to establish minimum levels of planning for all communities; provide fiscal and technical assistance

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<sup>204</sup> Million Acre Plan for North Carolina, <http://www.enr.state.nc.us/docs/millionsummary.pdf>.

<sup>205</sup> Id.

<sup>206</sup> See <http://sustainable.state.fl.us/fdi/fsc/news/world/0009.ncdot.htm>.

<sup>207</sup> S.B. 1328, 2000 Gen. Assemb., 1st Sess. (N.C. 2000).

<sup>208</sup> H.B. 1344, 2001 Gen. Assemb., Reg. Sess. (N.C. 2001).

<sup>209</sup> Id.

<sup>210</sup> See [http://sierraclub-nc.org/chapter/conservation/smartgrowth/attachments/Goals\\_com\\_1\\_19\\_01.pdf](http://sierraclub-nc.org/chapter/conservation/smartgrowth/attachments/Goals_com_1_19_01.pdf) (last visited Oct. 2001).

resources to support smart growth activities in all counties and municipalities; enhance the smart growth tool box at the local level; establish "Research North Carolina," a network of North Carolina based researchers and organizations to compile and initiate research on growth and development patterns; ensure coordination of local plans with regional strategies and with neighboring localities; strengthen regional coordination and cooperation; develop a state smart growth framework including a vision, goals and principles; create a state smart growth policy commission to provide oversight and advice; and make state investments consistent with adopted local and regional plans.<sup>211</sup>

## **Ohio**

### **Executive Activities**

Governor Bob Taft's Urban Revitalization Task Force, created in 1999 and composed of sixteen mayors (among others), issued its report in 2000 in accordance with its mission to promote and develop ways to improve state policies as they relate to the revitalization of urban areas. Specific policies and programs were recommended to the Governor in the areas of land, housing and neighborhoods, transportation and infrastructure, workforce development and education.<sup>212</sup>

In June 2000, Governor Bob Taft created the Office of Urban Development at the Department of Development for the purpose of helping cities to gain jobs, clean up brownfields and redevelop older neighborhoods.<sup>213</sup>

### **Legislative Activities**

Signed into law on July 26, 2001, House Bill 3 addresses brownfield revitalization by establishing procedures for the issuance of revenue bonds to generate \$400 million in funding to be deposited into the Clean Ohio Revitalization Fund. Administered by the Department of Development, the Clean Ohio Council is created to administer the grant program. To promote the establishment of recreational trails, the Act establishes the Clean Ohio Trail Fund, and to promote farmland preservation the Act creates the Clean Ohio Agricultural Easement Fund. This law implements State Issue 1 that voters approved in November 2000 by a 57 to 42% margin.<sup>214</sup>

Approved funding is allocated as follows: \$200 million each year for brownfield revitalization; \$25 million each year for farmland preservation; \$25 million each year for statewide recreational trails; and \$150 million each year for conservation projects.<sup>215</sup>

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<sup>211</sup> Id.

<sup>212</sup> Governor Bob Taft, Ohio Urban Revitalization, Policy Agenda and Task Force Report (2000).

<sup>213</sup> Press Release, Green Link, Taft Creates Urban Development Office: Will Ask Assembly for Other Revitalization Tools (July 17, 2000), available at <http://www.greenlink.org/public/hotissues/utrfoec.html>.

<sup>214</sup> Press Release, Governor Bob Taft, Taft Signs Bill to Create \$400 Million Clean Ohio Fund: Fund Will Revitalize Cities and Preserve Farmland, Green Space, Clean Water (July 26, 2001), available at <http://www2.state.oh.us/gov/releases/72620017681.htm>.

<sup>215</sup> Id.

## Oregon

### Legislative Activities

During the 2001 legislative session, bills were introduced to address metropolitan service district coordination of open spaces and historic and natural areas to those areas and resources which cross jurisdictional boundaries and where all jurisdictions request coordination.<sup>216</sup>

Governor Kitzhaber signed legislation in July 2001 requiring local comprehensive plans and land use regulations to address school facility planning as they would for other public facility planning.<sup>217</sup> To enhance water quality, the Governor signed legislation in August 2001 to authorize Portland, Multnomah County and municipalities within the urban growth boundary to offer land owners property tax incentives for stream restoration and maintenance on their property.<sup>218</sup>

### Ballot Initiatives

In November 2000, Oregonians approved Measure 7, a state constitutional amendment that provides that state or local governments shall provide compensation for any reduction in property values caused by regulations restricting the use of land. The measure, which passed by a 53 to 47% margin, was challenged and the Oregon Courts have so far ruled the measure unconstitutional.<sup>219</sup> The American Planning Association Amicus Curiae Committee along with the Oregon Chapter of APA submitted two briefs in this matter in support of the unconstitutionality of the measure.

## Pennsylvania

### Executive Activities

In his 2000-2001 budget presentation, Governor Ridge announced plans to preserve 100 farms in 100 days as part of his continued Growing Greener Initiative.<sup>220</sup> In April 2000, Governor Ridge announced nearly \$26 million in "Growing Greener" grants, making a total investment in the environment across the state more than \$77 million over 100 days.<sup>221</sup> As part

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<sup>216</sup> H.B. 2979, 71st Leg. Assemb., Reg. Sess. (Or. 2001).

<sup>217</sup> H.B. 3045, 71st Leg. Assemb., Reg. Sess. (Or. 2001).

<sup>218</sup> H.B. 3002, 71st Leg. Assemb., Reg. Sess. (Or. 2001).

<sup>219</sup> McCall v. Kitzhaber, No. S48227, 2001 Or. LEXIS 167, at \*1 (Or. Mar. 7, 2001).

<sup>220</sup> See Smart Growth News, <http://smartgrowth.org/news/bydate.asp?redate=2/1/00>; see also Press Release, Pennsylvania Department of Environmental Protection, Ridge Administration Announces 35 More Farms to be Preserved (Feb. 15, 2000), <http://www.dep.state.pa.us/update/default.asp?ID=615> (last visited Oct. 2001).

<sup>221</sup> News Release, Commonwealth of Pennsylvania, Governor Ridge Announces Nearly \$26 Million in 'Growing Greener' Grants to Mark Earth Week, Finale of '100 Days of Growing Greener' (April 18, 2000), <http://>

of this initiative, Lt. Governor Mark Schweiker presented local governments in sixteen counties with \$415,000 in land use planning grants.<sup>222</sup>

### **Legislative Initiatives**

In June 2000, as part of his "Growing Smarter" legislative agenda, Governor Ridge signed two land use bills<sup>223</sup> designed to provide both counties and municipalities with the tools necessary to plan for healthy economic growth and development, and the conservation of urban and rural resources while respecting private property rights.<sup>224</sup> As a package, Acts 67 and 68 of 2000<sup>225</sup> revised the Pennsylvania Municipalities Planning Code Act of 1968 and incorporated the four key components of the Governor's agenda including:

- clarifying the authority of counties and municipalities to create Locally Designated Growth Areas as part of their comprehensive land-use plans;
- encouraging and enhancing "Transferable Development Rights" as a tool to preserve open space and farmland, and to drive growth in areas where it is wanted;
- giving local governments greater ability to withstand legal challenges while effectively planning for growth in their communities; and
- facilitating consistent planning at the local, county and regional levels while retaining local control.

Also in 2000, Governor Ridge signed the Downtown Location Law, a measure designed to locate state offices in existing central business districts which promotes downtown revitalization and curbs sprawl.<sup>226</sup>

During the 2001 legislative session, a bill was introduced to authorize counties and municipalities to designate urban infill and redevelopment areas.<sup>227</sup> Community participation, economic and regulatory incentives, and grants are part of the proposal.<sup>228</sup>

### **Rhode Island**

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[www.dep.state.pa.us/newsreleases/default.asp?ID=332&varQQueryType=Detail](http://www.dep.state.pa.us/newsreleases/default.asp?ID=332&varQQueryType=Detail).

<sup>222</sup> See Smart Growth News, <http://smartgrowth.org/news/bydate.asp?redate=4/1/00>.

<sup>223</sup> H.B. 14, 184th Gen. Assemb., Reg. Sess. (Pa. 2000); S.B. 300, 184th Gen. Assemb., Reg. Sess. (Pa. 2000).

<sup>224</sup> The Pennsylvania Department of Environmental Conservation and Natural Resources, Governor Ridge Signs 'Growing Smarter' Land-Use Bills into Law, The Resource, July 2000, <http://www.dcnr.state.pa.us/polycomm/res2000/landusebill0700.htm> (last visited Oct. 2001).

<sup>225</sup> Approved by the Governor June 22, 2001 and June 23, 2001 respectively; H.B. 14, 184th Gen. Assemb., Reg. Sess. (Pa. 2000).

<sup>226</sup> 2000 Pa. Laws 318.

<sup>227</sup> S.B. 378, 185th Gen. Assemb., Reg. Sess. (Pa. 2001).

<sup>228</sup> Id.

## **Executive Order**

On February 17, 2000, Governor Lincoln Almond established the Growth Planning Council via Executive Order.<sup>229</sup> The Council, consisting of representatives of the public (state and local), private and non-profit sectors is charged with:

- examining the economic, environmental and social impacts of Rhode Island's current development;
- inventorying existing state programs, policies and expenditures to evaluate their effect on sustainable development;
- recommending ways of encouraging growth in economically and environmentally sound locations;
- fostering partnerships among state agencies, communities and the private sector to build local capacity to plan for and implement sustainable growth;
- providing advice and technical assistance to local governments in the development of their land use plans; and
- recommending to the Governor and the General Assembly necessary legislative and/or regulatory changes to encourage sustainable growth.<sup>230</sup>

The Council, charged with reporting annually beginning in June 2001, issued its first report that contained a series of recommendations including: increasing the focus of government investment in urban communities; targeting growth toward areas that can accommodate sustainable development; and using state administered grants to provide incentives for proactive planning.<sup>231</sup> In addition, the Council has undertaken the development of a Planning Institute, a permanent non-profit corporation designed to improve planning capacity where it is needed and currently lacking.<sup>232</sup>

## **Legislative Activities**

A 2000 Joint Resolution of the General Assembly created a special legislative commission to study the concept of sustainability as it could be encouraged by state government.<sup>233</sup> A report is forthcoming in January 2001.<sup>234</sup> In addition, the administration was directed to assign necessary staff to perform the functions required by the Comprehensive Planning and Land Use Regulation Act to assist communities to addressing sprawl, urban revitalization and inter-municipal coordination.<sup>235</sup> The Development Impact Fee Act was

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<sup>229</sup> Exec. Order No. 00-2, (R.I. 2000), <http://www.state.ri.us/dem/programs/bpoladm/suswshed/gpcorder.htm>.

<sup>230</sup> Id.

<sup>231</sup> Governor's Growth Planning Council, Annual Report (R.I. 2001), <http://www.state.ri.us/dem/pubs/growth1.pdf>.

<sup>232</sup> Id.

<sup>233</sup> S.J. Res. 2854, 2000 Gen. Assemb., Jan. Sess. (R.I. 2000).

<sup>234</sup> Id.

<sup>235</sup> H.R. 8071, 2000 Gen. Assemb., Jan. Sess. (R.I. 2000).

enacted in 2000 to help local governments ensure that adequate public facilities are available to serve new growth and development.<sup>236</sup>

## **South Carolina**

### **Executive Activities**

In March 2000, Governor Jim Hodges hosted a "Governors' Summit on Growth Remarks," which was attended by approximately 400 business and government leaders.<sup>237</sup>

### **Legislative Activities**

In 2000-2001, the Farm and Forest Lands Protection Act was introduced to, among other things, establish requirements, criteria and procedures for the creation of priority agricultural land areas.<sup>238</sup> The bill also authorizes the purchase of agricultural conservation easements, and create a State Priority Agricultural Land Board within the Department of Natural Resources to administer the programs. Two property rights bills were also introduced, one that would require compensation for landowners when a regulation causes a "substantial diminution" in property value as well as requiring local officials to assess the impact of proposed new regulations affecting land use on property values,<sup>239</sup> and a second bill would entitle a landowner to compensation when government action inordinately burdens a use of property.<sup>240</sup>

The Comprehensive Infrastructure and Sustainable Development Act was introduced in 1999.<sup>241</sup> The proposal defines local and regional sustainable development planning; provides for the creation of plans, programs, development incentives, regulations and studies that promote sustainable development planning; establishes advisory recommendations and standards for sustainable development practices; and provides for technical assistance and funding.<sup>242</sup>

## **Texas**

### **Legislative Activities**

During the 2001 legislative session, a bill limiting development moratorium to 120 days

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<sup>236</sup> H.R. 7308, 2000 Gen. Assemb., Jan. Sess. (R.I. 2000).

<sup>237</sup> See <http://www.state.sc.us/governor/speeches/Governoris%20sUmmit%20on%20Growth.htm> (last visited October 2001); See also <http://www.myscgov.com>.

<sup>238</sup> H.B. 3111, 2001 Gen. Assemb., Reg. Sess. (S.C. 2001); S.B. 156, 2001 Gen. Assemb., Reg. Sess. (S.C. 2001).

<sup>239</sup> S.B. 88, 2001 Gen. Assemb., Reg. Sess. (S.C. 2001).

<sup>240</sup> H.B. 3110, 2001 Gen. Assemb., Reg. Sess. (S.C. 2001).

<sup>241</sup> See Business Agenda Growth Management, <http://www/sccc.org/2002%20Business%20C%20Agenda/Growth%202002> (last visited Apr. 24, 2002).

<sup>242</sup> Id.

was signed by the Governor.<sup>243</sup> The legislation also requires two public hearings and written findings before a moratorium can be enacted. A proposal that would have removed the municipal exemption from the requirements of the property rights preservation act failed to secure passage<sup>244</sup> as did a proposal to exempt religious organizations from subdivision planning requirements.<sup>245</sup> Legislation to amend the impact fee law was enacted.<sup>246</sup>

## Utah

### Legislative Activities

Several proposals were introduced during the 2001 legislative session. These include: one hundred thousand dollars in funding to assist rural counties prepare general plans;<sup>247</sup> a proposal exempting telecommunications facilities from local subdivision regulations;<sup>248</sup> and a proposal requiring local governments to treat manufactured home subdivisions in the same way as conventional subdivisions.<sup>249</sup>

## Vermont

### Executive Order

In February 2000, Governor Howard Dean issued an executive order creating a Development Cabinet.<sup>250</sup> The Cabinet is responsible for ensuring collaboration and consultation among state agencies and departments. The executive order directs all agencies and departments to, among other things, support the conservation of working lands and open spaces; develop and implement public education plans that encourage discussion at the local level about the impacts of poorly designed growth; encourage development in and work to revitalize existing villages and urban centers (including brownfields and housing stock); encourage communities to approve settlement patterns that support compact villages, open spaces and working landscapes; and work to make sure that wherever possible the expenditure of state appropriations are made consistent with the executive order directives.<sup>251</sup>

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<sup>243</sup> S.B. 980, 2001 Legis. (Tex. 2001).

<sup>244</sup> H.B. 25, 2001 Legis. (Tex. 2001).

<sup>245</sup> H.B. 984, 2001 Legis. (Tex. 2001).

<sup>246</sup> S.B. 243, 2001 Legis. (Tex. 2001).

<sup>247</sup> H.B. 71, 56th Legis., Gen. Sess. (Utah 2001). According to Utah Rep. Stephen H. Urguart, this bill was passed and signed by Governor Leavitt as part of an appropriations bill and it is therefore not codified. (Conversation Oct. 18, 2001).

<sup>248</sup> S.B. 98, 56th Legis., Gen. Sess. (Utah 2001).

<sup>249</sup> S.B. 158, 56th Legis., Gen. Sess. (Utah 2001).

<sup>250</sup> Exec. Order No. 01-00, 110 Vt. Gov't Reg. 1 (Feb. 9. 2000).

<sup>251</sup> Id.

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## Virginia

### Legislative Activities

The Study Commission on Growth and Economic Development was created by joint resolution of the legislature in February 2001 to examine, among other things, the adequacy of current revenue resources to meet existing and future infrastructure needs, the revitalization of inner-city areas and older suburbs, the development of abandoned or unused sites (brownfields), and the appropriate means of preserving both open space and individual property rights as well as funding mechanisms for accomplishing preservation goals.<sup>252</sup> The Commission's report is due in November 2001.

Created in 2000, the Virginia Agricultural Vitality Program was established to preserve land and the business of agriculture in the state by, among other things, helping localities create a fund for the purchase of development rights programs.<sup>253</sup> To promote urban revitalization, the Urban Public-Private Partnership Redevelopment Fund was established to provide grants and loans to local governments to finance the assembling, planning, clearing and remediation of sites for redevelopment.<sup>254</sup>

A number of land use related bills were introduced in the 2000 legislative session, but they failed to win support. These measures addressed, among other things, a study on state zoning enabling laws;<sup>255</sup> impact fees;<sup>256</sup> special zoning exemptions for single family dwellings;<sup>257</sup> zoning applicant disclosure;<sup>258</sup> and land use planning reforms.<sup>259</sup>

## Washington

### Legislative Activities

A series of proposals was introduced in 2001 that failed to win support. These included: proposals to coordinate the planning process of the Growth Management Act with the Shoreline

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<sup>252</sup> H.J. Res. 671, 2001 Legis., Reg. Sess. (Va. 2001).

<sup>253</sup> See Virginia Agricultural Vitality Program, <http://www.savefarms.com/question2.htm> (last visited Oct. 2001).

<sup>254</sup> H.B. 1232, 2000 Legis., Reg. Sess. (Va. 2000).

<sup>255</sup> H.J. Res. 205, 2000 Legis., Reg. Sess. (Va. 2000).

<sup>256</sup> H.B. 853, 2000 Legis., Reg. Sess. (Va. 2000); H.B. 1285, 2000 Legis., Reg. Sess. (Va. 2000); H.B. 1529, 2000 Legis., Reg. Sess. (Va. 2000); S.B. 719, 2000 Legis., Reg. Sess. (Va. 2000).

<sup>257</sup> H.B. 908, 2000 Legis., Reg. Sess. (Va. 2000).

<sup>258</sup> H.B. 1070, 2000 Legis., Reg. Sess. (Va. 2000).

<sup>259</sup> S.B. 231, 2000 Legis., Reg. Sess. (Va. 2000).

Management Act;<sup>260</sup> requiring concurrency planning for parks, schools and law enforcement in growth management comprehensive plans and development regulations;<sup>261</sup> and revisions to the Growth Management Act.<sup>262</sup>

## Wisconsin

The Governor's Working Group on Tax Incremental Financing issued its report in December 2000, recommending technical amendments to existing laws as well as new laws and policies to assist in earmarking future tax revenues in designated areas to fund the costs of making certain improvements.<sup>263</sup>

In his 2001-2003 State Biennial Budget Proposal relating to land use and land information, Governor McCallum proposed minor statutory reforms to the 1999 land use reform put in place by Governor Tommy Thompson.<sup>264</sup>

## Wyoming

During the 2001 legislative session, the law was clarified to define a subdivision as any division of land rather than the division of land into three or more lots.<sup>265</sup> A bill to authorize local transfer of development rights programs for the purpose of preserving agricultural land failed to secure passage.<sup>266</sup>

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<sup>260</sup> S.B. 6208, 57th Legis., Spec. Sess. (Wash. 2001); H.R. 1964, 57th Legis., Reg. Sess. (Wash. 2001).

<sup>261</sup> H.B. 1815, 57th Legis., Reg. Sess. (Wash. 2001); H.B. 2278, 57th Legis., Spec. Sess. (Wash. 2001).

<sup>262</sup> S.B. 5840, 57th Legis., Reg. Sess. (Wash. 2001).

<sup>263</sup> John Reinemann, Division of State and Local Finance, Wisconsin Department of Revenue, Report of the Governor's Working Group on Tax Incremental Finance (TIF) (2000), <http://www.doa.state.wi.us/html/tifreprt.pdf>.

<sup>264</sup> State Budget Office, available at [http://doa.state.wi.us/debf/sbo/state\\_budget/state\\_budget0103.asp](http://doa.state.wi.us/debf/sbo/state_budget/state_budget0103.asp) (last visited Jan 2002)(excerpts from Governor McCallum's 2001-2003 State Biennial Budget Proposal Relating to Land Use & Land Information).

<sup>265</sup> S.F. 157, 2001 Legis., Reg. Sess. (Wyo. 2001).

<sup>266</sup> H.B. 251, 2001 Legis., Reg. Sess. (Wyo. 2001).

## Conclusion

The interest in land use reform at the state government level remains at an all-time high. In early 2002, the American Planning Association released the final version of its Growing Smart Legislative Guidebook<sup>267</sup> to assist lawmakers and policymakers with identifying quality land use reform initiatives that will best serve the constituents of the individual states. Perhaps a key lesson from the exhaustive review of state activities is that each state has approached the subject in a manner that reflects the political, social, economic and environmental challenges unique to the jurisdiction. Model laws that were once the foundation of early state enabling acts are yielding to creative and innovative tailored legislation in the states. This will provide fertile ground for comparative studies that benchmark the successes and failures of the smart growth land use reform effort in the future. For the present, planning reform advocates continue to have their seat at the table as planning law and policy is discussed and debated in statehouses across the country.

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<sup>267</sup> See American Planning Assoc., <http://www.planning.org> (information on Growing Smart and the Guidebook) (last visited Mar. 2002). Significantly, this Guidebook does not offer one model of statutory land use reform. Rather, it offers options with Commentary. See, Salkin, Patricia, "The Next Generation of Planning and Zoning Enabling Acts is on the Horizon: 2002 Growing Smart Legislative Guidebook is a Must-Read for Land Use Practitioners," 30 Real Estate L.J. 353 (2002).