



Part I

✱ Preface, Introduction and Initiating
Planning Statute Reform

Preface

State enabling legislation for planning and land-use control affects our lives in many important ways. We might not fully realize it, but most local governments in which we live and work have been planned and developed under state enabling statutes that establish the framework for community building.

State statutes delegate power to local governments to prepare comprehensive plans, zone land, regulate subdivisions, require the installation of public facilities in new developments, and redevelop older areas. They affect the quality of life that the built environment yields. They help determine public costs and tax burdens associated with providing infrastructure and public services, such as streets, sewer systems, and schools. The price you pay for housing, or indeed whether affordable housing is even available, is influenced by state planning and zoning enabling statutes and local policies that are authorized by and carried out under those state statutes. A local government's ability to designate areas of the community for commerce and industry, and thus help create a place for jobs, is also a function of enabling legislation.

Similarly, public policies and programs that are carried out under existing state statutes and the community-building objectives of local governments influence the quality of the natural environment. Whether a sensitive wetland is developed for an urban use, or set aside as an ecological preserve, will depend to some extent on the enabling statutes in your state and land-use regulations applied by local government.

A number of states are now taking innovative steps to reform their planning and zoning enabling statutes so that they help to revitalize neighborhoods, improve housing affordability, direct the pace and location of development, and ensure wise public expenditures for capital facilities. In other states, public and private groups need answers now about how to improve their communities and deal with issues of growth and change, and objective information on what planning and land-use control approaches work. It is time for more states to join the

innovators that have already recognized that reforming state planning and land-use enabling statutes holds the key to attaining contemporary public and private objectives.

To respond to this need, the American Planning Association has developed the *Growing SmartSM Legislative Guidebook: Model Statutes for Planning and the Management of Change*, 2002 Edition (Stuart Meck, FAICP, Gen. Editor). The *Guidebook* provides alternative approaches to reforming state planning and zoning enabling statutes with model laws and supporting commentary. Many of the model laws in the *Guidebook* are adaptations of existing, successful state statutes. This *User Manual* is intended to assist those interested in planning statute reform apply the materials in the *Guidebook* to develop innovative programs that are tailored to the needs of their own states.

Is This What The Future Holds?

Picture the following metropolitan region in the not-so-distant future. The central city, which once experienced disinvestment, is prospering once again. Residents of the central city are no longer disproportionately poorer, and living downtown has become attractive and popular again. Suburbs surrounding the city, even though they are maturing, have maintained their stability and have viable, attractive neighborhoods. The local governments in the inner-suburban areas of the region have been able to thwart decline and blight, due to changes in state laws that provide additional tools for economic development and tax-base sharing.

The region's outlying areas are protected by a productive agricultural greenbelt, which has helped to minimize the conversion of productive farmland to suburban subdivisions. The small towns in the outer portion of the region have maintained their small town features. Local governments in the growing suburban part of the region are keeping up with the demands of growth, due to changes to state planning statutes that authorize development impact fees and other innovative financing tools. Businesses in the region have a diverse, skilled labor force to choose from, due to the implementation of regional affordable housing plans and public transportation that is available within all parts of the region.

The natural environment of the region seems to be sustaining itself. Development is guided away from environmentally sensitive areas and into the most appropriate areas of the region because of supportive state policy, regional planning,

local regulation, and public-private partnerships. Wetlands that provide a rich ecosystem are maintained through innovative local approaches to mitigation authorized by state planning and land-use statutes. Open spaces are being permanently protected through conservation easements and land acquisition programs financed by new sources of revenue authorized by state statute.

Does this scenario accurately depict one or more regions in your state? A big part of the reason for success (or failure) lies in legislation—the adoption of state statutes that establish new planning systems and authorize tools to adapt to new times.

In metropolitan areas with characteristics described in this scenario, there is a growing appreciation that state planning and land-use enabling statutes have held the key to attaining their public and private objectives.

Why Planning Laws Need Reform:

- * *Complex intergovernmental systems*
- * *Need to assert state interests*
- * *Societal consensus for resource protection*
- * *A sophisticated and active citizenry*
- * *Complex legal issues*

Why Do We Need To Reform Planning Enabling Legislation?

Our planning tools date from another era. The planning and zoning statutes in many states are based on two model acts drafted by an advisory committee of the U.S. Department of Commerce in the 1920s, the *Standard City Planning and Zoning Enabling Acts*. When these acts were drafted, the nation was a different place. Growth was largely confined to central cities and the few suburbs that had commuter train lines. While control of air and water pollution, noise, and industrial hazards was always a fact in urban areas and prompted the adoption of early land-use regulations, appreciation of the complex interactions of ecological systems—and the human impact on those systems—was still in its infancy. After World War II, prompted by the construction of the Interstate highway system and by the availability of low-cost federally backed mortgages for homes, growth shifted outward from the central cities to the vast rural areas beyond.

In the 1920s we saw land merely as a commodity, something to be bought and sold. Today we view it as a resource for which there are competing social uses, and see the planning process as the vehicle to make decisions about those uses. In the 1920s, plans and development regulations were often developed without broad-based public involvement. Today, in virtually every community, citizens now expect to be engaged in community planning processes, and, when they participate, they expect to see results from their efforts. In the 1920s, government, especially local government, was simple, and there were fewer governmental units. Today, government is layered and complex, and there are many more governmental units—federal, state, regional, and local—whose actions affect each other.

Approaches that worked in the 1920s are plainly inadequate today. We must give people new choices concerning land use, housing, employment, transportation, and the environment. Statutory reform of planning laws is a serious contemporary concern that affects every state, region, and local government in our nation. The future is closing in, and it is time to grow smart.

Introduction

There is no single, “one-size-fits-all” model for planning statutes.
—Growing SmartSM Statement of Philosophy No. 1

What is the Central Purpose of the Legislative Guidebook?

The *Legislative Guidebook* is intended to provide users (see “target audiences”) with ideas, principles, methods, procedures, definitions, and alternative legislative approaches drawn from various states, regions, and local governments across the country.

- Target Audiences:**
- * Local elected and appointed officials
 - * Governors
 - * Public and private interest groups
 - * State legislators
 - * Planners
 - * State legislative research bureaus
 - * Citizens

What is Covered in the Legislative Guidebook?

The *Legislative Guidebook* addresses state statutes and provides models and alternatives for reforming them. State statutes are not exclusively regulatory in their contents, and neither is the *Guidebook*.

- Major Topics:**
- * Judicial review
 - * Planning
 - * Taxation
 - * Development control
 - * Incentives
 - * Infrastructure

It must be emphasized that alternatives are provided, as opposed to suggesting a “one-size-fits-all” approach. Pros and cons of the various alternatives are provided in the *Legislative Guidebook*.

How is the Legislative Guidebook Organized?

The *Legislative Guidebook* is organized in 15 chapters, with a preface and introduction. Each chapter follows a more-or-less standard organization of contents as follows:

Chapter Outline. Each chapter contains an outline that identifies major divisions of the chapter (e.g., “state planning agency organization”) and Section numbers of model statutes that pertain to them (e.g., 4-101, 4-102, etc.). Where the model statutes provide alternatives, they are identified in the chapter outline.

Cross References. In some of the chapters, cross references to other Sections of model statutes are provided to ensure that reader identifies statutory language related to the contents of the subject chapter.

Introductory Text. The content of each chapter begins with introductory text, which provides the context for the chapter and its contents. Introductory text is often divided into sections with title headings. Several chapters use tables and text boxes in the introduction to summarize contents, illustrate alternatives, reference key literature, or provide quotations for context. In many places, the introductory text is provided to divisions within a given chapter.

Commentary. A “commentary” precedes all model statutory language. Commentaries summarize the contents of the existing state statutes and relevant court decisions, alert the user to alternatives, and help the reader understand why the model statutes were drafted the way they are. Commentaries

also refer to prior model statutes, such as the U.S. Department of Commerce *Standard City Planning and State Zoning Enabling Acts* of the 1920s and the American Law Institute's *Model Land Development Code* (1976), and they describe how the model statutes of the *Legislative Guidebook* incorporate or depart from those prior models.

Model Statutes With Alternatives. Following the commentary, the *Legislative Guidebook* provides statutory language. Where appropriate, alternatives are provided. Sections of the model statutes are identified with a bold title (section of a statute) that is numbered (e.g., 4-20I, 4-30I, etc.).

Notes. The *Legislative Guidebook* also contains “Notes” in selected places. Oftentimes, notes are used to illuminate a particular state or local approach to statutory reform or regulation that has proven successful and that was influential in the drafting of the model statutes. Like the introductory text, the “notes” also incorporate tables and text boxes where appropriate

Footnotes. Footnotes provide citations to literature, statutes, and regional and local approaches on which the content of the *Legislative Guidebook* is based.

Planning statute reform should look not just at regulation but also at infrastructure and property taxation.

—Growing SmartSM Statement of Philosophy No. 4

Who Helped Develop the Legislative Guidebook?

A project Directorate, consisting of national organizations and representatives, advised the American Planning Association's project team. Project supporters, which include several federal agencies and a private foundation, also had input to the content of the *Legislative Guidebook*. An extensive public review process was followed in the drafting of the *Legislative Guidebook*, and many changes were made as a direct result of comments received through it.

Does the Legislative Guidebook Make Recommendations or Sanction Individual Approaches?

The content of the *Legislative Guidebook* was guided by the Growing SmartSM program's “statements of philosophy” formulated by the project Directorate. Ultimately, some choices were made in drafting alternative statutory models. However, the intent of the *Legislative Guidebook* is to provide alternatives, with commentary on the pros and cons of each alternative, out of the recognition that states should select or adapt the approach that best fits them.

Model statutes should be based on an appraisal of what has worked.

—Growing SmartSM Statement of Philosophy No. II

Additional Features of the User Manual

This *User Manual* employs text boxes as “sidebars” to illuminate key points. Readers can skim through this *Manual* by reading the sidebars and gain an overall picture of the contents of the *Legislative Guidebook*, as well as the statements of philosophy that guide the Growing SmartSM project. The *User Manual* provides references to model statutes in parentheses (e.g. I-101), and all references are to the *Legislative Guidebook* itself. The *User Manual* is “comprehensive” in the sense that it summarizes each major section of the model statutes provided in the *Legislative Guidebook*.

This *User Manual* also provides statements of “Caution” and “Interrelationships.” The purpose of the caution statements is to alert the user to be careful about some particular use or application of the *Legislative Guidebook*. The interrelationships are intended to guide the user into thinking more holistically about the particular task at hand or topic being considered. Also, the *User Manual* includes an occasional “Note.”