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COMMUNITY CHARACTER ACT OF 2002

SEPTEMBER 18, 2002.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

MINORITY VIEWS

[to accompany S. 975]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 975) to improve environmental policy by providing assistance for State and tribal land use planning, to promote improved quality of life, regionalism, and sustainable economic development, and for other purposes, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

Since its inception, our Nation has been expanding, both economically and demographically. America has grown from East to West, as well as from an urban setting to suburban one. After the second World War, waves of returning soldiers—looking for a better life for themselves and their families—helped create a unprecedented building boom in the United States. Farms and open spaces across America were turned into massive tracts of new houses as the Nation experienced explosive growth.

In the wake of the post-World War II building boom, towns across the country experienced the type of development that too often offends the eye and saps our economic strength. Due to a lack of planning, incremental and haphazard development occurred

through a mixture of incompatible zoning decisions. Industrial and commercial facilities and residential homes were frequently and inappropriately sited next to each other. In many areas, State and local governments strained by explosive growth learned that proper approaches to planning can help meet its challenges, whether it is preserving limited open space in the East or protecting precious drinking water supplies in the West.

Cities and towns across America are facing a difficult choice between development and the preservation of community character. Since 1990, the rates of population growth in some communities across America have been staggering: Las Vegas, NV, 83 percent; Naples, FL, 65 percent; Austin, TX, 48 percent; Boise, ID, 46 percent; Phoenix, AZ, 45 percent; Provo, UT 40 percent; Atlanta, GA, 39 percent; Wilmington, NC, 36 percent, and Denver, CO, 30 percent.

Factors contributing to the Nation's sweeping growth include a strong economy and transportation and technology advancements that allow people to live greater distances from work. Due in part to inadequate planning, strip malls and retail development catering to the automobile have become the trademark of the American landscape.

When a development boom hits a community, local planning departments are often overwhelmed, citizens are caught unawares, and the community's character is undermined before residents have a chance to be heard. Adequate planning requires funding to hire expertise in such areas as traffic engineering, landscape design, architecture, and historic preservation. The problems that may result include loss of open space, burdened drinking water supplies, wasted infrastructure spending for new facilities while existing infrastructure is sitting idle in developed and abandoned areas. By providing limited Federal funding, State and tribal governments can improve the quality of communities, the environment, and the economy.

OBJECTIVES OF THE LEGISLATION

First, the legislation recognizes that growth is oftentimes inevitable, and therefore requires careful planning. Well-planned development can significantly enhance a community's sense of character, while also expanding its revenue base. This bill is not intended to halt growth; it simply encourages State, tribal, and local governments to plan for growth.

The bill is specifically written to ensure local—not Federal—control of land use decisions. The bill does not require any State or local government to do any planning if they decide it is unnecessary. Instead, it provides critical funding to States and local governments that find themselves under siege by unexpected development and want to update local planning laws, but might otherwise lack the means to do so.

Mistakes made through haphazard development are costly and not easily erased. S. 975 represents an opportunity for the Federal Government to play a limited but helpful role, which every State is free to accept or reject. By providing $25,000,000 annually to aid States and municipalities with their planning needs, this small investment is intended to yield large dividends to communities in every corner of the Nation.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section designates the title of the bill as the "Community Character Act of 2001."

Sec. 2. Findings

Section 2 sets out the congressional findings and purposes of the legislation.

Sec. 3. Definitions

Section 3 defines the following terms for purposes of this bill: land use plan; land use planning legislation; Secretary; State; and tribal government.

Sec. 4. Grants to States and Tribal Governments to Update Land Use Planning Legislation

SUMMARY

Section 4 authorizes the Economic Development Administration to establish a program to provide grants to States and tribal governments on a competitive basis for the development or revision of land use planning legislation. States and tribal governments are eligible for grants if their land use planning activities promote environmental protection, public works infrastructure, and sustainable economic development. States and tribes that receive these grants may use them to develop or revise land use planning legislation, conduct research and development relating to land use plans, or provide funding to local governments to carry out land use planning activities consistent with State planning legislation. This section also provides for local government pilot projects related to land use planning. The bill provides $25 million per year for fiscal years 2003 through 2007 and caps grants at $1 million ($1.1 million if funding local pilot projects), subject to a 10 percent match. Five percent of the annual authorization is set aside for tribal governments to the extent that there are sufficient eligible applications.

DISCUSSION

Section 4(a) directs the Secretary to create a program to award grants to States and tribal governments for the purpose of promoting comprehensive land use planning at the State, tribal, and local levels. States and tribes that meet the eligibility requirements described in Section 4(b) are eligible to compete for and receive grants from the Secretary under this section. Grant awards may not be made directly from the Secretary to local governments although States may grant money to local governments under Section 4(c)(2) and 4(d).

Section 4(a)(2) establishes the mechanism for the submission and approval of grant applications. The application for funding under this program may take any form the Secretary deems appropriate. This section requires the Secretary to review applications for funding at least once per year, although nothing prohibits the Secretary from reviewing or approving applications more frequently. When determining which applications to approve, the Secretary must evaluate the application against the ranking criteria listed in this

section. It is anticipated that the Secretary will solicit information in the application process that will allow applications to be measured against the ranking criteria. Section 4(a)(3) establishes six ranking criteria that the Secretary will utilize to analyze competing grant applications. Those ranking criteria are:

- The extent to which a State or tribal government has in effect inadequate or outmoded land use planning legislation.
- The extent to which a grant will facilitate development or revision of land use plans consistent with updated land use planning legislation.
- The extent to which development or revision of land use plans will facilitate multistate land use planning.
- The extent to which the area under the jurisdiction of a State or tribal government is experiencing significant growth.
- The extent to which the project to be funded using a grant will protect the environment and promote economic development.
- The extent to which a State or tribal government has committed financial resources to comprehensive land use planning. Except for giving priority to States and tribal governments that have applied for grant funding and that have inadequate or outmoded land use planning legislation in effect, the Secretary has ultimate discretion with regard to how much weight to give each ranking criteria.

Section 4(b) delineates what States and tribal governments must demonstrate to be eligible for grant funding under this section. Since grants will be used to create future land use planning legislation or promote future land use activities at the State, tribal, and local levels, Section 4(b) is intended to be flexible so that a sufficient number of applicants are eligible for the money while ensuring that these government resources are not being wasted. The committee does not intend the eligibility requirements in Section 4(b) to be a prescriptive list of what must be included in the final product for which funding is being requested. Under Section 4(b), a State or tribal government will be eligible to receive grant funding under this section if it demonstrates that the project, or the goal of the project to be funded by the grant, promotes land use planning activities that:

- are comprehensive in nature and, to the maximum extent practicable promote environmental protection, take into consideration existing and future public works infrastructure (transportation, drinking water, and waste water), promote sustainable economic development and social equity, enhance community character, conserve historic, scenic, natural, and cultural resources, and provide for a range of affordable housing options;
- promote land use plans that contain an implementation element that includes a timetable for action and a definition of the respective roles and responsibilities of agencies, local governments, and other stakeholders, is consistent with the capital budget objectives of the State or tribal government, and provides a framework for decisions relating to the siting of infrastructure development, including development of utilities and utility distribution systems;
- result in multijurisdictional governmental cooperation, to the maximum extent practicable, particularly in the case of land use plans based on watershed boundaries;

- encourage the participation of the public in the development, adoption, and updating of land use plans;
- provide for the periodic updating of land use plans; and
- include recognized approaches to land use planning. Section 4(b) does not prescribe or endorse any particular approach to land use planning. It is expected that grant recipients will use awards to develop land use planning approaches that are suited to the individual circumstances, needs, geography, demographics, and desires of that grant recipient. In addition, at no point shall the Secretary direct grant recipients toward using one particular approach.

Section 4(c) describes the types of activities or projects that States and tribes may carry out with grants awarded under this legislation. Grants awarded under this section may be used to obtain technical assistance or to implement 1) development or revisions of land use planning legislation, 2) research and development relating to land use plans, and other activities relating to the development of State, tribal, or local land use plans, that result in long-term policy guidelines for growth and development, 3) workshops, education of and consultation with policymakers, and participation of the public in the land use planning process, and 4) coordination of Federal, State, regional, tribal, or local land use plans. In order to accommodate States that would like to fund similar activities at the local level, this section allows grant recipients to provide funding to local governments to carry out land use planning activities consistent with State and tribal land use planning legislation. In addition, grant recipients may use funding received under this section to acquire equipment or information technology to facilitate State, tribal, or local land use planning. Investing in this type of equipment, whether it be geographic information systems, community visualization software, or other equipment, will provide communities with the tools to pursue planning activities long after the grant is awarded. The intent of the legislation to is to be as flexible as possible in order to achieve maximum results with limited resources.

Section 4(d) allows a State to include in its application for a grant under this section a request for additional grant funds with which to establish pilot projects for local governments. The money obtained under the authority of this subsection would allow States to directly grant funding to local governments that wish to carry out land use planning activities that are consistent with land use planning legislation enacted at the State level. While it is not expected that the local government activities would mirror State activities, it is reasonable to expect that the local activities would not be inconsistent with State land use planning legislation, as defined under this Act.

Section 4(e) establishes caps for grants awarded under this Act. A State or tribal government may not receive a grant in excess of $1,000,000 unless its application included a provision to establish a local government pilot project, in which case the Secretary may award up to another $100,000. Therefore the maximum grant award under this section, if a State intends to establish local government pilot projects, is $1,100,000. This cap is limited to the amount of a single grant. A State or tribe may apply each year if it has eligible activities to fund, but must compete against all other

applications submitted in a given year. In order to ensure that the money provided under this program benefits all those which seek funding, the Secretary should consider previous grant awards to an applicant when balancing competing applications so that the same recipients do not receive funding year after year to the exclusion of others.

Section 4(f) precludes the Federal share from exceeding 90 percent of the cost of a project funded with a grant, except in a case in which the Secretary determines that a tribal government does not have sufficient funds to pay the non-Federal share of the cost of the project. An investment of 10 percent, of the cost of a project funded with a grant, by the State or tribal government will show commitment to the project and limit the costs to the Federal Government.

The bill provides in Section 4(g) that the Inspector General of the Department of Commerce may periodically audit grants awarded under this section to ensure that the grant funds are used for the purposes specified in this section. Results of any audits shall be taken into consideration by the Secretary in awarding any future grants to a State or tribal government. Within 3 years of enactment of this bill, the Inspector General of the Department of Commerce shall submit to Congress a report describing the management of this grant program.

Section 4(h) of this bill authorizes $25,000,000 for each of fiscal years 2003 through 2007. Of the amount appropriated under this subsection, the legislation requires a minimum of 5 percent be set aside for tribal governments to the extent that there are a sufficient number of tribal governments that are eligible for funding and that submit applications. The committee intends that the 5 percent of appropriated minimum funding level for tribal governments will be calculated annually based upon amounts appropriated and not the amounts authorized in this legislation.

LEGISLATIVE HISTORY

On May 25, 2001, Senators Chafee, Bennett, Jeffords, Levin, Specter, Bingaman, Cleland, and Lieberman introduced S. 975, a bill to improve environmental policy by providing assistance for State and tribal land use planning, to promote improved quality of life, regionalism, and sustainable economic development, and for other purposes. The Committee on Environment and Public Works conducted a hearing on S. 975 on March 6, 2002. S. 975, as amended, was reported favorably by the Committee on Environment and Public Works on April 25, 2002.

HEARINGS

On March 6, 2002, the Committee on Environment and Public Works held a hearing on S. 975, a bill to improve environmental policy by providing assistance for State and tribal land use planning, to promote improved quality of life, regionalism, and sustainable economic development, and for other purposes. The committee received testimony from Hon. David A. Sampson, Assistant Secretary for Economic Development, U.S. Department of Commerce; Ms. Elizabeth Humstone, Executive Director, Vermont Forum on Sprawl and Vice Chair, city of Burlington, VT Planning Commis-

sion, on behalf of the American Planning Association; Ms. Deborah Anderson, Director, Woods Partners, LLC, Durham, NC, on behalf of the National Multi-Housing Council and the National Apartment Association; Mr. Don Chen, Executive Director, Smart Growth America, Washington, DC; Mr. F. Gary Garczynski, President, National Association of Home Builders; and Ms. Mary Lou Bentley, Executive Director, Western Nevada Development District, Carson City, NV, on behalf of the National Association of Development Organizations.

ROLLCALL VOTES

On April 25, 2002, the Committee on Environment and Public Works met to consider S. 975, the Community Character Act. A manager's amendment offered by Senators Jeffords and Chafee was agreed to by voice vote. A motion to report S. 975 as amended was agreed to by a vote of 12 ayes and 7 nays. Voting in favor were Senators Baucus, Boxer, Carper, Chafee, Clinton, Corzine, Graham, Jeffords, Lieberman, Reid, Specter, and Wyden. Voting against were Senators Bond, Crapo, Domenici, Inhofe, Smith of New Hampshire, Voinovich, and Warner.

REGULATORY IMPACT STATEMENT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication of the report of the committee's estimate of the regulatory impact made by the bill as reported. No regulatory impact is expected by the passage of S. 975. The bill will not affect the personal privacy of others.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), the committee finds that this bill would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. The bill does not directly impose any private sector mandates.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 15, 2002.

Hon. JAMES M. JEFFORDS, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 975, the Community Character Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for Fed-

eral costs), who can be reached at 226–2860, and Leo Lex (for State and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN.

S. 975 Community Character Act of 2002, as ordered reported by the Senate Committee on Environment and Public Works on April 25, 2002

Summary

S. 975 would direct the Economic Development Administration (EDA) to make grants to states and tribes for projects related to land-use planning. The grants would be used for state or tribal research, development, and education, and to provide funding to local governments for land-use planning and other activities. For this purpose, the bill would authorize the appropriation of $25 million annually for fiscal years 2003 through 2007.

CBO estimates that implementing S. 975 would cost $70 million through fiscal year 2007, assuming the appropriation of the authorized amounts. (About $55 million of the authorized total would be spent after 2007.) The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 975 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development). For purposes of this estimate, CBO assumes that the bill will be enacted before the start of fiscal year 2003, and that authorized amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar EDA programs.

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION					
EDA Land-Use Grants:[1]					
Authorization Level	25	25	25	25	25
Estimated Outlays	2	8	15	20	25

[1]For 2002, $335 million was appropriated for the various development assistance programs administered by EDA. Land-use grants would be a new EDA program.

Pay-As-You-Go Considerations: None.

Intergovernmental and Private-Sector Impact

S. 975 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would authorize grants to states and tribal governments of $25 million annually over the 2003-2007 period for land-use planning purposes. With the exception of tribal governments that do not have sufficient funds to meet matching requirements, the bill would require state and tribal government recipients to provide at least 10 percent of the funds for any project supported by the new grants.

Estimate Prepared By: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Lauren Marks.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATORS SMITH, INHOFE, WARNER, BOND, VOINOVICH, CRAPO AND DOMENICI

The Community Character Act, as passed by the majority, is opposed by a wide spectrum of citizen and business groups and civil rights advocates. While claiming to foster local control, it would do exactly the opposite, investing State and Federal Governments with unprecedented land use control. While claiming to accomplish smart growth, it instead restricts growth. While claiming to promote community character, it denies community diversity. While claiming to make innocuous State grants, it sets out Federal policies and priorities for land use planning and provides funds to implement them.

This legislation negates the critical role of local jurisdictions in planning, regulating and managing land resources. Moreover, the constitutionality of this bill is highly dubious. The 10th Amendment to the United States Constitution reserves to the several States all powers not otherwise expressly delegated to the Federal Government. The Constitution does not grant to the Federal Government any power or role to play in the area of local land-use planning, regulation or management. We believe that the Federal Government should respect the expertise of local governments to make land-use decisions without interference from Washington.

In addition, the President is strongly opposed to this bill, as it would create a new $125 million Federal program. The Administration's position was given at the Committee's March 3, 2002 hearing by David Sampson, Assistant Secretary of Commerce. He testified that there is no money in the budget to pay for this program. He further pointed out that a centralized approach to land use planning is not the right approach, and he testified that the Bush Administration advocates growth policies that are market-based, locally defined, and focused beyond the immediate economic horizon.

This bill is opposed by groups as diverse as the National Association of Home Builders, the American Land Rights Association, National Cattlemen's Beef Association, American Farm Bureau Federation, National Association of Manufacturers, National Black Chamber of Commerce, Center for Individual Freedom, Defenders of Property Rights, American Road and Transportation Builders Association, U.S. Chamber of Commerce, Small Business Survival Committee, National Stone, Sand and Gravel Association, Outdoor Advertising Association, Outdoor Advertising Association of America, and the International Sign Association. Attached are two letters the Committee received in opposition to the bill, one dated April 15, 2002 from a wide variety of civic groups, and the other, dated April 24, 2002, from the National Association of Home Builders.

On the other hand, S. 975 is strongly supported by the American Planning Association, who authored the "Growing Smart Legislative Guidebook." This massive document, created with a $2.5 million Clinton Administration Federal grant and intended to provide users with ideas, principles, methods, procedures, definitions, and legislative approaches for planning and land use, contains distressing anti-property rights recommendations. Should S. 975 become law, the grants it provides would allow this Guidebook to

gain nationwide prominence over decisions that are now made in States, cities, and towns throughout America. Some of the most troubling land use laws and regulations suggested in this Guidebook are as follows: restricted flexibility for variances, conditional use permits, and special exemption permits; authority to issue administrative inspection warrants (which could violate due process and Fourth Amendment rights against unreasonable searches and seizures); prosecution and imprisonment of anyone who knowingly fails to comply with a zoning regulation; financial penalties against citizens who fail to bring their properties into conformity with national planning standards; and reduced compensation to property owners for the total value of their losses due to increased property restrictions.

For these reasons, we voted against reporting this bill out of committee, and remain opposed to its consideration by the Senate.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

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