APPENDIX B: STATE AND LOCAL ADVANCE NOTICE PROGRAMS

Advance notice legislation has been proposed in more than 20 States over the years. Three States and a few local governments require advance notice in certain circumstances, and a few other State legislatures have enacted voluntary notice laws of one form or another. Besides notice provisions, several State legislatures have authorized other kinds of programs related to plant closings: some States require continuation of health insurance coverage for workers after layoffs or closings; although this is usually offered at the employees' expense, one State requires the employer to pay for the continued coverage. Several States offer technical and financial assistance to aid employees in buying plants that are closing. Some States also provide assistance to troubled firms to help them stay in business, and thus avoid shutting down or laying off people. Finally, a number of State legislatures have authorized special studies or commissions on plant closing issues.

The current status of State advance notice laws and two well-known examples of local ordinances are discussed briefly below.

Maine

Since the early 1970s, a Maine law has required employers to provide advance notice, as well as severance pay, when certain plants are closed or relocated.118 The notice and severance pay requirements apply only to "covered establishments, " defined as "any industrial or commercial facility or part thereof which employs or has employed 100 or more people in the last 12 months. "

Any person proposing to close or relocate a covered establishment is to provide notice 60 days before the relocation to the Director of the State Bureau of Labor, A firm that intends to move operations outside of Maine must also provide 60 days' notice to the employees and the municipality. Failure to do so could result in a judgment of $500 against the firm; penalties are not specified for failure to notify the State. The law exempts firms from any fine if the relocation is required due to a natural calamity or if unforeseen circumstances prevented the firm from providing notice.

The requirement for mandatory severance pay also applies only to establishments that employed 100 or more workers in the prior 12 months. When closing or relocating such establishments, firms are to pay the equivalent of 1 week's wage for each year an employee has worked at the establishment. Severance pay is not required for employees who have worked less than 3 years at the firm; nor is it required when the firm relocates the facility within 100 miles of the current site, or when the employee accepts a job offered at the new location. Also, companies are not liable for severance pay when the closing or relocation is due to a "physical calamity ''–defined to include adjudicated bankruptcy as well as fires, floods, or other natural disasters. Finally, an employer does not have to adhere to the State severance pay requirements when it has an "express contract" with the employees providing for severance pay.

In enforcing the severance pay provisions, the State can examine the books and records of the employer. It can supervise the payment of unpaid severance, and it can bring court action to recover the unpaid amounts. Most companies apparently have complied with the severance pay requirements;lle however, several enforcement actions have been taken. Three companies have challenged the law on constitutional grounds, or on grounds that it preempts the Federal Employee Retirement Income Security Act (ERISA) and the National Labor Relations Act. In June 1986, Maine's Supreme Judicial Court upheld the State statute in one of these cases.[120]

The law does not explicitly provide the State government with the power to enforce the 60-day notice provision. Aside from a possible judgment of $500 for failing to provide notice to a municipality or the employees when moving an establishment outside the State, no other penalties are specified in the law. The State does not maintain separate statistics on compliance with the notice requirements of the law. However, some compliance information can be obtained from the State's Bureau of Labor Standards' recordkeeping on severance

111126 Maine Revised Statutes Annotated 625-B. The Maine law on notice of plant closings was initially passed in 1971; it was amended in 1973, 1975, and 1981. Initially, companies were required to provide severance pay only when they failed to provide notice. However, this was changed in 1973; severance pay is now required whether or not notice is provided.

[119] According t. Paul Love joy, the Deputy Director of the Bureau of Labor Standards, companies paid a total of $4,576,945 to 3,580 workers from the beginning of the program in 1971 through 1985. Most of these payments ($4,289,943 in severance to 3,380 dismissed workers) occurred between 1980 and 1985. Another 580 workers could receive a total of up to $1,746,499 if pending court cases are decided in their favor.

[120] "Court: Severance Pay Must be Granted," *Kennebec Journal,* June 3, 1986.

pay. In the 1982-85 period, according to the Bureau, 23 plant closings or relocations in Maine were large enough to be subject to the severance pay requirements of the law. Of these, 13 firms (or about 56 percent) provided at least 60 days' notice, Ten provided less notice than the law required, or no notice.[121]

Wisconsin

Wisconsin requires firms employing 100 or more people in the State to provide 60 days' advance notice before mergers, liquidations, dispositions, or relocations that would result in a cessation of business operations affecting 10 or more employees. Firms that fail to provide this notice or that do not provide certain other information required by the law can be fined up to $5o for each employee affected by the cessation of business operations. Notice is to be given to several parties: the State Department of Industry, Labor and Human Resources, and, due to an amendment to the law in 1984, to any affected employee, the union (if any), the municipality, and county governments.

One purpose of the notice law is to assure that companies provide all wages and benefits due to employees when closing down or relocating, In fact, the Wisconsin law was enacted in 1976, shortly after a company failed to provide final wages due to employees after shutting down its operations without notice and moving out of the State,

Besides giving notice, firms also are to provide information that may be required by the Industry, Labor and Human Relations Department about their payrolls, and the wages and other renumeration owed to affected employees. The Department also can require the employer to provide a plan for making final payments to employees when ceasing operations. The law establishes a procedure for dealing with disagreements between employers and employees about wage claims, and the State is authorized to investigate and attempt to adjust controversies about wage claims. The State can sue the employer on behalf of the employee when it deems that a wage claim is valid, and can take a lien on the employer's property within the State.

The notice law is also intended to give the State the opportunity to prepare an economic adjustment program. Under the law, the Department of Industry, Labor and Human Resources must promptly inform two other State agencies (the Department of Development and the Council for Economic Adjustment) when it receives notice of an impending cessation of business activities. The eight-member Council on Economic Adjustment, comprised of key State officials for economic development, labor, employment and training, and vocational, technical, and adult education, advises the Department of Development in carrying out its activities,

As noted, the penalty for not complying with the notice requirement is minimal—$50 per employee. Legislation to increase the penalty to $50 per employee for each day that notice is not provided (or $3,000 per employee if a company failed to provide any notice at all) was considered in the 1985-86 session of the legislature, but was not acted on before the session ended.

Since March 1984, when notice to employees and local governments was first required, the State has investigated several complaints that employers did not provide the requisite notice; as of July 1986, enforcement action had been recommended in three cases.

From 1976 through 1985, about 250 companies provided notice of partial or total closings in Wisconsin, but no hard figures are available on the degree of compliance with the law. Estimates prepared for the 1976-83 period (before employee and community notice was required) were that between 25 and 33 percent of the firms in Wisconsin complied with the notice requirements of the law.

Massachusetts

The Commonwealth of Massachusetts adopted a corporate standard for notice as part of a package of programs dealing with mature industries that passed the State legislature in July 1984. The notice provision is part of a "social compact," in which employers who receive financial assistance from certain quasi-public State agencies must "agree to accept" certain "voluntary standards of corporate behavior." Specifically, the companies must agree to make "a good faith effort" to provide employees with the "maximum practicable combination" of advance notice and maintenance of income and health insurance benefits. The law, while stating that no minimum standard is prescribed, nonetheless specifies that the State "expects" firms to provide "at least go days' notice or equivalent benefits. " The law also calls on companies to help reemploy the workers.

lzlof the firms that did not provide notice, one went bankrupt and presumably would not be required to provide notice; three are involved in legal proceedings about the law.

Companies are required to accept the voluntary standard only if they receive financial assistance from one of five "quasi-public" State agencies (the Massachusetts Industrial Finance Agency, the Community Development Finance Corp., the Massachusetts Technology Development Corp., the Government Land Bank, and the Massachusetts Product Development Corp.). These agencies provide assistance (such as industrial revenue bonds and loan guarantees) to aid new and established businesses in the State. The specific form of the agreement is to be devised by the individual agency. Typically, before getting financing, the company must sign an agreement that it will give employees advance notice of layoffs or closings, provide severance pay, and maintain health insurance benefits where possible.

The voluntary standard for corporate behavior is part of a comprehensive package of technical and financial assistance for troubled industries and adjustment assistance for displaced workers. Other components of the Massachusetts program include:

- Consulting and financial services for troubled firms.
- Reemployment assistance programs: this program provides reemployment services (such as counseling, placement and training) to workers affected by plant closings or partial closings. Services can be provided at the plant site or at other locations,
- Reemployment assistance benefits: workers who do not receive advance notice or severance pay from employers may receive supplemental unemployment insurance benefits under some circumstances. The maximum duration of the benefits is 13 weeks, reduced by the number of weeks of advance notice and severance pay given by the employer, The maximum amount of benefits per week is $97. Workers receiving this benefit must participate in a reemployment assistance program, if one is available.
- Health insurance: the law requires that new or renewed group health insurance policies provide for 90 days of continued coverage after a plant closing or partial closing. The employer and the displaced worker are to continue to pay their shares of the premium for the 90-day period. In addition, the State has established a health insurance benefit fund to help eligible displaced workers purchase health insurance. These funds are available only to workers who are eligible for reemployment assistance benefits, and then only if they lost group insurance plans due to the bankruptcy of their employer, or if they were insured under an individual (not a company policy) when they lost their job.

The concept of a social compact to deal with the issues of worker dislocation had its genesis in the Governor's Commission on the Future of Mature Industries in Massachusetts. In its final report, issued in June 1984, the Commission urged all Massachusetts businesses (not just the ones receiving State financial assistance) to adopt the standards of corporate behavior that were subsequently stated in the law. Although these standards would be voluntary, the Commission noted: ". . . they constitute a good-faith pledge of actual behavior by the companies that adopt this compact. "122

The State, labor organizations, and a number of business groups are promoting adoption of the voluntary social compact. The Massachusetts High Technology Council issued a statement of guiding principles for work force reductions, calling for the earliest practical notice to employees, local government, and the State.123 The Associated Industries of Massachusetts recommended that its 2,700 member companies members "adopt the voluntary guidelines as a matter of corporate policy" if they have not already done SO.124 About 40 local chambers of commerce also have endorsed the social compact concept.

Maryland

In May 1985, the Maryland legislature passed a law establishing a quick response program to help both employees and employers in mitigating the effects of reductions in business operations. The law calls on the State Secretary of Employment and Training to develop, in cooperation with the Governor's Employment and Training Council, voluntary guidelines for employers who are reducing operations. The guidelines must cover three topics:

1. appropriate length of notice. The law states that "whenever possible and appropriate, at least 90 days' notice shall be given." Compliance with the guideline is voluntary;
2. appropriate continuation of benefits, including health, severance and pension benefits, when operations are reduced; and

122 The Governor's Commission on the Future of Mature Industries, *Final Report,* June 1984, p. 64.

123 Massachusetts High Technology Council, Inc., "Guiding Principles Defining Appropriate Responsible Action for Any Work Force Reduction, " mimeo, n.d.

124 "AIM Urges Corporate Adoption," *Legislative Bulletin*, vol. 26, No. 9, May 22, 1986.

3. specific mechanisms employers can use to ask for assistance under the quick response program.

In June 1986, the Secretary of Employment and Training sent a letter and a copy of the voluntary guidelines to 95,000 Maryland employers.

Besides the voluntary guidelines, the Maryland quick response program includes onsite registration for unemployment insurance when 25 or more workers are laid off at one time, provision of labor market and retraining information, job placement services, and job search workshops,

Michigan

In 1979, the Michigan legislature adopted a voluntary notice provision. It calls on the State labor department to *encourage* business establishments considering closing or relocating to give notice "as early as possible" to the department, the employees, the employee representatives, and the community in which the facility is located. The voluntary notice provision is part of an act to encourage the formation of employee-owned corporations. Technically, the 1979 law lapsed in July 1984; the State legislature reauthorized and expanded the employee ownership law in a package of legislation passed at the end of 1985.[125]

Very few employers have officially notified the State labor department of plant closings or relocations in the 7 years since the voluntary notice provision was adopted. One State official familiar with the program since its inception recalled that only one firm had formally notified the Department of Labor by letter of an impending closing. This is perhaps not surprising since the notice program is entirely voluntary and little effort has been made to publicize it.

Connecticut

Connecticut does not have a notice requirement. However, it does require certain employers to continue to pay for health insurance benefits for employees affected by plant closings or relocations at establishments that employed 100 or more people at any time in the 12 months before the closing or relocation. Originally, employers were required to pay for the continuation of benefits for a 90-day period; in 1985, the legislature extended the period to 120 days. The requirement to pay ends when a worker becomes eligible for other group coverage. After the employer-provided coverage ends, the workers are entitled to 39 additional weeks of continued coverage at their own expense. The requirements of the law can be superseded when a collective bargaining agreement requires employers to pay for continued health benefits after closings or relocations.

Philadelphia

The city council of Philadelphia, in June 1982, adopted an ordinance requiring firms to provide 60 days' notice when closing down or relocating to a site outside of Philadelphia that is not within reasonable commuting distance.126 The notice requirements cover closings and relocations of facilities at which at least 50 people were employed in the prior 12 months.

Notice is to be given to the Director of the Philadelphia Commerce Department, the employees, and any union or employee organization that represents the employees. Enforcement of the ordinance is through courts of "appropriate" jurisdiction. Firms that do not provide written notice as required by law can be enjoined by a court from carrying out the closing or relocation until notice is given. If the firm has already carried out the closing or relocation, the court can award damages of up to 60 days' wages to each employee, depending on the number of days of notice that was not provided.

A key purpose of the ordinance is to try to find alternatives to the closure or departure of the firm. After notice is given, the city Commerce Department will explore the options with the employer. If the firm plans to relocate, the Department will investigate the possibility of finding another site within the city. For firms that plan to shut down, the city will investigate the possibility of a worker buyout, and also will help the firm find alternative financing or find buyers for the company. Depending on the circumstances, the city may be able to provide various kinds of economic development assistance, retraining assistance, and tax incentives to firms that stay.

From the fall of 1982 until the end of April 1986, about 65 firms provided letters of notification to the city. About 45 firms specified the number of employees affected; 4,268 full-time employees were involved. Fifty-two firms gave a reason for either closing or relocating; of these, 20 planned to relocate

[125] Public Law 152, laws of 1985.

[126] Bill No. 1118, amending Title 9 of the Philadelphia Code, was passed on June 17, 1982, and took effect 120 days later. The ordinance was initially disapproved by the Mayor; however, the council repassed the ordinance, and it went into effect without the Mayor's approval.

to an existing or proposed establishment outside of Philadelphia; 18 gave economic or financial reasons for closing or relocating; and others cited reasons such as termination of a lease or getting out of a line of business.

Vacaville, California

In 1984, the city council of Vacaville adopted an ordinance that requires companies that get certain kinds of local development assistance from the city to provide advance notice if they later close down a facility. The notice requirement applies to California employers who relocate to a special redevelopment area in Vacaville, and who receive at least $1,000 of local financial aid (other than governmental or tax exempt financing for public improvements). Such companies "must provide at least three months advance notice or sooner if known or reasonably foreseeable, of plans to reduce, relocate or cease operations which will effect 35 or more jobs of the company's full time permanent staff at the Vacaville location." These companies must "make reasonable efforts" to provide 1 year's advance notice. Upon applying for financial aid, the company must agree in writing to abide by the terms of the notice requirement. The ordinance will expire on January 1, 1987, unless extended by the council; however, companies receiving assistance while the ordinance is in effect will continue to be bound to its terms.

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