A bill for an act

relating to greenhouse gas emissions reduction; making findings; requiring land use planning and limiting certain types of development; prohibiting new incorporations; modifying tax increment financing standards; prohibiting the use of minimum acreage standards for new school siting; authorizing the sale of state bonds; appropriating money; amending Minnesota Statutes 2008, sections 116J.575, subdivision 1a; 123B.70, subdivision 1; 394.23; 462.352, by adding a subdivision; 462.353, subdivision 2, by adding a subdivision; 462.357, subdivision 1, by adding subdivisions; 462.358, subdivision 1a; 469.174, by adding a subdivision; 469.176, subdivision 1b, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 414; repealing Minnesota Statutes 2008, sections 394.232; 414.02; 462.3585.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **LEGISLATIVE FINDINGS.**

The legislature finds that land use reform is a key strategy in the effort to reduce the state's emission of greenhouse gases. Land use reform will reduce the distance and frequency of automobile trips and will encourage walking, bicycling, and the use of transit to get to school and work.

The legislature also finds that preservation of agricultural lands, forest, prairie, and open space contributes to a healthy and economically vibrant Minnesota. To preserve agricultural lands, forest, prairie, and open space, and to decrease vehicle miles traveled, economic development policies should give priority to the redevelopment and rehabilitation of existing residential, commercial, industrial, recreational, and institutional structures over the construction of new buildings on undeveloped land. Preservation of Minnesota's agricultural lands, forest, prairie, and open space, as well as the protection and enhancement of our cultural heritage, requires careful planning at all levels of government.

Sec. 2. Minnesota Statutes 2008, section 116J.575, subdivision 1a, is amended to read:

Subd. 1a. **Priorities.** (a) If applications for grants exceed the available appropriations, grants shall be made for sites that, in the commissioner's judgment, provide the highest return in public benefits for the public costs incurred. "Public benefits" include job creation, bioscience development, environmental benefits to the state and region, efficient use of public transportation, reduction of vehicle miles traveled, efficient use of existing infrastructure, provision of affordable housing, multiuse development that constitutes community rebuilding rather than single-use development, crime reduction, blight reduction, community stabilization, and property tax base maintenance or improvement. In making this judgment, the commissioner shall give priority to redevelopment projects with one or more of the following characteristics:

(1) the need for redevelopment in conjunction with contamination remediation needs;

(2) the redevelopment project meets current tax increment financing requirements for a redevelopment district and tax increments will contribute to the project;

(3) the redevelopment potential within the municipality;

(4) proximity to public transit if located in the metropolitan area;

(5) redevelopment costs related to expansion of a bioscience business in Minnesota;

(6) multijurisdictional projects that take into account the need for affordable housing, transportation, and environmental impact;

(7) the redevelopment project is an alternative to building on undeveloped land; or

~~(7)~~ (8) the project advances or promotes the green economy as defined in section 116J.437.

(b) The factors in paragraph (a) are not listed in a rank order of priority; rather, the commissioner may weigh each factor, depending upon the facts and circumstances, as the commissioner considers appropriate. The commissioner may consider other factors that affect the net return of public benefits for completion of the redevelopment plan. The commissioner, notwithstanding the listing of priorities and the goal of maximizing the return of public benefits, shall make grants that distribute available money to sites both within and outside of the metropolitan area. Unless sufficient applications are not received for qualifying sites outside of the metropolitan area, at least 50 percent of the money provided as grants must be made for sites located outside of the metropolitan area.

Sec. 3. Minnesota Statutes 2008, section 123B.70, subdivision 1, is amended to read:

Subdivision 1. **Commissioner approval.** In determining whether to give a school facility a positive, negative, or unfavorable review and comment, the commissioner must evaluate the proposals for facilities using the information provided under section 123B.71,

subdivision 9. The commissioner may evaluate the proposals using the most recent "Guide for Planning School Construction in Minnesota" prepared by the Department of Education, but must not issue a negative or unfavorable review and comment under this section for a school facility based on the acreage of the proposed school site. The commissioner must evaluate the energy and environmental impact of any new school facility. If a school is proposed for a new site, the commissioner must examine the energy costs associated with that facility, including the change in pupil transportation costs, and the costs of establishing new infrastructure, including roads, sidewalks, and utility lines.

EFFECTIVE DATE. This section is effective for review and comments issued after July 1, 2009.

Sec. 4. Minnesota Statutes 2008, section 394.23, is amended to read:

394.23 COMPREHENSIVE PLAN.

Subdivision 1. **General authority.** The board has the power and authority to prepare and adopt by ordinance, a comprehensive plan. A comprehensive plan or plans when adopted by ordinance must be the basis for official controls adopted under the provisions of sections 394.21 to 394.37.

Subd. 2. **Natural heritage data; protecting open space, environment.** The commissioner of natural resources must provide the natural heritage data from the county biological survey, if available, to each county for use in the comprehensive plan. When adopting or updating the comprehensive plan, the board must, if the data is available to the county, consider natural heritage data resulting from the county biological survey. In a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, the board must consider adopting goals and objectives that will protect open space and the environment.

Subd. 3. **Comprehensive plan required.** (a) Each county outside the metropolitan area, as defined in section 473.121, with a population of 5,000 or more must adopt a comprehensive plan that, at a minimum, includes provisions to achieve the following goals:

(1) minimize the fragmentation and development of agricultural, forest, wildlife, and open space lands;

(2) concentrate new residential development in cities, in the cities' established growth area, if any, or on buildable lands adjacent to cities that could be subject to annexation and the extension of municipal services; and

(3) reduce vehicle miles traveled by encouraging development of new business, industry, housing, recreation, and government facilities in a way that supports more compact communities, transit, and other nonmotorized forms of travel.

(b) A county's population must be determined by the state demographer's most recent population estimate or the most recent federal decennial census, whichever is more recent. A county that meets the population threshold on January 1, 2009, must adopt a comprehensive plan by January 1, 2011. A county that meets the population threshold after January 1, 2009, must adopt a comprehensive plan within two years after the population estimate or census establishing the county's population at or above 5,000. The county must review and update its comprehensive plan at least every ten years.

(c) If a county has an adopted comprehensive plan at the time it becomes subject to this subdivision, it must review and amend its plan as necessary to include provisions to achieve the goals.

(d) Notwithstanding paragraph (a), a county is not subject to the requirements of this subdivision if at least 60 percent of the land by area within the county is owned by the state or federal government.

Sec. 5. **[414.023] INCORPORATIONS PROHIBITED AFTER JUNE 1, 2009.**

The chief administrative law judge must not order any municipal incorporations after June 1, 2009.

Sec. 6. Minnesota Statutes 2008, section 462.352, is amended by adding a subdivision to read:

Subd. 1a. **City.** "City" means a statutory or home rule charter city.

Sec. 7. Minnesota Statutes 2008, section 462.353, is amended by adding a subdivision to read:

Subd. 1a. **Comprehensive plan required.** Each city outside of the metropolitan area, as defined in section 473.121, with a population of 2,500 or more that has had an increase in population of ten percent or more over the last five years must adopt a comprehensive plan. A city's population and growth rate must be determined by the state demographer's most recent population estimate for the city or the most recent federal decennial census, whichever is more recent. A city that meets the population and growth rate threshold on January 1, 2009, must adopt a comprehensive plan by January 1, 2011. A city that meets the population and growth rate threshold after January 1, 2009, must adopt a comprehensive plan within two years after the population and growth rate estimate or

census establishing the city's threshold population and growth rate. The city must review and update its comprehensive plan at least every ten years.

Sec. 8. Minnesota Statutes 2008, section 462.353, subdivision 2, is amended to read:

Subd. 2. **Studies and reports.** In exercising its powers under ~~subdivision 1~~ this section, a municipality may collect and analyze data, prepare maps, charts, tables, and other illustrations and displays, and conduct necessary studies. A municipality may publicize its purposes, suggestions, and findings on planning matters, may distribute reports thereon, and may advise the public on the planning matters within the scope of its duties and objectives. The commissioner of natural resources must provide the natural heritage data from the county biological survey, if available, to each municipality for use in the comprehensive plan.

Sec. 9. Minnesota Statutes 2008, section 462.357, subdivision 1, is amended to read:

Subdivision 1. **Authority for zoning.** For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in sections 103F.201 to 103F.221, access to direct sunlight for solar energy systems as defined in section 216C.06, flood control or other purposes, and may establish standards and procedures regulating such uses. To accomplish these purposes, official controls may include provision for purchase of development rights by the governing body in the form of conservation easements under chapter 84C in areas where the governing body considers preservation desirable and the transfer of development rights from those areas to areas the governing body considers more appropriate for development. No regulation may prohibit earth sheltered construction as defined in section 216C.06, subdivision 14, relocated residential buildings, or manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section. The regulations may divide the surface, above surface, and subsurface areas of the municipality into districts or zones of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class

or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. ~~A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.~~

Sec. 10. Minnesota Statutes 2008, section 462.357, is amended by adding a subdivision to read:

Subd. 1i. **Limited residential densities in unincorporated areas.** Except for unincorporated areas within a city's designated growth boundary, areas that are subdivided and for which there is a recorded plat as of February 1, 2009, areas governed by shoreland regulations and zoning, or parcels classified as noncommercial seasonal residential recreational property for property tax purposes, the residential density of an unincorporated area must not exceed the limits in this subdivision. Unincorporated areas with no more than one residential unit per 40 acres as of August 1, 2009, must not be developed with residential densities greater than one unit per 40 acres. If the unincorporated area has a residential density greater than one residential unit per 40 acres as of August 1, 2009, the density must not be increased.

Sec. 11. Minnesota Statutes 2008, section 462.357, is amended by adding a subdivision to read:

Subd. 10. **City growth areas.** (a) A city may create a growth area by ordinance when the city council determines that (1) population growth demands more housing than can be developed in the space available within the city, or growth in commercial or industrial use requires more space than available within the city, (2) planning of city services is necessary to facilitate the growth, and (3) the city has the capacity and willingness to extend city services such as sewer and water throughout the growth area. A city must not include in the growth area any area to which it is not willing or able to extend sewer or water services. An area is appropriate to be included in a city's growth

area to the extent that future development within the growth area will maximize existing transportation, water, sewer, and other municipal infrastructure, while avoiding to the extent practicable the development of class A agricultural land. Upon making the findings in this paragraph and after the county review and public hearings in paragraph (b), the city may designate the growth area and update its comprehensive plan to include the growth area.

(b) Before designating the growth area, the city must hold a hearing to present to the public its proposed findings for a designated growth area. Notice of the hearing must be published in the city and in the proposed designated growth area. Members of the public must be given a reasonable opportunity to present their comments. The city also must provide the proposed findings and designated growth area to the county planning authority of each county affected. Each county has 45 days to review and comment on the proposal. The city may but is not required to make changes to its proposed designated growth area based on comments from the public and each affected county. After receiving and considering the comments and before adopting the growth area ordinance, the city must provide notice and hold a second public hearing to present its findings and designated growth area, and any changes made to them based on comments received by the city.

(c) A city's growth area may extend into the unincorporated area beyond the city limits in any direction. If more than one city claims the same unincorporated area for its growth area, an administrative law judge will determine which city is best positioned to serve the area weighing factors that include existing development and population growth patterns; existing transportation infrastructure; impact on vehicle miles traveled from area to regional amenities, schools, jobs, and governmental services; and the overall costs of extending services to the area.

(d) A city has the exclusive right to plan, adopt, and enforce official controls in its growth area as though the area were within the city. Planning and development in the growth area must be at densities that are consistent with the rest of the city.

(e) Growth areas must be reviewed by the city council at least every ten years.

(f) As development occurs in the growth area and sewer and water service is extended to the development, that part of the growth area may be annexed to the city by ordinance, following the procedures in chapter 414.

Sec. 12. Minnesota Statutes 2008, section 462.358, subdivision 1a, is amended to read:

Subd. 1a. **Authority.** To protect and promote the public health, safety, and general welfare, to provide for the orderly, economic, and safe development of land, to preserve agricultural lands, to promote the availability of housing affordable to persons and families

of all income levels, and to facilitate adequate provision for transportation, water, sewage, storm drainage, schools, parks, playgrounds, and other public services and facilities, a municipality may by ordinance adopt subdivision regulations establishing standards, requirements, and procedures for the review and approval or disapproval of subdivisions. The regulations may contain varied provisions respecting, and be made applicable only to, certain classes or kinds of subdivisions. The regulations shall be uniform for each class or kind of subdivision.

~~A municipality may by resolution extend the application of its subdivision regulations to unincorporated territory located within two miles of its limits in any direction but not in a town which has adopted subdivision regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the subdivision of land equal distance from its boundaries within this area.~~

Sec. 13. Minnesota Statutes 2008, section 469.174, is amended by adding a subdivision to read:

Subd. 10c. **Compact development district.** "Compact development district" means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that the following conditions are satisfied:

(1) parcels consisting of 70 percent of the area of the district are occupied by buildings or other structures that are classified as class 3a property under section 273.13, subdivision 24; and

(2) the planned redevelopment or development of the district, when completed, will increase the total square footage of buildings, classified as class 3a under section 273.13, subdivision 24, occupying the district by three times or more relative to the square footage of similar buildings occupying the district when the resolution was approved.

EFFECTIVE DATE. This section is effective for districts for which the request for certification is made after June 30, 2009.

Sec. 14. Minnesota Statutes 2008, section 469.176, subdivision 1b, is amended to read:

Subd. 1b. **Duration limits; terms.** (a) No tax increment shall in any event be paid to the authority

(1) after 15 years after receipt by the authority of the first increment for a renewal and renovation district,

(2) after 20 years after receipt by the authority of the first increment for a soils condition district,

(3) after eight years after receipt by the authority of the first increment for an economic development district,

(4) for a housing district, a compact development district, or a redevelopment district, after 25 years from the date of receipt by the authority of the first increment.

(b) For purposes of determining a duration limit under this subdivision or subdivision 1e that is based on the receipt of an increment, any increments from taxes payable in the year in which the district terminates shall be paid to the authority. This paragraph does not affect a duration limit calculated from the date of approval of the tax increment financing plan or based on the recovery of costs or to a duration limit under subdivision 1c. This paragraph does not supersede the restrictions on payment of delinquent taxes in subdivision 1f.

(c) An action by the authority to waive or decline to accept an increment has no effect for purposes of computing a duration limit based on the receipt of increment under this subdivision or any other provision of law. The authority is deemed to have received an increment for any year in which it waived or declined to accept an increment, regardless of whether the increment was paid to the authority.

(d) Receipt by a hazardous substance subdistrict of an increment as a result of a reduction in original net tax capacity under section 469.174, subdivision 7, paragraph (b), does not constitute receipt of increment by the overlying district for the purpose of calculating the duration limit under this section.

EFFECTIVE DATE. This section is effective for districts for which the request for certification is made after June 30, 2009.

Sec. 15. Minnesota Statutes 2008, section 469.176, is amended by adding a subdivision to read:

Subd. 1i. **Compact development districts.** Tax increments derived from a compact development district may only be used to pay:

(1) administrative expenses up to the amount permitted under subdivision 3;

(2) the cost of acquiring land located in the district or abutting the boundary of the district;

(3) demolition and removal of buildings or other improvements and other site preparation costs for lands located in the district or abutting the boundary of the district; and

(4) installation of public infrastructure or public improvements serving the district, but excluding the costs of streets, roads, highways, parking, or other public improvements primarily designed to serve private passenger motor vehicles.

EFFECTIVE DATE. This section is effective for districts for which the request for certification is made after June 30, 2009.

Sec. 16. **REDEVELOPMENT GRANT PROGRAM.**

Subdivision 1. **Appropriation.** $20,000,000 is appropriated from the bond proceeds fund to the commissioner of employment and economic development for the redevelopment grant program under Minnesota Statutes, section 116J.575.

Subd. 2. **Bond sale.** To provide the money appropriated in subdivision 1 from the bond proceeds fund, the commissioner of finance shall sell and issue bonds of the state in an amount up to $20,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI, sections 4 to 7.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 17. **REPEALER.**

Minnesota Statutes 2008, sections 394.232; 414.02; and 462.3585 are repealed.

394.232 COMMUNITY-BASED PLANNING.

Subdivision 1. **General.** Each county is encouraged to prepare and implement a community-based comprehensive plan. A community-based comprehensive plan is a comprehensive plan that is consistent with the goals of community-based planning in section 4A.08.

Subd. 2. **Notice and participation.** Notice must be given at the beginning of the community-based comprehensive planning process to the Office of Strategic and Long-Range Planning, the Department of Natural Resources, the Department of Agriculture, the Department of Employment and Economic Development, the Board of Water and Soil Resources, the Pollution Control Agency, the Department of Transportation, local government units, and local citizens to actively participate in the development of the plan. An agency that is invited to participate in the development of a local plan but declines to do so and fails to participate or to provide written comments during the plan development process waives the right during the office's review and comment period to submit comments, except for comments concerning consistency of the plan with laws and rules administered by the agency. In determining the merit of the agency comment, the office shall consider the involvement of the agency in the development of the plan.

Subd. 3. **Coordination.** A county that prepares a community-based comprehensive plan shall coordinate its plan with the plans of its neighbors and its constituent municipalities and towns in order both to prevent its plan from having an adverse impact on other jurisdictions and to complement plans of other jurisdictions. The county's community-based comprehensive plan must incorporate the community-based comprehensive plan of any municipality or town in the county prepared in accordance with section 462.3535. A county may incorporate a municipal or town community-based comprehensive plan by reference.

Subd. 4. **Joint planning.** Under the joint exercise of powers provisions in section 471.59, a county may establish a joint planning district with other counties, municipalities, and towns, that are geographically contiguous, to adopt a single community-based comprehensive plan for the district. The county may delegate its authority to adopt official controls under this chapter to the board of the joint planning district.

Subd. 5. **Review and comment.** (a) The county or joint planning district shall submit its community-based comprehensive plan to the Office of Strategic and Long-Range Planning for review of the extent to which the plan promotes local citizen participation, promotes cooperation among adjacent communities, and demonstrates consideration of the community-based planning goals in section 4A.08. The office has 60 days after submittal to comment on the plan.

(b) The office may not disapprove a community-based comprehensive plan if the office determines that the plan promotes local citizen participation, promotes cooperation among adjacent communities, and demonstrates consideration of the community-based planning goals in section 4A.08.

(c) If the office disagrees with a community-based comprehensive plan or any elements of the plan, the office shall notify the county or district in writing of how the plan specifically fails to address the goals of community-based planning. Upon receipt of the office's written comments, the county or district has 120 days to revise the community-based comprehensive plan and resubmit it to the office for reconsideration.

(d) If the county or district refuses to revise the plan or the office disagrees with the revised plan, the office shall within 60 days notify the county or district that it wishes to initiate the dispute resolution process in chapter 572A.

(e) Within 60 days of notice from the office, the county or joint planning district shall notify the office of its intent to enter the dispute resolution process. If the county or district refuses to enter the dispute resolution process, the county or district is ineligible for any future grant disbursements related to community-based planning activities through the office.

(f) Priority for other state grants, loans, and other discretionary spending must not be given to local units of government based on their participation in community-based planning.

Subd. 6. **Plan update.** The county board, or the board of the joint planning district, shall review and update the community-based comprehensive plan periodically, but at least every ten years, and submit the updated plan to the office of strategic and long-range planning for review and comment. When updating the plan, the county board or the board of the joint planning district must consider natural heritage data resulting from the county biological survey. In a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, the board must consider adopting goals and objectives that will protect open space and the environment.

Subd. 7. **No mandamus proceeding.** A mandamus proceeding may not be instituted against a county under this section to require the county to conform its community-based comprehensive plan to be consistent with the community-based planning goals in section 4A.08.

Subd. 8. **Planning authority.** Nothing in this section shall be construed to prohibit or limit a county's authority to prepare and adopt a comprehensive plan and official controls under this chapter.

414.02 EXCLUSIVE METHOD OF MUNICIPAL INCORPORATION.

Subdivision 1. **Initiating the proceedings.** This section provides the exclusive method of incorporating a municipality in Minnesota. Proceedings for incorporation of a municipality may be initiated by petition of 100 or more property owners or by resolution of the town board within an area which is not included within the limits of any incorporated municipality and which area includes land that has been platted into lots and blocks in the manner provided by law. The petition or resolution shall be submitted to the chief administrative law judge and shall state the proposed name of the municipality, the names of all parties entitled to mailed notice under section 414.09, the reason for requesting incorporation, and shall include a proposed corporate boundary map.

Subd. 1a. **Notice of intent to incorporate.** (a) At least 30 days before submitting the petition or resolution to the chief administrative law judge under this section, the township must serve the clerk of each municipality and each township that is contiguous to the township by certified mail a notice of the township's intent to incorporate.

(b) If the proceedings for incorporation are initiated by the requisite number of property owners, the notice of intent to incorporate must be served by the property owner or owners or designee in the manner required under this paragraph. The property owner or owners or designee must serve a notice of intent to incorporate on the town board of the township containing the area proposed for incorporation. The property owner or owners or designee must also serve the clerk of each municipality and each township that is contiguous to the area proposed for incorporation by certified mail a notice of intent to incorporate.

Subd. 2. **Hearing time, place.** Upon receipt of a petition or resolution made pursuant to subdivision 1, the chief administrative law judge shall designate a time and place for a hearing in accordance with section 414.09.

Subd. 3. **Relevant factors, order.** (a) In arriving at a decision, the chief administrative law judge shall consider the following factors:

(1) present population and number of households, past population and projected population growth for the subject area;

(2) quantity of land within the subject area; the natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs;

(3) present pattern of physical development, planning, and intended land uses in the subject area including residential, industrial, commercial, agricultural, and institutional land uses and the impact of the proposed action on those uses;

(4) the present transportation network and potential transportation issues, including proposed highway development;

(5) land use controls and planning presently being utilized in the subject area, including comprehensive plans, policies of the Metropolitan Council; and whether there are inconsistencies between proposed development and existing land use controls;

(6) existing levels of governmental services being provided to the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of the services;

(7) existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems;

(8) fiscal impact on the subject area and adjacent units of local government, including present bonded indebtedness; local tax rates of the county, school district, and other governmental units, including, where applicable, the net tax capacity of platted and unplatted lands and the division of homestead and nonhomestead property; and other tax and governmental aid issues;

(9) relationship and effect of the proposed action on affected and adjacent school districts and communities;

(10) whether delivery of services to the subject area can be adequately and economically delivered by the existing government;

(11) analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment;

(12) degree of contiguity of the boundaries of the subject area and adjacent units of local government; and

(13) analysis of the applicability of the State Building Code.

(b) Based upon these factors, the chief administrative law judge may order the incorporation on finding that:

(1) the property to be incorporated is now, or is about to become, urban or suburban in character; or

(2) that the existing township form of government is not adequate to protect the public health, safety, and welfare; or

(3) the proposed incorporation would be in the best interests of the area under consideration.

(c) The chief administrative law judge may deny the incorporation if the area, or a part thereof, would be better served by annexation to an adjacent municipality.

(d) The chief administrative law judge may alter the boundaries of the proposed incorporation by increasing or decreasing the area to be incorporated so as to include only that property which is now, or is about to become, urban or suburban in character, or may exclude property that may be better served by another unit of government. The chief administrative law judge may also alter the boundaries of the proposed incorporation so as to follow visible, clearly recognizable physical features for municipal boundaries.

(e) In all cases, the chief administrative law judge shall set forth the factors which are the basis for the decision.

(f) Notwithstanding any other provision of law to the contrary relating to the number of wards which may be established, the chief administrative law judge may provide for election of council members by wards, not less than three nor more than seven in number, whose limits are prescribed in the chief administrative law judge's order upon a finding that area representation is required to accord proper representation in the proposed incorporated area because of uneven population density in different parts thereof or the existence of agricultural lands therein which are in the path of suburban development, but after four years from the effective date of an incorporation the council of the municipality may by resolution adopted by a four-fifths vote abolish the ward system and provide for the election of all council members at large as in other municipalities.

(g) The chief administrative law judge's order for incorporation shall provide for the election of municipal officers in accordance with section 414.09. The plan of government shall be "Optional Plan A", provided that an alternate plan may be adopted pursuant to section 412.551, at any time.

(h) The ordinances of the township in which the new municipality is located shall continue in effect until repealed by the governing body of the new municipality.

Subd. 4. **Effective date of incorporation.** The incorporation shall be effective upon the election and qualification of new municipal officers or on such later date as is fixed by the director's order.

462.3585 JOINT PLANNING BOARD.

Upon request of a home rule charter or statutory city council or county or town board by resolution presented to the county auditor of the county of the affected territory a board shall be established to exercise planning and land use control authority in the unincorporated area within two miles of the corporate limits of a city. The board shall have members in a number determined by the city, county, and town. Each governmental unit shall have an equal number of members. The members shall be appointed from the governing bodies of the city, county, and town. Upon request of more than one county or town board with respect to the unincorporated area within two miles of the corporate limits of a single city, the parties may create one board rather than a separate board for each county or town, with equal membership from each affected governmental unit. The board shall serve as the governing body and board of appeals and adjustments for purposes of sections 462.351 to 462.364 within the two-mile area. The board shall have all of the powers contained in sections 462.351 to 462.364 and shall have authority to adopt and enforce the State Fire Code promulgated pursuant to section 326B.02, subdivision 5. The city shall provide staff for the preparation and administration of land use controls unless otherwise agreed by the governmental units. If a municipality extends the application of its subdivision regulations to unincorporated territory located within two miles of its limits pursuant to section 462.358, subdivision 1a, before the creation of a joint board, the subdivision regulations which the municipality has extended shall apply until the joint board adopts subdivision regulations.